

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY  
LETITIA JAMES, ATTORNEY GENERAL OF  
THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA, WAYNE LAPIERRE,  
WILSON PHILLIPS, JOHN FRAZER, and  
JOSHUA POWELL,

Defendants.

Index No. 451625/2020

Motion Sequence No. \_\_\_

Hon. Joel M. Cohen

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION TO  
COMPEL THE POST-NOTE OF ISSUE SUPPLEMENTAL DEPOSITION  
OF LIEUTENANT COLONEL (RET.) WILLES LEE**

LETITIA JAMES  
Attorney General of the  
State of New York  
28 Liberty Street  
New York, NY 10005

Alexander Mendelson  
Monica Connell  
*Assistant Attorneys General*

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On behalf of the Plaintiff, the People of the State of New York (“Plaintiff”), the Office of Attorney General Letitia James (“OAG”) respectfully submits this memorandum of law in support of Plaintiff’s motion to compel the post-note of issue supplemental deposition of Lieutenant Colonel (Ret.) Willes Lee (“Col. Lee”), a current board member and former officer of defendant the National Rifle Association of America (“NRA”), pursuant to Commercial Division Rule 202.21(d), 22 N.Y.C.R.R. § 202.21(d).

### **PRELIMINARY STATEMENT**

In August 2020, the Attorney General commenced this action to hold the NRA, its current Executive Vice-President, Wayne LaPierre, its current Secretary and General Counsel, John Frazer, its former Treasurer and Chief Financial Officer, Wilson Phillips , and its former director, officer, and senior executive, Joshua Powell<sup>1</sup> accountable for their self-dealing, mismanagement and waste of charitable assets, alleging with particularity “a grim story of greed, self-dealing, and lax financial oversight at the highest levels of the National Rifle Association.” NYSCEF 609 at 1; *see generally* NYSCEF 646 (“Second Am. Compl.”) or (“SAC”).<sup>2</sup>

In December 2022, Plaintiff filed a note of issue, certifying that discovery was substantially complete, with one non-relevant carve-out, and that the action is ready for trial. *See* NYSCEF 1003, 1004. Since then, however, Col. Lee—a current NRA board member, a senior officer during periods relevant to this action, and a central witness offered by the NRA throughout these and

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<sup>1</sup> LaPierre, Frazer, Phillips and Powell are referred to as the “Individual Defendants” and the Individual Defendants and the NRA are referred to as the “Defendants.”

<sup>2</sup> Unless otherwise stated, page numbers for NYSCEF documents refer to the page numbers assigned by the NYSCEF system.

other proceedings to defend the organization's governance and operations—has harshly criticized the NRA's management and as a result was effectively ousted from his officer position.

Col. Lee's recent public statements in many instances directly contradict his prior testimony in this action and are highly probative of Plaintiff's contention that the continuing improper administration of the NRA's charitable assets by the organization and its senior officers, Defendants LaPierre and Frazer, requires injunctive relief. *See* SAC ¶¶ 641–653, 662–669, 697–704. Moreover, Col. Lee's description of the NRA's response to his questioning NRA's leadership and lack of transparency mirrors Plaintiff's allegations of retaliation against former NRA President Lt. Col. Oliver L. North ("Col. North") and other dissident board members. *See* SAC ¶¶ 461–492, 700. As outlined below, both Col. North and Col. Lee were refused customary nominations or renominations to their officer positions after questioning the NRA's response to evidence of significant misconduct that violated the law and NRA policy.

In light of these unusual and unanticipated circumstances, Plaintiff respectfully requests that the Court compel the post-note of issue supplemental deposition of Col. Lee pursuant to Rule 202.21(d).<sup>3</sup> As set forth below, merely cross-examining Col. Lee at trial is not sufficient under governing caselaw. Promptly conducting a continued examination of Col. Lee regarding his recent public statements would not cause prejudice to any of the Defendants in this action and would not

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<sup>3</sup> Plaintiff conferred with the Defendants to obtain their consent to a continued deposition of Col. Lee before filing this motion. Counsel for the NRA and for Col. Lee did not state an objection to a continued deposition; Mr. Powell indicated that he was familiar with Col. Lee's recent statements, but did not otherwise state his position on the question of a continued deposition; counsel for Mr. Phillips had no objection to a deposition to preserve testimony, but objected to Plaintiff's conducting a deposition to take additional discovery; counsel for Mr. Frazer joined in Mr. Phillips' objection, and further objected because a continued deposition would impose additional costs; counsel for Mr. LaPierre indicated that he needed an additional day to consider Plaintiff's request beyond the week already permitted. *See* Affirmation of Alexander Mendelson, filed herewith ("Mendelson Aff.") ¶¶ 17–23 and corresponding exhibits.

delay trial, which is scheduled to commence on January 8, 2024. In contrast, Plaintiff would suffer substantial prejudice if it is unable to complete the record and examine Col. Lee regarding this change in circumstances.

### **STATEMENT OF FACTS**

#### **I. Col. Lee's Role and Prior Testimony**

Col. Lee has been a member of the NRA's Board of Directors since 2017 and was one of the NRA's most senior officers during periods relevant to this action. *See Mendelson Aff., Ex. A, ("6/7/2022 Lee Depo. Tr.")* at 163:3-167:10, 172:3-174:23, 277:15-18, 387:23-388:9.<sup>4</sup> Specifically, Col. Lee was elected Second Vice President in 2019, and was elected First Vice President in 2021. *See id.* at 163:3-167:10, 172:3-174:23. During his tenure, Col. Lee has served as a member or chair of several board committees relevant to this action, including the Officers Compensation Committee and the Special Litigation Committee ("SLC"), both of which are composed of only the NRA's President, First Vice President, and Second Vice President. *See id.* at 314:20-22, 388:4-6; *see also* Ex. C, ("4/21/2021 PM Bankr. Tr.") at 22:8-11, 27:11-13.

Col. Lee was a featured witness, called to testify on behalf of the NRA in the bankruptcy proceedings before the U.S. Bankruptcy Court for the Northern District of Texas in 2021, where he asserted that the NRA had a strong and independent board and that Defendant LaPierre had good judgment and high moral character. *See* Ex. B, ("4/21/2021 AM Bankr. Tr.") at 8:18-21, 23:20-26:3, 41:8-43:11; Ex. C, ("4/21/2021 PM Bankr. Tr.") at 23:17-28:20, 29:23-32:13, 42:12-45:4. In his testimony in the bankruptcy proceeding, Col. Lee also testified about his role on the SLC and the decision to file a petition for bankruptcy. Ex. C, 4/21/2021 PM Bankr. Tr. at 23:17-

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<sup>4</sup> All Exhibits cited herein are attached to the Affirmation of Alexander Mendelson.

28:20, 29:23-32:13. At the time of his testimony, he was the First Vice-President of the NRA. In the NRA's closing statement, the NRA's counsel touted the significance of Col. Lee's testimony:

We had a national treasure, Colonel Lee, come before this Court, a war hero, decorated, to tell this Court that he trusts the leadership of Wayne LaPierre. He is in a better position than the speculation of the lawyers in this case. He came before this Court and told you with specific words that had he lost the confidence, he lost trust in the judgment wherefore with facts upon which evidence actually occurred to oust Mr. LaPierre, he would do so. But he said exactly the opposite. He said not only do I trust Mr. LaPierre, here are the benefits for which he provides the Association.

Ex. D (“5/3/2021 PM Bankr. Tr.”) at 45:23-46:7.

Thereafter, on June 7, 2022, Col. Lee was deposed in this action. He testified in his capacity as an officer and director of the NRA, and was represented by counsel for the NRA. *See* Ex. A, (“6/7/2022 Lee Depo. Tr.”) at 7:24-8:11, 14:25-16:16). Col. Lee was questioned on several topics, including, *inter alia*, his role and responsibilities as a director, officer, and board committee member, the board and officer nomination process, alleged retaliation against dissident board members, LaPierre's leadership, the efficacy of the NRA's purported “course correction,” the circumstances of the NRA's bankruptcy filing, and, as noted in the bankruptcy court's ruling, the “unusual involve[ment]” of the NRA's litigation counsel in the organization's affairs. *See* Ex. A (“6/7/2022 Lee Depo. Tr.”) at 191:12-192:20, 207:16-250:9; 264:24-274:18; 295:2-16; 379:9-382:10.

## **II. NRA Officer Electoral Process**

Traditionally, after an NRA member, like Col. Lee, serves two consecutive one-year terms as the NRA's First Vice President, the member is nominated and elected President at the NRA's next annual meeting. *See* Ex. E, (“6/17/2022 Cotton Depo. Tr.”) at 19:19-22:18 (current NRA President Charles Cotton testifying regarding his election as First Vice President and then President, noting that “I can't say ‘automatic’ but unless – unless it's a health reason, no one's going to say ‘okay, I'll serve as First VP for two years’ and – and not go to the President.”); *see*

also Ex. F, (“10/1/2021 Brownell Depo. Tr.”) at 57:16-61:22 (former President Peter Brownell testifying regarding this process, commonly referred to as “moving through the chairs”). Indeed, this tradition was followed in nine of the NRA’s last twelve election cycles.

Since 2012, the outgoing First Vice President was nominated and elected President in all but three years. In 2018, Col. North was selected by NRA management to replace the outgoing President, Peter Brownell, who chose not to serve a second term. *See* Ex. F, 10/1/2021 Brownell Depo. Tr. at 263:5-266:18.<sup>5</sup> In 2019, after Col. North took actions considered critical of the NRA’s senior leadership and of the Brewer Firm, his expected renomination to the Presidency was withheld after a purported “coup attempt” against Wayne LaPierre; instead, alternative candidates were nominated behind closed doors during an executive session. *See* Ex. G, (April 29, 2019 Meeting Minutes) NYAG-00118131 at NYAG-00118139);<sup>6</sup> *see also* SAC ¶¶ 461-488. And most

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<sup>5</sup> In May 2018, Col. North was elected Second Vice President. Immediately following the election, however, the individual elected President, Carolyn Meadows, “stated that she and First Vice President Richard Childress were in agreement the newly elected Second Vice President, *and the next NRA President, Lt Col Oliver L. North*, should chair the remainder of the meeting. Lt Col Oliver L North orally presented some brief remarks and then assumed the Chair.” *See* Ex. H, (May 7, 2018 Board Meeting Minutes) NYAG-00024498 at NYAG-00024504-507 (emphasis added). At the next board meeting in September 2018, President Carolyn Meadows and First Vice President Richard Childress immediately resigned, allowing Col. North to automatically become President pursuant to the NRA’s bylaws. *See* Ex. I, (Sept. 8, 2018 Board Meeting Minutes) NYAG-00026767 at NYAG-00026773. Following Col. North’s ascension to the Presidency, Childress was immediately re-nominated and re-elected First Vice President, and Meadows was immediately nominated and elected Second Vice President, pursuant to recommendations previously prepared by the Nominating Committee. *Id.* at NYAG-00026773-74, NYAG-00026790.

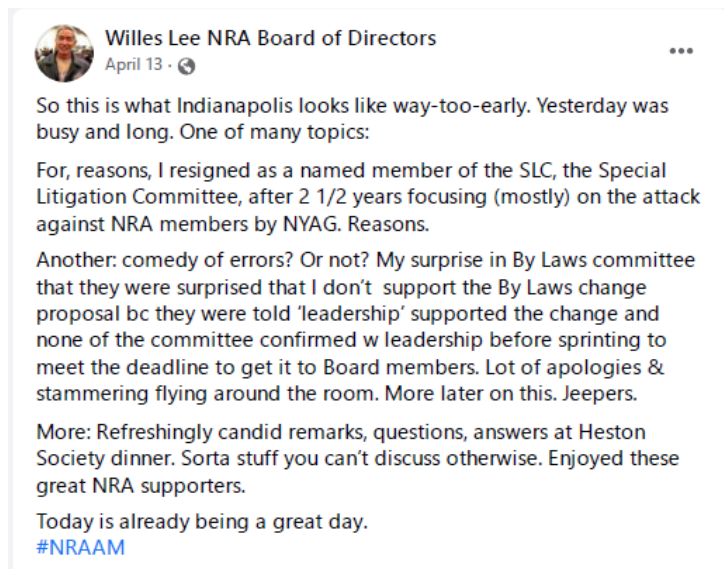
<sup>6</sup> Richard Childress joined Col. North in requesting that the NRA engage a “well-respected ethics lawyer” to perform an “outside independent examination” of Brewer’s fees and representation. *See* Ex. E, 6/17/2022 Cotton Depo. Tr. at 305:15-309:4; *see also* Ex. J, NRA-NYAGCOMM DIV-00862297 (4/18/2019 Memo. from Col. North to Frazer and Cotton). As a result, like Col. North, Childress was not renominated to his officer position as First Vice President. *See* Ex. G, (April 29,



recently, this year, as discussed in more detail below, Col. Lee was refused his expected, customary nomination and was effectively ousted from his officer position after resigning from the SLC and expressing dissenting views that differed from those of NRA's entrenched leadership in the days leading up to the NRA's 2023 Annual Meeting.

### III. Col. Lee's Public Statements, the NRA's 2023 Annual Meeting and Subsequent Events

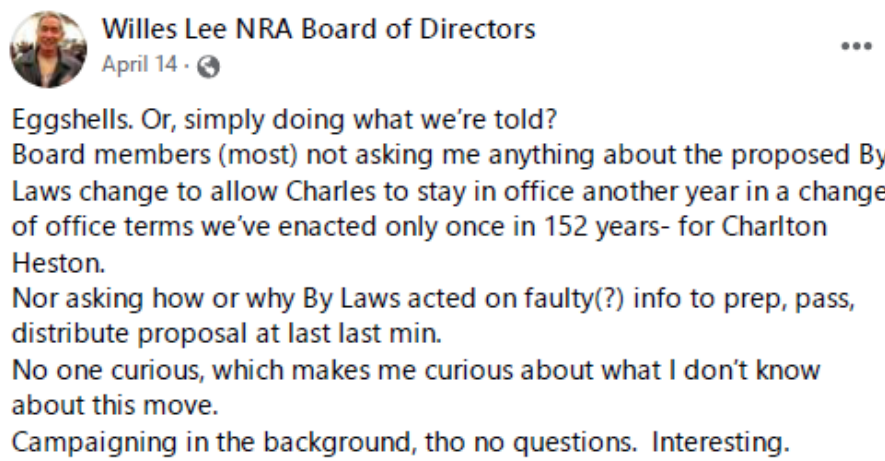
On Wednesday, April 13, 2023, near the outset of the NRA's Annual Meeting in Indianapolis, Col. Lee publicly announced in the following Facebook post his resignation from the SLC, which is responsible for overseeing this litigation, and referred to a proposed change to the NRA's bylaws with which he disagreed:



2019 Meeting Minutes) at NYAG-00118165. Carolyn Meadows was nominated to become President, while longtime Audit Chair Charles Cotton was nominated to become First Vice President, and Lt. Col. Willes Lee was nominated to become Second Vice President. *See id.*; *see also* Ex. E, 6/17/2022 Cotton Depo. Tr. at 24:19-23; Ex. K, ("6/2/2020 Cotton Exam. Tr.") at 90:22-92:4; Ex. A, 6/7/2022 Lee Depo. Tr. at 164:2-15). At the April 29, 2019 Meeting, Carolyn Meadows, Charles Cotton, and Lt. Col. Willes Lee were unanimously elected the President, First Vice President, and Second Vice President, respectively, during the executive session. Ex. G, (April 29, 2019 Meeting Minutes) at NYAG-00118139.

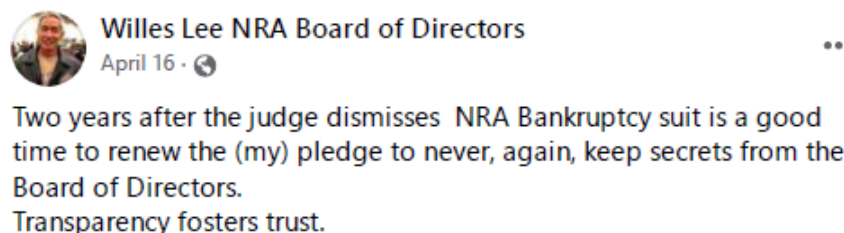
Ex. M (“Compiled Facebook Posts”) at 2 (4/13/2023 Facebook Post).

The next day, on April 14, 2023, Col. Lee explained in another Facebook post that the last-minute proposed by laws changes, among other things, would allow NRA President Charles Cotton to remain in his position beyond the existing term limits and thereby prevent Lee from succeeding Cotton as the next President of the NRA:



*Id.* at 4 (4/14/2023 Facebook Post).

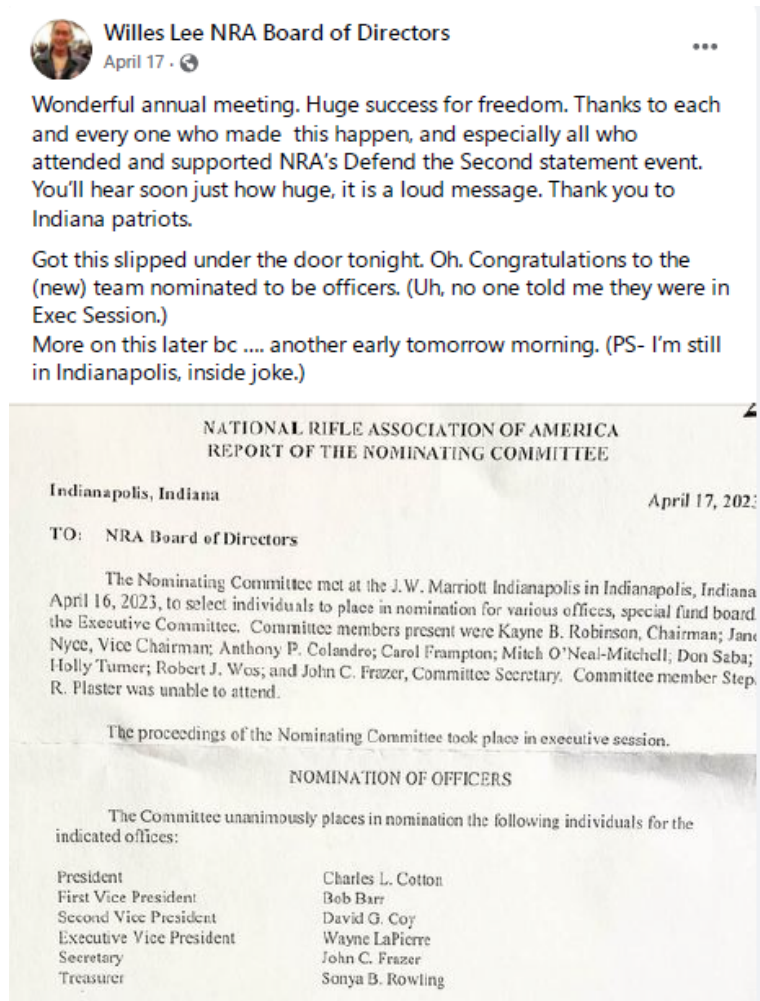
On April 16, 2023, Col. Lee made a Facebook post pledging transparency to the NRA Board in contrast with the NRA Bankruptcy filing, which was made without Board knowledge or consent two years earlier:



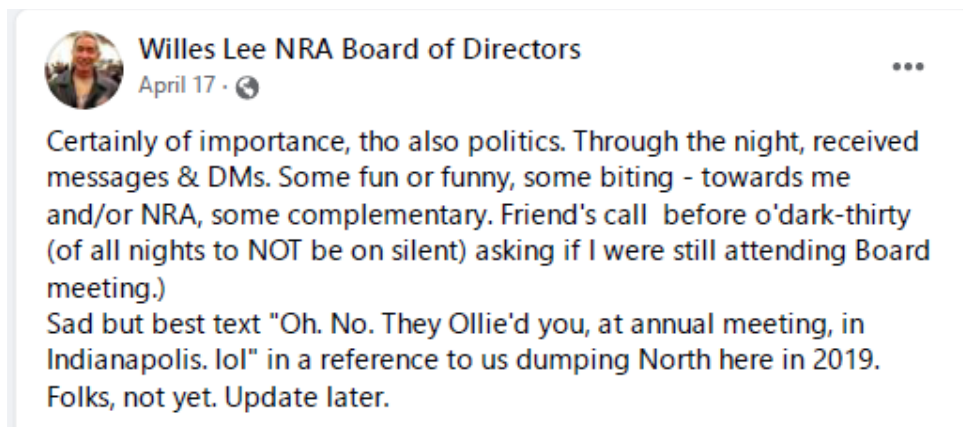
*Id.* at 6 (4/16/2023 Facebook Post).

That night, Col. Lee learned the consequences of speaking out: when the report of the NRA’s Nominating Committee was “slipped under [his hotel room ] door,” Col. Lee saw that his

name was excluded from the committee's proffered slate of nominees. Not only would he be denied the customary nomination to the Presidency, but he would not be re-nominated to the First Vice Presidency, or to any other officer position. He posted the committee's report and his thoughts about it on Facebook:



*Id.* at 8 (4/17/2023 Facebook Post). Col. Lee later announced, in the April 17<sup>th</sup> Facebook post below, that he received messages from other meeting attendees regarding his removal, including one message that drew the obvious similarity to the NRA's retaliation against Col. Oliver North in April 1919, stating: “Oh. No. They Ollie'd you at annual meeting, in Indianapolis. Lol' in a reference to us dumping North here in 1919.”



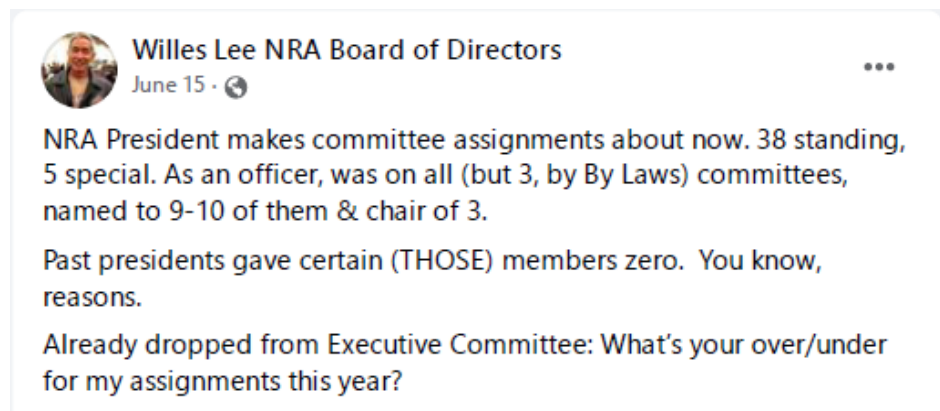
*Id.* at 7 (4/17/2023 Facebook Post); *see also* SAC ¶¶ 487 (discussing retaliation against former President Oliver North (Dissident No. 1) by withholding customary renomination to officer position when he raised concern about governance and financial issues within the NRA).

Col. Lee later summarized the events of the 2023 Annual Meeting and the NRA leadership's stripping him of power within the NRA's governance structure for expressing dissenting views in an April 28, 2023 Facebook Post:



Ex. M, Compiled Facebook Posts at 10 (4/28/2023 Facebook Post).

After losing his officer position, Col. Lee predicted in a June 15, 2023 Facebook post that he would likely be stripped of his Board committee assignments as "certain" other directors had when they expressed dissent in the past:



*Id.* at 23 (6/15/2023 Facebook Post); *see also* SAC ¶¶ 489-492, 700 (alleging that board members who expressed concerns about NRA's actions were stripped of their committee assignments).

As he feared, Col. Lee was, in fact, removed from all but one committee of the board. In his Facebook post announcing his removal, Col. Lee acknowledged that the retaliation against him contradicted his own prior testimony and sarcastically criticized the NRA's leadership for using the committee assignment process to punish dissent:



Ex. M, Compiled Facebook Posts at 30 (6/28/2023 Facebook Post); *see also id* at 26 (6/22/2023 Facebook Post) (“Our chamber prefers echoes. Board members are aware, that’s why they’re silent ... they see what happens (even to officers) when you speak.”) (ellipses in original)).

**IV. Col. Lee's Further Public Statements Since His Effective Ouster at the 2023 NRA Annual Meeting**

Since his ouster from a leadership role, Col. Lee has made numerous public statements on his social media accounts, which are directly relevant to Plaintiff's claims in this action. His statements criticize the NRA board of directors for secrecy and failure to take action in the wake of misconduct.

For example, with respect to the NRA's bankruptcy filing in 2021, Col. Lee stated in a May 6 post that as an NRA officer he:

did much crucial clean up & some disgusting things 'to save NRA'— the NRA y'all broke. Leading to Indy, was told to do things and to keep the real reason secret. Wouldn't support the edict which, ok, made me a liability. We promised to never repeat the Bankruptcy secrecy debacle. I won't, hence my Relocation & Special Litigation Committee resignations.

*See Ex. M, Compiled Facebook Posts at 13 (5/6/2023 Facebook Post).*

Col. Lee also stated in a June 26 post that, since leaving the SLC, he has suggested more oversight is needed because the strategy of “the depleted team (WLP, Brewer, Cotton)”<sup>7</sup> to “keep old folks who were in charge during the heinous NYAG allegations and admitted abuse” is ineffective. *Id.* at 28 (6/26/2023 Facebook Post). Col. Lee has also called public attention to information that even as a Board member and officer he learned through expert reports *proffered by Plaintiff* in this action that are critical of the NRA, stating that readers would “be shocked by the abuse, but not surprised.” *Id.* He has repeatedly urged his followers to review the redacted expert reports that Plaintiff has filed reflecting opinion testimony that Plaintiff intends to introduce

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<sup>7</sup> “WLP” refers to Executive Vice President Wayne LaPierre; “Brewer” refers to William A. Brewer III and the Brewer Firm, which serves as outside counsel to the NRA in this action and in other proceedings and capacities; “Cotton” refers to Charles Cotton, the current President of the NRA.

at trial. *See id.*; *see also, e.g., id.* at 32 (7/3/2023 Facebook Post) (“Expert report excerpt, NYAG v NRA. Just the facts. Tip of the iceberg.” (including link to Plaintiff Expert Report of Eric Hines)); *id.* at 33 (7/21/2023 Facebook Post) (“Click any paragraph, you’ll puke.” (including link to Plaintiff Expert Report of Jeffery S. Tenenbaum)).

Likewise, Col. Lee has posted extensively regarding the board’s lack of independence, involvement in governance, and scrutiny of misconduct, and has implied that the board has abdicated its responsibility:

- “I’ve testified to the talent of our NRA Board. Perhaps we try a little harder?” *Id.* at 16 (5/25/2023 Facebook Post).
- “NRA committees don’t do anything, perhaps helps w Board member’s election. Three of (controversial) consequence, some get staff updates, a few monitor events, most do NOTHING, couple haven’t met in years. Eh, oversight & guidance? What else do you do w 76 Board members? I raised cutting/combining/modernizing committees. Whoa. Landmine. More in a later post.” *Id.* at 25 (6/20/2023 Facebook Post).
- “Several NRA Directors report various long-term ailments (others simply don’t participate) & haven’t been seen in YEARS. Their absences are excused, they are renominated for Board election. . . .” *Id.* at 22 (6/12/2023 Facebook Post).
- Captioning “Hmm.” in response to an article titled, “Are You Being a Good Steward of Your Nonprofit’s Money?” *Id.* at 19 (6/2/2023 Facebook Post).
- “Our Board wasn’t savvy enough to ask why we rushed a change at the absolute last minute when we long knew the case would extend far past the board elections. #duped. . . .” *Id.* at 14 (5/12/2023 Facebook Post).
- Suggesting more oversight of “the depleted team (WLP, Brewer, Cotton)” is needed. *Id.* at 28 (6/26/2023 Facebook Post).

Col. Lee’s recent public statements also express skepticism regarding the NRA’s decision to retain the same leadership that was in place during the height of the misconduct alleged by the Attorney General:

- “Why would NRA leaders in charge during the grotesque NYAG allegations want the people who were in charge during the many NYAG allegations to be in charge as we go to trial? What’s up with that?” *Id.* at 17 (5/27/2023 Facebook Post).
- “If the goal of NRA By Laws change were to keep the leadership team intact, why did they change the leadership team?” *Id.* at 20 (6/10/2023 Facebook Post).

- “Let me get this straight? The people leading the NRA during the admitted abuse (plus NYAG alleged corruption) endorsed and reelected the people watching the coop during the (alleged) corruption and admitted abuse, so that those people can lead NRA into the future free from abuse and (alleged) corruption. Okay, got it.” *Id.* at 21 (6/10/2023 Facebook Post).
- “Same people that got us here running the place now.” *Id.* at 31 (6/28/2023 Facebook Post).
- “[N]eed (way) more eyes on litigation, relocation-staff status-building sale, finances & more. Don’t expect much – same people doing same things – tho anything/one better than what we have...” *Id.* at 29 (6/28/2023 Facebook Post).

## ARGUMENT

### I. Relevant Law

“Trial courts are authorized, as a matter of discretion, to permit post-note of issue discovery without vacating the note of issue, so long as neither party will be prejudiced.” *Cabrera v. Abaev*, 150 A.D.3d 588, 588 (1st Dep’t 2017) (quoting *Cuprill v. Citywide Towing & Auto Repair Servs.*, 149 A.D.3d 442 (1st Dep’t 2017)). Post-note of issue proceedings may be warranted “where unusual or unanticipated circumstances develop subsequent to the filing of a note of issue and certificate of readiness which require additional pretrial proceedings to prevent substantial prejudice” to the requesting party. 22 N.Y.C.R.R. § 202.21(d).

As relevant here, courts find unusual or unanticipated circumstances warranting resumption of the deposition of witnesses without vacating the note of issue where previously unknown or undiscoverable evidence becomes available after the note of issue has been filed. *See, e.g., Consolidated Sewing Mach. Corp. v. Sanford*, No. 604384/05, 2008 WL 4819603 (Sup. Ct. N.Y. Cnty. Oct. 17, 2008) (permitting supplemental depositions of two defendants to confront them with evidence obtained from a new witness that was discovered after the note of issue was filed); *see also Jones v. Seta*, 143 A.D.3d 482, 482 (1st Dep’t 2016) (modifying order denying motion to vacate note of issue to direct plaintiff to appear for supplemental deposition concerning



newly discovered evidence); *Crawford v. Westley*, No. 618291/2019, 2022 WL 2643717, at \*2 (Sup. Ct. Suffolk Cnty. Jan. 13, 2022) (vacating note of issue to the extent of permitting supplemental discovery related to newly discovered evidence).

**II. Col. Lee's Numerous Public Statements Contradicting Prior Testimony and His Ouster from the NRA Leadership Constitute "Unusual or Unanticipated Circumstances" Warranting Post-Note of Issue Proceedings Under Rule 202.21(d)**

In the months following the filing of the note of issue and certificate of readiness, unusual and unanticipated circumstances have arisen and have brought to light new evidence warranting further pretrial examination of Col. Lee. Four months after the note of issue was filed, Col. Lee resigned from key committees in order to "maintain [his] integrity" and subsequently lost his position as an officer of the Association. *See* Ex. M, Compiled Facebook Posts at 2 (4/13/2023 Facebook Post); *id.* at 8 (4/17/2023 Facebook Post); *id.* at 10 (4/28/2023 Facebook Post). The unusual and unanticipated nature of Col. Lee's resignation from those key committees and removal from the NRA's leadership structure is further punctuated by his numerous and detailed public statements criticizing the NRA, including those statements directly comparing his recent experiences at the NRA with those of dissident board members described in Plaintiff's Complaint.<sup>8</sup> Indeed, those detailed public statements since the note of issue was filed contradict his prior testimony in this action and present new evidence requiring clarification and further examination on the record.

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<sup>8</sup> Compare Ex. M, Compiled Facebook Posts at 7 (4/17/2023 Facebook Post) ("“Oh. No. They Ollie'd you at annual meeting, in Indianapolis. Lol' in a reference to us dumping North here in 2019.”) and *id.* at 30 (6/28/2023 Facebook Post) (announcing Col. Lee's removal from all but one committee after "shining a light on NRA faulty leadership") with SAC ¶¶ 461-488, 489-492, 700 (alleging that Board members who expressed concerns regarding the operations of the NRA were accused of disloyalty and stripped of their committee assignments.).

For example, since the note of issue was filed, Col. Lee has publicly criticized persistent derelictions of duty committed by NRA officers and directors, and has highlighted other governance failures in the organization that are of a piece with the dysfunction detailed in Plaintiff's Complaint. *See, e.g.*, Ex. M, Compiled Facebook Posts at 19 (6/2/2023 Facebook Post); *id.* at 22 (6/12/2023 Facebook Post); *id.* at 25 (6/20/2023 Facebook Post). In addition to being probative, many of his recent critical statements directly contradict his prior testimony, which previously praised the integrity and independence of the NRA's board, bolstered the efficacy of the NRA's "course correction," and denied the retaliatory nature of tactics used to keep board members in line.

In particular, Col. Lee previously testified in this action that the board had taken steps to address the bankruptcy court's concerns regarding the "unusual involvement of litigation counsel in the affairs of the NRA," including by "re-elect[ing] Charles Cotton, Willes Lee, and . . . br[inging] in Dave Coy as Officers," who would ultimately "make the decisions." Ex. A, 6/7/2022 Lee Depo. Tr. at 379:9–382:10. Since the note of issue was filed, Col. Lee has repeatedly indicated that the Board has abdicated its decision-making authority. *See, e.g.*, Ex. M, Compiled Facebook Posts at 14 (5/12/2023 Facebook Post); *id.* at 28 (6/26/2023 Facebook Post). Likewise, Col. Lee previously testified that he was "proud of the NRA and the course correction," that there would be a "constant review," that NRA's leadership will never "stop examining all of our processes," and although misconduct previously occurred, the NRA "found it" and "fixed the system." Ex. A, 6/7/2022 Lee Depo. Tr. at 264:24–274:18, 295:2-16. Since the note of issue was filed, Col. Lee has expressed skepticism regarding the NRA's reforms and decision to retain the same leadership that was in place during the height of the misconduct alleged by the Attorney General, noting that you can't "expect much" from the "same people doing [the] same things." *See, e.g.*, Ex. M,

Compiled Facebook Posts at 17 (5/27/2023 Facebook Post); *id.* at 20 (6/10/2023 Facebook Post); *id.* at 21 (6/10/2023 Facebook Post); *id.* at 29 (6/28/2023 Facebook Post). When questioned about Plaintiff's allegations of retaliation at his deposition, Col. Lee focused on the discretion of the President in setting committee assignments, defended his recommendation that certain dissenting board members be removed from their preferred committees, and equivocated regarding the retaliatory nature of that recommendation. Ex. A, 6/7/2022 Lee Depo. Tr. at 191:12-192:20, 233:9-250:9. In contrast, Col. Lee now appears to readily acknowledge the retaliatory nature of past committee-stripping practices, and that retaliatory tactics are used to keep board members in line. *See* Ex. M, Compiled Facebook Posts at 23 (6/15/2023 Facebook Post); *id.* at 26 (6/22/2023 Facebook Post). Indeed, Col. Lee directly acknowledged, sarcastically, that his removal from NRA committees contradicted his own prior testimony. *See id.* at 30 (6/28/2023 Facebook Post). These unusual and unanticipated circumstances and Col. Lee's recent unusual, unanticipated, and self-contradicting statements are directly probative of Plaintiff's claims regarding the NRA's serious ongoing governance problems that have resulted in the improper administration of charitable assets, and continued whistleblower retaliation—conduct that supports Plaintiff's demand for injunctive relief.

A supplemental deposition of Col. Lee addressing these unusual and unanticipated circumstances can be conducted efficiently and promptly to prevent any delay of the trial scheduled to begin on January 8, 2024. The continued deposition, therefore, would not prejudice Defendants, who can attend and examine the witness. In contrast, Plaintiff would suffer substantial prejudice if denied the opportunity to examine Col. Lee before trial about these issues. Col. Lee is currently a director of the NRA and remains under the NRA's control. If that changes before trial, and Col. Lee is unable or unavailable to testify at trial, Defendants would theoretically have the option to

offer his favorable deposition testimony in his absence, while Plaintiff would have had no opportunity to cross examine Col. Lee regarding these new developments and his contradictory statements. *See Bravo v. Vargas*, 978 N.Y.S.2d 313, 315 (2d Dep't 2014) (finding supplemental deposition regarding changed circumstances following initial deposition was required where "the movants established that further discovery on the limited issue . . . would be 'material and necessary' to the defense of the action."). And even if Col. Lee is available to testify at trial, Plaintiff would be prejudiced by having to question him for the first time at trial in connection with these recent events. This would also likely prolong the length of his testimony and the trial itself.

Given the strong parallels between Col. Lee's public statements regarding his experience and Plaintiff's allegations regarding the treatment of other dissenting officers and directors in the Complaint, and given the undeniable relevance of Col. Lee's statements to Plaintiff's causes of action and demand for injunctive relief, a supplemental deposition is required to complete the record and prevent substantial prejudice. *See Consol. Sewing Mach. Corp.*, 2008 WL 4819603, at \*1.

### **CONCLUSION**

For the reasons set forth above, Plaintiff's motion to compel the post-note of issue supplemental deposition of Lt. Col. Willes Lee pursuant to Rule 202.21(d) should be granted and the Court should award such other and further relief as it deems proper.

Dated: September 20, 2023  
New York, New York

LETITIA JAMES  
*Attorney General of the State of New York*

/s/ Alexander Mendelson  
Alexander Mendelson  
Monica Connell  
Assistant Attorneys General  
NYS Office of the Attorney General  
28 Liberty Street  
New York, New York 10005  
(212) 416-8990  
Alexander.Mendelson@ag.ny.gov

MEGHAN FAUX, *Chief Deputy Attorney General for Social Justice*  
JAMES SHEEHAN, *Chief of the Charities Bureau*  
EMILY STERN, *Chief of the Enforcement Section, Charities Bureau*  
*Of Counsel*

**Attorney Certification Pursuant to Commercial Division Rule 17**

I, Alexander Mendelson, an attorney duly admitted to practice law before the courts of the State of New York, certify that the foregoing Memorandum of Law contains 4,677 words, excluding the parts exempted by Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)). In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law.

Dated: September 20, 2023  
New York, New York

*/s/ Alexander Mendelson*

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Alexander Mendelson