NATIONAL RIFLE ASSOCIATION OF AMERICA
OFFICE OF THE PRESIDENT
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CONFIDENTIAL

NRA

John Frazer
Secretary & General Counsel, National Rifle Association of America

Charles Cotton
Chairman of the Audit Committee, National Rifle Association of America

April 18, 2019

Dear John and Charles:

As indicated in previous correspondence, we and others continue to be deeply concerned about the extraordinary legal fees the NRA has incurred with Brewer Attorneys & Counselors. The amount appears to be approximately $24 million over a 13-month period, $5 million of which apparently has been reimbursed in connection with the Lockton settlement.

Because of the extraordinary size of the Brewer firm's invoices, our NRA Board Counsel advised us to exercise our fiduciary duty to ensure all the NRA has paid (and allegedly still owe) the Brewer firm is reasonable, appropriate, and subject to proper oversight and accountability. To that end, we have asked several times over the past two months for NRA management to retain an outside, independent review of the Brewer firm's invoices. Thus far there has been no action.

In order to fulfill our fiduciary responsibilities to management, our fellow NRA board members, our donors, the public—and to comply with New York not-for-profit law-–our Board Counsel has urged us to formally request the engagement of a well-respected ethics lawyer who would perform the long-sought outside independent examination.

Further, in separate meetings we had with Mr. Brewer on 15 and 20 March 2019, he informed us that the NRA has been "lax" about "vendor-fee management" in the past. We are deeply concerned this "lax management" situation is extant with respect to the Brewer firm's past and now accelerating legal fees.

There are seven reasons why the NRA must engage an independent, outside expert to review the Brewer invoices immediately.

(703) 267-1040
(703) 267-3936 fax

***First*, the Brewer firm's invoices appear to be excessive on their face.**

The Brewer invoices are draining NRA cash at mindboggling speed.

Based on information provided to us over a month ago by our Secretary & General Counsel, the first 12 invoices the NRA received from the Brewer firm were for these amounts:

Date	Brewer Firm Invoice
March 2018	$ 25,000.00
April 2018	$ 1,011,184.04
May 2018	$ 1,409,622.82
June 2018	$ 1,730,571.18
July 2018	$ 1,839,535.17
August 2018	$ 1,839,743.68
September 2018	$ 1,883,351.80
October 2018	$ 1,892,735.45
November 2018	$ 2,043,746.51
December 2018	$ 1,847,898.88
January 2019	$ 1,887,452.55
February 2019	$ 1,849,610.20
TOTAL:	**$ 19,260,452.28**

Invoices of this size for 12 months of work appear to be excessive and pose an existential threat to the financial stability of the NRA. This is a fiscal emergency, yet we have been unable to get management to engage an outside, independent review to ensure these bills are necessary and reasonable.

More alarming still, are the most recent figures provided in the table below by our Treasurer & Chief Financial Officer. His data indicates the Brewer firm's invoices for 1st Quarter 2019 total more than $8.8 million—over $2.9 million per month—or $97,787 per day, seven days a week, every day of every month.

Invoices of this extraordinary magnitude deserve immediate attention, oversight, and a careful, competent and unbiased examination. $97,000 + a day is a stunning amount of money for any organization to pay. It cries out for an outside, independent review.

Brewer Attorneys & Counselors Paid & Owed 2018 & 1st Q 2019

2018			Comments
Invoiced Services – Paid	$ 15,523,390		Paid
Lockton Settlement – Rcvd	(4,500,000)		Reimbursement Rcvd
2018 Total net of reimbursements		**$ 11,023,390**	
2019			
Invoiced Services – Paid	$ 5,609,388		Paid
Invoiced Services – Owed	3,191,512		Accrued (owed)
Lockton Reimbsmt – Rcvd	(651,746)		Reimbursement Rcvd
Lockton Reimbsmt – Owed	(617,785)		Owed but not Rcvd
2019 Total net of reimbursements		**$ 7,531,370**	
Total Gross	**$ 24,324,290**		Paid or owed to Brewer
Total Net		**$ 18,554,759**	After reimbursement

***Second*, the secrecy surrounding the Brewer firm's invoices is alarming.**

We, and others, have made multiple requests and recommendations for an outside, independent review of the Brewer firm's invoices. All these requests have been denied. The secrecy surrounding these large invoices causes suspicion and raises questions.

On the advice of our Board Counsel that it was our fiduciary duty to do so, we have made the following requests regarding the Brewer invoices:

- February 25, 2019, President North asked our General Counsel/Secretary to be shown the Brewer invoices. He told President North he had been instructed not to show the invoices.

- February 26, 2019, President North, 1st VP Richard Childress and 2nd VP Carolyn Meadows, wrote to the Executive Vice President requesting the Brewer firm's invoices. The request was denied.

- On March 22, 2019, President North, 1st VP Richard Childress and 2nd VP Carolyn Meadows, wrote to the Audit Committee requesting that the Audit Committee retain and oversee an outside, independent review of the Brewer invoices. As yet, there is no response.

- On March 31, 2019, President North wrote to our Executive Vice President asking that he order an outside, independent review of the Brewer invoices. He refused.

- On April 8, 2019, President North wrote to our Executive Vice President urging him to end this controversy by ordering an outside, independent review of the Brewer firm's invoices. He again refused.

In Q1 2019 the NRA paid the Brewer firm more than $2.9 million per month. The fact that these billings are being shielded from review by an outside, independent auditor is alarming. If the bills are reasonable and properly documented, why the refusal to conduct an independent review?

***Third*, the Brewer firm's engagement letter is inconsistent with industry standards.**

The NRA's March 2018 engagement letter with the Brewer firm is inconsistent with industry standards. There are several problems with the engagement letter, all to the disadvantage of the NRA, including:

- The Brewer firm's engagement letter is vague regarding the scope of work that Brewer is performing for the NRA. The letter simply says the Brewer firm is performing legal services "in connection with litigation and strategic needs [?] arising from the termination, or potential termination, of key corporate relationships by contract counterparties in response to political pressure." It appears that the Brewer firm has far exceeded this scope—without proper written documentation. As we understand it, the standard in the legal profession is to require engagement letters for each separate matter, and to adequately document the scope of work that will be performed on each matter.

- The Brewer firm's engagement letter states it is charging the NRA "on an hourly basis" at "its usual and customary rates." But the NRA is a not-for-profit entity. Paying "rack rates" to the Brewer firm makes no sense. Law firms usually reduce rates when representing non-profits. Why no reduction for the NRA?

- The Brewer firm's engagement letter states the firm "requires payment of all expenses associated with this representation, including both in-house and third-party disbursements. In-house charges for support services may exceed the actual cost of providing such services." The letter identifies messenger costs, work processing charges, and telecommunications as examples. It makes no sense for the client of a law firm to pay surcharges on "in-house charges."

- The Brewer firm's engagement letter states the firm uses "I & A International, a company which is owned by partners of the Firm, to provide document abstracting." These costs apparently get passed along (at a surcharge?) to the NRA, but are they commercially reasonable? Have we looked at the market rate for such services?

- The Brewer firm's engagement letter says Texas law will apply, and that if we have a dispute with Brewer we must resolve it through arbitration where the loser pays all attorney fees. These provisions are not in the NRA's interests. Indeed, they are unusual and harmful to the NRA. Texas law? No Virginia-based non-profit should agree to that. Arbitration? That denies the leverage the NRA needs to compel honest and ethical legal services. Loser pays? This is a concept from English law—and is not used in America.

It is obvious that in addition to the high fees and secrecy surrounding the Brewer firm's invoices, we apparently have lax oversight regarding our engagement of the Brewer firm and the scope of what the Brewer firm should be doing, how they are billing us and the rates they are charging. These matters are key elements of our fiduciary duty and must be addressed by an outside, independent review.

The Brewer firm's March 2018 engagement letter should be discarded and re-written. If the Brewer firm does not agree to standard terms, a non-profit discount, detailed billing guidelines used by all properly managed corporations and non-profits (explained below), and adequate scope documentation for each matter on which the Brewer firm is working, then the entire engagement agreement should be terminated.

***Fourth*, NRA's oversight of the Brewer firm is totally inconsistent with industry standards.**

Our oversight of the Brewer firm is wholly inadequate. As we understand it, our NRA is failing to properly oversee the Brewer firm in multiple ways. For example:

- The NRA has failed to require the Brewer firm to adhere to "billing guidelines." These are standard in the both the non-profit and for-profit corporate world. There are samples on the internet. The American Bar Association provides guidance on this topic. Billing guidelines help organizations control the costs of outside counsel. The NRA should implement such billing guidelines immediately and direct the Brewer firm to follow them. They should be part of each separate retainer agreement.

- We have failed to secure a discount on Brewer's "high" hourly rates. Why do we allow the Brewer firm to charge such high rates? NRA outside counsel at Morgan Lewis wrote a memo to the NRA last month stating that:

  > "The Brewer firm's billing rates and monthly retainer, while **high**, are not unheard of in the context of high-stakes corporate litigation. **It may well be in the Association's interest to obtain a full accounting of the Brewer firm's time charges to date."** (Emphasis added.)

  It should be noted that not all of the Brewer firm's work is "high-stakes corporate litigation." First, NRA is a non-profit association, rather than a corporation. Second, some of the matters the Brewer firm apparently handles are uncomplicated, routine matters such as vendor contracts that were not properly managed in years past and responding to Congressional letters.

- Thus far, we have failed to require any outside, independent review of the Brewer invoices. There are services that perform this function—and we easily could find an outside expert to perform the function at very little cost. Morgan Lewis opined in its memo that it may be in our interest to do so. Why would we not do so?

***Fifth*, judges in cases in which the Brewer firm has been involved have determined that Mr. Brewer has engaged in improper unethical conduct and a Federal Judge in Virginia ejected him from representing the NRA in litigation.**

Mr. Brewer was found by a Federal District Judge in Virginia to have misled the court, an offense that led the court to eject Mr. Brewer from participating in a case for the NRA. In that case, after a special hearing to determine why Mr. Brewer failed to disclose his prior disciplinary problem in Texas, the Judge in the U.S. District Court for the Eastern District of Virginia decided on September 13, 2018 to revoke his standing to participate in the case. The Virginia federal court stated:

> "[T]he Court of Appeals [in Texas] went on to affirm the findings of Judge Reyes that Mr. Brewer's actions were not a negligent act, or a mistake, or the result of poor judgment, but they were in **bad faith, unprofessional, and unethical, highly prejudicial to the fair trial of an impartial jury**.
>
> And, of course, we're talking about this push poll that Mr. Brewer admitted he had reviewed and approved before it was used by the polling company. Disrespectful to the judicial system. Threatening the integrity of the judicial system. Incompatible with a fair trial. The poll was designed to improperly influence the jury pool. And that the conduct impacted the right of a trial by impartial jurors. And that it was intentional and in bad faith. And that the quote, "it is undisputed that the trial Court's ability to impanel an impartial jury and to try a case before unintimidated witnesses are core functions of the Court."
>
> Had I known about these opinions, notwithstanding that there is further appeals ongoing, I wouldn't have signed the pro hac vice form and would not have admitted Mr. Brewer to the Eastern District of Virginia. They are very serious allegations. They are findings of bad faith that go to the core of a fair and impartial rendering of a jury verdict. And now having reviewed them—and I realize that the NRA will be inconvenienced and, if necessary, there might have to be some adjustment to the discovery process ongoing—but **I find that Mr. Brewer's pro hac vice admission should be revoked and that he should not be admitted to proceed further in this case**."

Transcript, NRA v. Lockton, Case No. 18-639, September 13, 2018, page 16–17 (emphasis added).

Indeed, the Texas court sanctioned Mr. Brewer on January 22, 2016, writing:

> "[T]he manner in which Mr. Brewer has responded to the sanctions motions and allegations therein is concerning to this Court. Mr. Brewer's demeanor was nonchalant and uncaring. Additionally, Mr. Brewer was repeatedly evasive in answering questions when he was on the witness stand. This Court sustained multiple objections for non-responsiveness, instructed Mr. Brewer to answer the questions being asked of him by counsel, and before taking more aggressive steps, this Court took a recess during Mr. Brewer's examination seeking the assistance of Mr. Brewer's attorney. The Court asked Mr. Pridmore [Mr. Brewer's attorney] to step outside the courtroom and advise Mr. Brewer to follow the Court's instructions and be responsive to questions being asked of him. It was the desire and hope of this Court to highlight to Mr. Brewer that the matter at hand was of extreme importance and with potentially grave consequences. . . . **The Court finds Mr. Brewer's actions were not merely a negligent act, a mistake or the result of poor judgment, and Mr. Brewer's explanation that he bears clean hands . . . is insulting to this Court. The Court further finds Mr. Brewer's attempt to avoid responsibility and accountability for his conduct to be at the very least unpersuasive and at the worst in bad faith, unprofessional, and unethical.**"

Ruling from Judge Reyes, Teel v. Titeflex, Case No. 2012-504 (Lubbock, TX), January 22, 2016, pages 1–2 (emphasis added). As the Virginia federal court noted, the Texas Court of Appeals affirmed Judge Reyes's sanction of Mr. Brewer.

The NRA cannot ignore such findings. We understand that the ethical problem Mr. Brewer has in Texas is on appeal to the Texas Supreme Court. But the fact is, his honesty and ethics have been questioned by courts in Texas and Virginia. This record adds to the urgency of the requests that the NRA immediately conduct an outside, independent review of the millions in fees the Brewer firm has charged to the NRA, . . . fees which appear to be excessive . . . and fees which appear to have been paid at a rate of more than $97,000 per day in Q1 2019.

***Sixth*, Mr. Brewer has been actively trying to stop an outside, independent review of his firm's invoices.**

It is even more stunning to learn that Mr. Brewer has personally been actively working to stop an outside, independent review of his own invoices. Certainly the Brewer firm has a conflict of interest regarding the review of its own bills when it works to resist an outside, independent review of its own bills.

***Seventh*, the NRA Board of Directors has a fiduciary duty to oversee massive expenditures of NRA funds.**

The NRA is a non-profit registered in New York. It is regulated by the New York Attorney General. The New York Attorney General has published guidance on the financial management of non-profits. We must follow this guidance and the laws governing non-profits in the State of New York. Multiple guidance memoranda from the New York Attorney General can be found at www.charitiesnys.com. One particularly relevant piece of guidance is titled:

"INTERNAL CONTROLS AND FINANCIAL ACCOUNTABILITY FOR NOT-FOR-PROFIT BOARDS." It states:

> **"A primary responsibility of a nonprofit's board of directors is to ensure that the organization is accountable for its Programs and finances to its contributors, members, the public and government regulators."**

To fulfill our directors' fiduciary duties and responsibilities as stewards of our non-profit organization, we must insist on full disclosure, proper oversight, and an outside, independent review. If we do not, we are bound by our fiduciary duties to do what is right—and to push further for review and oversight of these extraordinary, multi-million-dollar expenditures. This is a matter of conscience for both of us.

We want to be clear that we raise concerns about the Brewer firm's multi-million-dollar fees for only one reason: it is our fiduciary duty to make sure the NRA responsibly uses the funds it raises from members and the public. We fully support the compliance work the Brewer firm has performed for the NRA. We fully support and expect 100% compliance with all rules, regulations and laws applicable to non-profits. But this includes compliance in all NRA contractual relationships with vendors, including the Brewer firm. If the NRA Audit Committee fails to order an outside, independent review, then the NRA Board of Directors, in fulfillment of its fiduciary duty, should do so.

Conclusion

The decision to permit an outside, independent review of the Brewer legal fees should not be difficult. In fact, it is a "no-brainer" when one considers the totality of current circumstances:

Over the last 13 months Brewer has billed the NRA approximately $24,000,000, more than $18.5 million net after reimbursements from Lockton. His retainer agreement is flawed, inconsistent with standards in the industry, and contains provisions clearly harmful to the NRA.

The bills he submitted are not subject to customary "billing guidelines" used by non-profits and public corporations. He provides no discount from his "normal" billing rates to NRA. He provides no budget of costs going forward. And the "scope" of his work is vague and does not include the projects for which he is billing the NRA.

Despite repeated requests to fulfill our Board of Directors' fiduciary responsibilities by conducting an outside, independent review of the Brewer firm's billing details, our efforts have been unsuccessful. Based on his 1st Quarter 2019 invoices, each day going forward will require the NRA to expend almost $100,000 with the Brewer firm.

Lastly, all of the above should be considered in the context that the lawyer whose bills are in question has had encounters with Judges who have taken action against him, finding ethical lapses in a Texas court and a false statement to a Federal Judge in Virginia, the result of which was that Mr. Brewer was ejected from the Virginia proceeding and prohibited from continuing to represent NRA in the ongoing litigation filed there.

For all the reasons above, and as we have articulated orally and in previous correspondence, we should retain an outside, independent reviewer of the Brewer firm's billings prior to our Board of Directors meeting on 29 April in Indianapolis. Failing that, we plan to address the points above to our Board in person, so they are aware of their fiduciary duties, our efforts to protect this organization and its members, and let our Board Members decide how they want to proceed.

Charles, hopefully, the agenda for your Audit Committee meeting on Sunday, 28 April will permit including this document for discussion under "new business" in executive session. If that is not possible, please advise and we will plan to introduce this letter during our Board of Directors meeting on 29 April 2019.

John, please pass a copy of this document as OFFICIAL CORRESPONDENCE to our Executive Vice President/CEO and inform him that if the Audit Committee takes a pass on retaining the services of an outside, independent reviewer acceptable to us, then it is our intention to seek approval for such a review of these massive expenditures from the Board Members in attendance.

Semper Fidelis,

Oliver North
NRA President

Richard Childress
NRA 1st Vice President

"SEMPER FIDELIS" IS MORE THAN A SLOGAN FOR U.S. MARINES.
"ALWAYS FAITHFUL" IS A WAY OF LIFE