

People v. The National Rifle Association of America, Index No. 451625/2020

Exhibit O to Affidavit of Monica Connell, sworn to July 1, 2024, in Support of Plaintiff's Pretrial Memorandum of Law for Phase 2

I. Non-Monetary Remedies Sought for NRA's Violations of Law

A. Commitments to Remediate Past Violations of Law and Implement an Effective Compliance Program. *The NRA will address deficiencies in its internal controls, compliance code, policies, and procedures regarding the In-Scope matters, as defined below, and agrees to continue to conduct in a manner consistent with all of its obligations under any order of the Court, appropriate reviews of its internal controls, policies, and procedures, its compliance programs and governance. Where necessary and appropriate, the NRA will modify its compliance program, including internal controls, compliance policies, and procedures it maintains: (a) an effective system of internal accounting and disclosure controls; (b) a rigorous compliance program that meets professional standards; (c) compliance leadership including that its directors and senior management provide strong, explicit, and visible support and commitment to enforce compliance with its corporate and compliance policies, and its statement of corporate ethics, and demonstrate rigorous support for compliance principles via their actions and words.*

1. What are the NRA's remediation commitments?

a) Conduct a root cause analysis that considers how deficiencies in the (i) governance structure, (ii) corporate culture, (iii) risk assessment process, (iv) policies, processes and controls, (v) compliance and internal audit capabilities, and (vi) incident response and remediation process contributed to the past violations of law.

b) Develop a corrective action plan, including milestones, timelines, and role and accountability assignments, to address the root causes identified in the analysis.

2. What are the NRA's commitments to implement an effective compliance program?

a) Within 60 days of the effective date of the Court's Order, conduct a baseline review ("NRA Baseline Review") of its existing compliance program against minimal professional standards (e.g., U.S. Sentencing Guidelines Chapter 8B1.2, U.S. DOJ Criminal Division, Evaluation of Corporate Compliance Programs or criteria suggested by the Court-Appointed Independent Consultant ("CAIC")).

b) Within 90 days of the effective date of the Court's Order, develop a corrective action plan, including milestones, timelines, and roles and accountability assignments to remediate deficiencies and implement a

compliance program that meets minimal standards.

c) Within 90 days of the end of the Court Appointed Independent Consultant's Term, the NRA President, Executive Vice-President, and Chief Compliance Officer will certify whether the remediation and compliance program are reasonably designed and operating effectively to (i) prevent and timely detect recurrence of violations of law and (ii) comply with NRA's New York State legal obligations.

3. What are the NRA's obligations to the CAIC?

a) Cooperate fully, including providing access to all NRA information, documents, records, facilities, and employees that fall within the scope of the CAIC's mandate.

b) Use its best efforts to provide access to the NRA's former directors, employees, agents, consultants, contractors and suppliers that fall within the scope of the CAIC's role and mandate.

c) Work cooperatively if the NRA seeks to withhold access to information, documents, records, facilities, or current or former employees based on attorney-client privilege, attorney work-product doctrine or another basis. If the matter cannot be resolved, the NRA shall promptly provide written notice to the CAIC and OAG. The CAIC may then consider whether to request the Court for access to such information, documents, records, facilities, or employees.

B. Court-Appointed Independent Consultant ("CAIC"). *The NRA will retain a CAIC to provide oversight and evaluation of the NRA's remediation of the NRA's legal violations and compliance program. The CAIC will serve three years from the effective date of the Court's Order.*

1. What is within the scope of the CAIC's responsibility (the "In-Scope Matters"):

a) Oversight of the NRA's compliance with its obligations to properly administer itself as a non-profit organization and its assets, revenues, and expenditures concerning financial transactions affairs and governance consistent with the laws and regulations applicable to non-profit entities and its own internal rules. This entails ensuring that the NRA implements and enforces its internal controls, policies, procedures and practices governing financial transactions and matters, including without limitation for purchasing, procurement, conflicts of interest and related party transactions, business ethics, expense reimbursements, travel expenses and gifts, gratuities and entertainment, are effective. This means that they are in place, compliant with governing law, communicated to staff, directors, vendors and NRA members, and consistently executed and enforced by the NRA's management, and the NRA Board has knowledge of the content and

operation and exercises reasonable oversight to ensure compliance.

b) Oversight of the NRA's compliance with its obligations concerning whistleblowers. This entails ensuring that the NRA's whistleblower policies, procedures and practices are compliant with governing law and effective. This includes adequate and enforced protocols with regard to the receipt, recording, reporting, and evaluating whistleblower complaints, investigating and responding to such complaints, and preventing and remedying any failure to investigate and address complaints determined to have merit or retaliation. This means that the NRA's whistleblower policies are in place, communicated, and enforced by management, and the NRA Board has sufficient knowledge of the content and operation and exercises reasonable oversight to ensure compliance.

c) Oversight of the NRA's compliance with its regulatory reporting obligations to New York. This entails ensuring that the NRA policies, procedures and practices are generally effective at ensuring that reports are complete, accurate and timely. This means that the NRA's policies and procedures related to its regulatory reporting are in place, communicated, and enforced by management, and the NRA Board has knowledge of the content and operation of reporting requirements, that required reports are accurate and complete, and timely reviewed, and exercises reasonable oversight. This shall require certification by key leadership that representations in regulatory filings are accurate to the best of their knowledge after reasonable inquiry.

d) Oversight of the NRA's execution and implementation of its corrective action plans to (i) address the root causes identified in the analysis and (ii) remediate deficiencies and implement a compliance program that meets minimal standards.

2. What is outside of the Scope of the CAIC's responsibility:

a) For the CAIC's scope of responsibility and authority, the CAIC shall not have oversight concerning the NRA's Core Fundamental Mission Operations, which are defined as:

- (1) political, legislative and advocacy activities of the NRA-ILA, including, without limitation, management of donor-restricted funds;*
- (2) the substance of programs comprising the NRA's nonprofit mission;*
- (3) mission-related (meaning advocacy) litigation;*
- (4) the subject matter and substantive content of marketing, donor, membership and fundraising activities, including*

maintenance of any member or donor lists, membership categories, donation histories, and information regarding members and potential members;

(5) The exclusion for Core Fundamental Mission Operations does not, however, exclude from CAIC's oversight the NRA's compliance with NRA's internal financial controls in these areas, including, for example, travel expense and reimbursement, conflict of interest, related party and other finance and governance-related policies.

3. How will the CAIC Discharge its Responsibilities?

*a) **Workplan.** Within 60 days of receiving the NRA's Baseline Review and after consulting with the NRA and OAG, the CAIC will submit for Court approval a work plan for the CAIC's Initial Review and Continuing Oversight, Testing and Reporting. for Court approval. In developing such a plan, the CAIC may, in its professional discretion, rely on the product of the NRA's processes (e.g., reviews, testing methodologies, audits, and analyses conducted by or on behalf of the NRA) and NRA's internal resources (e.g., legal, compliance, and internal audit), which can assist the Monitor to avoid duplication of efforts and increase efficiency, provided that the CAIC has confidence in the quality and independence of the product or resources.*

(1) The CAIC will conduct its work in a manner that will permit the business operations and mission activities of the NRA to proceed in an orderly fashion, subject to the requirements of the Court's Order.

(2) The CAIC Initial Review Work Plan will include oversight of independent review, testing and auditing of:

(a) the design and operating effectiveness of the NRA's internal controls relating to In-Scope Matters;

(b) the effectiveness of the NRA's compliance program and

(c) the structural and operating effectiveness of the NRA's corporate governance.

(3) The work plan will set out the CAIC's reporting requirements and the NRA's requirements for providing and certifying information to the CAIC.

(4) The CAIC may, if not sufficiently or timely completed by the NRA, require an independent consultant to perform a root cause analysis and any appropriate risk assessments and identify prudent remedial measures relating to the In-Scope Matters under applicable professional standards.

(5) *The work plan shall include a dispute resolution process allowing the NRA or the OAG to submit any objections to the CAIC regarding its actions or recommendations, including concerns about unnecessary, overly burdensome, or costly measures.*

(6) *The CAIC has the authority to retain independent consultants to perform testing, auditing, and procedures.*

b) **Initial Review Report and Recommendations.** *Within 120 days of receiving Court approval of the Initial Review Work Plan, the CAIC will conduct the review and issue a report to the Court, NRA and OAG of its results and recommendations. The NRA will implement recommendations within 90 days of receiving the Initial Review Report unless a dispute is pending over CAIC recommendations, or the CAIC determines the NRA appropriately needs additional time.*

c) **Continuing Oversight, Testing, and Reporting.** *The CAIC shall have continuing oversight, and after an interval to be determined by the CAIC but not more than one year after the issuance of the Initial Review, the CAIC shall conduct follow-up testing and auditing.*

d) **Communications with the CAIC.** *The CAIC and NRA may freely communicate independently of the OAG. Similarly, the CAIC and OAG may freely communicate independently of the NRA.*

e) **Periodic Reporting.** *The CAIC shall issue reports to the Court annually or on such other schedule as it deems appropriate, with a copy to the NRA and OAG. The reports shall include its findings concerning the NRA's compliance with the areas subject to the CAIC's oversight, the results of any testing, audits or assessments, its recommendations, and the NRA's compliance with its recommendations.*

f) **CAIC Certification.** *Within 30 days of the end of its three-year term, the CAIC will certify whether the NRA's remediation and compliance program are reasonably designed and operating effectively to (i) prevent and timely detect recurrence of violations of law and (ii) comply with NRA's New York State legal obligations. The certification will also report on the status of the NRA's internal controls, compliance program, and governance, and the NRA's acceptance and implementation of recommendations.*

4. **How will the CAIC be Selected?** *The Court will select the CAIC from a pool of three candidates proposed by the NRA to which the OAG has not asserted an objection.*

- a) *CAIC candidates should be highly qualified in third-party independent review of organizations, supervision or monitorships, and oversight of compliance and corporate governance, particularly in the In-Scope Matters.*
- b) *The NRA will propose three candidates to the OAG. The OAG will then have the right to evaluate, interview and object to the candidates. If the OAG objects, the NRA will nominate substitute candidates. The Court will select the CAIC from the three candidates proposed by the NRA to which the OAG did not object.*
- c) *The NRA and CAIC candidates will certify the candidate's independence and the lack of conflicts of interest. The NRA will certify that it will not affiliate or hire the selected candidate or team members for three years. CAIC candidates will certify that they have no conflicts of interest precluding their appointment, including whether the candidate or CAIC candidate team member has been an employee or worked with the NRA in any capacity.*
- d) *The CAIC will ensure that any third party used for tests, audits or assessments is appropriately experienced, independent and free from conflicts of interest.*

C. Implementation of Governance Reforms

1. *Following the governance audit under paragraph Point I(B)3.a.2.c, above, the CAIC shall recommend governance changes to the NRA. The CAIC may consult with the NRA and OAG about such recommendations. The CAIC shall report to the Court regarding any recommendations made and the NRA's response.*
2. *The governance audit should include an assessment of the following potential governance reforms:*
 - a) *requiring the NRA to undertake discrete efforts to improve transparency and ensure that all board members have timely access to the information necessary to carry out their fiduciary duties. This may include advance circulation of regulatory filings to permit time for Board review, creation of a portal for sharing information with Board members; and distribution of resolutions, proposals, committee reports and financial and governance-related information reasonably before Board meetings. Such information may be posted electronically to a secure site, distributed, including using encryption for sensitive information;*
 - b) *requiring, by N-PCL § 712, that NRA board committees, particularly any committees with responsibility for overseeing the NRA's financial affairs, be elected by the Board rather than appointed by the President;*

- c) *requiring the NRA to create a governance committee made up of only Board members (not member volunteers);*
- d) *requiring, if not already completed, that the NRA institute heightened protections for the chief compliance officer, either in his employment contract or in the NRA's Bylaws, to insulate him from adverse actions so long as he performs his duties in good faith;*
- e) *requiring the NRA's Board to formally evaluate the NRA's executive vice president on an annual basis;*
- f) *requiring the NRA to review its Bylaws periodically;*
- g) *reduction of the size of the NRA's 76-member Board;*
- h) *requiring the NRA to elect a majority of new directors who have not served on the Board in the last ten years;*
- i) *requiring the NRA to institute formal term limits on its directors;*
- j) *Requiring standards, reporting, and disclosure in meeting minutes of all executive sessions of the Board or any committees of the board; and*
- k) *Requiring the NRA to prohibit the use of nondisclosure agreements in the resolution of disputes.*

D. Certified Reporting by the NRA. *For three years, the OAG asks that the Court direct the following measures for enhanced transparency and accuracy in NRA reporting on compliance matters to regulators, Board members and NRA members. Such reporting should include:*

1. *The NRA's three salaried officers, three Board officers, General Counsel, compliance officer, internal auditor and members of the NRA's Audit Committee (the "NRA's Compliance Leadership") shall certify to the CAIC and OAG that the NRA's CHAR500 filings (including the attachments) are true and accurate to the best of their knowledge, following reasonable inquiry.*
2. *The NRA's Compliance Leadership shall certify reports to the whole NRA Board regarding the NRA's compliance program, including the nature, extent and results of testing and assessments of its areas of oversight. The CAIC can determine the details of such reporting.*
3. *The NRA's Compliance Leadership will prepare annual reports to members, which shall clearly and succinctly set forth, through the NRA's publications and a member website, certain information relating to:*
 - a) *Travel and entertainment expenses*
 - b) *Corporate credit card charges*
 - c) *Conflicts of interest and related party transactions*
 - d) *Compliance training completion rate and names of people who did*

- not complete training*
- e) Legal expenses for advocacy versus corporate matters, including advancement or indemnification of legal fees for NRA officers and board members*
 - f) Whistleblower activities (including compliance hotline reports)*
 - g) Procurement Policy compliance*

II. Non-Monetary Remedies Sought for Wayne LaPierre's Violations of Law

A. Wayne LaPierre should be barred from service in any role in the NRA and its related nonprofit organizations that has fiduciary responsibilities, whether as an officer, director, employee or key person associated with the NRA or as a paid fundraiser or consultant. The bar does not preclude LaPierre from being a member of, or volunteer with, the NRA, provided LaPierre does not bear responsibility for, or have authority over, matters that impose fiduciary responsibilities over the administration of NRA assets.

III. Non-Monetary Remedies Sought for John Frazer's Violations of Law

- A. For a period of five years, John Frazer should be subject to the following restrictions and requirements concerning any relationship he has with the NRA or its related nonprofit organizations:*
- 1. barred from involvement in preparation of circulation of, and certification of charities regulatory reports filed with New York State, including the NRA's CHAR500 and IRS Form 990 and all other components of those reports;*
 - 2. required to undergo training on federal and New York State charity regulatory reporting responsibilities before returning to any role in which he would be responsible for the preparation and/or certification of charities regulatory reports filed with New York State, including the NRA's CHAR500 and IRS Form 990 and all other components of those reports;*
 - 3. barred from involvement in the evaluation, investigation or handling of whistleblower complaints or other whistleblower-related functions;*
 - 4. required to undergo appropriate training on New York State whistleblower law before undertaking any role in which he would be responsible for evaluating or handling whistleblower complaints or whistleblower-related functions;*
 - 5. required to undergo training in nonprofit governance and the duties and obligations of fiduciaries in a New York State not-for-profit corporation if he continues to serve as an officer of the NRA;*
 - 6. required to undergo training in nonprofit governance and the duties and obligations of fiduciaries in a New York State not-for-profit corporation before assuming any other role which imposes fiduciary responsibilities or relates to corporate governance matters in a New York State non-profit corporation or a nonprofit corporation registered to do business in New York.*