SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK, COMMERCIAL DIVISION

PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, Plaintiff,	)	
v.	)	**Index No. 451625/2020** **Hon. Joel M. Cohen**
THE NATIONAL RIFLE ASSOCIATION OF AMERICA, INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL, Defendants,	)	**MOTION TO INTERVENE OR LIFT THE ORDER OF SEQUESTRATION AND FOR INJUNCTIVE RELIEF**
and	)	
PHILLIP B. JOURNEY, Proposed Intervener.	)	

COMES NOW Phillip B. Journey and requests that this Court allow him to intervene in this action for the remedial phase of the trial and represent my interests. In the alternative, I ask that the Court lift the order of sequestration of the witnesses so that I may attend the hearing regarding disposition in this matter and to allow me to address this Court regarding the injunctive and equitable relief sought in this Court appearing pro se. I wish to inform this Court of recent circumstances and why this request is being made so late. Acknowledging it is less than two weeks before the hearing of this hearing is set to begin. I more than most can appreciate the gravity of the request. No continuance is necessary as the questions my cause of action present are ancillary to the case in chief.

In support of the requests, I state as follows:

I was elected to my third term on the National Rifle Association's Board of Directors as it was officially reported by the Committee on Elections on May 18, 2024. I served on the board previously from 1995 to 1998. At the 1997 annual meeting of the National Rifle Association of America, I was on the losing side of a struggle within the Board of Directors similar to the one faced today. Wayne LaPierre was challenged by members of the Board of Directors because he failed or refused to follow board directives regarding vendor contracts. The Board ordered that all contracts in writing over $100,000 had to be approved by two executive officers out of the 2 vice presidents and the president.

According to the exhibit that Ronin Colman and I validated during our testimony, which was admitted into evidence, Mr. LaPierre made those contracts by oral agreements that were not in writing and therefore did not require review by the executive officers. The pattern of denying the Board of Directors important financial information has continued to this day. The policies perpetuated by former President Cotton, those that preceded him and now President Barr are preventing the board members from fulfilling their fiduciary duty.

At that 1997 member's meeting and subsequent board meeting in Seattle, those who maintained their place in the power structure of the National Rifle Association did so by bringing Charlton Heston to the meeting to step in as president with no prior service on the board. The slate of officers that narrowly won the officers' elections and their associates have continued holding the reins of the NRA's Board of Directors thereby NRA itself, since that time.

Over the next three years, from 1998 to 2000, all board members including myself, who

wished to hold Wayne Lapierre accountable were purged from the board of directors. Many were treated so poorly that they resigned or abandoned their position on the board. I am the only member purged during that difficult time to regain a seat on the board.

I was again elected to the board of directors in 2020 to a 3-year term that concluded at the adjournment of the annual meeting in Indianapolis in 2023. On both of those occasions (1995 and 2020), I was nominated by the nominating committee. In almost 30 years I can only recall a handful of candidates elected to the Board of Directors who did not have the nominating committee's endorsement. One was Frank Taite who only took office after a sitting board member passed away.

When I was nominated in 1994 by petition, the bylaws only required 250 voting-member signatures to be nominated for the board ballot. Since 1994 the bylaws were changed requiring signatures equal to .05% of the votes cast in the previous election. This amendment of the bylaws increased the number of signatures necessary to over 1,000 some years. This change in the bylaws was intended to block that route for nomination. The bylaw change made it much more difficult to be nominated by petition. It effectively closed that path for nomination. Over the last five years, the number of ballots cast by voting members in the elections as well as the overall membership has been decreasing. This is obviously due in no small part to the travails and controversy surrounding the NRA for the last few years.

Based upon the 2023 ballots cast in the Board of Directors election, the number was less than 400 signatures required for nomination. Knowing that number I determined that it was possible to circumvent the nominating committee. I recruited three friends to run with me in the election. The "four for reform" were Roscoe (Rocky) Marshall, Jeff Knox, Dennis

Fusaro, and Phillip Journey (myself). Volunteers around the country went to gun club meetings and gun shows soliciting and collecting voting member signatures. The number of signatures acquired was far in excess of those required for nomination.

We used innovative campaign techniques in both direct mail and electronic messaging reaching out to innumerable NRA voting members in 2024. We went to the membership where they were including gun shows, gun clubs, and gun stores. We campaigned online, on message boards and blogs to inform voting NRA members that there was an alternative to the status quo. See Exhibit "A".

The class of voting members who cast ballots totaled 81,800. See exhibit "B". Of those 81,800 ballots cast, 79,557 were valid. 2,243 ballots were invalid for reasons such as voting for more than 25 candidates, not being properly authenticated, and having zero votes. Of the 26 slots for board positions three of the "four for reform" came in the top five and the 4th, Mr. Fusaro, came in 16th. Of the 79,557 votes cast, 67.14% of those ballots voted for me, 66.43% were for Rocky Marshall, 65.45% were for Jeff Knox and 53.68% were for Dennis Fusaro. Receiving about two-thirds of the votes cast by the class of voting members, I believe I meet the 5% threshold of N-CPL section _623A.

Our campaign had the same theme as the organization I founded, to reform and restore the NRA. Over the last five years, it has been a consistent message. See Exhibit "C". I would submit to the Court that we have the mandate of the membership to resolve the issues entangling NRA and restore NRA to its former mission.

Rocky Marshall and I were found by the jury to be whistleblowers per section 715-b of the N-CPL. The jury also found that the National Rifle Association failed to protect those

whistleblowers, Rocky Marshall and myself.

Ferris v. Lustgarten Foundation, the Appellate Division, Second Department held that Section 715-b does imply a private right of action. Before my reelection to the Board of Directors this year but after the jury verdict, I asked Mr. Wang "What was our remedy?" He shrugged his shoulders; he did not have an answer. From my review of the New York law, because Mr. Marshall and I are not employees, we can only request injunctive relief and perhaps other remedies in equity from the Court to protect ourselves from future abuses. The NYAG has not demonstrated a desire to request protective injunctive or equitable relief on our behalf.

NY CPLR § 1001 (2023) provides that: …Persons who ought to be parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs.

The Jury in this trial found that I was a whistleblower and the National Rifle Association failed to protect me. That violation was of NCPL §715b. Being a member of the Board of Directors I have a right to seek equitable and injunctive relief.

FERRIS v. LUSTGARTEN FOUNDATION (2020)

Supreme Court, Appellate Division, Second Department, New York. That court found, "...a statute does not explicitly provide for a private right of action, recovery may only be had under the statute if a legislative intent to create such a right of action may "fairly be implied" in the statutory provisions and their legislative history (Sheehy v. Big Flats Community Day, 73 N.Y.2d 629, 633, 543 N.Y.S.2d 18, 541 N.E.2d 18; see Brian Hoxie's Painting Co. v. Cato–Meridian Cent. School Dist., 76 N.Y.2d 207, 211, 557

N.Y.S.2d 280, 556 N.E.2d 1087; Ader v. Guzman, 135 A.D.3d 671, 672, 23 N.Y.S.3d 292). This inquiry involves three factors: " '(1) whether the plaintiff is one of the classes for whose particular benefit the statute was enacted; (2) whether recognition of a private right of action would promote the legislative purpose; and (3) whether creation of such a right would be consistent with the legislative scheme' " (Maimonides Med. Ctr. v. First United Am. Life Ins. Co., 116 A.D.3d 207, 211, 981 N.Y.S.2d 739, quoting Carrier v. Salvation Army, 88 N.Y.2d 298, 302, 644 N.Y.S.2d 678, 667 N.E.2d 328; see Kamins v. United Healthcare Ins. Co. of N.Y., Inc., 171 A.D.3d 715, 716, 98 N.Y.S.3d 96)."

The Court held: "Accordingly, we hold that Not–For–Profit Corporation Law § 715–b creates an implied private right of action for employees who are retaliated against or subject to adverse employment consequences as a result of whistleblowing activities. (see Della Pietra v. Poly Prep Country Day Sch., 2016 N.Y. Slip Op. 32916[U], 2016 WL 11432581; Joshi v. Trustees of Columbia Univ. in City of N.Y., 2018WL 2417846, 2018 U.S. Dist. LEXIS 89280).

I recognize the holding is as to whistleblowers who are employees. To assert that the implied private right of action does not extend to members of the board would be contrary to the legislative intent. It as to a member of the board of directors is implied in the statutory provisions and the legislative scheme.

If I am not joined in this action and no relief on this jury finding may be sought by the New York Attorney General I will be precluded from pursuing any remedy. I will be prejudiced as the issue will be res judicata. The principle indicates that if there would be a final judgment based on merits, I cannot relitigate the same matter for the same cause of

action in a new lawsuit. As it now appears several members of the Board of Directors intend to continue in their pattern of abusive governance of the NRA. In that process should they regain power they will destroy the NRA as fundraising will collapse. The likelihood of the need for a new enforcement action is a certainty.

As a result of their actions, BAC is an adverse party to me, orchestrating and participating in the violation of 715b. They should be enjoined from further representation of the National Rifle Association. They should be required to disgorge the fees taken in violation of Texas law (it controls their engagement) for legal strategies they advised their client to take while knowing they would fail.

Since the annual meeting in May circumstances have developed that mandate these requests. This Court heard testimony regarding the punishments meted by the officers of the NRA, their counsel, and their allies to keep members of the Board of Directors in line. Methods such as the loss of committee assignments, control of the Nominating Committee, and whisper campaigns maligning whistleblowers. These are just a few of the techniques they used to keep the directors in line. It is my understanding that President Robert Barr has refused to assign any of the "four for reform" to a committee and he has stated they would be assigned after the trial in this Court. It seems clear he intends to reward or punish those he sees as friend or foe. It appears that all of the committees have been filled. See Exhibit "D"

At the board Orientation held last week and attended by President Barr, three of us were present as was a former employee elected to the board on Tuesday. During my 1st term as a director, in 1995, the committee chose its chair. However, President Barr stated in the orientation that Former President Cotton's assignments were adopted by President Barr

but for removing another problem director from the Ethics Committee chairmanship and replacing her with former President Cotton. President Barr made him Chairman of the committee. Presidents Cotton and Barr exceed their bylaw-granted authority in naming chairs and vice chairs of committees. See Exhibit "D". Our complaints were vocal, and Mr. Messenger intervened. We will see if President Barr chooses to be more subtle in his harassment. Immediately following the last board meeting, I wanted to give the new leadership the benefit of the doubt. They proved unworthy of that deference. In June my worst fears had been realized.

My act of whistleblowing was filing the Motion for an Examiner in the NRA's bankruptcy in Dallas, Texas. That motion has been entered as an exhibit during this trial. In it, I disclose that the Board of Directors was not consulted, nor did it approve the Ch. 11 bankruptcy filing prior to it being filed contrary to the certification of the petition signed by Wayne Lapierre stating that the board was fully apprised of the bankruptcy and approved the filing of the case. That sworn statement by Wayne LaPierre was false. Upon learning of the bankruptcy and after reviewing the petition, I concluded that fraud had been perpetrated on the Bankruptcy Court. As a sitting District Court Judge in Kansas, I understand I must follow our Canons of Judicial Ethics. Those ethics rules require that if a judge finds fraud being perpetrated on another Court that judge must inform that Court of said fraud. Within two weeks after the filing of the bankruptcy petition, I raised money and I hired lawyers who prepared a motion to appoint an examiner, which was filed before the New York Attorney General filed her motion to dismiss the bankruptcy.

Roscoe Rocky Marshall and Owen (Buz) Mills joined that motion for a bankruptcy

examiner along with other current and former board members of the National Rifle Association. At the March 2021 meeting of the Board of Directors, Mr. Marshall and I faced a difficult set of circumstances. This meeting followed the filing of our motion. NRA attorneys from the Brewer firm and the bankruptcy co-counsel began their campaign of punishment and harassment with the collaboration of NRA leadership to coerce us to dismiss our motion. That portion of the board meeting was in executive session. Executive session was misused by Cotton and his predecessors as a shield to hide their activities.

During the attorneys' explanation of the bankruptcy filing to the Board of Directors, the co-counsel of the Brewer firm stated from the podium that I was the "NRA's greatest enemy". At that moment began what Mr. Marshal described as “the food fight in the movie “Animal House”. From that point until this day, I believe President Barr and former President Cotton in concert with others acted with the intent to block Mr. Marshal and I from nomination by the nominating committee in 2023. President Barr was chair of the Nominating Committee in the 2022-2023 service year.

Other members of the Board along with Brewer Attorneys and Counselors (BAC) intend to continue to punish myself, Mr. Marshall, and others who are supporting legal and transparent business practices within the NRA. Both former President Cotton and President Barr have punished dissent through various means including stripping members of their committee assignments. During Mr. Marshall's first term on the Board, he was never given a committee assignment; in my second term, I was only given 1 committee assignment to a program with no resources of significance.

During the pendency of the bankruptcy and this case, I voluntarily complied with

subpoenas to provide testimony for depositions, that were all by Zoom and evidentiary hearings. I have consistently told the NYAG's staff, Brewer attorneys, and others that Mondays and Tuesdays were far more difficult for me to accommodate their requests than the rest of the week. Mondays and Tuesdays are my motion docket days. I am assigned 100,000 citizens' family law cases. It is easier to move 1 evidentiary hearing than 20+ motions. Since my election to the Board by 2/3's of the voting members the NYAG staff will not respond to my attempts to communicate. I intended to answer their subpoena and schedule my deposition. The communication by those purportedly seeking my sworn testimony has not been conducive to accomplishing the task.

My Court calendar has filled; I am even doing hearings on Friday, July 5. Keep in mind, Brewer attorneys are the same attorneys that violated sect. 715-b, were presenting themselves to me as if they were my counsel and asking me to come in and do a pre-deposition interview. BAC attorney Ms. Rogers prior to the deposition request attempted to schedule a meeting in Wichita, Kansas to "discuss" this case. They chose not to pursue that. I reiterated in that conversation my scheduling issues on Mondays and Tuesdays.

In their collaboration with the Brewer, they scheduled my 3rd deposition on Tuesday, June 25. I only had 5 days actual notice. The attorney from BAC sent me an email on June 10. I never saw it until July 2 as I was on a ship in the Pacific without cellular or internet access. The demands from both the NYAG and BAC required me to be in person 750 Lexington Ave. 14th floor NY, NY. No provision was expressed regarding the expense. It was to start at 3:00 pm and continue from day to day until completed. It would have required Monday and Wednesday for travel. The New York standards of civility Section 1(C) states,

"Lawyers should not engage in conduct intended primarily to harass…witnesses." Section VI. States, "A lawyer should not use any aspect of the litigation process, including discovery … as a means of harassment." I sent them the email attached as Exhibit "G". I wanted them to understand that we are adverse parties, that their scheduling of the deposition with the intent to disrupt my dockets and make this whistle-blower's circumstances far more difficult was continuing the punishment.

The new board member orientation I attended was also scheduled on a Monday and Tuesday after the deposition, not before. I told the NRA staff about my scheduling difficulties for Mondays and Tuesdays. The choice to schedule on these days despite my request is suspect.

On the day following my email in Exhibit "G", President Barr sent the following email, Exhibit "H", to all board members. I understood it to essentially be a notice that my including Mr. Wang on the email string was an ethical violation and I realized it could be grounds to move forward with that board member's expulsion from the board and/or the association itself. My intent in including him in the email was to avoid ex-parte communication, per Judicial Ethics.

To put this into context, after the 1997 meeting, Neal Knox and Weldon Clark, who led the drive for financial transparency and compliance with board policies, were prosecuted within the Ethics Committee and expelled from the board by the Hearings Committee. Documents regarding Mr. Clark's Federal Election Commission complaint and expulsion were admitted at trial. As someone who knows who voted with the "Four for Reform" and who did not, it is clear from the makeup of the committees that they are using the President's

power to stack the Ethics and Hearings Committees with their allies and supporters. Their intent may be divined from their action to do the same to us.

The initial resolution creating the Special Litigation Committee (SLC) named three members, the then-current president and two vice presidents. The initial resolution did not provide for the removal or replacement of any member. The SLC went through personnel changes at the whim of former President Cotton. Another resolution may have been passed to modify the membership of the committee. I have yet to locate it.

The reality is that those who lost the elections are still in control of the SLC and therefore the BAC. Neither the Executive Vice President, the 2 Vice-Presidents nor the Board have a say in this case. The "four for reform" were systematically excluded from the informational meeting for the Board scheduled the Thursday before the Members' meeting melted down. The "4 for Reform" would not begin their term of office until the conclusion of the member's meeting the following Saturday. Their actions indicate that they scheduled that meeting before the "Four" assumed office per bylaws with the specific intent of excluding us. We heard it didn't go so well for President Cotton and Mr. Brewer but, of course, that is only hearsay.

The 2024 Member's Meeting in Dallas, Texas was as big a disaster for President Cotton as was the NYAG trial informational meeting. While he was successful in shutting out members questioning leadership and any other descent his motion to move the NRA to Dallas failed. Boos and jeers greeted his arguments from the podium with Board Member Amanda Sufficool. She was retaliated against through her removal from all committee assignments when she abstained from granting President Cotton a 3rd term as President.

At the following Board meeting, the "four" and a coalition assembled by Owen "Buz" Mills won EVP, both Vice Presidencies and other offices such as the Nominating and Executive Committees positions. The old guard, including President Cotton, was able to elect only one officer, Robert Barr as President. With limited authority they have used the only tool they have, and obstruction appears to be the card they played. There was another informational meeting scheduled at NRA HQ on July 9th. Board members were required to pay their own travel expenses. So few signed up to attend, they canceled the briefing. Travel expense is another tool in their effort to restrict board member access to information. Zoom or other electronic means in this age could be configured to be a secure alternative, however that did not serve their purpose.

The NRA is in peril; its solvency is tenuous at best burning about two million a month net to keep the doors open. While touring the headquarters for the new board member orientation, I was taken aback upon seeing hundreds of empty cubicles. Should the current state of affairs continue its financial survival is improbable. This Court expressed the goal of not punishing the membership for the sins of the leadership. The NYAG appears to have no desire to stop the continued violation of Sect. 715b, nor aid the survival of the NRA regardless of her statutory duty to protect and recover member assets. In her view, perhaps we are still terrorists and there is no harm in allowing the organization to unravel. In my view you could be the last opportunity to restore the NRA.

The unfettered reality is that the BAC, the NYAG, and the old power structure all benefit from the current circumstances. That's almost everyone's benefit but the membership. The reality is that many of the members are aware of this. They know that reform is not

being done, that their concerns have not been completely addressed, and are hesitant to come home and renew their support. Just like in 1997 and with dramatic change, it will take 2 or 3 more years to complete reform. Under the current set of circumstances without dramatic change the NRA's survival is doubtful. This Court with the orders it chooses to make will likely determine whether it survives.

THEREFORE, I ask the Court to grant the following relief. Remove those board members who have sought and received compensation placing their personal interests ahead of the organization's and those who actively aided and abetted the looting of NRA assets and enjoin BAC from further representation and association with the National Rifle Association.

Dated: July 3, 2024

Wichita, Kansas.

Respectfully submitted,

Phillip B. Journey, Proposed Intervener
525 N. Main, 5th floor
Wichita, Kansas 67213
(Tel:) 316-660-5601
phillipjourney@gmail.com

To: PEOPLE OF THE STATE OF NEW YORK, by LETITIA JAMES,
Attorney General of the State of New York (via NYSCEF)
OFFICE OF THE ATTORNEY GENERAL OF
THE STATE OF NEW YORK
28 Liberty Street
New York, NY 10005
(212) 416-8401
Email: James.Sheehan@ag.ny.gov

Email: Emily.Stern@ag.ny.gov
Email: Monica.Connell@ag.ny.gov
Email: Steven.Thompson@ag.ny.gov
BREWER, ATTORNEYS &
COUNSELORS 750 Lexington Avenue,
Email: sme@brewerattorneys.com
14th Floor
New York, New York 10022
Telephone: (212) 489-1400
Facsimile: (212) 751-2849
ATTORNEYS FOR DEFENDANT THE
NATIONAL RIFLE ASSOCIATION OF
AMERICA