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September 16, 2020

By NYSCEF and Hand Delivery

Hon. Deborah A. Kaplan
Administrative Judge
Supreme Court, Civil Branch, New York County
60 Centre Street
New York, NY 10007

Re: Commercial Division Assignment of *People of the State of New York v. The National Rifle Association, et al.*, Index No. 451625/2020

Dear Judge Kaplan,

We represent defendant John Frazer in the above-referenced action. Mr. Frazer has been sued in his capacity as General Counsel of the NRA. On his behalf, we write to support today's request by the NRA (NYSCEF Doc. No. 26) that this case be transferred to the Commercial Division.

Although this case arises under the Not for Profit Corporation Law ("N-PCL"), many of the issues are substantively related to, or the same as, issues regularly and frequently addressed in the Commercial Division for "for-profit businesses." In this regard, many of the provisions of the N-PCL are taken verbatim from the BCL. As is evident from the history of the N-PCL, it is modeled after the BCL. Thus, there is a significant if not an identical overlap of issues relating to the adjudication of the issues in this case and those present and litigated under the BCL.

For example, the NYAG seeks dissolution pursuant to N-PCL §1102. This section is modeled after BCL §1102. Similarly, the NYAG seeks monetary relief against Mr. Frazer in the Fourth Cause of Action pursuant to the provisions of the N-PCL §§ 706, 714, and 720 which are virtually identical to the comparable provisions in the BCL and were originally derived from New York's General Corporation law – the predecessor to the BCL.

Accordingly, the interpretation and application of the N-PCLs will be greatly affected by their comparable provisions in the BCL. Mr. Frazer's conduct that is at issue in this action should be judged by the same standards as the General Counsel of a for-profit corporate entity. The Commercial Division is the best vehicle for achieving this objective.

As you are aware, in 1993, then-Administrative Judge Stanley S. Ostrau established four Commercial Parts on an experimental basis in NY Supreme. The aim was to test whether it would be possible, by concentrating commercial litigation in those Parts, to improve the efficiency with which such matters were addressed by the court and, at the same time, to enhance the quality of judicial treatment of those cases. There was an expressed need to have a court that was primarily focused upon the commercial activities of a business and that it was important to have a consistency in the application of the legal principles to those commercial practices.

As a result of the success of the pilot project, in January 1995, a task force of the Commercial and Federal Litigation Section of the New York State Bar Association recommended expansion of the Commercial Parts. Specifically, the Section proposed establishing a Commercial Division of the Supreme Court in those areas of the State in which there are significant amounts of commercial litigation. Shortly thereafter, then-Chief Judge Judith S. Kaye created the Commercial Courts Task Force, which proposed that a Commercial Division be established to, *inter alia*, promote the efficient resolution of commercial cases. The Chief Judge thereafter established the Commercial Division on a statewide basis.

The issues and applicable principles in the instant case are no different from any other commercial case. For the reasons outlined in the NRA's letter, this case is a *de facto* commercial case.

Accordingly, we respectfully request that the requests of both the NRA and the Office of the Attorney General be granted and that this matter be referred to a Commercial Division judge.

Respectfully submitted,



William B. Fleming

Cc: All counsel of record (via NYSCEF)