

with a singular goal – to deprive the NRA and its constituents of their First Amendment right to speak freely about gun-related issues and defend the Second Amendment.

The foundation of Defendants’ selective-enforcement and retaliation campaign is a series of threats to financial institutions that DFS, an agency created to ensure the integrity of financial markets after the 2008 credit crisis, will exercise its extensive regulatory power against entities that fail to sever ties with the NRA. To effect their sweeping agenda, Defendants issued public demands that put DFS-regulated institutions on notice to “discontinue[] their arrangements with the NRA” and other “gun promotion organizations” if they planned to do business in New York.

At the same time, Defendants engaged in back-channel communications to reinforce their intended purpose. Simply put, Defendants made it clear to banks and insurers that it is bad business in New York to do business with the NRA.

As a direct result of this coercion, multiple firms have succumbed to Defendants’ demands and entered into consent orders with DFS that compel them to terminate longstanding, beneficial business relationships with the NRA, both in New York and elsewhere. Tellingly, several provisions in the orders bear no relation to any ostensible regulatory infraction. Instead, the orders prohibit lawful commercial speech for no reason other than that it carries the NRA brand.

Absent injunctive relief, Defendants’ blacklisting campaign will continue to damage the NRA and its members, as well as endanger the free speech and association rights guaranteed by the constitutions of the United States and the State of New York. It is well-settled that viewpoint discrimination applied through “threat[s] of invoking legal sanctions and other means of coercion, persuasion, and intimidation” violates the Constitution where, as here, such measures chill

protected First Amendment activities.¹ Defendants' *de facto* censorship scheme cannot survive judicial scrutiny. Nor should it.

II.

PARTIES

1. Plaintiff the National Rifle Association of America is a nonprofit corporation organized under the laws of the State of New York with its principal place of business in Fairfax, Virginia. The NRA is America's leading provider of gun-safety and marksmanship education for civilians and law enforcement. It is also the foremost defender of the Second Amendment to the United States Constitution. The NRA has over five million members, and its programs reach millions more.

2. Defendant New York State Department of Financial Services is an agency of the State of New York that regulates financial services firms operating in New York in order to guard against financial crises and to protect New York consumers and markets from fraud. DFS has a regional office at One Commerce Plaza, Albany, New York 12257. Its main office is located at One State Street, New York, New York 10004-1511. It regulates more than 1,400 insurance companies with assets in excess of \$4.3 trillion, including 200 life insurers, 1,100 property casualty insurers, and 100 health insurance companies. DFS also regulates over 1,900 banking and other financial institutions with assets over \$2.9 trillion.

3. Defendant Maria T. Vullo is the Superintendent of the New York State Department of Financial Services and, at all times relevant to the Complaint, was acting under color of state law. Her principal place of business is One State Street, New York, New York 10004-1511. Vullo is sued in her individual and official capacities.

¹ See, e.g., *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 72 (1963).

4. Defendant Andrew Cuomo is the Governor of the State of New York and, at all times relevant to the Complaint, was acting under color of state law. His principal place of business is The State Capitol Building, Albany, New York 12224. Cuomo is sued in his individual and official capacities.

III.

JURISDICTION AND VENUE

5. Pursuant to 28 U.S.C. § 1331, the Court has subject matter jurisdiction over the claims asserted in this action because this action involves claims based on the First and Fourteenth Amendments to the United States Constitution (U.S. Const. amend. I, XIV), and because the action seeks to prevent state officials from interfering with federal rights. Further, subject matter jurisdiction is conferred on this Court by 28 U.S.C. § 1343(a)(3) because this action is brought to redress deprivations under color of state law of rights, privileges, and immunities secured by the United States Constitution. This Court has supplemental jurisdiction over all state-law claims asserted in this action under 28 U.S.C. § 1367.

6. Pursuant to 28 U.S.C. § 1391(b), venue is properly vested in this Court because defendant Cuomo resides in this judicial district.

7. There is a present and actual controversy between the parties.

8. The relief requested is authorized pursuant to 28 U.S.C. § 1343(a)(4) (recover damages or equitable relief or any other such relief for the protection of civil rights), 28 U.S.C. § 1651(a) (injunctive relief), 28 U.S.C. §§ 2201 and 2202 (declaratory and other appropriate relief), 42 U.S.C. § 1983 (deprivation of rights, privileges, and immunities secured by the Constitution), and 42 U.S.C. § 1988 (award of attorneys' fees and costs).

IV.

STATEMENT OF RELEVANT FACTS

A. The NRA: History Of Dedicated Support For Gun Safety And A Commitment To Core Political Speech.

9. After the Civil War, two Union Army officers created a private association to promote marksmanship among the citizenry. The officers believed that the war would have ended significantly sooner if the northern troops had been able to shoot as well as the Confederate soldiers. They obtained a charter from the State of New York in November of 1871; thereafter, the National Rifle Association built a proud legacy in the State of New York.

10. From the NRA's inception, it received praise from the State of New York for its many public contributions. In 1872, the New York State legislature and the NRA jointly dedicated funds for the creation of a rifle range on Creed Farm, in what is now Queens Village, Queens, New York. For many decades, the NRA partnered with the State to advance firearms safety, education, conservation, and other laudable public policy goals. For example, when New York City public schools sought to educate boys in marksmanship and gun safety, NRA co-founder Gen. George Wingate designed and headed the resulting Public Schools Athletic League (PSAL) marksmanship program.² Likewise, in 1949, the NRA worked with the State of New York to create the nation's first hunter education program. Similar courses were subsequently adopted by state fish and game departments across the country and in Canada, and make hunting among the safest sports in existence.

² See e.g., STEVEN A. RIESS, SPORTS IN AMERICA FROM COLONIAL TIMES TO THE TWENTY-FIRST CENTURY: AN ENCYCLOPEDIA 736 (Steven A. Riess ed., 2015); ROBERT PRUTER, THE RISE OF AMERICAN HIGH SCHOOL SPORTS AND THE SEARCH FOR CONTROL, 1880-1930 122 (1st ed. 2013); Robert Pruter, *Boys Rifle Marksmanship*, ILLINOIS HIGH SCHOOL ASSOCIATION, http://www.ihsa.org/archive/hstoric/marksmanship_boys.htm?NOCACHE=5:53:58%20PM (last visited May 11, 2018).

11. First among the “Purposes and Objectives” contained in the NRA’s bylaws is “[t]o protect and defend the Constitution of the United States.” Accordingly, political speech is a major purpose of the NRA. The NRA engages in extensive legislative advocacy to promote its purposes, as well as to vindicate the rights of its members and all Americans.

12. The NRA spends tens of millions of dollars annually distributing pamphlets, fact sheets, articles, electronic materials, and other literature to advocate for its view of the Second Amendment and to assist NRA members engaging in national, state, and local firearm dialogue. The NRA’s direct mail, television, radio, and digital communications seek to educate the public about issues bearing on the Second Amendment, defend the NRA and its members against political and media attacks, and galvanize participation in the political process by NRA members and supporters.

13. To its critics, the NRA is best known as a “superlobby – one of the largest and most truly conservative lobbying organizations in the country,” able to mobilize its millions of members in concerted efforts to protect the Second Amendment rights of all Americans.³ Of course, the NRA’s letter-writing campaigns, peaceable public gatherings, and other grassroots “lobbying” activities constitute precisely the type of political speech which rests “[a]t the core of the First Amendment.”⁴

³ Christina Robb, *HANDGUNS AND THE AMERICAN PSYCHE THE ATTEMPTED ASSASSINATION OF A PRESIDENT BRINGS THE ISSUE INTO SHARP FOCUS ONCE AGAIN. HANDGUNS – WHAT DO THEY MEAN TO AMERICANS? TO THE NRA, THEY ARE A SYMBOL OF FREEDOM; TO THOSE FRIGHTENED OF CRIME, THEY REPRESENT SAFETY – EVEN IF THE OWNER DOESN’T KNOW HOW TO USE THEM; TO GUN CONTROL ADVOCATES, THEY ARE SYMBOLS OF ULTIMATE EVIL.*, BOSTON GLOBE, 1981 WLNR 68847 (June 7, 1981).

⁴ See, e.g., *Brown v. Hartlage*, 456 U.S. 45, 52 (1982).

B. Cuomo's Political Vendetta Against The NRA.

14. Andrew Cuomo has criticized the political speech and influence of “Second Amendment types”⁵ generally, and the NRA specifically, for decades. Moreover, Cuomo has a history of abusing his regulatory power to retaliate against his political opponents on gun control issues.

15. The son of former Governor Mario Cuomo, Andrew Cuomo is a political opportunist who has consistently sought to gain political capital by attacking the NRA. During his tenure as Housing and Urban Development (“HUD”) Secretary in the 1990s, Cuomo coordinated a campaign of lawsuits (nearly all dismissed) against gunmakers that purported to hold them liable for crimes committed in public housing projects using illegally obtained firearms. Cuomo admitted that his real aim was to coerce, via settlement, the “voluntary” industrywide adoption of certain equipment and sale restrictions, and warned that any manufacturer who refused to settle would suffer “death by a thousand cuts.”⁶ Decried by even gun-control supporters as “wrong” and

⁵ On February 15, 2018, Cuomo appeared on the MSNBC program “The Beat,” where he discussed championing legislation that some believed “trampled the Second Amendment.” YOUTUBE, Gov. *Andrew Cuomo On Background Checks: “Bunch Of Boloney” | The Beat With Ari Melber | MSNBC*, <https://www.youtube.com/watch?v=Tz8X07fZ39o> (last visited May 7, 2018). However, Cuomo lamented that his “favorability rating” had dropped thereafter due to “backlash from conservatives and Second Amendment types.” *Id.*

⁶ Bill McAllister, *Gun Industry Rejects Settlement Effort*, THE DENVER POST (Feb. 1, 2000), <http://www.wagc.com/gun-industry-rejects-settlement-effort/>.

an abuse of agency authority,⁷ the Cuomo campaign failed after the NRA and other pro-gun groups organized legislative and grassroots opposition.⁸

16. Cuomo blamed “gun lobby extremists” for the collapse of his efforts at HUD.⁹ At a press conference on June 20, 2000, he referred to gun-rights supporters as “the enemy,” and announced a blueprint for defeating the NRA and its allies that would emphasize the use of state and municipal retaliatory authority: “If we engage the enemy in Washington we will lose. They will beat us in this town. They are too strong in this town. Their fortress is within the Beltway. We’re going to beat them state by state, community by community.”¹⁰

17. As governor of New York, Cuomo has loudly supported the enactment of some of the nation’s harshest gun-control laws.¹¹ But rather than debate opponents of his anti-gun

⁷ In an editorial dated December 17, 1999, the Washington Post described the Cuomo campaign as “disquieting even for those who, like us, strongly support rigorous controls on handguns.” *The HUD Gun Suit*, THE WASHINGTON POST (Dec. 17, 1999), https://www.washingtonpost.com/archive/opinions/1999/12/17/the-hud-gun-suit/48ee0a45-18da-4e8d-9b86-b9512172ae09/?utm_term=.9a74ce83f538. Anticipating themes that would continue to characterize Cuomo’s gun-control efforts over the next nineteen years, the editorial board stated that “it . . . seems wrong for an agency of the federal government” to put “pressure on an industry . . . to achieve policy results the administration has not been able to achieve through normal legislation or regulation.” *Id.*

⁸ See, e.g., *House Blocks Money For Gun Pact*, CBS NEWS (June 21, 2000, 11:58 PM), <https://www.cbsnews.com/news/house-blocks-money-for-gun-pact/>.

⁹ *HUD Archives: News Releases, HUD No. 00-150, COMMUNITIES FOR SAFER GUNS COALITION JOINS CUOMO IN CRITICIZING EFFORT IN CONGRESS TO KILL THE COALITION*, U.S. DEP’T OF HOUS. AND URBAN DEV. (June 27, 2000, archived Dec. 13, 2009).

¹⁰ *Remarks by Secretary Andrew Cuomo Handgun Control, Inc, Washington, D.C. Tuesday, June 20, 2000*, U.S. DEP’T OF HOUS. AND URBAN DEV. (Jan. 20, 2009), <https://archives.hud.gov/remarks/cuomo/speeches/handguncontrl.cfm>.

¹¹ See, e.g., Teri Weaver, *Judge: NY must release Safe Act stats from assault weapons registry*, SYRACUSE (May 7, 2015, 9:09 PM),

initiatives, he declared that conservative firearms advocates “have no place in the state of New York.”¹² In particular, Cuomo has sought to banish “the enemy” from public discourse altogether, and remains dissatisfied with what he perceives to be the excessive political influence of “conservatives and the Second Amendment types.”¹³

18. In truth, Cuomo bears distinct animus toward the NRA, which he accuses of exerting a “stifl[ing] . . . stranglehold” over national gun policy.¹⁴ For Cuomo, weakening the political advocacy of the NRA is a career strategy.

C. Defendants Attempt To Chill The NRA’s Political Speech In Support Of Americans’ Second Amendment Rights.

19. Against the backdrop of recent tragedies and a polarized public gun-control debate, Cuomo and the other Defendants have abused their authority in an effort to stifle the NRA’s political advocacy and to retaliate against the NRA for the effectiveness of that advocacy.

20. Together with DFS Superintendent Vullo, Cuomo has used, and continues to use, state power to chill the political speech of the NRA and other “gun promotion” organizations by punishing financial institutions which do “business with NRA.” To achieve this, Defendants draw

http://www.syracuse.com/news/index.ssf/2015/05/judge_ny_must_release_safe_act_data_on_auld_weapons_registry.html.

¹² Heather Long, *Conservatives aren’t welcome in New York, according to Governor Cuomo*, THE GUARDIAN (Jan. 14, 2014, 8:49 AM), <https://www.theguardian.com/commentisfree/2014/jan/24/governor-cuomo-conservatives-not-welcome-new-york>.

¹³ YOUTUBE, *Gov. Andrew Cuomo On Background Checks: “Bunch Of Boloney” | The Beat With Ari Melber | MSNBC*, <https://www.youtube.com/watch?v=Tz8X07fZ39o> (last visited May 7, 2018).

¹⁴ Kenneth Lovett, *Exclusive: Cuomo fires back at Jeb Bush for ‘stupid’ and ‘insensitive’ gun tweet*, NY DAILY NEWS (Feb. 17, 2016), <http://www.nydailynews.com/news/politics/cuomo-blasts-jeb-stupid-insensitive-gun-tweet-article-1.2534528>.

upon the formidable regulatory powers of DFS—an agency charged with ensuring the stability and integrity of New York’s financial markets.

21. At Cuomo’s behest, Vullo and DFS have threatened, and continue to threaten, regulated institutions with costly investigations and penalties should they fail to “discontinue[] . . . their arrangements with the NRA.”¹⁵ And Defendants have already carried out some of these threats. Within a single week, DFS levied multi-million dollar fines against two insurance-industry firms that dared to do business with the NRA. Under intense scrutiny, both firms were coerced to terminate their business arrangements with the NRA and its members—including arrangements having nothing to do with the allegedly unlawful conduct cited by DFS.

22. A DFS press release publicizing one recent enforcement action makes clear the gravamen of Defendants’ campaign: financial institutions regulated by DFS must refrain from “[e]ntering into any . . . agreement or arrangement,” which “involv[es] the NRA, directly or indirectly”¹⁶—or face the consequences.

¹⁵ *GOVERNOR CUOMO DIRECTS DEPARTMENT OF FINANCIAL SERVICES TO URGE COMPANIES TO WEIGH REPUTATIONAL RISK OF BUSINESS TIES TO THE NRA AND SIMILAR ORGANIZATIONS*, N.Y. STATE GOVERNOR ANDREW M. CUOMO (Apr. 19, 2018), <https://www.governor.ny.gov/news/governor-cuomo-directs-department-financial-services-urge-companies-weigh-reputational-risk>.

¹⁶ *DFS FINES LOCKTON COMPANIES \$7 MILLION FOR UNDERWRITING NRA-BRANDED “CARRY GUARD” INSURANCE PROGRAM IN VIOLATION OF NEW YORK INSURANCE LAW*, N.Y. STATE DEP’T OF FIN. SERVS. (May 2, 2018), <https://www.dfs.ny.gov/about/press/pr1805021.htm>; *see also* *DFS FINES CHUBB SUBSIDIARY ILLINOIS UNION INSURANCE COMPANY \$1.3 MILLION FOR UNDERWRITING NRA-BRANDED “CARRY GUARD” INSURANCE PROGRAM IN VIOLATION OF NEW YORK INSURANCE LAW*, N.Y. STATE DEP’T OF FIN. SERVS. (May 7, 2018), <https://www.dfs.ny.gov/about/press/pr1805071.htm>.

1. DFS And Its Regulatory Mission.

23. In 2011, as part of his state budget, Cuomo announced the merger of the New York State Insurance Department and the Banking Department to create DFS. The mandate of the new agency, which consolidated supervisory and enforcement powers previously vested in separate departments, is to “reform the regulation of financial services in New York to keep pace with the rapid and dynamic evolution of these industries, to guard against financial crises and to protect consumers and markets from fraud.”¹⁷

24. DFS has broad regulatory powers, which encompass the ability to initiate civil and criminal investigations and enforcement actions. In addition, pursuant to Financial Services Law, Article 3, § 301, the DFS superintendent has the power to refer matters to the attorney general for criminal enforcement. The creation of an agency with such expansive prerogatives and capabilities “grab[bed] power and headlines,” and the New York Times reported in 2015 that the first DFS superintendent, Benjamin Lawskey, was popularly caricatured as “the new sheriff of Wall Street” and an all-powerful monarch (“King Lawskey”).¹⁸

25. New York Financial Services Law, Article 2, § 201, provides the superintendent of DFS with formidable authority to, among other things, “ensure the continued solvency, safety, [and] soundness” of banks and insurance companies.¹⁹ Accordingly, DFS directives regarding

¹⁷ N.Y. STATE DEP’T OF FIN. SERVS. (Dec. 12, 2017), <https://www.dfs.ny.gov/about/mission.htm>.

¹⁸ Jessica Silver-Greenberg and Ben Protess, *Benjamin Lawskey, Sheriff of Wall Street, Is Taking Off His Badge*, THE NEW YORK TIMES (May 20, 2015), <https://www.nytimes.com/2015/05/21/business/dealbook/benjamin-lawskey-to-step-down-as-new-yorks-top-financial-regulator.html>.

¹⁹ New York Financial Services Law Article 2, § 201 (“Declaration of Policy”).

“risk management” must be taken seriously by financial institutions—as risk-management deficiencies can result in fines of hundreds of millions of dollars.

26. DFS’s regulatory mandate does not include setting gun-control policy. Nor does any statute or other authority empower DFS to blacklist, from receipt of insurance or banking services, speakers with political viewpoints objectionable to the governor or DFS superintendent. In addition, DFS has no authority to engage in unlawful viewpoint discrimination with respect to commercial speech.

2. NRA Member Insurance Programs.

27. Like many affinity groups and organizations nationwide, the NRA seeks to make life, health, and other insurance coverage available to its members on affordable, tailored terms. To this end, the NRA contracted with multiple insurance-industry firms to develop, market, and underwrite insurance policies endorsed by the NRA. Pursuant to these arrangements, the NRA performs none of the functions of an insurer. It does lend its valuable logos, marks, and endorsements to insurance policies brokered and serviced by others. Such “affinity insurance plans” are common, and believed by many to be a suitable substitute for employer-based coverage.²⁰

28. From 2000 onward, the NRA contracted with affiliates of the world’s largest privately-held insurance broker, Lockton Companies, LLC (collectively with pertinent affiliates, “Lockton”),²¹ for affinity-program brokerage and administration services. Lockton has provided

²⁰ See, e.g., Rachel Louise Ensign, *Affinity-Group Plans*, THE WALL STREET JOURNAL (Sept. 11, 2011), <http://online.wsj.com/article/SB10001424053111904836104576563341686006336.html>.

²¹ In particular, the NRA contracted with Lockton Affinity Series of Lockton Affinity, LLC (f/k/a Lockton Risk Services, Inc.) (“Lockton Affinity”) and Kansas City Series of Lockton Companies, LLC (“Lockton KC”).

services in the affinity-insurance market for decades, and caters to a wide array of industries and clients including franchises, professional and trade organizations, fraternal organizations, and common-cause groups such as the NRA. For roughly seventeen years, Lockton entities administered and marketed NRA-endorsed insurance in New York State and across the nation without incident.

29. The NRA-endorsed insurance programs administered by Lockton consist primarily of life, health, property, and casualty insurance that resemble policies offered by Lockton to other affinity groups. In addition, Lockton administers certain products, including a product known as “Carry Guard,” that provide coverage for expenses arising out of the lawful self-defense use of a legally possessed firearm. Illinois Union Insurance Company (“Illinois Union”), a subsidiary of Chubb Ltd., underwrote Carry Guard while doing business under the name “Chubb.”

3. DFS Commences A Politically Motivated Investigation Of NRA-Endorsed Insurance Programs.

30. In 2017, Cuomo conspired with DFS and Vullo to initiate an investigation into Carry Guard in an attempt to collaterally attack the NRA and stifle its gun-rights advocacy (the “DFS Investigation”). From the outset, it was clear that the investigation was meant to advance Cuomo’s political agenda by stifling the NRA’s speech and retaliating against the NRA based on its viewpoint on gun control issues. DFS did not announce inquiries regarding any self-defense insurance products apart from the ones endorsed by the NRA. The DFS Investigation was chronicled in the national media before official notice was provided to the NRA or its principals.

31. In fact, the DFS Investigation was orchestrated by anti-gun activists. The day after the investigation became public, a non-governmental activist organization known as Everytown for Gun Safety (“Everytown”) took credit for instigating the DFS Investigation, explaining that it previously undertook its own “investigation and legal analysis” of Carry Guard which it “shared”

with regulators in New York and elsewhere.²² Notably, Everytown’s explicit political mission is to oppose the NRA.²³

32. Many other membership organizations in New York endorse to their members affinity-type insurance programs similar to those endorsed by the NRA. These organizations include, *inter alia*, the National Association for the Self-Employed, the New York State Bar Association, the New York City Bar, the New York Association of Professional Land Surveyors, and the New York State Psychological Association. However, the DFS has not announced similar inquiries concerning any of these other membership organizations, even though their affinity programs involve most, if not all, of the practices and features that were the subject of DFS’s investigations into the NRA’s affinity programs. Instead, Defendants selectively targeted the NRA because of the NRA’s legislative and grassroots advocacy activities. Defendants specifically intend to undermine the NRA’s ability to conduct its affairs in New York—and to advance Cuomo’s anti-NRA political agenda.

4. Over The Course Of The Investigation, Cuomo And DFS Exhort Firms To Sever Ties With The NRA.

33. Throughout its purported investigation of Carry Guard in late 2017 and early 2018, DFS communicated to banks and insurers with known or suspected ties to the NRA that they would

²² *Everytown, Moms Demand Action Statements Responding to Report That New York Department of Financial Services is Investigating NRA Carry Guard Insurance*, MOMS DEMAND ACTION FOR GUN SENSE IN AMERICA (Oct. 25, 2017), <https://momsdemandaction.org/everytown-moms-demand-action-statements-responding-to-report-that-new-york-department-of-financial-services-is-investigating-nra-carry-guard-insurance>.

²³ Aaron Blake, *Bloomberg launches new \$50 Million gun control effort*, THE WASHINGTON POST (Apr. 16, 2014), https://www.washingtonpost.com/news/post-politics/wp/2014/04/16/bloomberg-aims-to-spend-50-million-on-gun-control/?noredirect=on&utm_term=.703fe67ee197 (explaining that Everytown “will attempt to combat the vast influence of the National Rifle Association”).

face regulatory action if they failed to terminate their relationship with the NRA. These exhortations extended far beyond Carry Guard (the policy purportedly raising regulatory concerns), indicating that any business relationship whatsoever with the NRA would invite adverse action.

34. Cuomo directed DFS to publicly “urge insurers and bankers statewide to determine whether any relationship they may have with the NRA or similar organizations sends the wrong message to their clients and their communities who often look to them for guidance and support.”²⁴

35. Accordingly, on April 19, 2018, Vullo, as Superintendent of DFS, issued a pair of ominous “guidance” letters (the “April 2018 Letters”) directed at the chief executive officers, or equivalents, of all New York State chartered or licensed financial institutions and all insurers doing business in New York. The April 2018 Letters urged recipients to sever ties with the NRA and other “gun promotion organizations.”²⁵ The directive was packaged in a sharply worded media advisory meant to generate headlines – and apply maximum public pressure on the NRA and those with whom it associates.

²⁴ *GOVERNOR CUOMO DIRECTS DEPARTMENT OF FINANCIAL SERVICES TO URGE COMPANIES TO WEIGH REPUTATIONAL RISK OF BUSINESS TIES TO THE NRA AND SIMILAR ORGANIZATIONS*, N.Y. STATE GOVERNOR ANDREW M. CUOMO (Apr. 19, 2018), <https://www.governor.ny.gov/news/governor-cuomo-directs-department-financial-services-urge-companies-weigh-reputational-risk>, attached hereto as Exhibit A.

²⁵ Maria T. Vullo, *Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations*, N.Y. STATE DEP’T OF FIN. SERVS. (Apr. 19, 2018), https://www.dfs.ny.gov/legal/dfs/DFS_Guidance_Risk_Management_NRA_Gun_Manufacturers-Insurance.pdf (addressed to the CEOs or equivalents of insurers doing business in the State of New York), attached hereto as Exhibit B; Maria T. Vullo, *Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations*, N.Y. STATE DEP’T OF FIN. SERVS. (Apr. 19, 2018), https://www.dfs.ny.gov/legal/dfs/DFS_Guidance_Risk_Management_NRA_Gun_Manufacturers-Banking.pdf (addressed to the CEOs or equivalents of New York State chartered or licensed financial institutions), attached hereto as Exhibit C.

36. The April 2018 Letters are suffused with political concerns far afield from DFS's mandate to prevent financial crises and financial fraud. For example, they urge banks and insurers to heed "the voices of the passionate, courageous, and articulate young people" speaking out in favor of gun control, and to reconsider any business relationships with "the [NRA], and similar organizations that promote guns and lead to senseless violence." However, the April 2018 Letters do not merely express Defendants' own political opinions: they invoke the "risk management" obligations of recipients, and direct banks and insurers to "take prompt actions to manage" purported "reputational risks" arising from "dealings with the NRA or similar gun promotion organizations."

37. Read in the context of the preceding months' private communications—as well as disclosures that would soon follow concerning consequences imposed on firms doing business with the NRA—the April 2018 Letters were threats that deliberately invoked DFS's "risk management" authority to warn of adverse action if institutions failed to support Defendants' efforts to stifle the NRA's speech and to retaliate against the NRA based on its viewpoint.

38. Importantly, the April 2018 Letters contain no language clarifying that DFS would forebear from directly enforcing the letters' terms. Nor do the April 2018 Letters provide regulated institutions with any objective criteria for measuring the "reputational risks" imposed by dealings with entities that "promote guns that lead to senseless violence." This is because Defendants intend the April 2018 Letters to intimidate institutions into acceding to a political blacklisting campaign, and have nothing to do with the types of market "risks" properly regulated by DFS.

39. To further dispel any ambiguity surrounding the April 2018 Letters, Cuomo and Vullo issued the contemporaneous press release, containing and endorsing a statement by Vullo

that directly “urge[s] all insurance companies and banks doing business in New York to join the companies that have already discontinued their arrangements with the NRA.”²⁶

40. Likewise, on April 20, 2018, Cuomo publicly tweeted: “The NRA is an extremist organization. I urge companies in New York State to revisit any ties they have to the NRA and consider their reputations, and responsibility to the public.”²⁷

41. The intended and actual effect of the April 2018 Letters, and the actions by Cuomo and Vullo, is to coerce insurance agencies, insurers, and banks into terminating business relationships with the NRA that were necessary to the survival of the NRA as a charitable organization.

D. The Damage Done.

1. DFS Permanently Restricts Lockton From Doing Business With The NRA In New York.

42. On May 2, 2018, two weeks after Vullo issued the April 2018 Letters, Lockton entered into a consent order Under Articles 21, 23, and 34 of the Insurance Law (the “Lockton Consent Order”) with DFS—signed by Vullo—which imposes a civil monetary penalty of \$7 million.²⁸ Although the Lockton Consent Order ostensibly addresses discrete violations by specific Lockton entities of New York’s Insurance Law, its provisions go much further. Most notably, the Lockton Consent Order purports to restrict Lockton’s participation in *any* NRA-

²⁶ *Governor Cuomo Directs Department of Financial Services to Urge Companies to Weigh Reputational Risk of Business Ties to the NRA and Similar Organizations*, N.Y. STATE GOVERNOR ANDREW M. CUOMO (Apr. 19, 2018), <https://www.governor.ny.gov/news/governor-cuomo-directs-department-financial-services-urge-companies-weigh-reputational-risk>.

²⁷ Andrew Cuomo (@NYGovCuomo), TWITTER (Apr. 20, 2018, 8:58 AM), <https://twitter.com/NYGovCuomo/status/987359763825614848>.

²⁸ The Lockton Consent Order is attached hereto as Exhibit D.

endorsed insurance programs in New York State, irrespective of whether such programs comply with the Insurance Law.

43. Specifically, the Lockton Consent Order requires that Lockton agree “not to participate in . . . any other NRA-endorsed programs with regard to New York State.” Nor may Lockton “enter into any agreement or program with the NRA to underwrite or participate in any affinity-type insurance program involving any line of insurance to be issued or delivered in New York State or to anyone known to Lockton to be a New York resident.” As a result, Lockton is prohibited from selling NRA affinity insurance outside New York to any individual who maintains a New York residence.

44. DFS and Vullo have no legal basis to restrict Lockton’s involvement with insurance programs that do not violate New York’s Insurance Law; nor do they have authority to regulate insurance transactions outside of New York. Nevertheless, DFS mandated that Lockton never enter into any future agreements with the NRA for legitimate and fully compliant insurance programs in New York.

45. Furthermore, Lockton would violate the Lockton Consent Order if it markets an ordinary property, casualty, or life insurance policy in the State of New York that was accompanied by an NRA logo or endorsement—notwithstanding that a comparable logo or endorsement referencing any other affinity or common-cause organization is permissible. This provision of the Lockton Consent Order is deliberate and intended to impair the NRA’s ability to negotiate insurance benefits for its members, damage the NRA’s goodwill among its membership, and unconstitutionally restrict the NRA’s commercial speech on the basis of political animus.

46. Several of the purported “violations” assessed pursuant to the Lockton Consent Order concern programs commonly engaged in by numerous additional affinity associations that

do not publicly advocate for Second Amendment rights and, therefore, are not targets of Defendants' unconstitutional conduct. Several such organizations are clients of Lockton—yet the Consent Order does not compel Lockton to discontinue its purportedly unlawful conduct with respect to these clients.

47. For example:

- DFS claims that Lockton Affinity violated Insurance Law § 2122(a)(1) by referring to the insurer's AM Best rating. Yet, in reference to Lockton Affinity's affinity program for the American Optometric Association through AOAExcel ("AOAExcel"), Lockton Affinity states that it has the "backing of a carrier that is rated A+ (Superior) by A.M. Best."²⁹ Similarly, Lockton Affinity currently advertises that coverage for the affinity programs designed for the Veterans of Foreign Wars ("VFW") and Moose International Inc. ("Moose") is through companies "rated 'Excellent' or higher by A.M. Best."³⁰
- DFS claims that Lockton Affinity violated Insurance Law § 2324(a) by giving or offering to give no cost insurance to NRA members in good standing. Yet, Lockton Affinity currently makes that same offer to members of both the Professional Photographers of America ("PPA")³¹ and the VFW.³²
- DFS claims that Lockton Affinity violated Insurance Law § 2116 by compensating the NRA based on actual premiums collected. Yet, Lockton Affinity paid AOAExcel, Moose, the VFW, and the PPA in the same or similar manner.

²⁹ *Questions? We have answers for you.*, AOAINSURANCEALLIANCE, <http://aoainsurancealliance.com/faq/> (last visited May 7, 2018).

³⁰ *FVW Post Insurance Program, Program Information*, VFW INSURANCE, http://vfwinsurance.com/wp-content/uploads/sites/29/2017/12/VFW_Post_Insurance_Information_Packet.pdf (last visited May 7, 2018); MOOSE INSURANCE PROGRAM, <http://mooseinsuranceprogram.com/> (last visited May 7, 2018).

³¹ INSURANCE FOR PPA, <https://insuranceforppa.com/> (last visited May 7, 2018).

³² VFW INSURANCE, <http://vfwinsurance.com/life-insurance/#no-cost> (last visited May 7, 2018).

48. Even if such conduct does violate insurance law, DFS’s selective enforcement of such offenses as to NRA-endorsed policies—but not as to other policies marketed by Lockton in an identical fashion—constitutes impermissible viewpoint discrimination and a denial of equal protection under the law.

2. DFS Purports To Prohibit Chubb From Doing Business With The NRA Anywhere.

49. On May 7, 2018, Chubb Group Holdings, Inc. and Illinois Union (together, “Chubb”) entered into a Consent Order Under Sections 1101 and 3420 of the Insurance Law (the “Chubb Consent Order”) with DFS—signed by Vullo—which imposes a civil monetary penalty of \$1.3 million.³³ Similar to the Lockton Consent Order, in the Chubb Consent Order, DFS overextends its authority and purports to restrict Chubb’s participation in *any* affinity-type insurance program with the NRA, irrespective of whether such programs comply with the Insurance Law.

50. Although DFS restricts Lockton from participating in any affinity-type insurance programs with the NRA in New York or with New York residents, Defendants’ restrictions in the Chubb Consent Order contain no geographic constraint whatsoever. Instead, the Chubb Consent Order purports to limit Chubb’s involvement with the NRA anywhere, and everywhere, in the world.

51. Nevertheless, DFS allows Chubb to continue to underwrite affinity-type insurance programs with other affinity or common-cause organizations that do not publicly advocate for Americans’ Second Amendment rights, so long as Chubb undertakes “reasonable due diligence to

³³ The Chubb Consent Order is attached hereto as Exhibit E.

ensure that any entity involved . . . is acting in compliance with the Insurance Law.”³⁴ The only plausible explanation for the DFS’s complete exclusion of NRA-endorsed policies, even those “in compliance with the Insurance Law,” is that Defendants seek to misuse DFS’s power to deprive the NRA of insurance and financial services, on the sole ground that Defendants disapprove of the NRA’s viewpoint regarding gun control.

3. Defendants’ Actions Are Causing Other Financial Institutions To Re-Evaluate Their Relationships With The NRA For Fear Of Significant Adverse Action By Defendants.

52. Defendants’ concerted efforts to stifle the NRA’s freedom of speech and to retaliate against the NRA based on its viewpoints are causing other insurance, banking, and financial institutions doing business with the NRA, such as Lloyd’s of London (“Lloyd’s”), to rethink their mutually beneficial business relationships with the NRA for fear of monetary sanctions or expensive public investigations.³⁵ Indeed, Lloyd’s announced on May 9, 2018, that it would “terminate all insurance offered, marketed, endorsed, or otherwise made available” through the NRA in light of the DFS Investigation.³⁶ Moreover, Defendants have impaired the NRA’s ability to engage in lawful, truthful commercial speech in connection with affinity-insurance endorsements.

53. The NRA has suffered tens of millions of dollars in damages based on Defendants’ conduct described above. Such damages include, without limitation, damages due to reputational harm, increased development and marketing costs for new NRA-endorsed insurance programs,

³⁴ Exhibit E (Chubb Consent Order), at 7.

³⁵ See, e.g., *Lloyd’s Underwriters Told to Stop Insurance Linked to NRA*, THE NEW YORK TIMES (May 9, 2018), <https://www.nytimes.com/reuters/2018/05/09/business/09reuters-lloyds-of-london-nra.html>, attached hereto as Exhibit F.

³⁶ *Id.*

and lost royalty amounts owed to the NRA, as well as attorneys' fees, legal expenses, and other costs.

V.

CLAIMS

A. Count One: Violation Of The NRA's First And Fourteenth Amendment Rights Under 42 U.S.C. § 1983, And Article 1, Section 8 Of The New York Constitution By The Establishment Of An Implicit Censorship Regime (As To All Defendants).

54. The NRA repeats and re-alleges each and every allegation in the preceding paragraphs as though fully set forth herein.

55. The First Amendment, which applies to Defendants by operation of the Fourteenth Amendment, and Section Eight of the New York Constitution secure the NRA's right to free speech, including its right to express its viewpoints and political beliefs regarding the constitutionally protected right to keep and bear arms.

56. The NRA has a longstanding history of political advocacy advancing the Second Amendment rights of all Americans. Although Cuomo and Vullo disagree with and oppose the NRA's political views, the NRA's freedom to express its views with respect to the gun-control debate is a fundamental right protected by the First Amendment.

57. Defendants have regulatory authority over financial institutions and insurance entities that have done or are doing business with or are otherwise associated with the NRA, including Chubb, Lockton, and Lloyd's.

58. Defendants' actions—including but not limited to the issuance of the April 2018 Letters and the accompanying backroom exhortations, the imposition of the Consent Orders upon

Chubb and Lockton, and the issuance of the press release dated April 19, 2018—established a “system of informal censorship” designed to suppress the NRA’s speech.³⁷

59. Defendants’ actions were for the purpose of suppressing the NRA’s pro-Second Amendment viewpoint. Defendants undertook such unlawful conduct with the intent to obstruct, chill, deter, and retaliate against the NRA’s core political speech.

60. Defendants’ unlawful exhortations to New York insurance companies, banks, and financial institutions that they, among other things, “manag[e] their risks, including reputational risks, that may arise from their dealings with the NRA . . . , as well as continued assessment of compliance with their own codes of social responsibility[,]” as well as “review any relationships they have with the NRA[,]” and “take prompt actions to managing these risks and promote public health and safety[,]” constitute a concerted effort to deprive the NRA of its freedom of speech by threatening with government prosecution services critical to the survival of the NRA and its ability to disseminate its message. Defendants’ actions constitute an “implied threat[] to employ coercive state power” against entities doing business with the NRA, and they are reasonably interpreted as such.³⁸

61. Defendants’ concerted efforts to stifle the NRA’s freedom of speech caused financial institutions doing business with the NRA to end their business relationships, or explore such action, due to fear of monetary sanctions or expensive public investigations. For example, Defendants caused Lockton and Chubb to cease their participation in NRA-endorsed insurance programs, regardless of whether the insurance programs met all legal qualifications under New

³⁷ *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 71 (1963).

³⁸ *Okwedy v. Molinari*, 333 F.3d 339, 342 (2d Cir. 2003).

York's Insurance Law. Defendants' implied threats also caused Lloyd's to cease doing insurance business with the NRA.

62. Furthermore, Defendants' unlawful and intentional restriction on the use of the NRA's logo or endorsement in marketing efforts for insurance products—notwithstanding that a comparable logo or endorsement referencing any other affinity or common-cause organization is permissible—is a deliberate attempt to unconstitutionally restrict the NRA's commercial speech on the basis of political animus.

63. Defendants' unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

64. Absent an injunction against Defendants, the NRA will suffer irrecoverable loss and irreparable harm if it is unable to acquire insurance or other banking services due to Defendants' actions.

65. Defendants' intentional actions resulted in significant damages to the NRA, including but not limited to damages due to reputational harm, increased development and marketing costs for new NRA-endorsed insurance programs, and lost royalty amounts owed to the NRA. The NRA is also entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and New York Civil Practice Law and Rules § 8601.

66. In addition to the above-described damages, the NRA seeks an order preliminarily and permanently enjoining Cuomo and Vullo (in their official capacities) and DFS—including its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction—from threatening or encouraging insurance companies, banks, or financial institutions to sever ties with or discontinue services to the NRA.

B. Count Two: Violation Of The NRA's First And Fourteenth Amendment Rights Under 42 U.S.C. § 1983 And Article 1, Section 8 Of The New York Constitution By Retaliating Against The NRA Based On Its Speech (As To All Defendants).

67. The NRA repeats and re-alleges each and every allegation in the preceding paragraphs as though fully set forth herein.

68. The First Amendment, which applies to Defendants by operation of the Fourteenth Amendment, and Section Eight of the New York Constitution, secures the NRA's right to free speech, including its right to express its viewpoints and political beliefs regarding the constitutionally protected right to keep and bear arms.

69. The NRA has a longstanding history of political advocacy advancing the Second Amendment rights of all Americans. Although Cuomo and Vullo disagree with and oppose the NRA's political views, the NRA's freedom to express its views with respect to the gun-control debate is a fundamental right protected by the First Amendment.

70. Defendants' actions—including but not limited to the issuance of the April 2018 Letters and the accompanying backroom exhortations, the imposition of the Consent Orders upon Chubb and Lockton, and the issuance of the press release dated April 19, 2018—were in response to and substantially caused by the NRA's political speech regarding the right to keep and bear arms. Defendants' actions were for the purpose of suppressing the NRA's pro-Second Amendment viewpoint. Defendants undertook such unlawful conduct with the intent to obstruct, chill, deter, and retaliate against the NRA's core political speech

71. Defendants' actions have concretely harmed the NRA by causing financial institutions doing business with the NRA to end their business relationships, or explore such action, due to fear of monetary sanctions or expensive public investigations. For example, Defendants caused Lockton and Chubb to cease their participation in NRA-endorsed insurance programs in New York and elsewhere, regardless of whether the insurance programs met all legal

qualifications under New York's Insurance Law. Defendants' implied threats also caused Lloyd's to cease participating in affinity insurance programs with the NRA.

72. Defendants had discretion in deciding whether and how to carry out their actions, including but not limited to the types of demands imposed on Chubb and Lockton in the Consent Orders, whether to issue the press release dated April 19, 2018, and the type of guidance provided in the April 2018 Letters. They exercised this discretion to harm the NRA because of the NRA's speech regarding the Second Amendment.

73. Defendants' unlawful and intentional actions are not justified by a substantial or compelling government interest and are not narrowly tailored to serve any such interest.

74. Absent an injunction against Defendants, the NRA will suffer irrecoverable loss and irreparable harm if it is unable to acquire insurance or other financial services due to Defendants' actions.

75. Defendants' intentional actions resulted in significant damages to the NRA, including but not limited to damages due to reputational harm, increased development and marketing costs for new NRA-endorsed insurance programs, and lost royalty amounts owed to the NRA. The NRA is also entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and New York Civil Practice Law and Rules § 8601.

76. In addition to the above-described damages, the NRA seeks an order permanently enjoining Cuomo, Vullo, and DFS—including its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction—from threatening or encouraging insurance companies, banks, or financial institutions to sever ties with or discontinue services to the NRA.

C. Count Three: Violation Of The Equal Protection Clause Of The Fourteenth Amendment Under 42 U.S.C. § 1983, And Article 1, Section 11 Of The New York Constitution (As To All Defendants).

77. The NRA repeats and re-alleges each and every allegation in the preceding paragraphs as though fully set forth herein.

78. Defendants knowingly and willfully violated the NRA's equal protection rights by seeking to selectively enforce certain provisions of the Insurance Law against Lockton's affinity-insurance programs for the NRA. Meanwhile, other affinity-insurance programs that were identically (or at least similarly) marketed by Lockton, but not endorsed by "gun promotion" organizations, have not been targeted by DFS's investigation.

79. Defendants' selective enforcement of the Insurance Law against the NRA and its business partners has been knowing, willful, arbitrary, capricious, unreasonable, discriminatory, and undertaken in bad faith and without a rational basis. Defendants' conduct does not further any legitimate government interest.

80. Defendants' selective enforcement of the Insurance Law against the NRA and its business partners is based on the NRA's political views and speech relating to the Second Amendment. These considerations are impermissible bases for an enforcement action.

81. Defendants' unlawful conduct inflicted, and threatens to continue to inflict immediate, irreparable harm on the NRA. Additionally, Defendants' actions have resulted in significant damages to the NRA, including but not limited to damages due to reputational harm, increased development and marketing costs for new NRA-endorsed insurance programs, and lost royalty amounts owed to the NRA. The NRA is also entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and New York Civil Practice Laws and Rules § 8601.

82. In addition, the NRA seeks an order preliminarily and permanently enjoining Cuomo and Vullo (in their official capacities) and DFS—including its officers, agents, servants,

employees, and all persons in active concert or participation with them who receive actual notice of the injunction—from selectively enforcing the Insurance Law by requiring Lockton or Chubb, through their respective consent orders, to forbear from doing business with the NRA which they could otherwise permissibly conduct with other affinity organizations.

D. Count Four: Conspiracy Under 42 U.S.C. § 1983 (As To Cuomo And Vullo In Their Individual Capacities).

83. The NRA repeats and re-alleges each and every allegation in the preceding paragraphs as though fully set forth herein.

84. Cuomo and Vullo, acting under color of state law, agreed with each other, and with others known and unknown, to deprive the NRA of rights secured and guaranteed by the First and Fourteenth Amendments to the United States Constitution and Sections Eight and Eleven of the New York Constitution.

85. In furtherance of these objectives, Cuomo directed Vullo to issue statements targeted at New York insurance and financial institutions to cause them to sever existing relationships with the NRA. Vullo subsequently released the April 2018 Letters, implicitly threatening DFS-regulated entities with potential prosecutorial action should they fail to sever ties with the NRA.

86. Less than two weeks after the April 2018 Letters, Vullo signed the Lockton Consent Order, imposing a monetary sanction of \$7 million against Lockton Affinity and Lockton Companies, and requiring them to never again participate in any lawful NRA-endorsed insurance program in New York. Shortly thereafter, Vullo signed the Chubb Consent Order imposing a monetary sanction of \$1.3 million against Chubb, and requiring them to never again participate in any lawful NRA-endorsed insurance program no matter where in the world the insured is located.

87. Cuomo's and Vullo's conspiracy was chiefly motivated by discriminatory animus against the NRA on account of its political speech, beliefs, and associations—in particular, its advocacy on behalf of Second Amendment rights. Vullo, at Cuomo's direction, issued the April 2018 Letters in an apparent effort to silence, intimidate, and deter those possessing a particular viewpoint from participating in the debate with respect to gun control. This effectively prevents, or at a minimum chills, the NRA's enjoyment and exercise of its right to freedom of speech. Cuomo's and Vullo's intentional actions spawned by the conspiracy were motivated by an unlawful motive or intent and involved a reckless or callous indifference to, or disregard of, the NRA's protected constitutional rights.

88. Cuomo's and Vullo's unlawful actions, undertaken separately and jointly under color of state law, resulted from a concerted and malicious conspiracy to abridge the NRA's freedom of speech under the First and Fourteenth Amendments to the United States Constitution and Section Eight of the New York Constitution and the NRA's right to equal protection under the Fourteenth Amendment to the United States Constitution and Section Eleven of the New York Constitution.

89. Cuomo's and Vullo's conspiracy to stifle the NRA's speech and induce a boycott of the NRA has caused, and continues to cause, significant damages to the NRA. For example, the NRA is entitled to compensatory damages resulting from the loss of insurance program revenues. The NRA is also entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and New York Civil Practice Law and Rules § 8601.

E. Count Five: Violation Of The NRA's Fourteenth Amendment Due Process Rights Under 42 U.S.C. § 1983, And Article 1, Section 6 Of The New York Constitution (As To All Defendants).

90. The NRA repeats and re-alleges each and every allegation in the preceding paragraphs as though fully set forth herein.

91. Defendants' actions have deprived the NRA of its constitutionally protected interests in engaging in core political advocacy and pursuing revenue opportunities free from unreasonable government interference by coercing financial institutions to cease providing essential services to the NRA and other "gun promotion" organizations.

92. For decades, the NRA has contracted with insurance-industry firms and professionals to create affinity-insurance programs providing life, health, property, casualty, and other similar types of insurance to NRA members, as well as club and business affiliates. The NRA has invested significant time, money, and effort into these insurance program in order to provide a valuable benefit to its members. Accordingly, the NRA has a property interest in the NRA-endorsed insurance policies, as well as a liberty interest in being able to endorse insurance products to its membership.

93. Defendants' April 2018 Letters, backroom exhortations during the DFS Investigation, and public statements caused, at a minimum, Lockton Affinity, Lockton Companies, and Chubb to discontinue their NRA-endorsed insurance options in New York or (in Chubb's case) nationwide and to never again participate in such programs, thus depriving the NRA of its property interest without due process of law.

94. Defendants, in their April 2018 Letters and in other public pronouncements, have made stigmatizing statements, including that the NRA represents a potential reputation risk to insurance companies and financial institutions, that the NRA is responsible for "senseless violence," and that the NRA is a threat to the public health and safety, that call into question the NRA's good name, reputation, honor, and integrity.

95. As evidenced by the actions multiple insurance companies have taken to terminate their business relationships with the NRA, Defendants' public statements and other unlawful

conduct have impugned the NRA's reputation in such a fashion as to materially obstruct and hinder the NRA's ability to carry its affinity insurance programs.

96. Defendants made these stigmatizing statements publicly, both through the release of the April 2018 Letters and in other public pronouncements.

97. Defendants made these statements concurrently with, or in close temporal relationship to, the decision by each of Lockton and Chubb to terminate one or more key business relationships with the NRA; those termination directly resulted from the coercion applied by Defendants to Lockton and Chubb.

98. Defendants' violation of the NRA's due process rights and deprivation of the NRA's interest in its NRA-endorsed insurance programs, as well as its other property and liberty interests, has resulted in significant damages to the NRA, including increased development and marketing costs for new NRA-endorsed insurance programs. The NRA is also entitled to an award of attorneys' fees and costs pursuant to 42 U.S.C. § 1988 and New York Civil Practice Law and Rules § 8601.

99. The NRA also seeks an order preliminarily and permanently enjoining Cuomo and Vullo (in their official capacities) and DFS—including its officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction—from engaging in any conduct or activity which has the effect of interfering with, terminating, or diminishing any of the NRA's contracts and/or lawful business relationships with any organizations.

VI.

DEMAND FOR JURY TRIAL

100. The NRA hereby demands a trial by jury on all issues so triable.

VII.

REQUEST FOR RELIEF

WHEREFORE the NRA respectfully requests that the Court enter judgment in the NRA's favor and against Defendants, as follows:

a. Declaring, pursuant to 28 U.S.C. § 2201, that Defendants have violated the NRA's rights to free speech, due process, and equal protection under both the Federal and New York Constitutions;

b. Granting a preliminary and permanent injunction, pursuant to 28 U.S.C. § 1651 (a), 42 U.S.C. § 1983, and Rule 65 of the Federal Rules of Civil Procedure, ordering DFS, its agents, representatives, employees and servants and all persons and entities in concert or participation with it, Cuomo (in his official capacity), and Vullo (in her official capacity):

- (1) to immediately cease and refrain from engaging in any conduct or activity which has the purpose or effect of interfering with the NRA's exercise of the rights afforded to it under the First and Second Amendment to the United States Constitution and Section 8 to the New York Constitution;
- (2) to immediately cease and refrain from engaging in any conduct or activity which has the purpose or effect of interfering with, terminating, or diminishing any of the NRA's contracts and/or business relationships with any organizations;
- (3) to immediately cease and refrain from further selective enforcement of the Insurance Laws to the NRA endorsed policies; and
- (4) to enjoin or preclude the enforcement of the provisions of the Lockton and Chubb Consent Orders purporting to prohibit Lockton and Chubb from doing business with the NRA;

- b. Granting such other injunctive relief to which the NRA is entitled;
- c. Awarding the NRA actual damages, including compensatory and consequential damages, in an amount to be determined at trial;
- d. Awarding the NRA exemplary or punitive damages;
- e. Awarding the NRA pre-judgment and post-judgment interest at the highest lawful rates;
- f. Awarding the NRA such costs and disbursement as are incurred in prosecuting this action, including reasonable attorneys' and experts' fees; and
- g. Granting the NRA such other and further relief as this Court deems just and proper.

Respectfully submitted,

By: s/ William A. Brewer III

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**ATTORNEYS FOR THE NATIONAL RIFLE
ASSOCIATION OF AMERICA**

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

NATIONAL RIFLE ASSOCIATION OF AMERICA,

(b) County of Residence of First Listed Plaintiff Fairfax County, Virginia (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Brewer, Attorneys & Counselors 750 Lexington Ave, 14th Floor, New York, New York 10022 212-489-1400

DEFENDANTS

ANDREW CUOMO, both individually and in his official capacity; MARIA T. VULLO, both individually and in her official capacity; and THE NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES

County of Residence of First Listed Defendant Albany County, New York (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): U.S. Const. amend. I; U.S. Const. amend. XIV; 42 U.S.C. § 1983. Brief description of cause: Violation of free speech and association rights; equal protection; due process rights

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 05/11/2018 SIGNATURE OF ATTORNEY OF RECORD s/ William A Brewer III

FOR OFFICE USE ONLY

RECEIPT # ANYNDC-4383332 AMOUNT \$400 APPLYING IFP JUDGE LEK MAG. JUDGE CFH

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1:18-cv-566 (LEK/CFH)

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

EXHIBIT A



APRIL 19, 2018 Albany, NY

Governor Cuomo Directs Department of Financial Services to Urge Companies to Weigh Reputational Risk of Business Ties to the NRA and Similar Organizations

Insurance Companies, Banks, and Other Financial Institutions Encouraged to Review Relationships with the NRA and Similar Organizations

Governor Andrew M. Cuomo today directed the Department of Financial Services to urge insurance companies, New York State-chartered banks, and other financial services companies licensed in New York to review any relationships they may have with the National Rifle Association and other similar organizations. Upon this review, the companies are encouraged to consider whether such ties harm their corporate reputations and jeopardize public safety.

"New York may have the strongest gun laws in the country, but we must push further to ensure that gun safety is a top priority for every individual,

company, and organization that does business across the state," **Governor Cuomo said.** "I am directing the Department of Financial Services to urge insurers and bankers statewide to determine whether any relationship they may have with the NRA or similar organizations sends the wrong message to their clients and their communities who often look to them for guidance and support. This is not just a matter of reputation, it is a matter of public safety, and working together, we can put an end to gun violence in New York once and for all."

DFS is encouraging regulated entities to consider reputational risk and promote corporate responsibility in an effort to encourage strong markets and protect consumers. A number of businesses have ended relationships with the NRA following the Parkland, Florida school shooting in order to realign their company's values. MetLife, a major insurer regulated by DFS, recently announced it was ending a discount program it offered with the NRA and Chubb, another DFS-regulated insurer, recently stopped underwriting the NRA-branded "Carry Guard" insurance program.

Financial Services Superintendent Maria T. Vullo said, "Corporations are demonstrating that business can lead the way and bring about the kind of positive social change needed to minimize the chance that we will witness more of these senseless tragedies. DFS urges all insurance companies and banks doing business in New York to join the companies that have already discontinued their arrangements with the NRA, and to take prompt actions to manage these risks and promote public health and safety.

DFS regulates more than 1,400 insurance companies with assets of \$4.3 trillion. These include 200 life insurers, 1,100 property casualty insurers, and 100 health insurance companies.

Click [here](#) for a copy of the DFS guidance that was sent to all DFS-regulated insurers and [here](#) for guidance sent to all DFS-regulated banks.

Contact the Governor's Press Office



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EXHIBIT B



**Department of
Financial Services**

MEMORANDUM

TO: The Chief Executive Officers or Equivalents of All Insurers Doing Business in the State of New York

FROM: Maria T. Vullo, Superintendent of Financial Services

DATE: April 19, 2018

RE: Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations

The New York State Department of Financial Services is issuing this guidance in the wake of several recent horrific shootings, including in Parkland, Florida that left 17 students and staff members at Marjory Stoneman Douglas High School dead. This was only one of many prior gun violence tragedies, including those in Columbine High School, Sandy Hook, Pulse night club, and the Las Vegas music festival, that left many innocent people dead.

While the social backlash against the National Rifle Association (the “NRA”), and similar organizations that promote guns that lead to senseless violence, has in the past been strong, the nature and the intensity of the voices now speaking out, including the voices of the passionate, courageous, and articulate young people who have experienced this recent horror first hand, is a strong reminder that such voices can no longer be ignored and that society, as a whole, has a responsibility to act and is no longer willing to stand by and wait and witness more tragedies caused by gun violence, but instead is demanding change now.

Our insurers are, and have been, vital to the communities they serve for generations and are guided by their commitment to corporate social responsibility, including public safety and health. Insurers’ engagement in communities they serve is closely tied to the business they do with their clients and customers and its impact on such communities. Often insurers report to their stakeholders that their performance is based on both their strategic business vision as well as on a commitment to society as a whole. There is a fair amount of precedent in the business world where firms have implemented measures in areas such as the environment, caring for the sick, and civil rights in fulfilling their corporate social responsibility. The recent actions of a number of financial institutions that severed their ties with the NRA after the AR-15 style rifle killed 17 people in the school in Parkland, Florida is an example of such a precedent.

The tragic devastation caused by gun violence that we have regrettably been increasingly witnessing is a public safety and health issue that should no longer be tolerated by the public and there will undoubtedly be increasing public backlash against the NRA and like organizations.

Our insurers are key players in maintaining and improving public health and safety in the communities they serve. They are also in the business of managing risks, including their own reputational risks, by making risk management decisions on a regular basis regarding if and how

they will do business with certain sectors or entities. In light of the above, and subject to compliance with applicable laws, the Department encourages its insurers to continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations, if any, as well as continued assessment of compliance with their own codes of social responsibility. The Department encourages regulated institutions to review any relationships they have with the NRA or similar gun promotion organizations, and to take prompt actions to managing these risks and promote public health and safety.

A handwritten signature in black ink, appearing to read "Maria T. Vullo", is written over a horizontal line.

Maria T. Vullo
Superintendent of Financial Services

EXHIBIT C



**Department of
Financial Services**

MEMORANDUM

TO: The Chief Executive Officers or Equivalents of New York State Chartered or Licensed Financial Institutions

FROM: Maria T. Vullo, Superintendent of Financial Services

DATE: April 19, 2018

RE: Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations

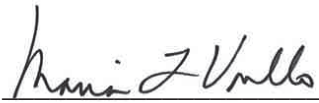
The New York State Department of Financial Services is issuing this guidance in the wake of several recent horrific shootings, including in Parkland, Florida that left 17 students and staff members at Marjory Stoneman Douglas High School dead. This was only one of many prior gun violence tragedies, including those in Columbine High School, Sandy Hook, Pulse night club, and the Las Vegas music festival, that left many innocent people dead.

While the social backlash against the National Rifle Association (the “NRA”) and similar organizations that promote guns that lead to senseless violence has in the past been strong, the nature and the intensity of the voices now speaking out, including the voices of the passionate, courageous, and articulate young people who have experienced this recent horror first hand, is a strong reminder that such voices can no longer be ignored and that society, as a whole, has a responsibility to act and is no longer willing to stand by and wait and witness more tragedies caused by gun violence, but instead is demanding change now.

Our financial institutions, whether depository or non-depository, are, and have been, the cornerstone of the communities they serve for generations and are guided by their commitment to corporate social responsibility, including public safety and health. The manner by which financial institutions engage in communities they serve is closely tied to the business they do with their clients and customers and its impact on such communities. In fact, a review of performance reports of many firms to their stakeholders demonstrates how their performance is based on both their strategic business vision as well as on a commitment to society as a whole. There is a fair amount of precedent in the business world where firms have implemented measures in areas such as the environment, healthcare, and civil rights in fulfilling their corporate social responsibility. The recent actions of a number of financial institutions that severed their ties with the NRA and have taken other actions after the AR-15 style rifle killed 17 people in the school in Parkland, Florida is an example of such a precedent.

The tragic devastation caused by gun violence that we have regrettably been increasingly witnessing is a public safety and health issue. Our financial institutions can play a significant role in promoting public health and safety in the communities they serve, thereby fulfilling their corporate social responsibility to those communities. They are also in the business of managing risks, including their own reputational risks, by making risk management decisions on a regular

basis regarding if and how they will do business with certain sectors or entities. In light of the above, and subject to compliance with applicable laws, the Department encourages its chartered and licensed financial institutions to continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations, if any, as well as continued assessment of compliance with their own codes of social responsibility. The Department encourages regulated institutions to review any relationships they have with the NRA or similar gun promotion organizations, and to take prompt actions to managing these risks and promote public health and safety.

A handwritten signature in black ink, appearing to read "Maria T. Vullo", written over a horizontal line.

Maria T. Vullo
Superintendent of Financial Services

1:18-cv-566 (LEK/CFH)

EXHIBIT D

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

In the Matter of

LOCKTON AFFINITY, LLC and
LOCKTON COMPANIES, LLC

**CONSENT ORDER UNDER
ARTICLES 21, 23 AND 34 OF THE INSURANCE LAW**

Lockton Affinity, LLC, on behalf of each of its separate operating series, one of which, Lockton Affinity Series of Lockton Affinity, LLC, is the successor entity to Lockton Risk Services, Inc. (“Lockton Affinity”), Lockton Companies, LLC, on behalf of each of its separate operating series (“Lockton Companies”) (together, Lockton Affinity and Lockton Companies, “Lockton”), and the New York Department of Financial Services (the “Department”) (collectively, the “Parties”) are willing to resolve the matters described herein without further proceedings.

THE DEPARTMENT’S FINDINGS FOLLOWING INVESTIGATION

1. Lockton, together with its affiliates, is the world's largest privately owned, independent insurance brokerage firm, offering customers risk management, insurance and employee benefits services. At least one Lockton affiliate has been licensed by the Department since approximately 1987, and Lockton Affinity has been licensed by the Department to act as an insurance producer, including as an excess line broker, since at least 2013.

2. Illinois Union Insurance Company (“Illinois Union”) is an unauthorized insurer eligible to write excess lines insurance in New York State. It is a subsidiary of Chubb Ltd., and

in connection with the “Carry Guard” program discussed herein, Illinois Union held itself out to the public simply as “Chubb” (hereinafter, “Chubb”).

3. Lloyd’s of London is an insurance market encompassing more than 50 insurance companies, over 200 registered brokers, and global network of over 4,000 local agents who manage these arrangements, known as “coverholders.”¹ The Lloyd’s market is backed by the Lloyd’s Corporation (hereinafter, together with Lloyd’s of London, collectively referred to as “Lloyd’s”).

4. The National Rifle Association of America (“NRA”) is a New York not-for-profit corporation incorporated in 1871. The NRA describes its mission as “firearms safety, education, and training and advocacy on behalf of safe and responsible gun owners.” The NRA is not licensed by the Department.

The Carry Guard Program

5. From approximately April through November 2017, Lockton Affinity and the NRA offered an insurance program to new and existing NRA members in New York and elsewhere called “Carry Guard.” During that time, the NRA’s website described the program as follows:

NRA Carry Guard is a two-pronged program. It was created to provide dynamic, state-of-the-art insurance protection to those who legally defend themselves with a firearm, and to offer an elite, one-stop training option. The insurance provides a cutting edge set of features that will help gun owners mitigate the potentially costly financial and legal consequences flowing from armed encounters, even if they did everything right.

6. The NRA website further described the Carry Guard program as “the only membership carry program *developed and supported by the National Rifle Association*, the

¹ A “coverholder” in the Lloyd’s syndicate is an insurance intermediary authorized by a managing agent to enter into contracts of insurance to be underwritten by the members of a syndicate managed by it, in accordance with the terms of a binding authority. See <https://www.lloyds.com/lloyds-around-the-world/europe/switzerland/becoming-an-intermediary-and-coverholder>.

most powerful civil rights organization in American history.” The website further stated that Carry Guard was “*created by the NRA.*”

7. Additional promotional materials disseminated by the NRA stated:

Why do I need Carry Guard? Although millions of Americans are prepared to use a firearm in self-defense, very few families can withstand the financial consequences that may come next. The legal fees to clear your good name could be enormous. Likewise, the costs of defending and potentially losing a civil lawsuit could cripple your finances for the rest of your life. *And many homeowners’ policies have severe limitations or exclusions related to intentional acts such as self-defense.*

These materials stated at the bottom of the page: “NRA CARRY GUARD™ Insurance Program Administered by Lockton Affinity, LLC • D/B/A/ Lockton Affinity Insurance Brokers, LLC.”

8. Pursuant to written agreements with Chubb and the NRA, Lockton Affinity served as the administrator for the Carry Guard program, carrying out such functions as marketing the insurance, binding the insurance, collecting and distributing premiums, and delivering policies to insureds.

9. Pursuant to written agreements with Lockton Affinity, Chubb -- through its Illinois Union subsidiary -- served as the underwriter for the Carry Guard insurance program, providing insurance policies to individuals who purchased Carry Guard insurance. According to the marketing and promotion website for the Carry Guard program, www.nracarryguard.com (in effect from April to mid-December 2017), the Carry Guard insurance program “*is backed by insurance leader Chubb*” and is underwritten by a “*group within Chubb the world’s largest publicly traded property and casualty insurance company.*” The Carry Guard insurance program is referred to herein as the “Carry Guard Program.”

10. The Carry Guard Program tied insurance to free NRA membership, in violation of the New York Insurance Law (the “Insurance Law”). When purchasing Carry Guard insurance, members would also receive one year of free NRA membership. The NRA membership benefit

was not specified in the insurance policy, and one year of membership exceeded \$25 in market value. The NRA directly managed the membership aspect of the Carry Guard program.²

11. Lockton Affinity placed these insurance policies through New York's excess line market. Excess line coverage offers policyholders an opportunity to obtain insurance that could not be procured from an authorized insurer. An "authorized insurer" is an insurance company that has received a license from the Department to provide specified types of insurance to customers in New York. Authorized insurers are fully regulated by the Department in order to ensure solvency and adherence to consumer protection standards.

12. Excess line insurers are not licensed or authorized by the Department, but are permitted to do business in New York through an excess line broker. Unless another exemption applies, an insurance policy may be procured from an excess line insurer only after an excess line broker has obtained declinations of coverage from three authorized insurers.

13. The Carry Guard insurance program, as underwritten by Chubb and administered, solicited and marketed by Lockton Affinity, provided insurance coverage that may not be offered in the New York State excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support.

14. Moreover, although it did not possess an insurance producer license from the Department, the NRA nonetheless engaged in aggressive marketing of and solicitation for the Carry Guard Program. For example (and without limitation):

² In the event the purchaser was already an NRA member, the Carry Guard program allowed the member to carry a credit for a free one year membership forward, or allowed a transfer of the credit to a family member for use in obtaining NRA membership at no cost.

- The NRA broadcasted NRA-produced videos promoting the Carry Guard Program on YouTube;
- The NRA solicited participation in the Carry Guard Program through mass e-mail marketing, direct mail, banner ads, and articles in NRA publications;
- The NRA heavily promoted the Carry Guard Program at its 2017 “Carry Guard Expo” and its annual meetings;
- The NRA operated the website “www.nracarryguard.com,” which was an important marketing portal for the Carry Guard Program and linked to a website operated by Lockton Affinity (www.lockton.nracarryguard.com), which provided additional information about the Carry Guard Program;
- The NRA promoted Carry Guard insurance on its main website, www.nra.org, which, among other things, featured an NRA spokesperson making claims such as, “*We’re proud to have developed* the one carry membership program that stands above all others – NRA Carry Guard”; and “I will never carry a gun without carrying this.”
- “Pop-up” internet advertising for the Carry Guard Program that featured one or more NRA spokespersons.

Other NRA-Endorsed Programs

15. From approximately January 2000 through March 2018, Lockton Affinity and the NRA together offered at least 11 additional insurance programs to new and existing NRA members in New York and elsewhere, including:

- a. “Retired Law Enforcement Officer Self-Defense Insurance,” which provided coverage for criminal and civil defense costs, and bodily injury and damage caused by the use of a firearm;
- b. “ArmsCare Plus Firearms Insurance,” which provided coverage for legal firearms and attached accessories against loss, damage, flood, fire, and theft (including theft from a locked vehicle);
- c. “No Cost ArmsCare Firearms Insurance,” which provided free coverage to NRA members in good standing for legal firearms and their attached accessories, up to \$2,500 in value, against loss, damage, flood, fire, and theft (including theft from a locked vehicle);
- d. “Firearms Instructor Plus Liability Insurance,” which provided coverage for injuries or damage the insured causes while acting as an instructor during a lesson, medical expenses up to \$5,000, legal expenses from lawsuits related to the injuries or damage,

and professional liability coverage that protects the member from allegations of negligent training;

- e. "Personal Firearms Protection Insurance," which provided coverage for any unintentional injuries or damage an insured causes while hunting or trapping on public or private land, shooting in competitions, or shooting at private shooting ranges, with a firearm, air gun, bow and arrow, or trapping equipment, and coverage for lawsuit defense costs;
- f. "Gun Collector Insurance," which provided coverage for certain firearms and their attached accessories against loss, damage, fire, and theft (including theft from a locked vehicle);
- g. "Gun Club Insurance," which provided coverage for loss or damage to any assets the gun club rents, leases or owns, coverage for general liability plus medical payments, coverage for claims of false advertising, and optional coverage for business income, boiler and machinery, glass, computers, valuable papers and records, and accounts receivable;
- h. "Hunt Club Insurance," which provided coverage for hunt clubs and the landowners to protect against injury and damage, provides host liquor coverage, and provided hired and non-owned auto coverage. In addition, an insured could select coverage for "personal and advertising," products/completed operations, and medical expenses up to \$5,000 for any one person;
- i. "NRA Business Alliance Insurance," which provided coverage for a firearms-related business, including coverage for loss or damage to any assets the insured business rents, leases or owns, coverage for general liability plus medical payments, coverage for claims of false advertising, gunsmith coverage, and optional coverage for business income, boiler and machinery, glass, computers, valuable papers and records, and accounts receivable;
- j. "Gun Show Insurance," which provided coverage for the insured's liability arising out of the insured's occupation as a gun show promoter; and
- k. "Home-Based Federal Firearms License Insurance" for gun dealers and gunsmiths, which provided coverage for the insured's business location, equipment and tools, and gear entrusted to the insured by the insured's clients, against theft, damage and other loss, and provides general liability coverage, including products/completed liability to insure the insured's finished work against later claims.

Together, these Lockton Affinity-administered Lloyd's insurance programs (and for a brief period, Lockton Affinity-administered Alea London Ltd. ("Alea") insurance programs), are referred to herein as the "Other NRA Programs."

16. Pursuant to written agreements with Lloyd's and the NRA, Lockton Affinity served as the administrator for the Other NRA Programs, carrying out such functions as marketing the insurance, binding the insurance, collecting and distributing premiums, and delivering policies to insureds.

17. Pursuant to written agreements with Lockton Affinity, Lloyd's and Alea served as the underwriters for the Other NRA Programs, providing insurance policies to individuals who purchased NRA-sponsored insurance. Lockton Affinity also placed these insurance policies through New York's excess line market.

Lockton Affinity's NRA Programs Violated New York Laws and Regulations

18. In violation of the Insurance Law, the Carry Guard Program, as brokered, administered, solicited and marketed by Lockton Affinity, provided insurance coverage that may not be offered in the New York State excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support.

19. Similarly, the NRA Retired Law Enforcement Officer Self-Defense Insurance Program provided insurance coverage that may not be offered in the New York State excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; and (b) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property.

20. Additionally, the Carry Guard insurance program, as administered by Lockton Affinity, failed to comply with Section 3420 of the Insurance Law, which sets forth minimum requirements for liability insurance policies.

21. Lockton Affinity also violated the Insurance Law by giving or offering to give: (a) the No Cost ArmsCare Firearms Insurance for free to NRA members in good standing; and (b) free NRA membership, which the insured could use him or herself, or transfer to a family member, if a person purchased the Carry Guard insurance, when the free NRA membership was not specified in the insurance policy and exceeded \$25 in market value.

22. Lockton has represented to the Department that, between approximately April and November 2017, 680 Carry Guard insurance policies were issued to New York residents. Lockton has further represented to the Department that no claims have been submitted under the New York Carry Guard insurance policies to date.

23. Lockton has also represented to the Department that, for the period January 2000 through March 25, 2018, 28,015 insurance policies were issued to New York residents under the Other NRA Programs.

24. Under written agreements between Lockton Affinity and the NRA, as of March 25, 2018, Lockton has represented that the NRA received royalties on the Carry Guard Program in the amount of about \$21,198, an amount based on a percentage of the actual premiums collected by Lockton Affinity under the Carry Guard Program from New York residents, in violation of the Insurance Law. Similarly, under written agreements between Lockton Affinity and the NRA, the NRA received additional royalties under the Other NRA Programs based on a percentage of premiums collected by Lockton Affinity from New York residents, similarly violating the Insurance Law.

25. Lockton has represented to the Department that revenue to the NRA from the Carry Guard Program and the Other NRA Programs in New York totaled approximately \$1,872,737 for the period January 2000 through March 25, 2018. Under written agreements between Lockton Affinity and the NRA, the NRA also received profit-sharing disbursements from Lockton Affinity based on a schedule agreed to by the parties in conjunction with the Other NRA Programs.

26. Between January 2000 and March 25, 2018, Lockton has represented to the Department that Lockton Affinity collected premiums from the Carry Guard Program and the Other NRA Programs in New York amounting to approximately \$12,056,627. Lockton has also represented that it collected approximately \$785,460 in administrative fees from insureds under the Carry Guard Program and the Other NRA Programs in New York during this time period.

Lockton Affinity Submitted Inaccurate Affidavits Required By the Insurance Law Pertaining to Excess Lines Insurance Coverage

27. Lockton Affinity, through one or more of its sublicensees, submitted affidavits to the Excess Line Association of New York (“ELANY”) required by Insurance Law § 2118 in connection with the Carry Guard Program and the Other NRA Programs. As set forth below, those affidavits contained inaccurate information concerning compliance with the Insurance Law and regulations promulgated thereunder.

28. As noted above, an authorized insurer is an insurance company that is licensed by the Department to write certain kinds of insurance in New York, as specified in Insurance Law § 1113(a). Authorized insurers are fully regulated by the Department in order to ensure solvency and adherence to consumer protection standards. An unauthorized insurer is an insurer not licensed by the Department to write insurance in New York, and may be an insurer that provides “excess line” insurance only under prescribed rules.

29. Under the Insurance Law, unless another exemption applies, an excess line broker like Lockton Affinity that seeks to procure excess line insurance must first approach three separate authorized insurers to determine if any one of those insurers will write coverage for the risk. If all three authorized insurers decline to provide the requested coverage, only then may the excess line broker place the insurance with an unauthorized insurer like Chubb. An excess line broker must seek three declinations for each insured; the broker may not rely upon declinations obtained with respect to other insureds.

30. In placing the Carry Guard Program and Other NRA Program insurance policies, Lockton Affinity only obtained declinations from three authorized insurers once annually for a single policy for each of these insurance programs, and then relied upon the single annual declination with respect to all other insureds who received policies under these programs. At least one Lockton Affinity sublicensee affirmed that, to the best of his knowledge and belief, every policy procured by the sublicensee on behalf of Lockton Affinity was in full compliance with the Insurance Law and regulations promulgated thereunder, when, in truth and in fact, the sublicensee had not secured such declinations in compliance with the Insurance Law.

The Department's Investigation

31. Since October 2017, the Department has been conducting an investigation of the involvement of Chubb, Lloyd's, Lockton and the NRA in the Carry Guard Program, the Other NRA Programs, and other matters, including review of thousands of pages of documents obtained from Chubb, Lockton and the NRA, and review of other information obtained from investigative resources (the "DFS Investigation").

32. Lockton has represented to the Department that, following initiation of the DFS Investigation in October 2017, which included information requests sent to Lockton in October

2017, Lockton Affinity suspended the Carry Guard Program on or about November 17, 2017, no longer making Carry Guard policies available for New York residents to purchase.

33. **NOW THEREFORE**, to resolve this matter without further proceedings, pursuant to Articles 21, 23 and 34 of the Insurance Law, Lockton Affinity, Lockton Companies, and the Department hereby stipulate and agree as follows:

VIOLATIONS OF LAW AND REGULATIONS

34. Lockton Affinity compensated the NRA based on actual premium collected when the NRA was acting as an unlicensed insurance broker by selling and soliciting insurance in New York, in violation of Insurance Law § 2116.

35. Lockton Affinity acted for and aided an unauthorized Chubb insurer, Illinois Union, in connection with Illinois Union's issuing or delivering policies in New York State, or otherwise issuing policies covering New York State residents, which provided insurance coverage that may not be offered in the New York State excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support, in violation of Insurance Law § 2117.

36. Lockton Affinity gave, or offered to give, a free one-year NRA membership if a person purchased the Carry Guard Program insurance policy, when the NRA membership benefit was not specified in the policy and exceeded \$25 in market value, in violation of Insurance Law § 2324(a).

37. Lockton Affinity gave, or offered to give, the No Cost ArmsCare Firearms Insurance at no cost to NRA members in good standing, in violation of Insurance Law § 2324(a).

38. Lockton Affinity advertised the financial condition of a Chubb insurer by referring to the insurer's AM Best rating, in violation of Insurance Law § 2122(a)(1).

39. Lockton Affinity called attention to an unauthorized Chubb insurer by advertising Chubb's participation in the Carry Guard Program on the Carry Guard website, in violation of New York Insurance Law § 2122(a)(2).

40. Lockton Affinity failed to properly secure declinations from authorized insurers for each insured, in violation of Insurance Law § 2118.

SETTLEMENT PROVISIONS

Civil Monetary Penalty

41. Lockton Affinity shall pay a civil monetary penalty to the Department pursuant to Articles 21, 23 and 34 of the Insurance Law in the amount of \$7,000,000. Lockton Affinity shall pay the entire amount within ten days of executing this Consent Order. Lockton Affinity agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. Lockton further agrees that it will not claim, seek, or receive indemnification of the civil monetary penalty from any other person or entity. This provision is not intended, and shall not be construed, to prohibit Lockton affiliates from funding inter-company transfers to Lockton Affinity.

Prohibition on NRA-Endorsed Insurance Programs

42. Lockton agrees not to participate in the Carry Guard Program, any similar programs, or any other NRA-endorsed programs with regard to New York State, including,

without limitation, (a) by agreeing not to provide Carry Guard or other insurance policies specific to firearm usage that provides liability coverage for bodily injury or property damage from use of a firearm, whether they are written or issued in New York State or elsewhere; and (b) by agreeing not to provide liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in general liability policies that is not limited to those occasions where bodily injury results from the use of reasonable force to protect persons or property, whether they are written or issued in New York State or elsewhere; provided, however, that Lockton Affinity may provide runoff administration for any in-force policies not cancelled pursuant to Paragraph 46. Furthermore, Lockton agrees not to issue or deliver any Carry Guard or similar insurance policies in New York State, regardless of the residence of the insured. For the avoidance of doubt, Lockton shall not be prohibited from procuring homeowners, renters or general liability insurance in New York State or for New York residents that includes personal injury liability insurance or property damage liability insurance for loss, damage, or expense that results from the negligent use of a firearm.

43. Lockton agrees that it shall not enter into any agreement or program with the NRA to underwrite or participate in any affinity-type insurance program involving any line of insurance to be issued or delivered in New York State or to anyone known to Lockton to be a New York resident; provided, however, that Lockton may assist the NRA in procuring insurance for the NRA's own corporate operations.

44. Lockton confirms and represents to the Department that, between approximately April and November 2017, 680 Carry Guard insurance policies were issued to New York residents. Lockton confirms and hereby represents to the Department that no claims have been submitted under the New York Carry Guard insurance policies to date.

45. Lockton confirms and represents to the Department that:
 - a. for the period January 2000 through March 25, 2018, 28,015 insurance policies were issued to New York residents under the Other NRA Programs;
 - b. Under written agreements between Lockton Affinity and the NRA, as of March 25, 2018, the NRA received royalties from the Carry Guard Program in New York in the amount of approximately \$21,198;
 - c. Total revenue to the NRA from the Carry Guard Program and the Other NRA Programs in New York totaled approximately \$1,872,737 for the period January 2000 through March 25, 2018;
 - d. Lockton Affinity collected premiums from the Carry Guard Program and the Other NRA Programs in New York amounting to approximately \$12,056,627 for the period January 2000 through March 25, 2018;
 - e. Lockton Affinity collected approximately \$785,460 in administrative fees from insureds under the Carry Guard Program and the Other NRA Programs in New York during the period January 2000 through March 25, 2018.

46. Lockton agrees to fully cooperate with Chubb, Lloyd's and Alea (the "Underwriters") to effect any cancellation initiated by an Underwriter of Carry Guard insurance policies issued to New York residents, NRA Retired Law Enforcement Officer Self-Defense Insurance policies issued to New York residents, and any other NRA-related insurance policies issued to New York residents that provide coverage for intentional acts or legal services insurance that were procured by Lockton Affinity, such cancellation to be effective 90 days from the date of such notice. Lockton agrees to cooperate with the Underwriters in submitting any such draft notices to the Department for the Department's review and approval prior to the

mailing or delivery of such notices by the Underwriters. Lockton Affinity also agrees to fully cooperate in refunding the insurance premiums for the cancelled policies. Thereafter, Lockton Affinity shall promptly file a certification with the Department that sets forth its compliance with this Paragraph 46.

47. Lockton Affinity agrees not to procure from an unauthorized insurer any insurance policy to be issued or delivered in New York State, or to anyone known to Lockton Affinity to be a New York resident, in the New York State excess line market that provides: (a) defense coverage in a criminal proceeding; (b)(i) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in an insurance policy limited to use of firearms and that is beyond the use of reasonable force to protect persons or property, or (ii) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in general liability policies that is not limited to those occasions where bodily injury results from the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support. For the avoidance of doubt, Lockton shall not be prohibited from procuring homeowners, renters or general liability insurance in New York State or for New York residents that includes personal injury liability insurance or property damage liability insurance for loss, damage, or expense that results from the negligent use of a firearm.

Full and Complete Cooperation of Lockton

48. Lockton commits and agrees to fully cooperate with the DFS Investigation and all terms of this Consent Order. Such cooperation shall include, without limitation:

- a. producing all non-privileged documents and other materials to the Department, as requested, wherever located in Lockton's possession, custody, or control;
- b. requiring employees or agents to appear for interviews, at such reasonable times and places, as requested by the Department;
- c. responding fully and truthfully in a prompt manner to all inquiries when requested to do so by the Department; and
- d. testifying at hearings, trials and other judicial, administrative or other proceedings, when requested to do so by the Department, in connection with its investigation of matters relating to any NRA-endorsed insurance program.

Compliance Review

49. Lockton agrees to fully and completely cooperate with the DFS Investigation by providing a truthful, accurate and complete report to the Department, within 60 days of the execution of this Consent Order (the "Compliance Review"), that reports on:

- a. any additional violations of the Insurance Law, or regulations promulgated thereunder, that Lockton has identified;
- b. any actions undertaken by Lockton to identify any violations of the Insurance Law, or the regulations promulgated thereunder; and
- c. a plan for remediation of any violation of the Insurance Law, or regulations promulgated thereunder, identified in connection with the Carry Guard Program, the Other NRA Programs, or any other insurance program or conduct that violates the Insurance Law, or regulations promulgated thereunder.

The Department may, in its sole regulatory discretion, accept, reject, or modify any plan of remediation submitted by Lockton.

Breach of Consent Order

50. If the Department believes Lockton or Lockton Affinity to be in material breach of this Consent Order, the Department will provide written notice to Lockton and/or Lockton Affinity and Lockton and/or Lockton Affinity (as the case may be) must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

51. The Parties understand and agree that Lockton's and/or Lockton Affinity's failure to make the required showing within the designated time period shall be presumptive evidence of such party's breach. Upon a finding that Lockton and/or Lockton Affinity has breached this Consent Order, the Department has all the remedies available to it under the New York Insurance and Financial Services Laws and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Waiver of Rights

52. The Parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

Parties Bound by the Consent Order

53. This Consent Order is binding on the Parties, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

54. No further action will be taken by the Department against Lockton in connection with the Carry Guard Program and the Other NRA Programs for the period January 1, 2000 through March 31, 2018, provided that Lockton complies fully with the terms of this Consent Order, including Paragraphs 48 and 49 above.

55. Notwithstanding any other provision contained in this Consent Order, the Department may undertake action against Lockton for transactions or conduct that Lockton did not disclose to the Department in the written materials that Lockton submitted to the Department in connection with this matter, including, without limitation, any transactions or conduct that Lockton identifies to the Department pursuant to the Compliance Review that it will undertake as set forth in Paragraph 49 of this Consent Order.

Notices

56. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

For the Department:

Hadas Jacobi
Assistant Deputy Superintendent
for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Megan Prendergast
Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Connor Mealey
Excelsior Fellow
New York State Department of Financial Services
One State Street
New York, NY 10004

For Lockton Companies, LLC:

William Humphrey
Secretary
Lockton Companies
444 West 47th Street
Kansas City, MO 64112

Scott A. Edelman
Milbank, Tweed, Hadley & McCloy
28 Liberty Street
New York, NY 10005

Andrew R. Holland
Sidley Austin
787 Seventh Avenue
New York, NY 10019

For Lockton Affinity, LLC:

William Humphrey
Secretary
Lockton Affinity
444 West 47th Street
Kansas City, MO 64112

Scott A. Edelman
Milbank, Tweed, Hadley & McCloy
28 Liberty Street
New York, NY 10005

Andrew R. Holland
Sidley Austin
787 Seventh Avenue
New York, NY 10019

Miscellaneous.

57. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.

58. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 2nd day of May, 2018.

**LOCKTON COMPANIES, LLC, on
behalf of each of its separate operating series,**


By: 
WILLIAM HUMPHREY
Secretary

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

By: 
MARIA T. VULLO
Superintendent of Financial Services

**LOCKTON AFFINITY, LLC, on
behalf of each of its separate operating series,**

By: 
WILLIAM HUMPHREY
Secretary

By: 
MATTHEW L. LEVINE
Executive Deputy Superintendent for
Enforcement

1:18-cv-566 (LEK/CFH)

EXHIBIT E

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

In the Matter of

CHUBB GROUP HOLDINGS INC. and
ILLINOIS UNION INSURANCE COMPANY.

**CONSENT ORDER UNDER
SECTIONS 1102 AND 3420 OF THE INSURANCE LAW**

Chubb Group Holdings Inc., its subsidiary, Illinois Union Insurance Company (“Illinois Union”) (together, “Chubb”) and the New York Department of Financial Services (the “Department”) are willing to resolve the matters described herein without further proceedings.

THE DEPARTMENT’S FINDINGS FOLLOWING INVESTIGATION

1. Chubb is the world’s largest publicly-traded property and casualty insurance company, and the largest commercial insurer in the United States. Chubb has operations in 54 countries and territories, providing commercial and personal property and casualty insurance, personal accident and supplemental health insurance, reinsurance and life insurance to customers. Several Chubb subsidiaries have been licensed by the Department to conduct certain types of insurance business in the State of New York since at least 1922. Illinois Union, a Chubb subsidiary, is an unauthorized insurer that is eligible to write excess line insurance in New York State.

2. In connection with the “Carry Guard” insurance program discussed herein, Illinois Union held itself out to the public simply as “Chubb.”

3. Lockton Companies, LLC (“Lockton”) is the world’s largest privately owned, independent insurance brokerage firm, offering customers risk management, insurance and

employee benefits services. At least one of its affiliates has been licensed by the Department since approximately 1987. Lockton Affinity, LLC (“Lockton Affinity”) is an affiliate of Lockton Companies, and has been licensed by the Department to act as an excess line insurance broker since at least 2013.

4. The National Rifle Association of America (“NRA”) is a New York not-for-profit corporation incorporated in 1871. The NRA describes its mission as “firearms safety, education, and training and advocacy on behalf of safe and responsible gun owners.” The NRA is not licensed by the Department.

5. From approximately April through November 2017, the NRA offered an insurance program to new and existing members resident in New York called “Carry Guard.” According to the NRA’s website:

NRA Carry Guard is a two-pronged program. It was created to provide dynamic, state-of-the-art insurance protection to those who legally defend themselves with a firearm, and to offer an elite, one-stop training option. The insurance provides a cutting edge set of features that will help gun owners mitigate the potentially costly financial and legal consequences flowing from armed encounters, even if they did everything right.

The NRA website further described the Carry Guard program as “the only membership carry program *developed and supported by the National Rifle Association*, the most powerful civil rights organization in American history.” The website further stated that Carry Guard was “*created by the NRA.*”

6. Additional promotional materials disseminated by the NRA stated:

Why do I need Carry Guard? Although millions of Americans are prepared to use a firearm in self-defense, very few families can withstand the financial consequences that may come next. The legal fees to clear your good name could be enormous. Likewise, the costs of defending and potentially losing a civil lawsuit could cripple your finances for the rest of your life. *And many homeowners’ policies have severe limitations or exclusions related to intentional acts such as self-defense.*

These materials stated at the bottom of the page: “NRA CARRY GUARD™ Insurance Program Administered by Lockton Affinity, LLC • D/B/A/ Lockton Affinity Insurance Brokers, LLC.”

7. Pursuant to written agreements with Lockton, Chubb -- through Illinois Union -- served as the underwriter for the Carry Guard insurance program, providing insurance policies to individuals who purchased Carry Guard insurance. Lockton Affinity placed these insurance policies through New York’s excess line insurance market.

8. Pursuant to written agreements between Chubb/Illinois Union and Lockton Affinity, and between Lockton Affinity and the NRA, Lockton Affinity served as the administrator for the insurance program, carrying out such functions as marketing the insurance, binding the insurance, collecting and distributing premiums, and delivering policies to insureds.

9. Without a license by the Department, the NRA engaged in aggressive marketing of and solicitation for the Carry Guard insurance program. For example (and without limitation):

- The NRA broadcasted NRA-produced videos promoting the Carry Guard insurance program on YouTube;
- The NRA solicited participation in the Carry Guard insurance program through mass e-mail marketing, direct mail, banner ads, and articles in NRA publications;
- The NRA heavily promoted the Carry Guard insurance program at its 2017 “Carry Guard Expo” and its annual meetings;
- The NRA operated the website “www.nracarryguard.com,” which was an important marketing portal for the Carry Guard insurance program and linked to a website operated by Lockton Affinity (www.lockton.nracarryguard.com), which provided additional information about the Carry Guard insurance program;

- The NRA promoted Carry Guard insurance on its main website, www.nra.org, which, among other things, featured an NRA spokesperson making claims such as, “*We’re proud to have developed* the one carry membership program that stands above all others – NRA Carry Guard”; and “I will never carry a gun without carrying this.”; and

- “Pop-up” internet advertising for the Carry Guard insurance program that featured one or more NRA spokespersons.

10. The Carry Guard insurance program, as underwritten by Chubb/Illinois Union and administered, solicited and marketed by Lockton Affinity, unlawfully provided insurance coverage that may not be offered in the New York State excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended from the insured’s standpoint in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support.

11. The Carry Guard insurance program, as underwritten by Chubb/Illinois Union and administered by Lockton Affinity, failed to comply with Section 3420 of the Insurance Law, which sets forth minimum requirements for liability insurance policies.

12. Moreover, in underwriting and administering the Carry Guard insurance program at the behest of the NRA, with knowledge that the NRA did not have a license to conduct insurance business from the Department, Chubb/Illinois Union and Lockton Affinity engaged in practices with an unlicensed party, the NRA, in a manner that resulted in violations of the Insurance Law.

13. Chubb/Illinois Union has represented to the Department that, between approximately April and November 2017, 681 Carry Guard insurance policies were issued to New York

residents; and has represented to the Department that no claims have been submitted under the Carry Guard insurance policies to date by New York residents.

14. Under the written agreements between Lockton Affinity and the NRA, the NRA was entitled to and did receive a variety of compensation in connection with the Carry Guard insurance program, even though it had no license from the Department, including as follows:

- The NRA was entitled to be paid half of the “administrative fee” collected by Lockton Affinity from Carry Guard insureds for purported but unspecified services;
- The NRA was entitled to receive certain royalties from Lockton Affinity for use of the NRA’s name in conjunction with the Carry Guard insurance program; and
- The NRA was entitled to receive 100 percent of certain “profit sharing” awards arising out any funds generated and paid from a certain Lloyd’s insurance policy.

15. Since October 2017, the Department has been conducting an investigation of the involvement of Chubb, Lockton and the NRA in the Carry Guard insurance program and other matters, including a review of thousands of pages of documents obtained from Chubb, Lockton and the NRA, as well as other information obtained from investigative resources (the “DFS Investigation”).

16. Following initiation of the DFS Investigation in October 2017, which included document and information requests sent to Chubb in October 2017, Chubb and Illinois Union suspended participation in the Carry Guard program on or about November 17, 2017, and ceased making available Carry Guard policies for New York residents to purchase.

17. **NOW THEREFORE**, to resolve this matter without further proceedings, pursuant to Sections 1102 and 3420 of the Insurance Law, Chubb, Illinois Union, and the Department (collectively, the “Parties”) hereby stipulate and agree as follows:

VIOLATIONS OF LAW AND REGULATIONS

18. Chubb, through Illinois Union, engaged in the business of insurance without a license by issuing or delivering policies in New York State, or otherwise issuing policies covering New York State residents, which provided insurance coverage that may not be offered in the New York State excess line market, specifically: (a) defense coverage in a criminal proceeding that is not permitted by law; (b) liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in an insurance policy limited to use of firearms and that was beyond the use of reasonable force to protect persons or property; and (c) coverage for expenses incurred by the insured for psychological counseling support, in violation of Insurance Law § 1102.

19. Chubb, through Illinois Union, issued liability insurance coverage to New York residents that failed to contain required liability insurance policy provisions, in violation of Insurance Law § 3420.

SETTLEMENT PROVISIONS

Civil Monetary Penalty

20. Chubb shall pay a civil monetary penalty to the Department pursuant to Sections 1102 and 3420 of the Insurance Law in the amount of \$1,300,000. Chubb shall pay the entire amount within ten days of executing this Consent Order. Chubb agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order. Chubb further agrees that it will not claim, seek, or receive indemnification of the civil monetary penalty from any other person or entity.

Prohibition on Carry Guard and Other Insurance Programs

21. Chubb and Illinois Union agree not to participate in the Carry Guard insurance program or any similar program with regard to New York State, including, without limitation, by agreeing not to provide Carry Guard or other insurance policies specific to firearm usage that provide liability coverage for bodily injury or property damage from use of a firearm; and by agreeing not to provide liability coverage for bodily injury or property damage expected or intended from the insured's standpoint in general liability policies that is not limited to those occasions where bodily injury results from the use of reasonable force to protect persons or property, whether they are written or issued in New York State or elsewhere. Furthermore, Chubb and Illinois Union agree not to issue or deliver any Carry Guard or similar insurance policies in New York State, regardless of the residence of the insured. For the avoidance of doubt, Chubb and Illinois Union shall not be prohibited from providing homeowners, renters or general liability insurance in New York State or for New York residents that includes personal injury liability insurance or property damage liability insurance for loss, damage, or expense that results from the negligent use of a firearm.

22. Chubb and Illinois Union agree that they shall not enter into any agreement or program with the NRA to underwrite or participate in any affinity-type insurance program involving any line of insurance; provided, however, that the NRA may itself purchase insurance from Chubb for the sole purpose of obtaining insurance for the NRA's own corporate operations. Chubb and Illinois Union further agree that they shall not enter into any affinity-type insurance program without undertaking reasonable due diligence to ensure that any entity involved in the issuance, brokering, administration or marketing of such affinity insurance program is acting in compliance with the Insurance Law and the regulations promulgated thereunder, including but

not limited to, any licensure requirements of the Insurance Law or regulations promulgated thereunder.

23. Chubb/Illinois Union has represented to the Department that, between approximately April and November 2017, 681 Carry Guard insurance policies were issued to New York residents; and has represented to the Department that no claims have been submitted under the Carry Guard insurance policies to date by New York residents.

24. Within 10 business days of the execution of this Consent Order, Illinois Union shall mail or deliver to all New York State insureds notice stating that Illinois Union is canceling the insured's Carry Guard insurance policy effective 90 days from the date of notice. Illinois Union agrees to submit the draft notices to the Department for the Department's review and approval prior to Illinois Union mailing or delivering such notices. Illinois Union also agrees to fully refund the insurance premiums for the cancelled policies. Thereafter, Illinois Union shall promptly file a certification with the Department that sets forth its compliance with this Paragraph 24.

25. Chubb and Illinois Union agree not to issue or deliver in New York State an insurance policy, or otherwise issue an insurance policy covering a New York State resident, that provides defense coverage in a criminal proceeding unless expressly permitted by law.

26. Illinois Union and any other unauthorized Chubb insurer agree not to issue or deliver in New York State an insurance policy, or otherwise issue an insurance policy covering a New York State resident, that provides insurance for expenses incurred for psychological counseling support because such conduct violates the Insurance Law.

Full and Complete Cooperation of Chubb

27. Chubb and Illinois Union commit and agree to fully cooperate with the DFS Investigation and all terms of this Consent Order. Such cooperation shall include, without limitation:

- a. producing all non-privileged documents and other materials to the Department, as requested, wherever located in the possession, custody, or control of Chubb or Illinois Union;
- b. requiring employees or agents to appear for interviews, at such reasonable times and places, as requested by the Department;
- c. responding fully and truthfully in a prompt manner to all inquiries when requested to do so by the Department; and
- d. testifying at hearings, trials and other judicial, administrative or other proceedings, when requested to do so by the Department, in connection with its investigation of matters relating to the Carry Guard insurance program.

Breach of Consent Order

28. If the Department believes Chubb or Illinois Union to be in material breach of this Consent Order, the Department will provide written notice to Chubb or Illinois Union and Chubb or Illinois Union must, within ten business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

29. The parties understand and agree that the failure of Chubb or Illinois Union to make the required showing within the designated time period shall be presumptive evidence of Chubb's

or Illinois Union's breach. Upon a finding that Chubb or Illinois Union has breached this Consent Order, the Department has all the remedies available to it under New York Insurance and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Waiver of Rights

30. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

Parties Bound by the Consent Order

31. This Consent Order is binding on the Department, Chubb and Illinois Union, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

32. No further action will be taken by the Department against Chubb for the specific conduct set forth in this Consent Order, provided that Chubb complies fully with the terms of this Consent Order, including paragraph 27 above.

33. Notwithstanding any other provision contained in this Consent Order, the Department may undertake action against Chubb or Illinois Union for transactions or conduct that Chubb or Illinois Union did not disclose to the Department in the written materials that Chubb and Illinois Union submitted to the Department in connection with this matter.

Notices

34. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

For the Department:

Hadas Jacobi
Assistant Deputy Superintendent
for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Megan Prendergast
Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Connor Mealey
Excelsior Fellow
New York State Department of Financial Services
One State Street
New York, NY 10004

For Chubb:

Kevin Rampe
General Counsel
Chubb Group
1133 Avenue of the Americas
New York, NY 10036

John P. Mulhern
Drinker, Biddle & Reath LLP
1177 Avenue of the Americas
New York, NY 10036

For Illinois Union:

Kevin Rampe
General Counsel
Chubb Group
1133 Avenue of the Americas
New York, NY 10036

John P. Mulhern
Drinker, Biddle & Reath LLP
1177 Avenue of the Americas
New York, NY 10036


Miscellaneous

35. Each provision of this Consent Order shall remain effective and enforceable until stayed, modified, suspended, or terminated by the Department.


36. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of the Consent Order.

IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed this 7th day of May, 2018.

CHUBB GROUP HOLDINGS INC.

By: 
JOSEPH WAYLAND
Executive Vice President and
General Counsel

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

By: 
MARIA T. VULLO
Superintendent of Financial Services

**ILLINOIS UNION INSURANCE
COMPANY**

By: 
JOSEPH WAYLAND


By: 
MATTHEW L. LEVINE
Executive Deputy Superintendent for
Enforcement

EXHIBIT F

The New York Times

Lloyd's Underwriters Told to Stop Insurance Linked to NRA

By Reuters

May 9, 2018

LONDON — Lloyd's of London [SOLYD.UL] said on Wednesday it would direct underwriters to terminate all insurance offered, marketed, endorsed or otherwise made available through the National Rifle Association of America.

The move comes after insurer Chubb was fined \$1.3 million over its role in an NRA insurance program after an investigation found the NRA's "Carry Guard" insurance program unlawfully provided liability insurance "to gun owners for acts of intentional wrongdoing".

"The Lloyd's Corporation has given very careful consideration as to whether syndicates at Lloyd's should continue to insure programs offered, marketed, endorsed or otherwise made available through the National Rifle Association of America (NRA).

"This is now subject to an inquiry by the New York Department of Financial Services (NYDFS). Therefore Lloyd's Corporation has decided to direct underwriters in the market to terminate any existing programs of this type and not to enter into any new ones," a Lloyd's spokesman said.

(Reporting by Simon Jessop; editing by Maiya Keidan)