

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

IN RE: . Case No. 21-30085-HDH-11
. .
NATIONAL RIFLE . Earle Cabell Federal Building
ASSOCIATION OF AMERICA . 1100 Commerce Street
and SEA GIRT, LLC, . Dallas, TX 75242
. .
. . May 3, 2021
Debtors. . 8:02 a.m.
. A.M. SESSION

TRANSCRIPT OF CLOSING SUMMATIONS
BEFORE HONORABLE HARLIN DeWAYNE HALE
UNITED STATES BANKRUPTCY COURT CHIEF JUDGE

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I N D E X

<u>Summations:</u>	<u>Page</u>
By: Mr. Pronske	8
By: Mr. Mason	55
By: Mr. Taylor	96
By: Mr. Lambert	110
By: Mr. Herring	121

1 THE COURT: Good morning. This is the Bankruptcy
2 Court in Dallas in the National Rifle Association of America
3 case. We have some folks that have signed in. Let me do that
4 quick and then take appearances of anybody else that would like
5 to make an appearance.

6 Mr. Mason and your group?

7 MR. MASON: Good morning, Your Honor. We are here
8 and present.

9 THE COURT: Welcome.

10 Mr. Pronske, Van Horn?

11 MR. PRONSKE: Your Honor, we are here. And for the
12 Attorney General's Office Jim Sheehan, Emily Stern, Monica
13 Connell, and Stephen Thompson, Jonathan Conley, Yael Fuchs,
14 Lucas McNamara, Sharon Sash, and William Wang. And we're all
15 here representing Letitia James, the Attorney General for the
16 State of New York.

17 THE COURT: I note for the record that you're not
18 doing that by memory, Mr. Pronske. I see you reading
19 something.

20 Mr. Neligan, Buncher, and Gaither?

21 MR. NELIGAN: Good morning, Your Honor. Pat Neligan
22 and Doug Buncher, as well, who's on the line.

23 THE COURT: Welcome.

24 Ms. Lambert and Mr. Salitore?

25 MS. LAMBERT: Good morning. Lisa Lambert and Marc

1 Salitore are present.

2 THE COURT: Welcome.

3 Strubeck, Drake, Hendrix, and Ms. Smith?

4 MR. STRUBECK: Yes, Your Honor; good morning. All of
5 us on behalf of the Official Committee of Unsecured Creditors.

6 THE COURT: Welcome. Ms. Jackson for the D.C.
7 Attorney General?

8 MS. JACKSON: Good morning, Your Honor. Catherine
9 Jackson for the D.C. Attorney General's Office.

10 THE COURT: Welcome back.

11 Mr. Garman and group?

12 MS. JACKSON: Thank you.

13 MR. GARMAN: Yes, sir. I'm here with my colleagues,
14 Mr. Noall, Ms.

15 Taylor and Watson?

16 MR. TAYLOR: Good morning, Your Honor. Jermaine
17 Watson and Clay are here.

18 THE COURT: Welcome. Mr. Garman and your group?

19 MR. GARMAN: Yes, sir. I'm here with my colleagues,
20 Mr. Noall, Ms. Kozlowski, Mr. Ciciliano. Mr. Robichaux is in
21 the room with his colleague from Ankura, Mr. Morton. Mr.
22 Neligan made his appearance already. We're here together, and
23 Mr. Correll is also present today.

24 THE COURT: Welcome.

25 Mr. Taylor and Mr. Watson?

Summation - Pronske

7

1 MR. TAYLOR: Good morning, Your Honor. Clay Taylor
2 here on behalf of Journey, et al.

3 THE COURT: Welcome.

4 MR. WATSON: Judge, I'm here, as well. Thank you.

5 THE COURT: Welcome back.

6 Anyone else wish to make an appearance that I haven't
7 called?

8 MR. HERRING: Yes, Your. Walt Herring is here on
9 behalf of David Dell'Aquila.

10 THE COURT: Welcome. And just to let everyone know,
11 I think they do know from Friday, Mr. Herring asked for five
12 minutes. He's joined in one of the motions, and I said that
13 that would be fine.

14 Anyone else like to make an appearance?

15 (No audible response)

16 THE COURT: All right. I think we have a breakdown
17 of the times. Let me also say we have plenty of time by my
18 calculation. I'm not going to hold anybody to the minute, but
19 if you would try to stay as close to your estimates as
20 possible. I think that lets us get everything in today that we
21 need to get in.

22 And I show that was the Attorney General going to go
23 first or Ackerman?

24 MR. PRONSKE: Attorney General, Your Honor.

25 THE COURT: Okay. And my memory is that you want to

Summation - Pronske

8

1 go about an hour-ten, and then save twenty at the end as I said
2 on the first day. Is that right?

3 MR. PRONSKE: That is correct; thank you.

4 THE COURT: All right. You may proceed.

5 MR. PRONSKE: Thank you, Your Honor. Good morning.

6 Gerrit Pronske for the Attorney General of the State of New
7 York. We are here this morning to present closing arguments on
8 the New York Attorney General's motion to dismiss this
9 bankruptcy case as a bad-faith filing and, in the alternative,
10 to appoint a Chapter 11 trustee over the NRA.

11 I will begin the presentation with the presentation
12 of the Attorney General's motion to dismiss. The evidence
13 presented in this case has clearly shown that the NRA and Sea
14 Girt bankruptcy cases were filed in bad faith and should be
15 dismissed under Section 1112 of the Bankruptcy Code for the
16 four following reasons.

17 One, these cases were improperly filed for a pure
18 litigation strategy purpose, in the words of the NRA, to dump
19 New York.

20 Two, the NRA clearly and undisputedly had no
21 financial reasons to file this bankruptcy whatsoever.

22 Three, the bankruptcy filings in Texas were clearly
23 and cavalierly the result of impermissible forum shopping.

24 And, four, these bankruptcy cases were not -- were
25 filed not only without board approval but with management of

Summation - Pronske

9

1 the NRA intentionally deceiving the board.

2 Number one, Your Honor, this case was filed for a
3 pure litigation strategy purpose, to dump New York, which
4 basically means to escape regulation in the New York
5 proceeding. Bankruptcy law is clear that a bankruptcy filing
6 as a litigation strategy is a bad-faith filing necessitating
7 the dismissal of the case. The case law is clear about the
8 existence of the bad-faith remedy.

9 Every circuit in the country has a good-faith filing
10 requirement for the filing of a Chapter 11 bankruptcy. In the
11 Fifth Circuit, of course, we have the matter of Little Creek
12 Development case in which the Fifth Circuit says that: "every
13 bankruptcy statute since 1898 has incorporated literally or by
14 judicial interpretation a standard of good faith for the
15 commencement, prosecution, and confirmation of bankruptcy
16 proceedings.

17 In the Investors Group, LLC, case, and that's a case
18 where in the Northern District of Texas, District Judge Lindsay
19 affirmed the dismissal of a bankruptcy case that was ruled by
20 Judge Jernigan of the bankruptcy court. That case has very
21 strong language about what happens when a case is filed to
22 obtain a litigation advantage, like the NRA did in this case.

23 That court said: "when a bankruptcy court finds that
24 a party pursues bankruptcy for the purpose of securing
25 litigation advantage in another forum, such intent is

1 dispositive. It establishes bad faith and necessitates
2 dismissal."

3 Let's review the testimony relevant to the reasons
4 that the NRA filed bankruptcy. And, Your Honor, like most all
5 the evidence that goes to the dismissal issues in this case,
6 this testimony and the reason for the filing of the NRA
7 bankruptcy case are not in dispute.

8 Let's look at Wayne LaPierre's testimony regarding
9 the reasons for filing bankruptcy. Mr. LaPierre said on the
10 screen here, "Okay" -- and this was a question that was being
11 asked by Mr. Gruber, and Mr. LaPierre said, "Okay, you're
12 asking me if you take New York State and all of New York
13 weaponized-government actions out of it, would the NRA have
14 filed Chapter 11? Is that your question?" Mr. Gruber says,
15 "Would they need to file Chapter 11, yes, essentially." And
16 Mr. LaPierre answers, "No."

17 Mr. LaPierre goes on to say that the reason for the
18 filing of the bankruptcy was in his words to abandon the
19 corrupt political and regulatory environment in New York. And,
20 of course, from this quote, we can see that Mr. LaPierre is
21 saying that if it weren't for the New York Attorney General
22 case, the NRA would never have filed bankruptcy.

23 As far as the second evidence on this, Your Honor,
24 there was a letter to members that was issued by Wayne LaPierre
25 on behalf of the NRA the day of the bankruptcy filing. And

Summation - Pronske

11

1 that's New York Attorney General Exhibit 151.

2 This, among many things in this letter, the letter
3 says: "The plan can be summed up quite simply. We are dumping"
4 -- in all capital letters -- "New York and we are pursuing
5 plans to reincorporate the NRA in Texas." The testimony of
6 John Frazer, the NRA's general counsel and corporate secretary,
7 agreed with this and testified that dumping New York was the
8 reason for the filing of the NRA bankruptcy.

9 Debtors' counsel in his opening statement, rather
10 than attempting to deny that the NRA bankruptcy was filed to
11 dump New York, actually embraced that fact. But he added a
12 twist to attempt to distinguish these cases and save them from
13 being dismissed for bad faith. The twist raised by debtor's
14 counsel is that the NRA in this case is trying to create
15 essentially an exception or a defense to the well-recognized
16 rule that you can't file bankruptcy for strategic advantage in
17 litigation.

18 They are likening dissolution sought by the New York
19 Attorney General to a foreclosure of the debtors' assets, a
20 more traditional bankruptcy-type proceeding. They're
21 essentially saying that when dissolution threatens the entire
22 existence of the entity, like a foreclosure of primary assets,
23 that existential threat provides the bankruptcy proceeding with
24 the legitimacy that it needs to survive a bad-faith attack.
25 I'm going to call this the dissolution defense to a bad-faith

1 filing.

2 With that bit of background regarding the reasons for
3 the filing of the NRA bankruptcy and the legal impact of a
4 filing of bankruptcy to secure a litigation advantage and the
5 raising by the NRA of the dissolution defense, the Court raised
6 an interesting and highly significant issue last Thursday that
7 plays into the NRA's argument that being the target of a
8 potential dissolution could somehow immunize the NRA case from
9 being dismissed for bad faith.

10 The Court's issue was stated by Your Honor as
11 follows: "But while one purpose of Chapter 11 is to prevent the
12 unnecessary dissolution of an otherwise viable debtor, is that
13 purpose broad enough to include a situation where the debtor is
14 seeking protection from potential dissolution that would not be
15 a collateral effect of litigation but rather the intended
16 relief sought and it would only occur upon a judicial
17 determination that dissolution is in the best interest of the
18 public."

19 As this Court requested, I would like to now address
20 this Court's question. And actually, Your Honor, the wording
21 of the Court's question perfectly frames the issue.
22 Paraphrasing, the Court's question seems to me to draw a
23 distinction between, one, a dissolution that is the collateral
24 effect of litigation such as a foreclosure on debtors' assets
25 or a seizure of the debtor's assets following the rendering of

1 a judgment and, two, a dissolution where that dissolution is
2 actually the intended relief sought by a judicial determination
3 that it is in the best interest of the public.

4 The second prong of the Court's question, that being
5 situations where the dissolution is actually the intended
6 relief sought by a judicial determination in the best interest
7 of the public, raises a fascinating question that we actually
8 have been looking at for quite a bit of the time the last
9 several weeks.

10 In order to answer the Court's question, we need to
11 drill down to two further questions or issues. One, the first
12 issue is whether the New York proceeding under New York law
13 constitutes the exercise of police and regulatory power of the
14 State of New York.

15 To answer that question, let's look at the purpose of
16 the New York Attorney General's Charities Bureau which is that
17 it is responsible for supervising charitable organizations to
18 protect owners and beneficiaries of charities from unscrupulous
19 practices in the solicitation and management of charitable
20 assets. The Charities Bureau Division supervises the
21 activities of charities such as the NRA, a 150-year-old
22 charity, to ensure that their funds and other property are
23 properly used and to protect the public interest in charitable
24 gifts and bequests contained in wills and trusts.

25 To drill down a little more specifically to the

1 situation where the subject of a particular proceeding is a
2 request for a dissolution of the charity, the statutory law in
3 New York clearly indicates that the New York proceeding is a
4 proceeding under the police and regulatory powers of the State
5 of New York.

6 Section 1109 of NPCL is the section of the New York
7 not-for-profit statutes that governs over dissolutions. (b) (1)
8 of Section 1109 says in very clear language that in making the
9 decision of dissolution, "the Court shall take into
10 consideration the following criteria: one, in an action brought
11 by the attorney general, the interest of the public is of
12 paramount importance."

13 Your Honor, I submit that Section 1109(b) (1) is the
14 classic well-recognized language that elevates proceedings to
15 the level of police and regulatory powers of the state. So the
16 answer to the first question or the first issue is, yes, the
17 New York proceeding under New York law clearly constitutes the
18 exercise of police and regulatory power of the State of New
19 York.

20 The second question or issue to answer this Court's
21 question then looks at the interplay of New York charity law
22 and federal bankruptcy law and asks whether the police and
23 regulatory power of the state is, one, to protect its own
24 pecuniary or money interests or, two, to protect the interests
25 of the public.

Summation - Pronske

15

1 That question is what type of police and regulatory
2 powers is implicated by New York law's charity dissolution
3 provisions. Since this bankruptcy case is pending in Texas, we
4 look to the Fifth Circuit and find an extremely clear decision
5 in the Fifth Circuit that provides the answer to what type of
6 political and regulatory -- I'm sorry -- police and regulatory
7 powers we are dealing with. And that is the Halo Wireless case
8 decided by the Fifth Circuit in 2012.

9 The Fifth Circuit held in the matter of Halo Wireless
10 that bankruptcy cases do not stop or impact the regulatory
11 power of government when that regulatory power is for the
12 purpose of protecting the interests of the public, like in the
13 New York proceeding. If instead the government is exercising
14 its regulatory power to protect its own pecuniary interests,
15 then bankruptcy might be more like the first example in the
16 question raised by the Court on Thursday where dissolution
17 might be the collateral effect of litigation.

18 I would submit, Your Honor, that the NRA's
19 dissolution defense could potentially have more legitimacy if
20 the government was attacking them to further the government's
21 own pecuniary interest. However, when government is
22 prosecuting a case to pursue non-pecuniary governmental
23 regulatory power to protect the public, bankruptcy law does not
24 and will not impact the regulatory proceeding.

25 Put into the context of the NRA case, the dissolution

1 defense to the bad-faith filing is ineffectual because neither
2 the NRA nor this bankruptcy case have power to stop the
3 ultimate dissolution of the NRA as it is clearly under
4 governing statutes the exercise of public-interest police and
5 regulatory powers.

6 Therefore, Your Honor, the whole bankruptcy case
7 becomes a mere continuation of the NRA's dysfunction. It is a
8 circuit sideshow that eventually ends up without succeeding to
9 stop the New York proceeding including the potential of
10 dissolution.

11 Back to the Court's question, which is basically can
12 the specter of a potential dissolution be a defense to a bad-
13 faith filing when the dissolution is a judicial determination
14 that is, in the words of Halo Wireless, a public-interest
15 police and regulatory action.

16 Quotes from the Fifth Circuit's Halo Wireless case
17 provide a solid way to dispel the NRA's dissolution defense to
18 a bad-faith filing. Without that defense, Your Honor, this
19 case is nothing more than a pure litigation strategy whose
20 filing was nothing more than an admission of bad faith and must
21 lead to its dismissal.

22 Halo Wireless is an automatic-stay case, but that
23 actually strengthens its application to the dismissal motion.
24 The automatic stay, Your Honor, is a temporary respite. The
25 exceptions to the stay are situations that are so strongly

1 outweighing the bankruptcy concerns that the debtor doesn't
2 even get a temporary respite.

3 In the Halo Wireless case, the court said, and I want
4 to just read four quotes from this case that I think are very
5 on point to this situation. First, the Fifth Circuit said:
6 "This exception discourages debtors from submitting bankruptcy
7 petitions either primarily or solely for the purpose of evading
8 impending governmental efforts to invoke the governmental
9 police powers to enjoin or deter ongoing debtor conduct which
10 would seriously threaten the public safety and welfare."

11 The Fifth Circuit goes on to say: "A fundamental
12 policy behind the police or regulatory power exception is to
13 prevent the bankruptcy court from becoming a haven for
14 wrongdoers." That's some pretty strong language as it relates
15 to the NRA bankruptcy case, as we'll see as we move further.

16 The third quote says: "The exception to the automatic
17 stay helps to ensure that debtors do not use a declaration of
18 bankruptcy to avoid the consequences of their actions that
19 threaten the public interest." This quote, Your Honor, could
20 not be more on point to the NRA case.

21 Finally, Fifth Circuit says: "The purpose of the
22 exception is to prevent a debtor from 'frustrating necessary
23 governmental functions by seeking refuge in the bankruptcy
24 court.'" And isn't it true, Your Honor, that the quote
25 "frustrating necessary governmental functions by seeking refuge

1 in the bankruptcy court" sounds amazingly similar to the
2 catchphrase "dump New York?"

3 I've taken a long time to answer the Court's
4 question. It's a powerful question, and the importance of this
5 issue requires a thoughtful response. I hope this has been
6 somewhat helpful.

7 Now let's review some more of the NRA's act that
8 strongly argue for dismissal of the case. Interestingly, Your
9 Honor, Wayne LaPierre had to admit that the New York courts are
10 not corrupt and that it is the Court that would potentially
11 dissolve the NRA, not the New York Attorney General, with then
12 two levels of appeal that he admitted were not corrupt. Mr.
13 Frazer, the general counsel of the NRA, essentially mirrored
14 that testimony.

15 But having said that, Your Honor, it really doesn't
16 matter what Wayne LaPierre or Mr. Frazer think and whether they
17 think the courts in New York hearing these cases are corrupt or
18 not corrupt. Why? Because litigants don't get to avoid courts
19 they don't like. They don't get to forum shop, and they don't
20 get to file bankruptcy as a strategy in litigation in any court
21 even if they think that court is in their own assessment
22 corrupt.

23 This is why we have appeals courts, and this is why
24 the case law says that bankruptcy cases that are the result of
25 forum shopping get dismissed.

Summation - Pronske

19

1 Interestingly, Your Honor, Judge Phillip Journey, who
2 is an NRA member since the 1970s and a member of the board of
3 directors of the NRA, does not agree with Mr. LaPierre's
4 characterizations that the New York case is unfounded corrupt
5 proceeding. Judge Journey testified that he believes that the
6 allegations in the New York case were backed up by civil
7 discovery, that there was significant support for the Attorney
8 General's allegations, and that the NRA's corporate governance
9 was worse than he ever imagined.

10 The second reason for dismissing this bankruptcy
11 case, Your Honor, is that the NRA clearly and undisputedly had
12 no financial reasons for filing bankruptcy. As you know, Your
13 Honor, federal courts are courts of limited jurisdiction, many
14 of which are set up to deal with a particular type of case and
15 are not for general use to achieve something for which that
16 court was not established.

17 For example, to file a federal tax case, you need to
18 have a tax problem. To file a federal admiralty case, you have
19 to have a problem about a boat. And, of course, to file
20 federal bankruptcy, you have to have a problem with debt. To
21 take this out of the context of the law, to buy a cake, you
22 don't go to Home Deposition testimony.

23 It's a major indicia of bad faith and an abuse of
24 this Court that the NRA has no debt problems. In a bankruptcy
25 case, that's actually a shocking fact. Let's look at some of

1 the evidence on the financial strength of the NRA.

2 Again, turning to the letter that Mr. LaPierre sent
3 to the members of the NRA and the supporters the same day as
4 the bankruptcy filing on January 15th, 2021, Mr. LaPierre said
5 that the NRA is not bankrupt or going out of business. The NRA
6 is not insolvent. Mr. Frazer, the general counsel, testified
7 that he agreed with those statements and that the NRA had no
8 problem meeting its financial obligations.

9 This letter to the members in bold print says: "The
10 NRA is financially strong as we have been in years." Mr.
11 Frazer's testimony again agreed that that statement was
12 correct. Mr. LaPierre's testimony showed that the NRA is in
13 the best financial condition it's ever been in. And he also
14 testified that financial conditions are not the reason for
15 filing the bankruptcy case.

16 Mr. Craig Spray, the CFO who this bankruptcy case was
17 hidden from until after it was filed, testified that the NRA
18 was in a strong financial position as of the filing date. He
19 testified that the NRA was current with all its creditors,
20 never had issues making payroll, didn't have any problems
21 funding benefit plans, and was not in financial crisis. He
22 also testified that there was no financial reason for the NRA
23 or Sea Girt to file bankruptcy.

24 Going back to the case law, dismissal is warranted
25 when debtors don't have real debt problems, which makes sense

Summation - Pronske

21

1 with bankruptcy courts and federal courts being courts of
2 limited jurisdiction. The Investors Group, the Judge Lindsay
3 case that I mentioned earlier, and the SGL Carbon case from the
4 Third Circuit, both stand for that proposition.

5 In the NRA case, there is no question that the
6 unsecured creditors would have been paid in full or will be
7 paid or would be paid in full in the event of a dismissal.
8 Ironically, Your Honor, the only parties that have been
9 financially hurt by the debtors' decision to file bankruptcy
10 are those unsecured creditors.

11 The testimony is that there was plenty of cash on
12 hand as of the bankruptcy filing date to pay unsecured
13 creditors in full in the ordinary course of business. Instead
14 of paying those creditors in the ordinary course of business,
15 those creditors were not paid intentionally and now will have
16 to wait rather than being paid in the ordinary course if the
17 NRA had not chosen to withhold those payments and file
18 bankruptcy.

19 The secured creditor on the headquarters building
20 will not be impacted by a dismissal. There is \$20 million in
21 equity in the NRA building in Virginia. I'm not even aware of
22 a single time that the secured lender even appeared at a
23 hearing in this case. How unusual is that?

24 The assets of the NRA greatly exceed its liabilities,
25 and that is clear from the schedules and statements of affairs

Summation - Pronske

22

1 filed by the NRA. The undisputed testimony leads to the
2 inescapable conclusion that the NRA is vastly solvent and that
3 filing bankruptcy with no financial issues or debt problems is
4 an abuse of this court's federal jurisdiction requiring a
5 dismissal of this case.

6 The third reason to dismiss this case, Your Honor, is
7 that Sea Girt's bankruptcy filing was in bad faith for the sole
8 purpose of impermissible forum shopping for the NRA bankruptcy
9 case. Here we have another independent reason to dismiss the
10 bankruptcy. Sea Girt, LLC, was formed as a Texas LLC on
11 November 24th, 2020. Its formation, Your Honor, is pure forum
12 shopping. It is the foundation piece for the NRA attempting to
13 move to Texas and file bankruptcy.

14 Sea Girt is the poster child of a bankruptcy filed in
15 bad faith. It has no employees. It has no operations. It has
16 no creditors. It has -- the only asset that it has is \$51,000
17 funded from the Brewer firm's trust account into Sea Girt two
18 days before the bankruptcy filing.

19 Then, quite shockingly, Your Honor, after the filing
20 of the bankruptcy, according to the monthly operating reports
21 which are on the screen, the money was transferred out of the
22 Sea Girt account without a court order and paid -- and the
23 money was paid to the NRA, its equity owner. This transfer,
24 post-petition transfer of \$50,000 without a court order, is a
25 serious violation of Section 363(b) of the Bankruptcy Code

Summation - Pronske

23

1 which requires that transactions out of the ordinary course of
2 business have to be approved by the court, which this
3 transaction was not.

4 The transfers in and then out of Sea Girt positively
5 and conclusively show that the money was not put into the
6 account to pay creditors, to run a business, or for any
7 legitimate purpose. The money was put into Sea Girt account
8 for the sole purpose of pretending, and that's the right word,
9 pretending that Sea Girt has some possible connection to their
10 forum-shopped estate.

11 The transfer of the money right back out after
12 serving its forum-shopping purpose shows, in addition to
13 violating the Bankruptcy Code, that the whole creation of Sear
14 Girt and the initial deposit of money was nothing more than a
15 ruse and an abuse of this Court and an abuse of the bankruptcy
16 process.

17 The testimony of the NRA officers show their cavalier
18 and brazen attitude as they made no effort to even hide the
19 fact that they were attempting to forum shop. Mr. LaPierre's
20 words from his testimony were that Sea Girt was formed as a
21 transitional vehicle. The testimony from John Frazer, again
22 who's the general counsel of the NRA, said he did not know of
23 any purpose for forming Sea Girt other than to file NRA's
24 bankruptcy in Texas.

25 There is no nexus -- there is no other nexus for the

Summation - Pronske

24

1 NRA to file bankruptcy in Texas other than Sea Girt's bad-faith
2 formation to create venue. NRA's bankruptcy in Texas is the
3 fruits of the poisoned tree of Sea Girt's bad-faith filing.

4 Your Honor, a bad-faith bankruptcy paradigm is in the
5 beginning of stages. And I'm going to call this the Boy Scouts
6 paradigm. In the Boy Scouts bankruptcy case, the Boy Scouts
7 had no nexus to Delaware for the filing of bankruptcy. In
8 order to forum shop the Boy Scouts case to Delaware, the Boy
9 Scouts set up an entity to bootstrap the real bankruptcy case
10 into Delaware.

11 The NRA in this case, Your Honor, filed that Boy
12 Scouts paradigm precisely 100 percent with every single fact to
13 the letter with 100 percent similarity. Here's the Boy Scouts
14 paradigm and you will see that it's exactly the same as what
15 the NRA did in this case.

16 In both of these cases, both entities created LLCs
17 where their forum shopping took them. Both entities put the
18 same amount to the penny into a bank account -- that being
19 \$50,000 into a bank account of the LLC in the forum-shopped
20 estate right before the bankruptcy. Both LLCs carried on no
21 business. Both LLCs had no employees. Both LLCs were pure
22 corporate shells. Both LLCs had no financial problems and no
23 reasons to file a bankruptcy.

24 In the Boy Scouts case, this paradigm was not
25 challenged and, therefore, the Court never addressed it, it

1 never made a ruling on it and, therefore, there was no
2 precedent set in the Boy Scouts case.

3 However, Your Honor, this paradigm is being
4 challenged in this case. The ruling that this Court makes on
5 this issue will undoubtedly become major precedent, especially
6 given the size and importance of this case. If the Court
7 condones the Sea Girt forum shopping to allow the NRA to
8 continue its case in Dallas, Texas, I submit that such a ruling
9 would completely destroy the bankruptcy venue provision of
10 Section 1408 of Title 28 as it would permit any bankruptcy case
11 to be filed in any district with the simple creation of a decoy
12 duck LLC.

13 A leading bankruptcy professor, that being Adam
14 Levitin, professor of bankruptcy law at Georgetown Law School,
15 wrote an article in Credit Slips dated February 21st, 2020 a
16 little more than a year ago about this Boy Scouts paradigm.
17 Judge, Levitin said: "It's hard to conceive of a more blatant
18 abuse of the venue statute." Mr. -- Professor Levitin went on
19 and called this paradigm the "gaming of the bankruptcy-venue
20 statute."

21 The Sea Girt venue grab is alone a reason to dismiss
22 the Sea Girt bankruptcy case and the NRA bankruptcy cases both
23 for bad faith. The Sea Girt bankruptcy case in Texas was the
24 sole foundational lynchpin upon which the entire NRA bankruptcy
25 filing in Texas is based. That Sea Girt was forum-shopped,

Summation - Pronske

26

1 filed, and used as a tool to forum shop the NRA case is blatant
2 manipulation and abuse of the corporate forum, blatant misuse
3 of bankruptcy law and of this Court, and requires that both
4 cases be dismissed.

5 The fourth reason for the dismissal of this case,
6 Your Honor, is that the filing of this bankruptcy was not just
7 without board approval but was performed by intentionally
8 deceiving the board of directors of the NRA. Your Honor, it's
9 very clear that board approval is needed under the NRA bylaws
10 to file bankruptcy. The bylaws provide and require that acts
11 of major significance require board approval and cannot be
12 delegated.

13 Let's look at the testimony. John Frazer, the
14 current general counsel of the NRA, and Judge Journey, a board
15 member, both testified really to the obvious, which is that
16 bankruptcy is an act of major significant. Mr. Frazer went on
17 to actually say that bankruptcy is one of the biggest decisions
18 that a corporation can make. Mr. Frazer also testified that he
19 thinks it would be bad faith for a bankruptcy case to be filed
20 without appropriate authority, which is clearly what happened
21 in this case.

22 The NRA did not have authority to file this case.
23 Judge Journey testified that authority was not requested of the
24 board and was not given by the board to file bankruptcy.
25 Instead of submitting the board a simple resolution down the

Summation - Pronske

27

1 middle of the fairway to approve a bankruptcy filed by an open,
2 honest, frank discussion regarding bankruptcy, the NRA
3 management chose and attempted to obtain board approval by
4 sneaking language in the employment contract of Wayne LaPierre
5 to fool the board of directors into approving the bankruptcy
6 filing.

7 This language was hidden into the "duties" section of
8 Mr. LaPierre's employment contract which gave Mr. LaPierre the
9 duty "to reorganize or restructure the affairs of the
10 association for purposes of cost minimization, regulatory
11 compliance, or otherwise." At this January 7 board meeting,
12 management was actually successful in sneaking the board
13 approval by the board without a single board member figuring it
14 out.

15 Again, this is such a horrible fact that it alone
16 cries out for the dismissal of the NRA case for bad faith that
17 rises in this case to the level of actual fraud. Multiple
18 witnesses testified that bankruptcy was not discussed, not even
19 mentioned during this almost one-hour executive session of the
20 board meeting.

21 Think about how incredible that is, Your Honor. The
22 strategists knew that board approval was needed for filing
23 bankruptcy. For some reason, they wanted to get board approval
24 but decided that they needed to get board approval in a way
25 that the board didn't know it was giving approval. This is as

1 shocking as it is completely dishonest.

2 It is nothing less than fraud and recklessly put the
3 NRA in the horrible position that its entire bankruptcy would
4 be questioned, that we would go through a lengthy trial, that
5 the NRA bankruptcy case would be dismissed in bad faith, and
6 that the press reaching the entire country through major news
7 sources would broadcast out the major misdeeds and dishonesty
8 of the NRA.

9 According to Judge Journey, and this is an
10 interesting fact, Your Honor, only a handful of copies of that
11 employment contract were made available for the 37 board
12 members to crowd around two tables to read. Management was
13 obviously trying to make sure that the board members had as
14 little opportunity to read and digest the reorganization
15 language in the employment contract as possible. They were
16 successful.

17 The NRA's general counsel, who was present in the
18 executive session of that January 7 board meeting where the
19 employment contract was the sole topic for nearly an hour and
20 who is obviously a lawyer and who had actually read the
21 employment contract, did not in his words "piece together" that
22 the employment contract contemplated a bankruptcy filing.

23 Judge Journey, a sitting judge and a board member,
24 also read the employment contract completely and was in that
25 meeting and said it didn't even cross his mind that the

1 employment contract had anything to do with bankruptcy, much
2 less to give board approval to file bankruptcy.

3 I even noted, Your Honor, that during our trial at
4 the time that Mr. Journey was testifying, Your Honor, said:
5 "Let's take a five-minute break to reorganize." I don't think
6 Your Honor meant let's take a five-minute break for us all to
7 file bankruptcy. Even the reorganization judge uses the words
8 "reorganize" in a non-bankruptcy sense.

9 Judge Journey testified that the manner in which the
10 approval was obtained is actually a "fraud perpetrated on this
11 court." I agree with this board members's statement.
12 Authority to file bankruptcy is a very serious matter. There
13 is no question that the NRA board was tricked into attempting
14 to delegate authority to file bankruptcy, and that's not just
15 fraud on the board. That's a fraud on this Court.

16 If the board had been given a straight-up resolution
17 to approve bankruptcy and had voted that resolution down, they
18 would have saved this Court a lengthy trial time and countless
19 additional days that this Court, including three law clerks and
20 three interns and Your Honor and your staff, have spent getting
21 prepared for this trial and the hearings in this case with
22 great disruption to Your Honor's docket.

23 This fact alone shows without question that this case
24 was filed in bad faith and deserves no better fate than a
25 dismissal with a bad-faith label attached to it. Your Honor,

Summation - Pronske

30

1 the motivation that Mr. LaPierre had to hide this bankruptcy
2 filing from the board of directors is answered by Mr.
3 LaPierre's conflicts of interest for that reason to file the
4 bankruptcy of the NRA.

5 Mr. LaPierre is a personal defendant in the New York
6 case and is being sued for millions of dollars of excess
7 benefits to return that money to the NRA. This provides
8 motivation for Mr. LaPierre to do anything to dump New York,
9 even to file bankruptcy for the NRA.

10 The NRA points to potential leaks of the board as the
11 reason for keeping the bankruptcy from the board. And, Your
12 Honor, as to leaks, I'm going to say first leaks do not justify
13 hiding a bankruptcy from a board of directors when bylaws
14 require the board of directors to authorize a bankruptcy
15 filing.

16 Next, Your Honor, the NRA could easily have had a
17 board meeting over a weekend on a Sunday morning, let's say,
18 obtain true bankruptcy authority with honesty and filed
19 bankruptcy on a Sunday afternoon where there would have been no
20 problem with leaks. The NRA has filed -- has three times
21 during the pendency of this case called board meetings on a
22 weekend on two weeks' notice.

23 So you can't tell me that the NRA doesn't know how to
24 call a Sunday morning board meeting. And the United States
25 Trustee would tell you that Sunday afternoon bankruptcy filings

1 are not an uncommon occurrence.

2 The fiasco with this board deceit was so bad that it
3 caused at least one board member, Duane Liptak, to resign.
4 That's New York Attorney General Exhibit 201. Mr. Liptak
5 thought that the board was being deceived.

6 Let's move to the NRA's attempt to ratify the
7 bankruptcy filing at a post-bankruptcy board meeting on March
8 28th, 2021. This ratification is, of course, an admission of
9 the failure to properly obtain board approval prior to filing.
10 The board had no choice on March 28th to back Mr. LaPierre and
11 to ratify the bankruptcy proceeding.

12 The testimony of a long-term NRA member and board
13 member, Owen "Buz" Mills, was that the board at that March 28
14 meeting was put in a "untenable position when it was asked to
15 ratify bankruptcy."

16 Importantly, the resolution not only authorizes but
17 directs the officers of the NRA to refile bankruptcy if
18 dismissed and does not limit that instruction to immediately
19 refile to a situation only if the bankruptcy is dismissed for
20 lack of authority.

21 In other words, Your Honor, if you dismiss this case
22 for bad faith, they are being -- the management is being
23 directed to immediately refile this case I'm guessing somewhere
24 other than here, which causes me to make the request of this
25 Court that not only that this case be dismissed for bad faith

1 but that it also be dismissed with prejudice to a further
2 refiling for a period of 18 months.

3 I'm going to now move, Your Honor, to the motion to
4 appoint a trustee. As the Court knows, the trustee's statute,
5 Section 1104(a)(1), provides various cause standards for the
6 appointment of a Chapter 11 trustee. And those cause standards
7 that are delineated in the statute are fraud, dishonesty, gross
8 mismanagement, or incompetence, all which essentially go to the
9 issue of trust where the inquiry is does the Court have the
10 trust in the current NRA management and board of directors or
11 do they need to be displaced with a court-appointed Chapter 11
12 trustee?

13 In the Marvel Entertainment case, the Third Circuit
14 Court of Appeals held that upon the finding of cause, the
15 appointment of a trustee is mandatory, but that the
16 determination of cause is within the discretion of Your Honor.
17 The Marvel Entertainment court also held that the list of terms
18 in the statute that constitute cause are not exclusive.

19 For example, in the Cajun Electric Power case decided
20 by the Fifth Circuit, the Fifth Circuit added to that statutory
21 list of cause for the appointment of a trustee two additional
22 grounds that constitute cause that are certainly highly, highly
23 relevant in this case, and that being conflicts of interest and
24 acrimony in litigation.

25 I'm going to try to break down the voluminous

1 testimony in this case on the issue of the trustee to three
2 major categories showing the breakdown of these trust issues in
3 the NRA that cry out for the appointment of a trustee, the
4 first issue being conflicts of interest in the management of
5 the NRA; second issue being issues of lack of oversight both at
6 the board level and at the level of key management; and
7 finally, number three, issues of cause under Section 1104 of
8 fraud, dishonesty, gross mismanagement, and incompetence.

9 Let's talk first about the conflict-of-issue problems
10 at the NRA, and we'll start with Mr. LaPierre. The facts
11 relating to Mr. LaPierre's conflicts of interest and self-
12 dealing that necessitate the appointment of a trustee go to
13 issues of cause that include gross mismanagement and
14 incompetence and even rise to the level of fraud. The Third
15 Circuit in the Marvel case said that conflicts standing alone
16 can provide sufficient cause for the appointment of a trustee.

17 The filing of this bankruptcy case shows actions
18 taken by Mr. LaPierre as a seriously conflicted officer of the
19 NRA. These facts I've discussed earlier. Another good example
20 of Mr. LaPierre's conflicts of interest and the resulting
21 breakdown in NRA policies relates to his dealings with an
22 entity called MMP.

23 The testimony shows that a man named David McKenzie
24 owns various entities which include MMP, Allegiance Creative
25 Group, and Concord Social and Public Relations. Those entities

Summation - Pronske

34

1 are getting paid significantly more per month than the
2 contracts support. Specifically, MMP has been paid over \$20
3 million more over the last 36 months than called for in the
4 contracts. Concord has been paid over \$8 million more over 36
5 months than called for in the contracts.

6 At the same time that these massive overpayments in
7 violation of NRA policy are being paid to the McKenzie
8 entities, McKenzie provides Mr. LaPierre with expensive private
9 vacations on two of his yachts, both yachts which happen to be
10 perfectly named for McKenzie and Mr. LaPierre handle business,
11 the Illusions and the Grand Illusions.

12 The Illusions represents eight yacht trips to the
13 Bahamas, and the Grand Illusions represents two yacht trips in
14 Europe. These week-long private trips on yachts are straight
15 out of the "Lifestyles of the Rich and Famous" and come
16 complete with fuel, food on the yachts, a chef, and complete
17 crews. In addition to the yacht trips was a lavish vacation to
18 Atlantis and the Bahamas all paid for by Mr. McKenzie.

19 On top of these consequential conflict issues, Mr.
20 LaPierre has consistently denied in his reporting to the NRA
21 that he has received any gifts in excess of \$250 in flagrant
22 disregard of conflict rules of the NRA. Also, Mr. LaPierre has
23 failed to disclose receipt of those sizeable gifts and
24 conflict-of-interest forms as required by the NRA.

25 We've talked about excess benefit issues as they

1 relate to Mr. LaPierre. And to fit the pattern and the
2 paradigm of the NRA getting caught and then reacting, the NRA
3 was sued in August of 2020 by the New York Attorney General and
4 it was finally at that time that the excess benefits were
5 disclosed for the first time in years in November of 2020.

6 This is one of the many examples of the NRA only
7 attempting compliance as a reaction to being forced into
8 compliance. As further violation of the NRA policies, these
9 excess benefits were not properly disclosed to the board or to
10 the audit committee.

11 Now let's move to and talk about lack of oversight in
12 this case, which is a serious issue when dealing with a trustee
13 request. And first we'll talk about lack of board oversight.
14 Your Honor, nonprofit boards are a little different than profit
15 boards. As the Court knows, the responsibility of a board of
16 directors in a nonprofit is a fundamental legal and public
17 responsibility to provide the oversight and accountability for
18 the organization.

19 The record in this case is replete with examples of
20 lack of board oversight of Mr. LaPierre that constitute cause
21 under the trustee statute and the Cajun Electric and Marvel
22 Entertainment cases. The inability of the NRA board to provide
23 oversight and/or the conscious indifference of that board to
24 provide oversight go to appointment of a trustee for gross
25 mismanagement.

Summation - Pronske

36

1 Your Honor, a case that is very much on point to this
2 case is the Woodlawn Community Development case, which I don't
3 believe is in our brief, but that case is at 6 -- I'm sorry, it
4 is in our brief. That's at 613 B.R. 671. In that case,
5 Woodlawn Community Development Corporation was a nonprofit
6 company that had served a vital public interest and had been
7 around for a long time, much like the NRA, and was forced to
8 file bankruptcy.

9 Again, much like the NRA, Woodlawn had a leader who
10 was engaged in acts that led a bankruptcy judge after the
11 filing of a motion to appoint a trustee to conclude that the
12 leader was out of control and that board oversight was failing
13 to contain him. The bankruptcy judge ordered the appointment
14 of a trustee and the organization appealed touting great
15 accomplishments and merits of the community organization, much
16 like debtors' counsel did with the first half of his opening
17 argument.

18 The appellate court disagreed that the bankruptcy
19 judge erred in appointing a trustee. In the following quote,
20 Finney is the leader and the organization is called Woodlawn,
21 the court stated: "Finally, Woodlawn argues that appointing a
22 trustee was the death knell of an old and venerable community
23 organization that benefitted underserved communities. But
24 Finney rang that bell. Woodlawn's management allowed him to
25 operate with virtually limitless discretion and Woodlawn is now

1 paying the price. The fault lies with management; not with the
2 bankruptcy judge."

3 Like in the Woodlawn case, the continuing nature of
4 abuses and lack of oversight was an issue before Judge Nelms in
5 the Northern District of Texas in the Life Partners case
6 dealing with a multi-billion dollar public company that was the
7 largest owner of life insurance policies -- settlements in the
8 world.

9 The appointment of the trustee was requested for past
10 acts dealing with securities law violations of the CEO of the
11 company that had tried to correct itself with the CEO resigning
12 after the bankruptcy filing and shifting the CEO's power over
13 to a compliance-oriented CFO, much like Craig Spray in the NRA
14 case.

15 I represented the debtor in that case and was on the
16 losing end of that trustee battle. Judge Nelms' ruling in that
17 case dealt with board oversight. He found that even though the
18 bad actor had resigned, the board nevertheless stayed in place
19 and even though the bad actor was gone, the lack of board
20 oversight had created the problem in the first place and the
21 board remained.

22 As the quote on the screen shows, Judge Nelms said in
23 his ruling, "In short, the evidence is that Ms. Pieper" --
24 that's the CFO -- "Ms. Pieper may be independent but the board
25 is not and, ultimately, it is the board that runs the company.

1 Consequently, I find that cause exists to appoint a trustee
2 under Section 1104(a)(1), but I also find that a trustee would
3 best serve the best interest of the creditors, shareholders,
4 and other interests of the estate."

5 Let's look at what the record in the NRA case shows
6 as to the examples of continuing problems with board oversight.
7 And those examples include the hiding of information from key
8 officers such as the -- unbelievable is the only word I can
9 think of -- the unbelievable fact that the filing of bankruptcy
10 was kept secret from the general counsel and the CFO of the NRA
11 until after they were filed.

12 And the reason I say the word "unbelievable" is that
13 bankruptcy is a massive legal proceeding, and they kept that
14 legal proceeding from the chief legal officer of the company
15 until after the filing of the case. And I say "unbelievable"
16 because, obviously, the filing of bankruptcy is a massive
17 financial issue dealing with financial problems for a company
18 and they hid and kept the filing of the bankruptcy from the
19 chief financial officer until after it was filed.

20 Keeping information secret like this necessitates
21 that various rules be violated in the NRA because, for example,
22 if you're going to hide bankruptcy from the general counsel and
23 the CFO, then you also have to hide from the bankruptcy -- you
24 have to hide the bankruptcy lawyer's engagement letter from
25 those individuals which means you have to violate the \$100,000

1 contract policy. And that would have to be violated because
2 showing the bankruptcy lawyer's engagement letter to the
3 general counsel and the CFO who you're trying to hide things
4 from would mean you can't hide from those individuals.

5 So, Your Honor, it's an example of how
6 dysfunctionality breeds governance problems. This type of
7 example -- these types of examples are replete as a matter of
8 course with the NRA.

9 And the facts bear out in the testimony that the
10 bankruptcy lawyer's engagement letter was hidden from those
11 individuals and that that clearly violated the \$100,000
12 contract policy of the NRA which would have required Mr. Frazer
13 and Mr. Spray, the general counsel and the CFO, to sign off on
14 those engagements.

15 Next, the record shows the clear intention to keep
16 the board in the dark in general. The words of Judge Journey,
17 the long-term board -- the long-term member of the NRA and
18 board member, was that the NRA board is a what he called
19 "supine board" with essentially a consent agenda. The record
20 shows that the giving of the Brewer firm a \$5 million
21 bankruptcy slush fund with no oversight or no controls over its
22 usage.

23 They were keeping all of the bankruptcy work hidden
24 from key officers such as Mr. Frazer and Mr. Spray and board
25 members, the effect of which unquestionably presented the

1 possibility of oversight and violated a number of the NRA's
2 policies.

3 That slush fund, Your Honor, was just given to Mr.
4 Brewer, and Mr. Brewer was then able to pay lawyers' fees and
5 in fact did pay \$1.3 million in bankruptcy legal fees prior to
6 the filing of the bankruptcy case, again, amazingly without the
7 knowledge of the general counsel and without knowledge of the
8 chief financial officer. And ultimately, this shows a lack of
9 board oversight.

10 And I use the word at the beginning of talking about
11 this that that oversight can be due to inability to provide
12 oversight or a conscious indifference of the board to provide
13 oversight. I think this is an example where the board was
14 unable to have oversight because they basically -- all the
15 information is kept from them.

16 The record also shows testimony of Carolyn Meadows, a
17 board member and the president of the NRA, admitting that upon
18 finding out that her notes and records could be subpoenaed, she
19 actually destroyed her notes by shredding them and even burning
20 them. And she remains on the company's special litigation
21 committee overseeing litigation, the person that burned her
22 notes fearing subpoenas.

23 The testimony shows that board oversight is a huge
24 problem. And I'll quote from some testimony. First, the
25 testimony again of Judge Journey, a board member and long-time

1 historic figure at the NRA, who testified that there are
2 extensive governance abuses at the NRA and that the New York
3 proceeding connected a lot of dots for him relating to those
4 abuses.

5 Judge Journey also testified that the balance of
6 power and checks and balances at the NRA are essentially non-
7 existence and that the NRA is run as a kingdom, not a
8 corporation, with Wayne LaPierre as the king.

9 Owen "Buz" Mills, I believe, very credibly testified
10 that the board has abdicated their responsibility and has
11 failed to adequately supervise management.

12 Rocky Marshall, another board member, testified about
13 his concern about the lack of oversight of the board.

14 Another issue that's closely related to oversight
15 issues are a troubling set of facts that revolve around what
16 are known at the NRA as "Wayne says" approvals that violate NRA
17 policy. "Wayne says" approvals being acts, whether appropriate
18 under the rules, policies, and bylaws of the NRA or not, are
19 automatically approved because Wayne says.

20 The following examples of "Wayne says" mentality,
21 these examples continue even after the NRA was allegedly trying
22 to get into compliance. And they include first travel --
23 first-class air travel of individuals that are not permitted to
24 fly first class, Brewer's firms being paid in disregard of
25 rules and policies because Wayne says.

1 Another example of "Wayne says" is that there's no
2 board approval of the firing of Craig Spray as required under
3 the bylaws. Tony Makris' testimony calls this management by
4 crisis. Judge Journey called this Wayne's kingdom where Wayne
5 LaPierre is the king.

6 Your Honor, in November of 2020, Mr. Spray, the CFO
7 who was trying to bring the NRA into compliance, and this is
8 NYAG Exhibit 278 on the screen, he wrote an email to Mr.
9 Frazer, the general counsel, saying: "You know as well as I do
10 that these are not approvals. There are no 'Wayne said'
11 approvals at the NRA. All of you are core to our controls
12 process and, quite frankly, I am disappointed in all of you."
13 He closes with: "I can't emphasize enough what a breakdown this
14 is." What happens to Mr. Spray? Of course, he gets fired by
15 Wayne LaPierre.

16 Another telling example is that Wayne LaPierre never
17 attended any of the compliance presentations that the NRA set
18 up to try to get back into compliance. Mr. LaPierre is not
19 even interested in appearing to be compliant to the duties of a
20 nonprofit organization. Basically, Mr. LaPierre does what Mr.
21 LaPierre wants to do.

22 This mentality, Your Honor, is something that you
23 actually observed yourself. This mentality is consistent with
24 his inability to answer simple "yes" or "no" questions, and
25 continuing instructions over and over from this Court and even

1 his own attorney showing that he absolutely cannot follow
2 directions.

3 This is consistent not only with not following
4 bylaws, taking massive excessive benefits and dealing with
5 Craig Spray trying to make meaningful changes in the NRA by
6 firing him. In Wayne LaPierre's testimony, objections to non-
7 responsiveness were sustained over 60 times.

8 This Court admonished Mr. LaPierre 16 times to just
9 listen to the question and answer the questions, even making
10 sure at one point that Mr. LaPierre could actually hear the
11 Court's instructions. Mr. LaPierre's own counsel had to
12 admonish his own client, Mr. LaPierre, five times to just
13 listen to the question and answer them.

14 Now let's talk about some lack of oversight issues
15 regarding the Brewer firm that are very important in this case.
16 Your Honor, every dysfunctional company has within it a person
17 who the late great Christopher Wiehl (phonetic) used to call
18 the organizational evil.

19 In the NRA, we can see the impact of Bill Brewer and
20 the Brewer firm on the demise of the functionality of the NRA
21 and the failure to contain those actions. The issues relating
22 to the Brewer firm are shocking and show complete breakdown in
23 oversight at the NRA. They go both to the standards of gross
24 mismanagement and to the case-law standard of acrimony in
25 litigation that comes both from the Cajun Electric case in the

1 Fifth Circuit and the Marvel Entertainment case from the Third
2 Circuit.

3 The first Brewer law firm issue is the absolute
4 exponential expansion of legal fees of the NRA since the hiring
5 of the Brewer firm in March of 2018. The chart shows what I'm
6 about to tell the Court as far as some numbers here. The 2016
7 990 shows legal fees and this is before Mr. Brewer's firm's
8 hired -- show total legal fees of the NRA at \$6.5 million. In
9 2017, the 990 shows that the total legal fees are similar at
10 \$6.9 million.

11 In 2019, things start changing and that's when Mr.
12 Brewer's firm is hired in March of that year. In the last nine
13 months after the Brewer firm is hired, the legal fees go up
14 from their normal 6.9-, 6.5-million-dollar number to 13.8
15 million. And since he was hired only in March, that annualizes
16 to \$18.4 million. That's a 267-percent increase in legal fees
17 when the Brewer firm is hired.

18 Then in 2019, Your Honor, the 990s shows \$24.8
19 million in legal fees, which is a 360-percent increase from
20 2017 before the Brewer firm is hired. In 2020, those legal
21 fees jump up to \$34 million to the Brewer firm in fees. That's
22 a 492-percent increase from 2017 before the Brewer firm was
23 hired.

24 Those three numbers for those three years add up to
25 \$72.6 million being paid to the Brewer firm over three years.

Summation - Pronske

45

1 17.5 million of that 72 million was paid just in the 90 days
2 prior to bankruptcy, which would annualize out to \$70 million a
3 year in legal fees.

4 To put the Brewer firm's three years' worth of fees
5 of \$72.6 million collected over a three-year period into
6 perspective, Your Honor, that's more than the amount of the
7 value of the NRA 305,000 square-foot corporate headquarters
8 building in Virginia.

9 To put that \$72-million number into further
10 perspective, to generate \$72.6 million to pay Brewer fees over
11 three years is equivalent at \$45 a year membership dues of the
12 NRA to 1.6 NRA member -- 1.6 million NRA members' annual dues,
13 which are going to the Brewer firm rather than going to what
14 debtors' counsel referred to in his opening statement as all
15 the great programs and missions of the NRA.

16 Oliver North, who was president of the NRA in 2019,
17 voiced concerns about the Brewer fees repeatedly. And what
18 happens to him? He's pushed out of the NRA, much like Mr.
19 Spray. Oliver North wrote a letter dated April 18th, 2019, and
20 that's Ackerman's Exhibit Number 38, which says that the Brewer
21 fees "pose an existential threat to the financial stability of
22 the NRA."

23 The Oliver North letter went on to say: "It cries out
24 for outside independent review." Colonel North also raised
25 issues relating to troubling unethical conduct of Brewer found

1 by various judges that's discussed in that letter.

2 The second Brewer firm issue that goes to the
3 standard of acrimonious litigation under the case law and lack
4 of oversight and gross mismanagement is that the board failed
5 to control out-of-control litigation that has developed since
6 the Brewer firm took hold of the NRA in 2018. And, again, all
7 of this is after the NRA claims to be in "self-correction
8 mode."

9 One gross example of this, Your Honor, is the Cox
10 litigation. The Cox litigation is litigation attempting to
11 block \$2 million worth of contractual entitlement to Mr. Cox so
12 it's a \$2-million issue that is -- and in that case, Your
13 Honor, the evidence shows that \$6 million has been paid to
14 Brewer to chase this \$2 million.

15 Additionally, there's an advancement of
16 indemnification provision in Cox's agreement that require
17 prepayment of his attorneys' fees. So not only has the NRA
18 paid \$6 million in legal fees on the Cox litigation, but it's
19 also had to pay \$1.8 million to Winston & Strawn which is Cox
20 lawyers because of that provision.

21 So a total of \$7.8 million and counting to eliminate
22 a \$2-million contractual obligation and a "Hail Mary pass" for
23 additional speculative damages, and the arbitration hasn't even
24 happened yet. The facts show that legal fees that are
25 multiples of the amount in controversy show a complete lack of

1 oversight and out-of-control litigation that goes way beyond
2 mismanagement.

3 Your Honor, the New York regulatory case is another
4 example and suffice it to say that millions of dollars of
5 Brewer fees are being spent rather than just taking serious
6 compliance -- taking compliance seriously and making real
7 changes at the NRA.

8 What is clear from these Brewer facts? One, nobody
9 is acting as a check to Brewer's power and influence. And,
10 two, Brewer's effective takeover of control of the NRA, this
11 fact and the resulting attorneys'-fees insanity that has been
12 experienced by the NRA with alarming escalation since the
13 engagement of Brewer, screams out for the appointment of a
14 trustee.

15 And, finally, Your Honor, issues of cause under
16 statute for fraud, dishonesty, gross mismanagement, and
17 incompetence. The first one I would like to address is the
18 actual filing of this bankruptcy case. The fact that this case
19 was filed at all is a highly problematic issue that goes
20 strongly in favor of the appointment of a trustee for
21 incompetence and gross mismanagement.

22 The facts of dishonesty surrounding the filing of the
23 case, which I handled earlier dealing with board approval, go
24 to fraud and dishonesty. Those facts earlier discussed apply
25 to the requirements of the appointment of a trustee every bit

1 as much as they do to show the case was filed in bad faith for
2 purposes of dismissal.

3 But the actual fact of putting this 150-year-old
4 charity into bankruptcy at all goes to the gross mismanagement
5 and competence issues. First, let's recall the words of
6 debtors' counsel said in the opening statement in this case,
7 that -- I'm sorry, not said in the opening statement, said in
8 open court during this case, that being that the dismissal --
9 that this dismissal-trustee proceeding could end the existence
10 of the NRA.

11 That statement was obviously meant to give this Court
12 pause to rule against the NRA, but the concept that the current
13 proceedings before this Court could end the NRA itself is a
14 major indictment against the NRA for taking the monumental risk
15 in this filing to begin with. Why? Because the filing of
16 these motions to dismiss and appoint a trustee were easily
17 foreseeable and should have been completely anticipated.

18 The filing facts, including the financial strength of
19 the NRA, the clear litigation strategy, purpose of the filing
20 of this bankruptcy, the bad-faith forum shopping of this case,
21 using an entity created solely for the purpose of forum
22 shopping, there is no question that a filing for a motion for
23 dismissal of this case or appointment of a trustee was going to
24 be filed and clearly should have been anticipated.

25 And at the risk of losing one of those motions would

1 be likely, highly likely, the filing of this bankruptcy case
2 and the endangering of its existence according to debtors'
3 counsel, as he suggested, could be a result of losing the
4 motions to dismiss, appoint a trustee. And therefore, the risk
5 to the charity, the risk to its programs and mission, the risk
6 to its members, the risk to its donors is nothing less than
7 gross mismanagement and incompetence as contemplated under
8 Section 1104.

9 Your Honor, I'm going to briefly go through some
10 actions that were taken in early May of 2018 after the NRA
11 claims to be on a course correction. And those facts show that
12 in April of 2018, one month after the NRA started its purported
13 course correction, Wayne LaPierre went to Dallas to shop for a
14 house that was to be secretly paid for by the NRA. Weeks later
15 on May 5th, 2018, the NRA executed a poison-pill contract that
16 would pay Wayne LaPierre \$17 million regardless of whether he
17 was fired.

18 On the same day, May 5th, the NRA's outgoing
19 president, Pete Brownell, signed a consulting agreement for the
20 CFO, Woody Phillips, who apparently was not up to the task that
21 would pay him \$30,000 a month after he resigned.

22 Importantly, both of those contracts were signed by
23 Carolyn Meadows. This is the same Carolyn Meadows that is the
24 current NRA's president, the same Carolyn Meadows that formed
25 the special litigation committee that consented to this

Summation - Pronske

50

1 bankruptcy filing and purportedly acts as a check on Wayne
2 LaPierre's power as she, in her own words, burns her own notes.

3 Two weeks after that, the NRA formed an entity called
4 WBB, LLC, to facilitate the secret purchase of the house, an
5 entity in which Woody Phillips who had just received a
6 lucrative consulting contract authorized \$70,000 to be paid to
7 fund that entity.

8 The fact that NRA ultimately did not go through with
9 that purchase does not magically cleanse the fact that WBB
10 entity was set up and funded and a real attempts was pursued to
11 find and purchase a \$6-million home for Mr. LaPierre to be paid
12 for by the NRA in secret, all after the NRA claims it's on its
13 way to a course correction. These facts clearly show fraud and
14 dishonesty under the statute.

15 Your Honor, I'll save for rebuttal some facts I want
16 to talk to the Court about regarding Craig Spray who is the
17 person that was trying to make positive changes of compliance
18 in the NRA, but the long story short is that he attempted this
19 compliance in a serious and sincere manner and ended up being
20 fired by Wayne LaPierre without board approval.

21 The CRO application is going to be discussed by the
22 United States trustee, so the only mention that I want to make
23 of it, Your Honor, is that the CRO application -- and this is
24 completely no disparagement on the CRO who is a well-respected
25 individual in Dallas, but the application and the way that the

Summation - Pronske

51

1 CRO was attempted to be employed is a microcosm of the
2 dysfunction in the NRA's management. The United States Trustee
3 will be discussing this application.

4 But, in sum, Your Honor, after hearing the testimony,
5 my conclusion of the CRO application is that it appears to be
6 merely a transparent attempt to lend the very good name and
7 reputation of the CRO to the NRA and to brand their plan with
8 the CRO's good name in return for a \$1-million success fee.

9 So, in closing and conclusion, Your Honor, I'm going
10 to end with what the NRA began this trial with which was
11 debtors' counsel's opening statement. I was listening intently
12 as to how the NRA would handle their biggest problem in this
13 case which was that it was filed by an entity that is in the
14 best financial condition in its history, has no creditor
15 issues, was filed as pure litigation strategy in a fabricated
16 venue.

17 I can't imagine worse facts. Instead of trying to
18 argue or disagree with these factual premises, which we were
19 listening for, the NRA instead through debtors' counsel's
20 opening and through its own witnesses' testimony embraced those
21 facts and premises and admitted that the sole reason of the
22 filing of bankruptcy was to gain this strategic litigation
23 through "dumping New York."

24 The twist upon which they hung their hat was that the
25 New York proceeding had been -- had the possibly outcome of

1 dissolution which debtors' counsel likened to a foreclosure.

2 If it's okay to file bankruptcy to stop a foreclosure, then it
3 must be okay to file a bankruptcy to stop a dissolution.

4 In fact, Your Honor, those two situations are
5 completely different. Where a company files bankruptcy to stop
6 a foreclosure and has creditors that will be impacted by the
7 foreclosure of a major piece of collateral which that entity
8 needs to conduct business and pay its creditors, the bankruptcy
9 is completely aligned with the purposes of bankruptcy, that
10 being to stave off a secured creditor who the Bankruptcy Code
11 ensures will be adequately protected, preserve the value of the
12 assets, and maximize the payout to unsecured creditors.

13 In the NRA case, the situation is completely
14 different. In this case, there are no creditors who will not
15 get paid in full. That is a game-changing difference. Under
16 New York law in a dissolution proceeding, like in this
17 bankruptcy case, creditors are paid off the top and any excess
18 funds are paid as determined by order of the Court, not at the
19 choice of the New York Attorney General but as determined and
20 ordered by the Court.

21 Under the facts of this case, the assets vastly
22 exceed the debts. The unsecured creditors would be paid in
23 full in the dissolution, and the secured creditor with \$20
24 million plus in equity in his collateral would also be paid in
25 full. Dissolution would pay all creditors in full, and the New

1 York court would have taken care of and fully satisfied with
2 the bankruptcy court can and should do on its best day.

3 However, the debtors' counsel did not stop with the
4 payment of his creditors. Instead, he gave a lengthy
5 presentation on the activities, programs, and members of the
6 NRA, much as debtors' counsel did in the Woodlawn Community
7 case cited earlier.

8 Bringing debtors' counsel opening thoughts back to
9 the potential dismissal of this case and the resulting
10 possibility that the NRA should be dissolved, I submit to you
11 that because the creditors would be paid in full and because
12 the members of the NRA are not shareholders or otherwise equity
13 owners, the right court to hear the debtors' counsel
14 presentation regarding the activities, programs, and members of
15 the NRA is not the court that set up to solve debt problems of
16 which the NRA has none.

17 The right court to make those determinations, the
18 right court to weigh the great activities and programs against
19 wrongful governance, the right court to weigh interests of
20 members against wrongful acts of management is the court that
21 the New York legislature has entrusted that weighing to, which
22 is the state court in which the NRA chose to be incorporated --
23 not the creditor court but instead the public-interest court,
24 not the court that the NRA forum-shopped its way into with a
25 clearly manipulated, fabricated bad-faith venue.

Summation - Pronske

54

1 Your Honor, this case must be dismissed. It must be
2 dismissed to allow the right decisions to be made by the right
3 courts, courts that Mr. LaPierre had to admit to you were fair
4 courts that are not corrupt. Those are the courts that should
5 be hearing about the activities and the programs of the NRA,
6 the welfare of its members, the purpose of its mission and the
7 necessary interplay of New York law is that the police and
8 regulatory power of the State of New York with the purposes of
9 protecting the interests of the public.

10 The Fifth Circuit has told us in cases like Halo
11 Wireless that those police and regulatory powers trump the
12 interests of the bankruptcy law even when there are creditors
13 that won't get paid in full. In this case, the lack of
14 insolvency takes this case to a new level where this Court is
15 serving no function other than to provide an impermissible
16 block to the New York court system and the New York statutes
17 designed to protect the public interest.

18 It is very clear, Your Honor, that this case was
19 filed in the most -- utmost bad faith, has no legitimate
20 purpose, and must be dismissed. Thank you.

21 THE COURT: Thank you, Mr. Pronske. I show you have
22 just short of 20 minutes left.

23 MR. GARMAN: Your Honor, this is Greg Garman. Might
24 I ask a point of clarification?

25 THE COURT: Sure.

Summation - Mason

55

1 MR. GARMAN: Mr. Pronske indicated that he was going
2 to reserve an argument related to Craig Spray for his rebuttal.
3 That would deny me the ability to respond to an argument I
4 understand is going to be advanced. If there is going to be an
5 argument about Mr. Spray, I do believe it needs to come now,
6 not in rebuttal so that I might properly respond.

7 THE COURT: Mr. Pronske, you want to respond to that?

8 MR. PRONSKE: Your Honor, yes, I'll reserve any
9 rebuttal that I have to rebutting whatever he says about Mr.
10 Spray. In other words, it will be appropriate rebuttal.

11 THE COURT: And that would count to anybody that gets
12 the last word on the movants' side that you can't spring
13 anything new.

14 All right. Ackerman -- I think we'll go through
15 Ackerman's first round of closing argument, and then we'll take
16 a short recess before we move into Journey then.

17 So I'm not sure who's going to argue for Ackerman.

18 MR. MASON: Good morning, Your Honor. Brian Mason.

19 THE COURT: And, Mr. Mason, before we start, my
20 understanding is you want about an hour and ten in this first
21 pass; is that right?

22 MR. MASON: That is correct, Your Honor.

23 THE COURT: All right. You may proceed.

24 MR. MASON: Your Honor, on behalf of Ackerman McQueen
25 and its legal team, we appreciate your patience with us and

1 your attention to this most important case.

2 Like a stone tossed into a tranquil lake, the ruling
3 in this case will have ripples which extend from coast to
4 coast. And while there's been a great deal of time spent in
5 this courtroom making a record, we believe that the decision to
6 dismiss this bankruptcy is straightforward and overwhelmingly
7 supported by the evidence. To assist the Court, I'd like to
8 highlight what we believe supports the inevitable conclusion
9 that this bankruptcy must be dismissed with prejudice.

10 Mr. Pronske spent a fair amount of time talking about
11 the standard for dismissal that's applicable here. And I'm
12 going to do my best to not repeat what he has said, but I do
13 want to highlight some standards that this Court is very much
14 aware of with respect to the dismissal standard at issue here.

15 Your Honor, this bankruptcy was filed in bad faith
16 and should be dismissed for two independently sufficient
17 reasons. Number one, the NRA did not file this bankruptcy for
18 a valid reorganizational purpose as required under black-letter
19 bankruptcy law. And number two, this was a fraudulent
20 bankruptcy. As Judge Journey put it, this was a fraud on this
21 Court.

22 For starters, I'd like to talk a little bit about one
23 of the fundamental issues with most debtors in Chapter 11
24 bankruptcies. I know Mr. Pronske touched on this, but one of
25 the things that I told the Court in opening that we were going

1 to see during this trial was an overwhelming amount of evidence
2 that the NRA is financially healthy and that its finances had
3 absolutely nothing to do with this bankruptcy filing.

4 And as you can see, this is just a snapshot of the
5 testimony that we saw throughout this trial. It's exactly what
6 the evidence has shown. It is an undisputed fact that the
7 NRA's financial situation had nothing to do with the filing of
8 this bankruptcy. Unlike the vast majority of entities trying
9 to seek shelter in bankruptcy, there is no distress, there's no
10 solvency issues here.

11 This Court heard testimony from virtually every NRA
12 witness in this trial, including Mr. LaPierre, Mr. Frazer, Mr.
13 Spray, Mr. Cotton, Ms. Rowling and others that the NRA is
14 financially healthy as ever and that its finances had nothing
15 to do with this bankruptcy. The latest operating statements
16 from the NRA bankruptcy disclosures make it clear that there is
17 approximately \$72 million of available cash for the NRA.

18 Proudly proclaiming their financial situation just
19 like in SGL Carbon, the NRA boldly told the world in public
20 statements on the very day that they filed this bankruptcy that
21 it was as financially as strong as ever and that it could
22 continue business as usual, despite the bankruptcy, everything
23 that goes along with it.

24 In Cedar Shore Resort, the Eighth Circuit made clear
25 that Chapter 11 bankruptcy was created by Congress as a vehicle

1 for businesses on the verge of a fatal financial plummet, not
2 for a profitable business to evade liability and gain the
3 bankruptcy system like the NRA is trying to do here with this
4 Court.

5 Given that the NRA is solvent and its finances had
6 nothing to do with this bankruptcy, why did it file? Well, we
7 heard a little bit of evidence throughout this trial that the
8 NRA wanted to try and centralize litigation. The intent --
9 here Mr. Frazer testified that one of the reasons the NRA filed
10 was to streamline and consolidate litigation.

11 But Mr. LaPierre testified that absent the New York
12 Attorney General enforcement action, its other litigation would
13 not be a reason to file for bankruptcy. Both Ms. Rowling and
14 Mr. Spray, financial arms of the NRA, testified that the NRA
15 could afford to defend and prosecute litigation, especially the
16 litigation that the NRA has commenced.

17 At the first-day hearings, Mr. Neligan represented to
18 this Court that the NRA had attempted to consolidate litigation
19 through the MDL and that when it failed, the option of
20 bankruptcy was more of a necessity because of the amount of
21 litigation. Death by a thousand cuts, I believe were Mr.
22 Neligan's words.

23 Importantly, the MDL was not even decided as of the
24 petition date on January 15th. Mr. Frazer testified that the
25 MDL was asked by the NRA to look at centralization and

1 consolidation of its litigation. And on February 4th, 2021,
2 the MDL panel found that they were not persuaded that
3 centralization is necessary for the convenience of the parties
4 and witnesses or to further the just and efficient conduct of
5 this litigation.

6 In other words, the MDL panel considered thousands of
7 pages of briefing and evidence, oral argument, and came to the
8 conclusion that the reason Mr. Frazer attempted to articulate
9 as one of the NRA's reasons for filing for bankruptcy was not a
10 valid basis for consolidation or centralization. This MDL just
11 like this bankruptcy conceived by Mr. LaPierre, the Brewer
12 firm, the special litigation committee, is now another part of
13 the NRA's litigation tactic, to try to obtain an advantage in
14 another forum and exert leverage on the New York Attorney
15 General and other litigants like Ackerman McQueen.

16 So if the NRA didn't file for bankruptcy because of
17 solvency concerns or it's a centralized litigation, what else
18 is there? In his opening statement, Mr. Garman stated that
19 there was three reasons the NRA filed this bankruptcy: Take
20 dissolution off the table, take receivership off th table, and
21 get out of New York.

22 Mr. Garman further analogized the NRA's situation to
23 a foreclosure. As Mr. Garman said, it's bankruptcy 101 that
24 you file because you have a foreclosure in place or a judgment
25 is headed your way or a receivership is in the works. Here

1 there's not even a trial setting. There is absolutely no
2 evidence of all of a dissolution judgment headed towards the
3 NRA.

4 Mr. Frazer testified that a trial and appeal on the
5 New York AG enforcement action could be years away. Mr.
6 LaPierre and Judge Journey testified to the same. Even the
7 proposed CRO, Mr. Robichaux could not tell the Court whether a
8 judgment was close and whether the threat of involuntary
9 dissolution is currently jeopardizing the NRA.

10 This whole idea of comparing the NRA's situation to a
11 foreclosure makes no sense. In a foreclosure, there is one
12 party that can secretly file its own. That is not the case
13 here. The New York Attorney General cannot cause this
14 dissolution on its own. It requires an independent judicial
15 finding in the Court's sole discretion at the conclusion of the
16 evidence that the equitable remedy of involuntary dissolution
17 is in the best interest of the public.

18 This whole idea of a receiver and the imminency or
19 the thought of a receiver is also a completely made-up idea.
20 First and foremost, the New York Attorney General has not even
21 requested the appointment of a receiver. Second, there's no
22 evidence of any threat, imminent or otherwise, of a receiver
23 being appointed. This was confirmed throughout the trial by
24 both Mr. Frazer and Mr. LaPierre and others.

25 In reality, the closest thing the NRA has to a

1 receiver is the appointment of a Chapter 11 trustee if this
2 case does not get dismissed. And to be absolutely clear, if a
3 Chapter 11 trustee is appointed, then the people that chose to
4 file this bankruptcy -- Mr. LaPierre, the Brewer firm, the
5 special litigation committee -- be can the ones to blame for
6 putting the NRA in this situation.

7 The NRA members can hold them accountable because
8 there was absolutely no legitimate good-faith purpose for
9 filing this bankruptcy and putting the NRA in this position.

10 Both prior to and during this case, Mr. LaPierre and
11 the NRA have slandered and libeled the entire State of New
12 York, its public officials, political officeholders, and
13 overbroadly even its courts. Mr. LaPierre initially admitted
14 that when the NRA said that all things they said about public
15 officials, he knew that that could be interpreted to mean
16 judges also. As we will see, he later backed off those
17 comments and made it clear that the NRA is not accusing the New
18 York Judiciary of any wrongdoing or bias.

19 These statements made about New York and its
20 officials are numerous and, frankly, reprehensible. But
21 importantly, it's all a bunch of political public relations
22 noise. The NRA cares more about how they're portrayed to the
23 public than fighting for the Second Amendment.

24 Regardless of the outlandish claims the NRA wants to
25 make about New York, it cannot change the simple fact that the

1 New York Attorney General does not have the power or authority
2 to dissolve the NRA. Mr. Frazer testified that the NRA has due
3 process rights, that there is a judicial process involving a
4 state court judge.

5 Mr. LaPierre also testified that the New York
6 Attorney General cannot unilaterally dissolve the NRA, it takes
7 a court, and that any judgment is subject to an appeal. Judge
8 Journey testified to the same thing.

9 Even the New York Attorney General makes this same
10 point in her prayer for relief, expressly acknowledging in the
11 complaint that was filed against New York that dissolution
12 would be in the Court's discretion if it's determined to be in
13 the interest of the public. And I know Mr. Pronske showed the
14 Court this same statute earlier with respect to the idea of
15 dissolution and how there ultimately has to be a determination
16 that it is in the public's best interest.

17 But part of the problem with the NRA's entire
18 argument about a weaponized New York Attorney General is that
19 the New York Attorney General doesn't have a weapon to dissolve
20 the NRA. All of the Court's questions bear within the seeds of
21 the problems with the NRA's bankruptcy filing. The grave
22 threat that it waves about to draw the attention of the Court
23 is a phantom.

24 There is no boogeyman or boogey attorney general.
25 There are only state and federal courts with two levels of

1 appeals above each. These courts are all available to the NRA
2 because of its vast litigation war chest that the Brewer firms
3 had no problem tapping into the last few years.

4 Understanding that the New York Attorney General
5 cannot unilaterally dissolve the NRA, we asked John Frazer, the
6 NRA's general counsel, to confirm that dissolution is in fact
7 nothing like foreclosure. As you could see here, Mr. Frazer
8 didn't even understand the comparison that Mr. Garman attempted
9 to make in his opening. Hopefully, Mr. Frazer now understands
10 that a dissolution requires a court process overseen by a judge
11 who is ultimately going to make that determination.

12 Here the judges that we've been talking about who are
13 overseeing this dissolution issue, the ones who should decide
14 whether dissolution is in the best interest of the public, the
15 ones that the NRA is asking this Court to simply ignore, Judge
16 Joel Cohen, there's been a lot of testimony about Judge Cohen
17 in this trial. The state court judge presiding over the New
18 York enforcement action who, by the way, also presided over the
19 NRA's claim against Colonel North regarding an indemnity issue
20 and who ruled in the NRA's favor.

21 One of the burning questions here is that the NRA
22 claims they've spent the last two and a half years, tens of
23 millions of dollars solving any problems under New York
24 nonprofit law. Did they not have faith in all the changes that
25 they've made?

1 Mr. LaPierre testified that the NRA is now in
2 compliance. Every chance they got throughout this trial, they
3 were trying to talk about the wonderful self-correction, the
4 course correction. Why is the NRA so afraid of having Judge
5 Cohen listen to all of the evidence, listen to the years of
6 self-correction, and then make a final decision of whether the
7 equitable remedy of involuntary dissolution is in the best
8 interest of the public.

9 If this case is dismissed, the NRA's going back to
10 New York to continue to defend themselves in the state court
11 action. They're swimming in cash. They've got remedies in
12 federal court and in state court.

13 The NRA has attempted to create the illusion that the
14 complaint filed by the New York Attorney General seeking
15 different requests for relief, one of which is dissolution, has
16 created an immediate, urgent, and catastrophic threat to the
17 NRA. Nothing could be further from the truth. There was
18 absolutely no testimony of any immediate, urgent, catastrophic
19 threat. And three of the key NRA witnesses throughout this
20 trial made clear that the NRA can get a fair shake in New York.

21 Mr. LaPierre acknowledged that the New York courts
22 were not corrupt or that they did not present an uneven playing
23 field. He testified that the courts and not the New York
24 Attorney General have control over the ultimate outcome, that
25 there's levels of appeal above a trial court, that there's no

1 trial date that's imminent, and any potential final judgment
2 can be appealed.

3 The NRA filed in federal court an action to try and
4 protect their constitutional rights and take dissolution off
5 the table. Mr. Frazer acknowledged that the courts of New York
6 are not corrupt. He testified that the courts are going to
7 decide the ultimate outcome of dissolution or receivership,
8 there's no trial setting and, again, that the NRA has exercised
9 their rights and sought relief in the federal courts in New
10 York. Mr. Frazer also testified that there's different levels
11 of appeal even up to the U.S. Supreme Court.

12 Colonel Lee, the second vice-president of the NRA and
13 member of the special litigation committee, testified that
14 Judge Joel Cohen could be fair and impartial, the NRA cannot
15 unilaterally dissolve the NRA, and that the NRA has due process
16 rights. Judge Journey -- I'm sorry, Colonel Lee also talked
17 about the various appellate remedies at the NRA's disposal if
18 there's ultimately an unfavorable finding up in the New York
19 Attorney enforcement action.

20 Judge Journey had a number of insights on the fact
21 that dissolution would be accomplished by a court and not be a
22 regulatory agency and that the court in the appellate process
23 would take an extensive amount of time. He also testified that
24 he knows of no reasons why the courts of New York would be
25 biased or unable to present a level playing field, that they're

1 not actually weaponized against the NRA.

2 I want to talk a little bit more about what's going
3 on in the New York federal court action. There's been some
4 discussion about it, but I think it's important to emphasize
5 the specific relief that the NRA is requesting in the federal
6 courts up in New York.

7 In addition to having their due process rights and
8 defending themselves in the action before Judge Cohen, the NRA
9 filed a lawsuit in federal court in New York. And as part of
10 the relief they're seeking, they're asking for an injunction to
11 stop the New York Attorney General enforcement action and take
12 the request of dissolution off the table. If this case is
13 dismissed, the NRA can continue to exercise those rights.

14 The fact of the matter is this federal New York
15 action is another insurance policy that the NRA has taken out.
16 And they are exercising their rights in two different forums up
17 in New York. There does not need to be a third. This Court is
18 not the appropriate court to determine whether dissolution is
19 appropriate.

20 Mr. Frazer testified that -- on that same point that
21 the NRA has sought the protection of the federal district
22 courts in New York and that that is specifically designed to
23 impact the relief sought by the New York Attorney General and
24 the enforcement action.

25 So why are we really here? New York -- as Mr.

1 Pronske stated, the NRA is double-bound. This is all about New
2 York. Mr. Cotton testified on the morning of April 6th that
3 the NRA has been contemplating leaving New York for at least 15
4 years. Mr. LaPierre even testified that this has been under
5 construction for a while as officials from various states have
6 approached the NRA.

7 Why now? Mr. Pronske briefly talked about some of
8 his testimony, but I want to highlight it because these next
9 two slides include some of the most important testimony that
10 the Court heard in this trial. And that is because Mr.
11 LaPierre acknowledged that if you take the New York Attorney
12 General enforcement action off the table, the NRA doesn't file
13 for bankruptcy. In other words, but for the enforcement
14 action, none of us are here right now.

15 Here, Mr. LaPierre specifically acknowledged that
16 solvency in the other litigation, the Ackerman litigation, the
17 Under Wild Skies litigation, the Chris Cox arbitration, were
18 not issues that require the NRA to file for bankruptcy. In
19 other words, Mr. Frazer's testimony at the beginning of this
20 trial that one of the purposes was to somehow consolidate or
21 streamline litigation, that's not why we're here. That's not
22 why the NRA sought the Chapter 11 protection.

23 So why is all that important? The litigation
24 advantage that the NRA is seeking here is to take dissolution
25 off the table. By allowing this case to go forward, Your

Summation - Mason

68

1 Honor, you're taking the relief off the table in the State of
2 New York, moving that relief and taking that determination away
3 from Judge Cohen to decide the issues based on the entire
4 merits of that case. To a large extent, you'd be doing the
5 same thing to the federal judge overseeing the NRA's
6 constitutional rights in the federal lawsuit.

7 In short, I would submit that you're saying the NRA
8 wins in the First Amendment lawsuit that they filed against
9 Letitia James by granting them the relief that they're seeking
10 here and taking dissolution off the table. Plain and simple,
11 bankruptcies cannot be used as litigation tactics, and that is
12 exactly what the NRA has admitted in this case. Mr. Garman
13 talked about it in his opening. You heard tons of evidence
14 throughout this trial, and I expect that's exactly what you're
15 going to hear from him again when he gets up here this
16 afternoon.

17 What's really funny is if you think about it, the
18 whole notion that a special litigation committee and not the
19 financial people at the NRA or the CFO decided to file
20 bankruptcy should send a huge red flag that the purpose of this
21 bankruptcy was to obtain a litigation advantage.

22 Mr. Pronske talked about various cases that have been
23 cited in both of our briefs, and I won't go through all of
24 these cases. But we did highlight some of these for the Court.
25 And if it's okay with Your Honor, we would like to provide the

Summation - Mason

69

1 Court with a copy of this PowerPoint at the conclusion and we
2 can highlight some of these cases.

3 But I'm going to flip through some of these because I
4 don't want to be repetitive of Mr. Pronske. One case that I'm
5 sure that Mr. Pronske did discuss and maybe I missed it, so I
6 apologize if I did, was the In re Alexander Trust case. And in
7 that case, Judge Houser found that obtaining a more convenient
8 forum in litigation standing alone is not a good faith reason
9 for filing a bankruptcy petition. So here the NRA creates a
10 sham company, Sea Girt, solely as a transitional vehicle to get
11 this case in Texas, which is not good faith.

12 The bankruptcy court in that case also found it
13 wouldn't be able to decide much of the litigation involving
14 state law rights among non-debtor parties. And in that case,
15 the court relied on the Supreme Court precedent in Stern v.
16 Marshall. Judge Houser also found that the litigation tactic
17 in that case that was based on the fact that the bankruptcy
18 filing was timed to events in litigation. Here the NRA talked
19 about leaving New York for 15 years, but it wasn't until the
20 New York Attorney General filed a lawsuit in April of 2020 that
21 the NRA actually started moving.

22 We heard testimony that starting in September of
23 2020, it formed the special litigation committee. They hired
24 or they had the Brewer firm beginning bankruptcy-related work.
25 They hired bankruptcy counsel. And then on January 15th, they

Summation - Mason

70

1 filed. Just like the filing in Alexander Trust was a bad-faith
2 litigation tactic, so too is this bankruptcy.

3 Mr. Garman spent a lot of time talking about the
4 matter of Halo Energy [sic]. I'm not going to repeat that. I
5 did want to provide the Court with a citation to that case if
6 it doesn't have it. It's -- for the record, it's 684 F.3d 581.

7 As I mentioned at the outset, there's two reasons why
8 we think this bankruptcy should be dismissed, that it was not a
9 good-faith filing. The second reason that we believe that this
10 bankruptcy should be dismissed is because it was a fraudulent
11 bankruptcy filing. It was not authorized by the board of
12 directors.

13 The laughable attempt at authorization of this
14 Chapter 11 petition was the result of an elaborate cynical
15 scheme which began with the NRA's lawyer, Bill Brewer, working
16 with his ex-partner purportedly representing Mr. LaPierre to
17 prepare an employment agreement for the executive vice-
18 president. You heard testimony that in Mr. LaPierre's
19 approximate 30 years of being at the NRA, his employment
20 agreement has never before been presented to the board.

21 The blatantly obvious purpose of the employment
22 agreement being presented to the board at the closed session on
23 January 7th was to have some language to point out to try and
24 authorize Mr. LaPierre to file for Chapter 11 bankruptcy. The
25 problem for the NRA, Mr. LaPierre, and their lawyers is that

1 they did it all wrong.

2 Again, Mr. Pronske talked about this briefly, so I
3 will just briefly touch on it. But according to the NRA's
4 bylaws, the NRA's executive committee is not permitted to
5 authorize the filing of bankruptcy. The bylaws make clear that
6 there are certain powers that are reserved exclusively for the
7 board. Two of those provisions that we've heard plenty of
8 evidence are at issue here: present a petition for judicial
9 dissolution, adopt a plan for merger consolidation or non-
10 judicial dissolution, formulate a plan or perform corporate
11 activities of the association of such major significance.

12 Your Honor, they pointed to all of these documents
13 throughout this trial that supposedly show that there was this
14 corporate authority to file this bankruptcy. But really they
15 just pointed to a bunch of bricks and they're trying to call it
16 a house. No, these documents are sufficient individually or
17 collectively to overcome the plain language of the bylaws which
18 clearly require full board approval for such a significant
19 decision as the filing for bankruptcy of a nonprofit
20 organization that has been around for 150 years.

21 Mr. Frazer, Mr. LaPierre, and Mr. Cotton and others
22 all testified and acknowledge the obvious. This was a major
23 decision. This is an undisputed fact. So if the executive
24 committee can't approve the bankruptcy filing, what about the
25 special litigation committee?

1 The NRA contends that the special litigation
2 committee approved and authorized the filing of this
3 bankruptcy. Again, the bylaws make clear because the executive
4 committee cannot file or authorize bankruptcy, neither can a
5 special committee, like the special litigation committee in
6 this particular case.

7 Mr. LaPierre, Mr. LaPierre also did not have the
8 power or authority to authorize the filing of this bankruptcy.
9 The bylaws specifically set out Mr. LaPierre's role and powers
10 and duties with respect to the National Rifle Association.
11 Nowhere in there is there any authority to file or authorize a
12 bankruptcy filing.

13 Numerous witnesses throughout the trial also
14 testified that Mr. LaPierre's employment agreement that we've
15 talked so much about did not amend or change the NRA's bylaws.
16 So how did they do it? How did they come up with this I don't
17 even want to call it elaborate, but this scheme to defraud the
18 board, to defraud all of us?

19 This is a snapshot of the board minutes from the
20 January 6th executive session of the Officers Compensation
21 Committee that talks about the employment agreement that was
22 drafted by NRA's counsel and Mr. LaPierre's counsel, Kent
23 Correl, Mr. Brewer's former partner. And here, we know that
24 those two individuals got together, conspired with Mr. LaPierre
25 to hide and slip that language into Mr. LaPierre's employment

1 agreement and make it so ambiguous that it wouldn't catch the
2 board's attention at the January 7 meeting.

3 There's no reason why -- Mr. Pronske said there's no
4 reason why the NRA could not have had a board meeting and
5 talked about this. There's just not. This whole idea of
6 (indiscernible) receivership, it's a fallacy. They could have
7 done it, and instead they chose to be deceptive about it. They
8 chose to be fraudulent. They chose to deceive the board.

9 Mr. LaPierre repeatedly stated during his testimony
10 that he would have never filed for bankruptcy if he didn't have
11 the comfort of the reorganized language buried in the middle of
12 the long and convoluted sentence of his employment agreement.
13 Mr. Frazer testified that reorganize and reincorporate can have
14 a variety of reasons, not just bankruptcy. Many other
15 witnesses said the same thing.

16 Here, Mr. Frazer testified that the language in Mr.
17 LaPierre's employment agreement was not discussed at the
18 January 7 meeting. Mr. LaPierre's counsel, the Brewer firm,
19 and special litigation committee did not explain that the
20 following language, "reorganize or restructure the affairs of
21 the association for purposes of cost minimization, regulatory
22 compliance, or otherwise" was going to provide Mr. LaPierre
23 with the purported authority to file bankruptcy.

24 Mr. LaPierre and others in on this fraud repeatedly
25 said that the board of directors could have asked any questions

Summation - Mason

74

1 they wanted. You guys figure it out. It's on you if you don't
2 understand what that means. Come on; that's ridiculous. It's
3 hard to decide what's more aggravating here that the band of
4 conspirators thought that they were so clever or the fact that
5 they thought we were all so incredibly stupid.

6 Judge Journey was shocked at the filing of this
7 bankruptcy because the attorneys at the January 7 meeting
8 breached their duties to the board. Judge Journey made clear,
9 and other board members, that there was nothing in the
10 employment agreement, no actions at that board meeting that
11 gave them any inkling that Wayne LaPierre may try and put the
12 NRA into bankruptcy in a couple of weeks.

13 I think it's important here that the NRA produced a
14 number of witnesses throughout this trial, a number of board
15 members. And other than confirming the complete dysfunction of
16 the NRA board and management, it's notable of the absence of
17 any testimony from any board member that was at that meeting
18 that said, yeah, I knew what that meant. Of course, it was
19 obvious. There was none of that, Your Honor.

20 That's because they intentionally deceived the board,
21 and none of those board members would have thought that that
22 language would have provided their purported authorization to
23 file bankruptcy.

24 Mr. Frazer, the NRA's general counsel, he knew that
25 there was bankruptcy-related research going on. He knew that

1 the employment agreement for Mr. LaPierre was being discussed
2 with the board. But it never occurred to him that the language
3 in that employment agreement would provide the authority for
4 Mr. LaPierre to initiate a Chapter 11 proceeding.

5 Here, Mr. LaPierre claimed under oath it was the
6 board's fault if they didn't understand the meaning of the
7 language. They could have asked questions. They should have
8 asked questions. They should have figured it out. But Mr.
9 LaPierre had to admit that his own understanding of that
10 language in his employment agreement came from talking to
11 counsel. He didn't even know it himself until his lawyers
12 explained to him that it was purportedly going to give him that
13 authorization.

14 One of the most damning admissions that Mr. LaPierre
15 made, and pardon me if I lose count, was that as the general
16 counsel -- that the NRA's general counsel would be in a better
17 position to understand the language in the employment agreement
18 as opposed to any of the board members. But Mr. Frazer didn't
19 even know. So this idea that any board member understood or
20 should have understood that they were approving a Chapter 11
21 petition makes no sense.

22 One of the other remarkable parts about this
23 fraudulent bankruptcy filing is the people that Mr. LaPierre
24 and Mr. Brewer and others kept it from. Mr. LaPierre testified
25 and made clear that it was a small tight-knit circle, that he

1 had no intention of telling the board that there was going to
2 be a filing based on these paranoid made-up fears that they
3 would leak the information or that it would somehow get out and
4 they wouldn't be able to move forward.

5 The notion that there's no way that the board of
6 directors would go along with this -- with such a reckless,
7 unnecessary, and even -- with the authorization of the board is
8 just more evidence of their unlawful actions here.

9 In addition to not telling the board, we've heard it
10 a ton, Mr. LaPierre did not tell the general counsel, he didn't
11 tell the CFO, two of the most critical officers in any
12 corporation and two people that this Court knows fully well
13 that are normally kept in the loop with normal good-faith
14 bankruptcy filings. Mr. Spray and Ms. Rowling both admit that
15 they did not find out about the bankruptcy until after the
16 filing and that it was a big mistake in preparation for the
17 filing.

18 I want to talk a little bit about ratification
19 because I think this is important. Although the attorneys
20 assisting Mr. LaPierre in this conspiracy to defraud the board
21 were well aware of what they intended to do with respect to
22 this employment agreement and this language, they said nothing
23 at the meeting. But Mr. LaPierre and the special litigation
24 committee and their attorneys, they knew this was an
25 unauthorized filing. That's why they talked before about

1 getting the board to ratify the filing of this bankruptcy
2 later.

3 The old adage of asking for forgiveness rather than
4 asking for permission, why else would they discuss ratification
5 before filing, as Mr. Cotton testified here, unless they knew
6 they were going to file without proper authority.

7 Mr. LaPierre here testified that he specifically did
8 not -- he specifically discussed not telling the board about
9 the language in the employment agreement. And he testified
10 also that the only thing he relied on to give him comfort in
11 filing, again, was that language in his employment agreement
12 that the board couldn't have possibly know was going to give
13 him that authorization.

14 Mr. Frazer, general counsel, understood the dismissal
15 issue in this case, that if the bankruptcy was not an
16 authorized bankruptcy filing, it could not be filed in good
17 faith, which is exactly what happened here. Judge Journey made
18 clear that he believed the filing of this bankruptcy was a
19 fraud on this Court.

20 And nowhere maybe is there a more direct
21 misrepresentation regarding authority to enter the bankruptcy
22 process than the resolution of the special litigation committee
23 that was specifically attached to and made part of the
24 bankruptcy petition itself. No one has claimed that the
25 special litigation committee had any authority to authorize the

1 bankruptcy filing.

2 And a number of witnesses, even from the NRA, have
3 testified under oath that no such authority existed. For
4 example, here's Mr. Cotton's testimony making clear that the
5 special litigation committee did not have authority to file
6 bankruptcy on its own.

7 One of the things that Mr. Pronske touched on is with
8 respect to Mr. LaPierre's conflicts with filing this
9 bankruptcy. Part of the relief sought by the New York Attorney
10 General is that he should be removed as an officer and director
11 from the NRA. So by attempting to reorganize the NRA in Texas,
12 Mr. LaPierre was taking this relief off the table for himself
13 personally. If the NRA is permitted to reorganize in Texas,
14 then the New York Attorney General isn't going to have any
15 jurisdiction to remove Mr. LaPierre as an officer of a Texas
16 nonprofit organization.

17 We heard testimony throughout the trial that when the
18 final decision was made to file for bankruptcy, no one, Mr.
19 LaPierre or the special litigation committee, went back to the
20 board to obtain approval. They determined they'd rather ask
21 for forgiveness than ask for permission. And they put the
22 board in an untenable position, let's go ratify it.

23 As Mr. Pronske alluded to, Judge Journey, "Buz"
24 Mills, and others testified that the board was put into an
25 untenable position. But the problem though with all of this,

1 Your Honor, is you can't ratify a fraud, which is exactly what
2 the evidence in this trial has shown.

3 I want to talk briefly about Sea Girt. I know
4 there's been a lot of discussion about it, no employees or
5 operations other than this bankruptcy filing. Mr. Frazer's
6 testimony that the basis upon which the NRA obtained venue in
7 Texas was through Sea Girt, making clear that this sham
8 corporation was only formed to carry out the NRA's fraud on
9 this Court trying to secure venue in Texas.

10 And after serving its fraudulent venue purpose, there
11 was a discussion about this briefly earlier, Sea Girt doesn't
12 have any assets left. The NRA's monthly operating report shows
13 that that \$50,000 that was originally there has now been gone
14 back to the Brewer firm. And in short, it's undisputed that
15 Sea Girt was a sham entity for securing venue.

16 The NRA has admitted to that. They're unapologetic
17 about it. But like Mr. Pronske said, you're completely
18 changing and rewriting the history books of bankruptcy law by
19 permitting those actions to take place.

20 I want to spend a few minutes talking about the
21 ripple effect that this bankruptcy is going to create if it's
22 not dismissed. This Court, as we talked at the beginning, has
23 acknowledged the importance of this case. And we agree that
24 with that sentiment, we believe it's critical to address the
25 issue of what happens if this case is permitted to move forward

Summation - Mason

80

1 and the dangerous precedent we believe that it will set.

2 If this case is not dismissed, Your Honor, it's going
3 throw a monkey wrench into the gears of federalism. It will
4 put a gasoline on the ideological fires that are already raging
5 out of control in this country. It will impugn the Attorney
6 General of New York, all of its public officials, and it will
7 impugn the state and federal courts of New York giving truth
8 and support to the internationally-published why that New York
9 politicians, regulators, and judges are corrupt.

10 That is why the decision to dismiss this case is so
11 important. The purported debtors have intentionally presented
12 the case to you in such a form that you must find that an
13 entire state isn't capable of creating, enforcing, and
14 adjudicating its own laws fairly and justly in a non-corrupt
15 manner. Should the Court allowed this case to proceed, the
16 standing necessary in order to invoke this Court's jurisdiction
17 won't completely change.

18 The NRA mentioned the issue of a receivership, but
19 there is not even a mention of a receiver anywhere in the New
20 York Attorney General's complaint. And Mr. LaPierre and
21 others, as we've talked about, have denied any threat of a
22 receiver.

23 The NRA came in comparing the New York Attorney
24 General's conduct as seeking a foreclosure, but as we discussed
25 a unilateral disposition, that's a unilateral disposition of

1 property. The New York Attorney General has no ability to
2 involuntarily dissolve the NRA, only in a New York state court
3 in its sole discretion at the conclusion of the evidence and
4 only if it believes that it's in the public's best interest.

5 And more importantly, the admissions through the
6 NRA's general counsel, Mr. LaPierre, Mr. Frazer, and others,
7 and the acknowledgment of other board members, including the
8 distinguished Judge Journey, made clear that there's a long
9 road between the filing of this complaint in August of 2020 and
10 a trial up in New York. We're not even close. Discovery has
11 just started.

12 There's no imminent harm. There's no burdensome or
13 oppressive situation due to just the claim. The NRA has sued
14 the New York Attorney General up in federal court in New York.
15 The NRA has used the New York Attorney General's complaint to
16 clean house at the lowest levels of the NRA, but the threat of
17 a continued regulatory action does not seem to have changed
18 much about the way the NRA does business at the top.

19 So what else would it mean if this bankruptcy is not
20 dismissed? An unprecedented intervention into the workings of
21 a state government and highly-proprietary area concerning
22 nonprofits, which could be compared to wards of the state.

23 Permitting this case to go forward would mean a major
24 interference in the workings of state and potentially federal
25 courts already involved in the dispute involving dissolution.

1 Permitting this case to go forward is essentially
2 confirmation that the terrible defamation, slander, and libel
3 against the State of New York, which is an NRA and Wayne
4 LaPierre way of doing business, has validity. Failure to
5 dismiss this case would give truth to the lie that New York
6 officials are corrupt and do not allow for a level playing
7 field.

8 Permitting this case to move forward would make the
9 basis of bankruptcy jurisdiction depend on ideological
10 differences between states and essentially the promotion of
11 hate speech based on the way people think in whatever part of
12 the country they live in.

13 The NRA has framed the question of its right to stay
14 in bankruptcy court in such a way that the failure to dismiss
15 gives truth to another lie, that a party is entitled to escape
16 a jurisdiction based on the way its people think and live for a
17 preferred supposedly more enlightened, more personally
18 compatible justice. Texas has no legal relationship to the NRA
19 but for the sham corporation that it created to enter this
20 Court.

21 Permitting this case to go forward means that
22 throughout the United States, if any regulator or
23 administrative agency simply seeks the relief of dissolution,
24 seeks the relief of dissolution against a nonprofit or other
25 entity, that entity will be able to immediately point to this

Summation - Mason

83

1 NRA bankruptcy case as its "get out of jail free" card where it
2 can simply put up a shell corporation, file for Chapter 11
3 bankruptcy, and move its operations and assets out of town.

4 Permitting this case to move forward means that
5 attorney generals and other administrative agencies tasked with
6 trying to protect and act on behalf of the public in their
7 respective states will be forced to consider whether they can
8 even name or seek the relief of dissolution because they will
9 know that if we do that, if we simply ask for it, even if we
10 think it's absolutely appropriate and warranted, then that
11 entity can simply point to the 2021 NRA bankruptcy proceeding
12 in Dallas, Texas as the opinion that rewrote the history books
13 of bankruptcy law in this country.

14 And, yes, that is how important this case is because,
15 Your Honor, you would be changing the playing field here taking
16 away the rights of the regulators across the United States to
17 do the job they see appropriate, the police and regulatory
18 powers. One the other similar questions before this Court
19 regarding dismissal is whether a party can use any method, any
20 fraud, any devious scheme to enter the bankruptcy court and
21 expect to stay there.

22 This is not a question of unclean hands in this case.
23 It is hands made actually filthy by the dirty work it took to
24 put together a scheme that brought us to this hearing today.
25 This Court must decide if the toll to enter the bankruptcy

1 courts may be paid with the coin of blatant fraud on the NRA's
2 board, its executives, the other parties to this proceeding,
3 and the Court.

4 You have the opportunity to send that message today
5 that the bankruptcy courts cannot be the subjects of fraud. In
6 order to do that, this bankruptcy case needs to be dismissed
7 with prejudice.

8 I'd like to talk briefly about a trustee. As we --
9 as I discussed at opening, the relief that Ackerman McQueen is
10 seeking here is dismissal. But if the Court does not believe
11 that that is appropriate, we believe that the overwhelming
12 evidence that this Court has heard over the last month supports
13 and justifies, mandates the appointment of a Chapter 11
14 trustee.

15 The Court is familiar with the standard for
16 appointment of a trustee: fraud, dishonesty, incompetent, gross
17 mismanagement. Let's talk a little bit about fraud and
18 dishonesty. We've talked a lot about the evidence presented to
19 the Court, how the filing of this bankruptcy was not only a
20 fraud on the NRA's board but a fraud on this Court that amounts
21 to nothing else than a litigation and publicity stunt.

22 Judge Journey testified the filing of this bankruptcy
23 was the symptom of the disease. We've seen evidence of how the
24 board of directors was intentionally not informed about the
25 bankruptcy filing by management. We've seen evidence of how

1 none of the NRA's salaried officers were informed.

2 You've seen evidence of how Mr. LaPierre and his
3 attorneys intentionally slipped the language into his
4 employment agreement to try and deceive and trick the board.
5 You've seen evidence of how Sea Girt was formed as a shell
6 company 52 days before the filing of this bankruptcy to simply
7 secure venue. You've seen evidence of how the \$5 million in
8 funds was transferred to the Brewer firm's trust account to
9 keep any record of pre-bankruptcy off the books and unnoticed
10 by the NRA's CFO and account staff.

11 We're not talking about something that happened years
12 ago. We're not talking about pre-course correction. We're
13 talking about acts recently taken by the NRA's current
14 leadership and their counsel. The bankruptcy petition filed in
15 this action is exhibit A for the type of fraudulent conduct
16 that merits the appointment of a trustee in this case.

17 Let's talk a little bit more about the other fraud
18 and dishonesty that we heard throughout this trial. We saw
19 evidence that the hundreds of thousands of dollars in excess
20 benefits Mr. LaPierre received. He's apparently agreed to pay
21 back 300,000 of that, but it's abundantly clear that that's
22 only a fraction of the improper benefits he received.

23 For example, there's no evidence that he's agreed to
24 pay back all the benefits he received when he would take off to
25 the Bahamas on his buddy's luxury yacht, especially after a

1 tragic school shooting where the NRA likely needed him the
2 most.

3 Although the NRA has tried to make it sound like all
4 of these expenses were accidental or unintentional, I didn't
5 know, you've seen evidence from Mr. LaPierre's own travel
6 agent, Ms. Stanford, who testified that Mr. LaPierre himself
7 directed Ms. Stanford to exclude certain details about his
8 travel from invoices -- about his travel in the invoices.

9 You've seen evidence of multiple instances of
10 intentional embezzlement by Mr. LaPierre's personal assistant,
11 Millie Hallow, who beyond all rational explanation has been
12 allowed to keep her job with no discipline.

13 You've seen evidence how the NRA's current president,
14 Carolyn Meadows, testified that she burned and shred -- she
15 burned and shred her notes, her NRA notes, upon the advice of
16 the NRA's general counsel, John Frazer, just so they wouldn't
17 be able to be subpoenaed.

18 You've seen evidence that the Brewer firm pushed
19 through an eleventh-hour preferential payment to itself, \$1.2
20 million, the day before this bankruptcy petition was filed.

21 Let's talk a little bit about the incompetence and
22 gross mismanagement. Throughout this trial, many of the NRA's
23 own witnesses, its own witnesses, even its own counsel
24 acknowledged that the NRA had been grossly mismanaged in the
25 past. Michael Ursling repeatedly testified how the management

1 was in a mess, and this was not just Woody Phillips. This is
2 not just about Woody Phillips. This is about Mr. LaPierre.

3 And any notion that this is any wrongdoing, any lack
4 of internal controls in the NRA's finance department is all a
5 result of Mr. Phillips, as, again, it makes no sense. And you
6 know what, there's only one person that's responsible for the
7 accounting department and Mr. Phillips, and that is Wayne
8 LaPierre.

9 Here's more examples of the incompetence and gross
10 mismanagement that we heard throughout this trial. Ms. Rowling
11 acknowledging the override of internal controls, the American
12 Express cards, the conflicts of interest, the failure to follow
13 the \$100,000 procurement policy. And relating to that, we
14 heard testimony that apparently according -- to the hiring of
15 law firms, it doesn't apply. The NRA can just ignore the
16 \$100,000 procurement policy. According to the lawyers and some
17 of the witnesses, no evidence of that. Vendors being paid
18 without contracts.

19 But then in 2017, the NRA started down this course
20 correction, this self-correction. Mr. Frazer, Mr. LaPierre,
21 Mr. Cotton testified that the Schneiderman call in mid-2017,
22 that was the gamechanger. Mr. King suggested that right after
23 the Schneiderman call, they went and hired the Brewer firm
24 because they were a New York law firm. But remember, Morgan
25 Lewis, according to Mr. LaPierre, was hired to start off the

1 purported self-correction in 2017.

2 The Brewer law firm was hired in March of 2018 to
3 handle the Lockton litigation. They were not hired for this
4 self-correction. What happened is the Brewer firm came in and
5 they started taking everything over bit by bit, piece by piece.
6 And that's why that chart that Mr. Pronske showed you earlier
7 continued to go up and up and up. That's why the litigation
8 exploded -- the four lawsuits against my client, the litigation
9 against Colonel North, and all the other litigation we've heard
10 about.

11 Mr. LaPierre is taking credit for this course
12 correction claim that he was determined to go down the
13 principal path, do the 360-degree top-to-bottom review. The
14 problem with that is did it work. Is the NRA's house really in
15 order? Is this really true? Can you really clean your house
16 if you just swept everything under the rug?

17 If your definition of cleaning house is just getting
18 rid of everyone who disagrees with you, that doesn't fix the
19 underlying problem. Ultimately, the focus can't be on just
20 whether past errors have been fixed but whether the effects of
21 those errors are still being felt by the NRA and, most
22 importantly, whether the same management is in place who
23 allowed the errors to occur in the first place.

24 Let's look at some of the evidence that was post-
25 course correction. The main theme that came out of testimony

1 from witnesses like Judge Journey, Mr. Mills, Esther Schneider,
2 these various board members, Wayne's kingdom, Wayne's sole
3 proprietorship, Wayne's world. It's all about Mr. LaPierre.

4 Mr. Pronske talked about Mr. LaPierre's inability to
5 answer the questions throughout this trial, I think it was 60
6 times, he said, and the constant admonishment. If Mr. LaPierre
7 cannot follow the Court's instructions in a trial, a live trial
8 before the general public, how in the world could anyone expect
9 that he's going to listen to anybody else.

10 And like any good dictator, Mr. LaPierre understands
11 that when you can't -- when you control the flow of
12 information, you can control the people and the outcomes in
13 your favor. Mr. Makris talked about management by chaos.
14 Here's the testimony of Mr. Mills, Judge Journey, Rocky
15 Marshall about the lack of oversight by the board.

16 At the end of the day, Mr. LaPierre, regardless of
17 what he says to this Court, does what he wants. Another common
18 theme that we heard throughout this trial was the frequency of
19 the board retroactively approving prior actions taken by
20 management about the filing of this bankruptcy. We heard
21 testimony from "Buz" Mills and Rocky Marshall this was an
22 anomaly compared to other -- the NRA was an anomaly in
23 comparison with other boards that they had served on.

24 These are not ultimately issues that have been
25 cleaned up or self-corrected. At the end of the day, these are

Summation - Mason

90

1 systematic issues that are symptomatic of an ingrained culture
2 at the NRA which won't truly be corrected until new management
3 is in place.

4 And while the NRA management exercises complete
5 control over the board, it only happens due to the director's
6 inability or unwillingness to do something about it. Mr.
7 Pronske talked about Judge Journey describing the board as
8 being supine, completely passive to the desires and requests of
9 those they are supposed to oversee. The tail is wagging the
10 dog.

11 Again, here's various examples of evidence that we
12 have heard throughout this trial no real oversight, lacks
13 safety switches of corporate governance, nominated committee
14 picks management, not consulting people before they're fired,
15 not consulting people before they're hired.

16 Let's talk a little bit about Wit Davis. We talked a
17 lot about the various Brewer firm connections: Mr. Davis; Mr.
18 Correll, a former partner; Mr. Marshall -- Marshall Smith who
19 was going to be the proposed CRO; Mr. Davis; the Neligan firm;
20 Mr. Garman. The board wasn't consulted about the hiring of Wit
21 Davis. And Mr. Mills talked about all the problems that the
22 board has with Mr. Davis, counsel to the board, and how they
23 weren't even notified about his prior relationship with Bill
24 Brewer.

25 What's really happened here is there's been this

Summation - Mason

91

1 attempt to put people in place to cloak the NRA in this wide
2 array of privilege. And we've heard it a whole lot in the
3 month of expedited discovery. And we didn't hear it as much in
4 this trial, but it is rampant. Anything that the NRA wants to
5 do, they cloak it in this privilege.

6 And if you look at all of the individuals surrounding
7 this privilege, they've been carefully placed. This is not an
8 accident. The control that is being seen here at the NRA is
9 really at the direction of two people, Mr. LaPierre and Mr.
10 Brewer.

11 Here's some additional examples of the lack of
12 oversight in the testimony that we heard. The various
13 contracts that NRA board members had with the NRA, Sandy
14 Froman, she receives \$50,000 annually for an office space
15 reimbursement. Marion Hammer, hundreds of thousands of dollars
16 a year paid to her.

17 We heard testimony that the NRA gives business to
18 (indiscernible) ongoing compensation to David Keene. I believe
19 -- I think it was about two dozen NRA board members that at
20 least -- oh yeah, dozens of board members that currently have
21 agreements and are receiving compensation from this nonprofit,
22 this nonprofit organization.

23 Anther way to keep the board passive is just to
24 simply get rid of the ones who cause too much trouble. In the
25 last two years, some 21 board members ousted or resigned. They

1 were either kicked out or left because of retaliation with Mr.
2 LaPierre. We heard a ton of evidence about anyone that
3 challenges LaPierre, anybody that challenges Mr. Brewer,
4 they're gone.

5 They're labeled extortionists. They're publicly
6 defamed. They're shouted down in board meetings. They're
7 accused of having alternative agendas. They're accused of
8 being anti-Second Amendment.

9 Craig Spray, the change agent, the change agent who
10 numerous witnesses testified really was the catalyst or the
11 change agent for these internal controls that purportedly
12 changed. He's fired. Maybe the one good thing that the NRA
13 had, Mr. LaPierre fired him without consulting anybody.

14 Before I conclude, I do want to address this Court's
15 questions from last Thursday. And I'm not going to repeat. I
16 know that the Court is well aware of what it asked the parties
17 to address. But I'd first like to address the language and the
18 notion of an involuntary dissolution.

19 And, again, whether dissolution is necessary or not
20 is best answered by the New York State and its courts who are
21 charged with protecting the public interest. I know I've said
22 that a lot, but it is fundamental to why we're here. There's
23 no reason for this Court to usurp the New York judiciary's role
24 or right to answer that question, but that's exactly, Your
25 Honor, what the NRA is asking you to do here.

1 The phrase that you used, "an otherwise viable
2 debtor, yes, this Court must consider the economic realities of
3 the NRA, which we've seen is undisputedly solvent. It's in its
4 best financial condition in years. But we would also present
5 to the Court that viable includes whether the NRA is a viable
6 charity in New York, meaning that whether it's serving its
7 purpose under New York nonprofit law despite repeatedly
8 violating its tax-free status.

9 But, again, this is not for this Court to decide.
10 It's for the independent judiciary in New York after hearing
11 all of the evidence, after hearing the NRA talk about their
12 course correction. The NRA board members, general counsel,
13 executives, special litigation committee members, and officers
14 all admitted the New York courts are not weaponized. There's
15 no reason why those courts should not -- should be denied the
16 opportunity of deciding whether a nonprofit within their
17 jurisdiction is viable in terms of whether it is serving the
18 public interest.

19 The NRA spent most of its time making the case that
20 no matter what Mr. LaPierre does, as long as the money rolls
21 in, a big fundraiser, no matter how big of a slice he and his
22 cronies take of that money, he should be allowed to stay. But
23 this is the very definition of corruption, sacrificing what is
24 right for what is lucrative. Surely this would not pass the
25 public-interest test.

1 Continued corruption would certainly indicate that as
2 a nonprofit entity, betraying the public's trust, NRA may not
3 be viable. But setting aside the question of when this Court
4 should determine whether a dissolution is unnecessary and
5 whether an entity is viable, there's undoubtedly no urgency in
6 reaching the issue now of an unnecessary dissolution or the
7 viability of the NRA. There's no urgency in taking the
8 question, in taking the issue of should the NRA be dissolved,
9 is that appropriate based on all of the evidence. There is no
10 need to decide that issue now.

11 In answering your question about the bankruptcy,
12 whether the bankruptcy purpose is broad enough to encapsulate
13 the intended relief of dissolution that requires judicial
14 determination to be in the best interest of the public, at the
15 very earliest, we would contend that the Court could intervene
16 if it felt that it must when and if Judge Joel Cohen in his
17 statutory discretion after the conclusion of all the evidence
18 determines that involuntary dissolution of the NRA is in the
19 best interest of the public.

20 There is every reason for this Court to respect
21 federalism, to respect the integrity and good conscience of the
22 judiciary, state and federal courts of the State of New York,
23 and allow the regulatory and judicial process to take its
24 natural course. If this case is dismissed, the NRA is going to
25 be okay. They're swimming in cash. They have remedies in

1 different courts. They're going to be okay.

2 And, Your Honor, we believe that the evidence that
3 you have heard throughout the last month mandates only one
4 course of action in this case, and that is dismissal of this
5 bankruptcy. And I will reserve the remainder of my time for
6 rebuttal. Thank you.

7 THE COURT: Thank you, Mr. Mason. By my rough
8 calculations, you have slightly more than 20 minutes left.

9 MR. MASON: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Before we break, let me just review. Mr. Watson, Mr.
12 Taylor, I think on Thursday y'all said you'd need between 30
13 and 45 minutes. Is that still right?

14 MR. TAYLOR: That's correct, Your Honor.

15 THE COURT: Okay. And then, Ms. Lambert, we had sent
16 a message to you I think over the weekend saying it looks like
17 we can get to the U.S. Trustee before lunch. And y'all are
18 saying about 30 minutes; is that right?

19 MS. LAMBERT: Yes, Your Honor.

20 THE COURT: Okay. I believe we can also hear the
21 five-minute presentation by Mr. Herring also before lunch. So
22 if y'all could be ready.

23 Why don't we take a 15-minute recess so everybody can
24 get their thoughts together, and we'll come back in at 10:45.

25 (Recess at 10:28 a.m./Reconvened at 10:45 a.m.)

Summation - Taylor

96

1 THE COURT: We're back on the record in NRA in a
2 minute.

3 (Pause)

4 THE COURT: Mr. Taylor, are you ready?

5 MR. TAYLOR: Yes, Your Honor. I am.

6 THE COURT: Mr. Garman, I can see your room. Are
7 y'all ready?

8 MR. GARMAN: Yes, sir.

9 THE COURT: All right. Mr. Taylor?

10 MR. TAYLOR: Yes, Your Honor. Before I get into my
11 direct closing, we would like to attempt to answer Your Honor's
12 question. And just for purposes of a clear record, the
13 question as we understand it is while one purpose of Chapter 11
14 is to present a necessary dilution of an otherwise viable
15 debtor, is that purpose broad enough to include a situation
16 where the debtor is seeking protection from a potential
17 dissolution that would not be a collateral effect of litigation
18 but rather the intended relief sought that would only occur
19 upon a judicial determination that dissolution is in the best
20 interest of the public.

21 We also have searched the case law for anything
22 definitively on point. We haven't found anything 100 percent
23 on square with that exact fact pattern, but we do believe that
24 there are some answers available.

25 We start with that insolvency is not a prerequisite

1 to a finding of good faith under Section 1129(a), and it is not
2 a requirement to be eligible to file for bankruptcy relief.

3 Fields Station, LLC v. Capital Food Corp. is a good
4 example of a case. That's 490 F.3d 21 (1st Cir. 2007). And
5 that case stated: "A debtor need not be insolvent before filing
6 a bankruptcy petition, however, provided it is experiencing
7 'some type of financial distress'" -- and they cite to
8 Integrated Telecom that says "The absence of an insolvency
9 requirement encourages companies to file for Chapter 11 before
10 they face a financially hopeless situation."

11 And that's exactly what we have here, Your Honor.
12 The NRA has seen a freight train coming at them, and they have
13 acted expeditiously to avoid that freight train hitting them
14 and blowing them off the tracks. In fact, the Code itself
15 distinguishes whether the automatic stay such as the
16 enforcement action here can even proceed.

17 If it is a proper exercise of police and regulatory
18 effect, then it must proceed. Section 362(b)(4) expressly
19 allows certain governmental enforcement actions to continue,
20 notwithstanding a pending bankruptcy. In other words, the New
21 York AG dissolution suit could technically continue to the
22 extent it is an exercise of police or regulatory power.

23 The Fifth Circuit has ruled that this determination
24 could be summed up as follows, and we actually point to the
25 very same case that the New York AG cited to in its opening in

1 answering this question.

2 "The pecuniary purpose and public policy test both
3 contemplate that the bankruptcy court after assessing the
4 totality of the circumstances will determine whether the
5 particular regulatory proceeding at issue is designed primarily
6 to protect the public safety and welfare or represents a
7 governmental attempt to recover from property of the debtor
8 estate, whether on its own claim, or on the non-governmental
9 debts of private parties." That's Halo Wireless that's
10 previously been cited to this Court.

11 In the current case, while the New York AG
12 enforcement action can proceed as far as the reporting
13 requirements and the means by which the NRA reports to the New
14 York regulators while it is still incorporated there, that part
15 can proceed. But we think that that is a two-pronged type of
16 case. The damages phase of that action, the dissolution in an
17 attempt to impose pecuniary sanctions on the NRA, take away its
18 assets and redistribute it is something expressly prohibited by
19 the Code, and we think that it should not be allowed to proceed
20 here.

21 And, therefore, we think that this reorganization
22 should be allowed to restructure and reincorporate within Texas
23 to avoid that very outcome. We'll address that a little bit
24 more in our closing arguments about how we see that playing
25 out, Your Honor.

Summation - Taylor

99

1 Moving on to our closing argument, before I start, I
2 know Your Honor and this Court has seen myself and Mr. Watson
3 appearing before Judge Journey and all, but I did want to take
4 this opportunity to thank on the record my colleagues Robby
5 Clark who's provided support throughout this case to us and to
6 Christian Ellis who has helped prepare our closing and helped
7 me with that.

8 May it please the Court, we believe this trial is the
9 most important trial in America right now. It is so important
10 because the constitutional rights that the citizens of this
11 country and the voices of millions of Americans who support and
12 uphold those rights ride on the outcome of this case.

13 We have been in trial together for a month now. We
14 truly appreciate Your Honor's attention and demonstrated
15 fairness throughout the entire process. Anyone watching this
16 trial has seen the judicial process administered evenhandedly
17 and rightly and, for that, we are very grateful.

18 Now we bring a close to this all-important trial
19 which in large part will determine whether or not the voices of
20 millions of America will be silenced -- of Americans will be
21 silenced or whether they will continue to be heard as they have
22 for 150 years.

23 We believe that the most important people in this
24 case, the nearly five million members of the NRA, including
25 over 2.5 million lifetime members, have not been entirely

Summation - Taylor

100

1 represented. My clients have brought their action to represent
2 as best they could the best interests of the members as they
3 saw fit. We do look forward to the hearing on our motion to
4 form a member committee in the coming days.

5 But at this time, without such a membership committee
6 in place, we implore the Court to recognize that it is our
7 clients and our clients only who do not have a pecuniary or
8 personal interest in this case. Our clients are paying their
9 legal fees out of their own funds and out of the monies raised
10 by appealing to everyday members of the NRA to save and restore
11 the NRA.

12 Neither Judge Journey nor any of our clients will
13 achieve financial gain or financial loss as a result of what
14 happens here today, which cannot be said of any other party.
15 Judge Phillip Journey; Roscoe "Rocky" Marshall, Jr.; Esther
16 Schneider; Owen "Buz" Mills; and Bart Skelton do stand to win
17 or lose in this case what they hold much more dear than
18 financial gain. They and members of the NRA could lose the
19 voice protecting their Second Amendment rights and the ongoing
20 life and livelihood of the only organization in America with
21 the history, personnel, resources, and public trust necessary
22 to protect and preserve those Second Amendment rights.

23 For our clients and the millions of other members of
24 the NRA, the ongoing life at the NRA and this important Second
25 Amendment mission is literally equivalent to the ongoing

1 preservation of the freedom of the United States of America.

2 We are, therefore, before this bankruptcy court to ensure the
3 preservation of those rights and to preserve the NRA.

4 Now the circumstances of how we got here have been
5 told and retold during this trial. But in closing, we must say
6 two things. First, we admit albeit somewhat begrudgingly, but
7 we do admit that this bankruptcy filing was entirely valid
8 under the law and that the entire matter is properly before
9 this Court.

10 Second, we believe that the overall management style
11 and circumstances that led us here are indicative of the steps
12 that we must take in this case going forward to examine and
13 modify how the NRA does its business.

14 The relief sought by the various parties to this
15 matter range along a spectrum, Your Honor. On the one side of
16 the spectrum, the New York AG's Office moves to dismiss this
17 case and subsequently dissolve the NRA and seize all of its
18 assets. That is clear. This is clearly an untenable and
19 imprudent consequence and is no way appropriate here.

20 Dismissal would only be in the interest of a handful
21 of interested parties. This bankruptcy case is in the best
22 interest of all interested parties. It was lawfully filed and
23 should be allowed to continue. Similarly, and as we'll address
24 more fully, the alternative motion for a trustee is in no way
25 an acceptable solution for this situation either.

1 On the other side of the spectrum is the NRA's
2 request for a "inside baseball-style CRO" whose findings would
3 largely be confidential and without any meaningful powers to
4 identify and address management problems.

5 We are advancing a solution that we believe would be
6 a "Goldilocks" solution. It is not a "Goldilocks" solution
7 simply because it is the middle ground. Just like the story,
8 our proposed solution rejects the hot porridge and cold
9 porridge options as being entirely unreasonable and unuseable.
10 Our proposal produces a solution that is proper for this
11 situation, the parties, the members of the NRA, and the overall
12 good of our country's ongoing constitutional discussions.

13 We respectfully pray this Court to appoint an
14 examiner or, if the Court desires, a CRO with the following
15 powers. Before proceeding, we note that this list of powers
16 differs slightly from our filing, but it will be recited fully
17 in our proposed order to the Court that we will file today or
18 tomorrow.

19 We request that the examiner be required to:

20 One, independently examine the overall management
21 processes of the NRA and, to the extent necessary, suggest
22 modifications to those management processes for the NRA's
23 executive management, if necessary to be implemented via court
24 order in the initial stages of this case and, ultimately, to be
25 implemented as a long-term solution via plan of reorganization.

1 Likewise, we welcome proposed changes and fixes to
2 the ways and means by which the board operates in which changes
3 could be implemented in a plan of reorganization. These
4 changes would include how management communicates with the
5 board and how management makes decisions.

6 For example, the examiner will provide management
7 guidance to achieve certainty regarding the content and
8 propriety of Form 990 filings and similar issues. This power
9 would also include the ability to form or disband management
10 committees or other management structures.

11 Two, to independently examine compensation, benefits,
12 and other transfers made to vendors, management, board members,
13 and their respective affiliates.

14 Three, to independently examine and, to the extent
15 necessary, put forth a plan of recovery of any improperly paid
16 amounts.

17 Four, to independently examine and, to the extent
18 necessary, remove management for cause.

19 Five, to independently examine and, to the extent
20 necessary, report to the membership or membership committee
21 should one be formed the circumstances of any board member
22 wrongdoing and put forth removal of the offending board members
23 as per the bylaws of the organization.

24 Six, report the outcomes of all independent
25 examinations directly to the Court, board of directors, the

1 creditors' committee, and members or member committee.

2 Seven, the ability to come back and ask this Court
3 for expanded powers and duties as necessary.

4 And, eight, to participate in the formulation of a
5 plan of reorganization by coordinating efforts among
6 management, the Unsecured Creditors' Committee, board of
7 directors, the membership committee, and other parties in
8 interest.

9 Now can this task be performed with a chief
10 restructuring officer? Like the other parties, we have great
11 respect for Mr. Robichaux. And, yes, we do believe that it can
12 be done with a CRO, and we would support the appointment of a
13 CRO with the above enumerated powers. We believe that the
14 appointment of an examiner is a better result because of an
15 examiner's inherent independence and direct reporting
16 requirements to this Court.

17 He or she would be a court-appointed fiduciary and
18 would be truly independent and not beholden to management or
19 any board member. But, ultimately, we are confident that the
20 Court will select the correct vehicle, whether it be examiner
21 or CRO, to accomplish these goals.

22 We further request that the Court with input from the
23 board of directors and membership committee issue final
24 approval of any engagement agreement with any CRO or in an
25 order directing and then confirming the appointment of an

1 examiner.

2 We would ask that the engagement agreement or the
3 order approving the examiner, as appropriate, include the
4 following provisions:

5 One, that no confidentiality provision protect the
6 examiner's disclosure or CRO's disclosure to the Court or other
7 stakeholders of its findings and recommendations.

8 Two, that the examiner may not fail to disclose his
9 or her findings or recommendations in full due to the
10 application of the attorney-client privilege and is entitled to
11 waive the privilege to execute the examiner or CRO's duties.

12 Three, that the examiner or CRO report its findings
13 and recommendations directly to the board, the Unsecured
14 Creditors' Committee, membership committee, and not selectively
15 or exclusively to management or any management committee. In
16 other words, any reporting must be made in full to the board of
17 directors, membership committee, and this Court.

18 Four, that the special litigation committee not
19 necessarily be the primary point of contact for the examiner or
20 CRO for day-to-day operations or any other function. That
21 independent person must be free to interact with the debtor as
22 that examiner or CRO sees fit.

23 Five, that the examiner have full autonomy to
24 investigate freely or take any other action allowed by this
25 Court and need not obtain prior advance approval of the special

1 litigation committee or any other stakeholder.

2 The examiner or CRO structure that we envision is
3 best for the NRA and its members is one of autonomy,
4 independence, and transparency. We do not want the process to
5 be opaque, orchestrated by current management, or cloaked in
6 secrecy.

7 We recognize that the appointment of a trustee would
8 result in autonomy, as well, but such appointment would be, to
9 use the analogy again, a bitter porridge that could lead to
10 significant harm to the NRA and even death. Appointment of a
11 trustee would be so disruptive and overbearing that the entire
12 organization may well cease to exist.

13 Appointment of a trustee would terminate exclusivity,
14 resulting in a potential torrent of competing reorganization
15 plans proving even more costly, divisive, distracting, and
16 painfully inefficient for all involved.

17 The appointment of a trustee would result in the loss
18 of institutional knowledge, and many of the things that make
19 the NRA a viable and functioning entity would likely disappear.
20 Expenses would skyrocket, and the result would be calamitous
21 for millions of Americans who rely on the NRA's advocacy.

22 Moreover, fundraising, the life blood to fund the
23 NRA's missions would be harmed if not perhaps effectively shut
24 down if a trustee were to be appointed.

25 The appointment of an examiner or CRO with powers and

1 restrictions as enumerated above fits the bill. This
2 "Goldilocks" solution keeps the lights on, serves the interest
3 of the members, allows fundraising to continue, and fosters the
4 spirit of cooperation among all stakeholders and parties in
5 interest that will allow the NRA to function all while it
6 receives the management examination and possible overhaul that
7 is needed here.

8 Certainly, the NRA has put on ample evidence that
9 while the problems of 2017 and '18 were significant, that they
10 have taken many efforts to remediate those issues. On the
11 other hand, the New York AG has also put on evidence of some
12 lingering concerns with how the NRA continues to be managed,
13 which we view primarily as curable with the right management,
14 people, and processes in place.

15 What the New York AG has not done is present a case
16 that meets her burden for the appointment of a trustee, which
17 as Your Honor knows is a clear and convincing burden of proof.
18 As the Fifth Circuit Court ruled in 2004 in Shafer v. Army and
19 Air Force Exchange, clear and convincing evidence is: "that
20 weight of proof which produces in the mind of the trier of fact
21 a firm belief on conviction as to the truth of the allegations
22 sought to be established, evidence so clear, direct, and
23 weighty and convincing as to enable the fact-finder to come to
24 a clear conviction without hesitancy of the truth of the
25 precise facts of the case."

1 Here, the New York AG has simply not met this clear
2 and convincing burden of proof to absolutely establish fraud,
3 dishonesty, incompetence, or gross mismanagement. Are there
4 indications of incompetent or mismanagement? Yes, there are
5 indications of those things occurring. And those occasions
6 give our client the very desire for the appointment of the
7 independent examiner.

8 But the statutory burden that the New York AG bears
9 to have the trustee appointed is clear and convincing evidence.
10 And though this case has been hotly disputed, that burden is
11 simply not been met.

12 The "Goldilocks" plan that Judge Phillip Journey;
13 Roscoe "Rocky" Marshall, Jr.; Esther Schneider; Owen "Buz"
14 Mills; and Bart Skelton put before you today is a plan that
15 best serves the members, best preserves the NRA for the benefit
16 of creditors and its members, and best serves the interests of
17 the future of the NRA.

18 We fully anticipate under our proposal that
19 ultimately any fines required by New York law will be paid to
20 the New York regulatory authorities and, further, that any
21 causes of action that the NRA owns against third parties will
22 be preserved. And those claims may exist against current
23 management, board members, or vendors. They need to be
24 preserved for the benefit of the bankruptcy estate and the
25 unsecured creditors and also for the members of the NRA.

1 Judge Journey and his fellow colleagues have spent
2 their own money, time, and resources for the benefit of the
3 rank and file members of the NRA. Judge Journey volunteers in
4 a way that embodies the values of the NRA. He is a 4-H
5 volunteer incorporating NRA training into his service. He is a
6 benefactor member of the NRA with a lifetime commitment to the
7 organization.

8 He is a former state legislator who has helped write
9 much of the gun legislation in the State of Kansas. He loves
10 the NRA. He supports its mission and enjoys the constitutional
11 rights and protections that the NRA has fought long and hard to
12 preserve.

13 Each of our other clients likewise share his passion
14 for the NRA and have likewise given generously of their time,
15 money, and passion to the organization.

16 The NRA exists to train young people and adults in
17 the safe handling and accurate shooting of firearms. They
18 provide valuable training to Boy Scouts of America, 4-H, and
19 other youth and adult groups across the United States. The
20 number of lives saved and injuries avoided due to the NRA's 150
21 years of safety training and instruction are incalculable.

22 The NRA also exists to protect our First and Second
23 Amendment freedoms. There is no other organization in the
24 United States that has been more effective in preserving those
25 freedoms than the NRA. For the NRA to be dissolved or forcibly

Summation - Lambert 110

1 taken over and damaged by an appointed trustee would be akin to
2 ripping out the constitutional soul of our country.

3 Judge Journey, "Rocky" Marshall, Esther Schneider,
4 "Buz" Mills, and Bart Skelton are lifetime members. They along
5 with millions of other Americans paid for these lifetime
6 memberships because they have made a lifetime commitment the
7 values and freedoms that they hold most dear. The NRA must be
8 preserved, yet, we know the NRA must be closely examined and
9 their management practices likely must change.

10 Our solution accomplishes those goals and does so in
11 a manner that is lawful, equitable, and just. We pray that you
12 grant the relief sought by these petitioners. Thank you, Your
13 Honor.

14 THE COURT: Thank you, Mr. Taylor.

15 Ms. Lambert or Mr. Salitore for the United States
16 Trustee?

17 MS. LAMBERT: May it please the Court, my name is
18 Lisa Lambert. I represent the United States Trustee.

19 THE COURT: Welcome.

20 MS. LAMBERT: Your Honor, in the United States
21 Trustee's statement regarding the motion seeking appointment of
22 an examiner, trustee, or case dismissal, we provided our
23 position on the legal standards required for the various forms
24 of relief requested by the parties. And we specifically
25 reserve the right to take a position on the motions after

1 review of the evidence.

2 And to assist in reviewing the evidence, the United
3 States Trustee's attorneys, among other things, have conducted
4 a Section 341 meeting at which the debtors' representatives
5 testified under oath for seven hours. We have participated in
6 discovery. We have attended every deposition, and we have
7 attended every day of trial.

8 It is on this history that the United States Trustee
9 makes this statement. Considering the undisputed factual
10 record developed here and applying those facts to the
11 applicable law, we submit that the movants have met their
12 burden to justify each of the forms of relief requested:
13 dismissal, a trustee, or an examiner. The NRA has not met its
14 burden, however, to justify approval of a chief restructuring
15 officer.

16 So let's talk about each of the remedies that have
17 been requested; first, dismissal. The legal standard, as
18 everyone has stated, under the dismissal statute, Section 1112,
19 is cause. And the parties have alleged that the cause in this
20 case is bad faith. As the NRA acknowledges in its brief, the
21 standard is preponderance of the evidence. And good faith has
22 been the standard incorporated literally or by judicial
23 interpretation since 1898.

24 In Little Creek and other cases, the Fifth Circuit
25 has noted that a bad-faith dismissal may be based on the

1 totality of circumstances considering all of the facts and
2 circumstances surrounding the debtor's filing including pre-
3 petition bad-faith conduct and post-petition bad-faith conduct.

4 In addition, the Fifth Circuit in Antelope
5 Technologies and numerous lower court cases also have held that
6 following to gain a litigation advantage while solvent
7 constitutes bad faith. And, for example, in Antelope
8 Technologies, the Court considered releases, exculpations, or
9 injunctions protecting third parties in a plan as suggesting an
10 improper ulterior motive. Antelope Technologies involved an
11 attempt to gain control of the litigation and take advantage
12 while fully solvent.

13 So let's turn to the undisputed evidence about the
14 pre-petition facts, post-petition facts in the absence of a
15 legitimate bankruptcy purpose. The NRA has stated that it is
16 seeking refuge from the New York Attorney General's actions and
17 wishes to change its state of incorporation. That can be done
18 outside of bankruptcy. It is not a legitimate reason for
19 filing bankruptcy.

20 The NRA created Sea Girt to manufacture venue. And
21 here's what we know about Sea Girt. It is a non-operating for-
22 profit LLC. It has no employees. There's been no stated
23 intent of ever operating. In fact, the pending plan proposes
24 to dissolve it. Even the \$50,000 put on deposit with Sea Girt
25 was later withdrawn.

Summation - Lambert

113

1 They say they're fixing it, that it's a problem with
2 opening the debtor-in-possession account, but two MORs show
3 zero balance in the Sea Girt account. They've had plenty of
4 time. It's a shell with no apparent purpose other than to
5 anchor venue in this district.

6 So let's shift from Sea Girt to the NRA. The filing
7 was conceived and executed without even a minimum amount of
8 transparency. Putting aside all the questions about the
9 authority to file under the NRA's governing documents, the
10 customary authorities were not informed. They did not know
11 about the bankruptcy filing, not the board, not the treasurer
12 CFO, not the secretary general counsel, not the executive
13 director of general operations.

14 These are the folks who typically prepare documents
15 for filing. They navigate strategy. They contribute to the
16 plan and the disclosure statement. And using the Brewer trust
17 account to seed the Sea Girt with \$50,000 and to pay the
18 bankruptcy counsel facilitated keeping the expenses out of the
19 NRA's purview and keeping the bankruptcy filing from the
20 customary authorities.

21 In responding to the Court's question about whether
22 the prospect of dissolution in New York legitimizes this
23 filing, the case law does not support evading government
24 enforcement as a legitimate function. The consequences of the
25 NRA's actions are its own.

Summation - Lambert 114

1 In filing by a solvent entity to avoid litigation in
2 its relatively early stages with created venue, no clear board
3 disclosure, no clear officer disclosure is cause to dismiss.
4 But if the Court does not dismiss, then a Chapter 11 trustee or
5 an examiner is an appropriate remedy.

6 For a trustee, the legal standard is cause. But if
7 the Court finds cause, then the order to appoint is mandatory
8 under the plain terms of the statute as interpreted by numerous
9 circuit and lower courts.

10 The evidence meets the Fifth Circuit's clear and
11 convincing standards. Some of the cases cited by the parties
12 today in the briefing apply the preponderance-of-the-evidence
13 standard under Grogan v. Garner, and arguably that is the
14 standard after the 2005 amendments. But the record provides
15 numerous examples of financial irregularities constituting
16 gross mismanagement under the Code, and the clear and
17 convincing standard is met.

18 Before the audit and the imposition of new cost
19 controls in 2018, the record is unrefuted that Wayne LaPierre's
20 personal expenses were made to look like business expenses.
21 Wayne LaPierre's budget and expense approval was separate from
22 the general budget and approval process. The \$6-million house
23 that was designed to be purchased through a corporation that
24 the NRA and Ackerman McQueen would own stopped, but it started.
25 LaPierre acquired suits for TV, 225,000 in business suits

Summation - Lambert

115

1 charged to Ackerman McQueen and then charged back. The charter
2 planes, LaPierre says these are for security. But the evidence
3 is he picked up family. The evidence is that extra stops were
4 not to be noted in the booking records. And the testimony is
5 unrefuted that no NRA policy authorizes charter plane
6 (indiscernible).

7 AMC charges were used for other expenses including a
8 Landini's restaurant account where bills totaled in the
9 thousands. One employee charged the NRA for \$40,000 for her
10 son's wedding. And the testimony is she has repaid that amount
11 but otherwise has suffered no additional consequences. Woody
12 Phillips, the former CFO treasurer for decades, when asked
13 about executive vice-president Wayne LaPierre's expenses as
14 well as his own, pled the Fifth Amendment.

15 This evidentiary record clearly and convincingly
16 establishes that executive vice-president Wayne LaPierre has
17 failed to provide the proper oversight. So then let's turn to
18 the self-correction.

19 Even after the self-described course correction, the
20 irregularities were not fixed. Those accused of irregularities
21 including, for example, Phillips, were given lucrative
22 consulting packages without any documentation that they did any
23 work. The chief financial officer was not allowed to see the
24 reimbursement calculations supporting the Schedule L, and some
25 request for certification of reimbursement amounts were not

Summation - Lambert

116

1 returned. No documentation came into evidence supporting the
2 calculation of the repayment by the board members or others,
3 including Wayne LaPierre.

4 When the chief financial officer did not sign the
5 990s, communication stopped. He says he was eventually fired.
6 Some NRA witnesses say he resigned for health reasons. In any
7 event, he refused to sign critical documents that were
8 essential to show the accuracy of the corrective action, the
9 repayments. He did not sign, and he was relieved of his
10 duties.

11 And this brings us to the undisputed irregularities
12 that have occurred since the bankruptcy filing. Almost two
13 weeks into the bankruptcy filing, about the time the schedules
14 and statements of financial affairs would have been due, Chief
15 Financial Officer Spray says Wayne LaPierre terminated him.
16 You have not even heard from the person who signed the
17 schedules and statement of financial declarations.

18 It's not the former Chief Financial Officer Spray.
19 It's not the Interim Chief Financial Officer Rowling, but David
20 Warren who's the chief financial officer for for-profit
21 entities. Mr. Warren is not even on the NRA organization chart
22 that has been admitted into evidence.

23 Importantly, three years into the self-correction and
24 post-petition, Wayne LaPierre signs the conflict-of-interest
25 form dated April 7th, 2021 the same day he's testifying in this

Summation - Lambert

117

1 Court. And he disclosed multiple yacht vacations. This is
2 relevant because the yacht owners own MMP and related entities
3 that are contractors with the NRA office and the NRA
4 headquarters, building, and we don't know the rental terms.

5 Both the Ursling and Rowling testimony establishes
6 that the MMP invoices more than double the 400,000 contractual
7 amount consistently month after month. And Spray's testimony
8 is that other contractors were brought in line. Wayne LaPierre
9 himself signed the agreement with allegiance one of the yacht
10 owners related entities without complying with the NRA's market
11 analysis protocol.

12 So some were shielded from the self-correction
13 because Wayne LaPierre failed to disclose conflicts and because
14 internal procedures were not honored. This lack of accounting,
15 this lack of accountability, the lavish personal spending, the
16 termination of the chief financial officer who would not sign
17 tax documents, financial irregularities, and misuse of funds
18 amply justify the removal of the debtor-in-possession
19 management in favor of a trustee.

20 However, even if the Court does not agree with our
21 analysis and the facts or law that a trustee is mandated,
22 management can and should on this record still be curtailed.

23 The Court should evaluate the examiner appointment
24 under the legal standard, best interest of the creditors,
25 because there's no evidence that the mandatory five-million

1 trustee threshold has been met. Given the scope of the
2 problems, the movants' suggestion, the Journey team's
3 suggestion of a \$350,000 cap for an independent and thorough
4 financial examination of the NRA, given the NRA's size is not
5 sufficient.

6 Even though the examiner does not displace
7 management, the Court, if the Court opts for an examiner should
8 expand the powers to require that major expenditures and
9 certification of expenditures go through the examiner before
10 being paid. And the scope might include determining improper
11 expenditures, ensuring that they're paid back, reviewing legal
12 costs, imposing new financial controls, and improving
13 significant expenditures.

14 Importantly, significantly, an examiner would be
15 independent, and the examiner's report would be publicly filed
16 to provide transparency, which brings me to why the CRO is not
17 a proper remedy.

18 Chief restructuring officers should not be used to
19 evade statutory remedies. And a request to hire a CRO that
20 would report to a government structure that failed to detect
21 and later failed to cure serious financial irregularities
22 should not be approved by the Court. We made these arguments
23 citing facts and law in the U.S. Trustee's objection to the
24 chief restructuring officer.

25 But the subsequent trial revealed additional facts

1 that further demonstrate the improvidence of the chief
2 restructuring officer. The CRO terms are unclear, as the
3 testimony evidenced. And the CRO's answer to the ambiguities
4 is impractical.

5 He suggests that matters be brought to the Court for
6 resolution. But the Court's function is to decide important
7 legal issues, not routine daily internal governance or
8 financial control of a not-for-profit. It's unnecessary. The
9 Bankruptcy Code provides remedies, the trustee or an examiner.
10 These remedies are more than adequate for the task at hand.

11 The chief restructuring officer's testimony evidences
12 that this same chief restructuring officer typically reports to
13 boards, full boards in bankruptcy cases. The disclosure
14 procedures are inadequate. He initially failed to identify
15 material connections related to the hiring process. The \$1-
16 million bonus creates its own conflict of interest for the
17 chief restructuring officer. It's not similar to his prior
18 engagements.

19 It's not a reasonable exercise of business judgment
20 when according to his own testimony he has not reviewed the
21 schedules and statements of financial affairs, has not done an
22 in-depth financial review, and while he has proposed some plan
23 provisions, he has not read the plan that apparently was
24 already approved by the board yesterday.

25 So, in summary, Judge Hale, there are unusual aspects

Summation - Herring 120

1 to this case. There are decades of connections between the NRA
2 and its vendors or former vendors. Decades that many members
3 of the board of directors have been on the board. They are
4 long-time employees. Some of the connections are even
5 familial.

6 And the NRA is a not-for-profit with a mission that
7 includes advocacy. But, Your Honor, the NRA elected to be
8 here. And having brought us here, the Bankruptcy Code
9 controls. The strength of the Bankruptcy Code is that it
10 brings a variety of remedies that anticipate the challenges
11 that arise in a variety of contexts. Those remedies work. And
12 under the facts of this case, the Court should impose one of
13 them: dismissal, a trustee, or an examiner with expanded
14 powers. Thank you.

15 THE COURT: Thank you, Ms. Lambert.

16 Why don't we hear from Mr. Herring and then we'll
17 take a break and we'll start earlier than I normally start.

18 Mr. Herring, I think you had asked for five minutes.

19 MR. HERRING: Yes, Your Honor. It may seven or eight
20 minutes, but certainly under ten.

21 THE COURT: We'll give you two or three extra there.

22 MR. HERRING: I appreciate that.

23 Well, Your Honor, may it please the Court, my name is
24 Walt Herring and I'm here on behalf of the creditor, David
25 Dell'Aquila or a creditor of David Dell'Aquila. Mr.

1 Dell'Aquila is a member of the Unsecured Creditors' Committee,
2 has filed a partial joinder to the UCC motion. A partial
3 joinder because while Mr. Dell'Aquila opposes the motions to
4 dismiss and adopts the U.S. Trustee and the UCC's position on
5 that point, he does not agree that the appointment of a CRO
6 will halt the systematic abuses of the NRA's current management
7 and the board for the reasons noted below, and the Chapter 11
8 trustee with limited power is what's needed in this case.

9 There's no question that mismanagement, abuse, and
10 outright fraud have been a systematic problem in the NRA for
11 years. Those issues have become well-known over the past
12 several years and were well-chronicled in the prior closing
13 statements this morning. Rather than waste time by repeating
14 those issues, we will simply note the facts categorized and
15 highlighted by the other movants at this hearing as
16 confirmation of the undeniable certainty that something is
17 definitely amiss with the NRA's management and board for years
18 before this bankruptcy proceeding was initiated.

19 We do not believe, however, that those systematic
20 abuses have been adequately addressed, unlike some parties in
21 this litigation. The course corrections of the past few years
22 we believe have been ineffective, and problems will still exist
23 and continue to plague the NRA in the year to come if they are
24 not addressed now.

25 As an example of those continuing systematic problems

1 and abuses, we would note some of the following. First, the
2 board of directors is too big, 76 members; so big it's just
3 ineffective and, in fact, chaotic. And that ineffectiveness
4 and chaos has worked to the current management's benefit. The
5 proposed CRO has recognized this problem when he stated it made
6 sense for him to report to the three-member special litigation
7 committee rather than the board.

8 Some may argue that a board provides a diversity of
9 opinion and that one-third of the board is up for re-election
10 each year ensuring new ideas and new vigor. Well, that all
11 sounds good in theory, but the reality is something quite
12 different. The reality is to be a board member, you have to be
13 elected by the nominating committee chosen by the current
14 management places a name on that election ballot. And who do
15 you think gets appointed to the nominating committee and who
16 gets nominated on the ballot? Let's just say that diversity of
17 thought, strength of leadership do not appear to be
18 particularly desirable characteristics for the candidates
19 approved by the committee.

20 And the bylaws have changed in the last few years to
21 make it virtually impossible to be a write-in candidate. As a
22 result, the diversity and vigor of the board is highly
23 questionable. Instead, the board simply rubber-stamps
24 management's decisions and the one-third turnover does not have
25 the desired effect. The results have been highlighted in this

1 proceeding, and they speak for themselves.

2 Arguably, the entire board should be charged with
3 dereliction of their fiduciary duties, as Mr. Dell'Aquila has
4 been arguing for years. Even their own "Buz" Mills testified
5 in this proceeding that he believes the entire board should be
6 replaced, including himself.

7 In addition, the prior business practices and
8 systematic abuses continue. The fact that the major multi-
9 million-dollar contracts are currently administered under oral
10 arguments. For example, the MMP contract, Allegiance Creative
11 Group contract, the Concord Social and Public Relations
12 contract, they're all oral at this time and that's just simply
13 unacceptable. These aren't small vendor contracts with paper
14 clips and pencils. No legitimately run enterprise would
15 operate this way.

16 Another example, Mr. LaPierre's expenses have not
17 been submitted for review for the last two years and are still
18 being withheld from discovery and scrutiny. How can anyone say
19 that the abuses have been curbed when the information isn't
20 even there to make an honest assessment?

21 Other examples, there's no companywide policy on
22 charting jets, as the U.S. Trustee just pointed out. Perhaps,
23 that's not a huge issue in and of itself, but it's emblematic
24 that things really haven't changed that much. And how about
25 the multiple lucrative severance packages doled out to loyal

Summation - Herring 124

1 former employees like Michel Marcellin, Robert Marcario, Robert
2 Weaver? And even Woody Phillips who has repeatedly taken the
3 Fifth Amendment rather than testify? Or a lucrative consulting
4 contract for Marion Hammer that lasts through 2030, almost
5 another decade?

6 So my favorites, though, are Craig Spray, the CFO who
7 was hired to help reform the system that was fired for no
8 apparent reason after he refused to sign the 2019 IRS Form 990.
9 The president, the first vice-president, and the second vice-
10 president as well as other important members of the management
11 personnel refused to sign that same form because, according to
12 Mr. Cotton, who was the CFO to tell him what to do.

13 Another one, the NRA continues to litigate a
14 severance case with a total liability of two million and has
15 spent to date \$6 million in legal fees on a \$2-million plane,
16 and the case is ongoing. They paid the Brewer firm \$17.5
17 million in the 90 days before bankruptcy, 2 million of that the
18 day before they filed. And as has been noted here numerous
19 times, the general counsel and the CFO were not even told of
20 the bankruptcy filing until the filing had occurred.

21 One of those abuses you might excuse as a lapse.
22 Two, you might say, well, that's just bad luck. Three, I'd
23 start to ask some question. Seven, eight, nine -- and, again,
24 these are all since the self-corrections have supposedly
25 occurred. All these since then have taken place. How can

Summation - Herring 125

1 anyone seriously argue that the ship is being righted?

2 That doesn't look like righting the ship at all. It
3 looks as if the ship is still sinking, maybe not as quickly but
4 the holes are huge and the life boats are filling up quickly.
5 Just ask Mr. Spray.

6 Another example of problems, in 2013, the NRA had a
7 membership of five million, and Mr. LaPierre projected then
8 that it would double in the next five years. A few days ago,
9 after over seven years later, Mr. LaPierre testified that the
10 NRA currently has 4.89 million members. In other words, under
11 the direction and leadership of Mr. LaPierre, current
12 management, and the board, the membership has basically stayed
13 flat. It's stagnant at a time when the Second Amendment has
14 never been under greater assault.

15 There are an estimated 100 million gun owners in the
16 United States out of an estimated population of 331 million.
17 Less than five percent are members of the NRA. What other CEO,
18 what other management group would stay in power with that kind
19 of performance?

20 So the facts just do not support the contention that
21 the abuses are in the past, that thing started to turn for the
22 good several years ago. The problems continue and will
23 continue if left unchecked. But those problems are not going
24 to be solved by the proposed CRO. Why? Because the CRO
25 proposal doesn't give the CRO the power or authority needed to

1 address the real problems.

2 While we conditionally applaud the decision to have
3 the CRO report to the SLC instead of the board, the definitions
4 of core fundamental mission operations -- i.e., those are the
5 operations outside the CRO's purview -- and the definition of
6 management operations, those operations within the CRO's
7 purview, are significant problems that will only lead to
8 further abuses and mismanagement.

9 By way of example, a core fundamental mission
10 operation, something outside the CRO's purview, includes a
11 charitable program -- includes "charitable programs comprising
12 the company's nonprofit mission." In prior years, the NRA has
13 given large donations to Youth For Tomorrow. That's a charity
14 with a very worthwhile goal of providing outpatient and
15 inpatient services for children with acute psychological and
16 behavior disorders.

17 It's a charity that's closely associated with the
18 LaPierres. While certainly a worthwhile goal and mission, that
19 is not the core mission of the NRA. Yet, that contribution to
20 that charity would be out of the CRO's domain and purview.

21 And if the CRO objected to that or any other core
22 fundamental mission operation or objected to the SLC's decision
23 on the management operations, something within his purview for
24 that matter, the only recourse this proposal has for the CRO
25 would be an appeal to you, Judge Hale -- I'm sure you would

Summation - Herring

127

1 appreciate that -- or to submit a noisy resignation. That's
2 it. Not much power there for the CRO.

3 Moreover, and perhaps more of a fundamental problem
4 under the current CRO proposal, the real power lies at the
5 three-member SLC. Obviously, the appointment of those members
6 and the ability to remove and reappoint members is vital. We
7 are convinced that the current management and the current board
8 would continue to influence that process through its
9 appointment of SLC members that are friendly to the board and
10 management.

11 Now this is the same SLC whose current member Carolyn
12 Meadows destroyed documents when the subpoena was coming. And
13 it's the same SLC that has a member now who has said the CFO
14 doesn't make policy for the company. We question whether the
15 SLC as currently appointed is going to be effective.

16 In essence, the CRO, as proposed, has been or will
17 quickly be emasculated. That's why we believe that the current
18 management board will never voluntarily relinquish their
19 control to a CRO. That's proven by the watered-down proposal,
20 and that's what leads Mr. Dell'Aquila to support the alternate
21 proposal of the UCC, the appointment of a Chapter 11 trustee
22 with limited powers.

23 Yes, we understand that's a rare animal. In fact, we
24 understand the U.S. Trustee has argued it can't be done. But
25 as pointed out in the UCC's briefing, it can be done in

1 extraordinary circumstances. And if there ever was an
2 extraordinary circumstance, this is it. The NRA has an
3 extraordinary history with an extraordinary mission, and it's
4 facing an extraordinary crisis.

5 To address the issue, the UCC has argued that it's
6 too complex and it's too expensive for a trustee to step in and
7 hit the ground running or it's too destructive, as has been
8 argued by the UCC and others. So fine, leave the current
9 management and board in place for continuity purposes, but let
10 the trustee come in and select who those managers and board
11 members should be and give the trustee the power to let them
12 operate while he closely monitors that performance. But that
13 trustee must have the power to remove and replace the
14 management board at his or her sole discretion.

15 That alone would prevent the abuses of the past from
16 continuing into the future. That is what we believe best
17 serves the purpose of the NRA, the mission of the NRA, and best
18 serves the millions of its members of the NRA who truly support
19 the Second Amendment. You don't have to dissolve it. The
20 trustee doesn't have to dissolve it. But you can appoint
21 someone to ensure an experienced crew is steering the ship and
22 that that crew is held accountable to that trustee.

23 In conclusion, Mr. Dell'Aquila is the voice of the
24 rank-and-file member here at this proceeding, the only real
25 voice of those members. Judge Journey has claimed he and his

1 group represent those members. But Judge Journey has been on
2 the board and is still on the board. With all due respect,
3 where has he been until now?

4 And his examiner proposal steps on and duplicates the
5 role of the UCC. The New York Attorney General represents New
6 York. The D.C. AG represents D.C. Ackerman has its own
7 interest and claims. And the UCC represents a variety of
8 creditors with varied interests, as evidenced by its members
9 taking contrary positions on numerous issues. But only Mr.
10 Dell'Aquila speaks for rank-and-file members. Those members
11 who contribute their hard-earned dollars, 10, 20, 100 dollars
12 at a time but they are, indeed, the life blood of the NRA.

13 Given the continuing systematic management problems,
14 the continuing influence of the very people who cause those
15 problems, and the emasculation of the CRO as proposed by the
16 NRA, a trustee with limited powers is the only real option
17 here. It may be a bold option; it may be an extraordinary
18 option. But the Court should be bold; the Court should be
19 extraordinary. This is the time to do that.

20 Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Herring.

22 Before we break, let me just go through my notes
23 here. Mr. Strubeck, I show that on Thursday, y'all were
24 thinking about a half an hour. Is that still right?

25 MR. STRUBECK: Yes, Your Honor. It is. It may be,

1 as Mr. Herring just suggested at the beginning, a couple of
2 minutes longer, but I think that's about the right amount of
3 time.

4 THE COURT: Sure. Yeah, I'm not going to hold
5 anybody to the minutes. I may hold Mr. Garman to the hours,
6 though, that he's requested.

7 And, Mr. Garman, I show you have three hours then.
8 Is that still about right?

9 MR. GARMAN: Yes, sir. I'm going to try and do
10 better than that, sir.

11 THE COURT: I know you will. Sometime in the middle
12 of yours, if you could come to a logical just a resting spot
13 for us to take an afternoon break, I think that's going to be
14 appropriate.

15 Then my understanding is we're going to pause for 30
16 minutes and then the AG and Ackerman come back with the last
17 word after that. Is that still the understanding?

18 (No audible response)

19 THE COURT: Okay. All right. So --

20 MR. GRUBER: Your Honor, this is Mike Gruber. I just
21 want to confirm that Mr. Strubeck somehow goes before the last
22 word that you've talked about Ackerman and the New York
23 Attorney General getting.

24 THE COURT: Mr. Strubeck goes next, Mr. Gruber.

25 MR. GRUBER: Okay, thank you.

1 THE COURT: You're welcome.

2 All right.

3 MR. TAYLOR: Your Honor? Your Honor, this is Clay
4 Taylor. We also reserved a brief rebuttal time, and I presume
5 we would keep the same order.

6 THE COURT: Yeah. I think that would be fair. How
7 much do you think you're going to need about?

8 MR. TAYLOR: We reserved up to 30 to 45 minutes, but
9 we can be done in 10, Your Honor.

10 THE COURT: That's fine. I just didn't write that
11 down on Thursday, and that's my bad on that, Mr. Taylor. But
12 you're a movant, just like the other two are. Different
13 relief, but you're certainly entitled to come back at the end,
14 too.

15 What I would suggest --

16 MR. PRONSKE: Your Honor, if I might, I think that
17 the New York Attorney General and Ackerman should have the last
18 word and that Judge Journey is opposed to us, as well. So I
19 think we would prefer that order.

20 THE COURT: Okay.

21 MR. TAYLOR: Your Honor, we were first filed and
22 believe we should go last.

23 THE COURT: Let's just keep it in the order that we
24 just did the first round.

25 I'm still trying to get out the words here. I'd like

1 to break now. It's 11:43, so why don't we come back at one.
2 And I think we should have plenty of time to do all the closing
3 that we need to close.

4 All right. We'll see y'all at 1 o'clock.

5 (Proceedings recessed at 11:43 a.m.)

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C E R T I F I C A T I O N

I, DIPTI PATEL, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, and to the best of my ability.

/s/ Dipti Patel

DIPTI PATEL, CET-997

LIBERTY TRANSCRIPTS

DATE: May 4, 2021