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The Honorable Letitia James  
Office of the New York State Attorney General  
The Capitol  
Albany NY 12224-0341

*Via Overnight Mail*

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*Via Email*

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*Via Email*

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28 Liberty Street 23<sup>rd</sup> Floor  
New York, NY 10005

*Via Email*

August 1, 2023

Re: Violations of New York Rules of Professional Conduct  
Demand for Retraction and Correction of the Record before the First Department in  
“James v. VDARE Foundation, Case No. 2023-00672” and the Northern District of New  
York “VDARE Foundation, Inc. v. James, Civil Action No. 22-cv-1337.”

Dear Attorney General James, Messrs. Sawyer, Sheehan, and Mendelson, and Ms. Trento:

Lawyers within your office are in violation of a number of the Rules of Professional Conduct with regard to the making of false statements of fact or law to a tribunal. These false statements were made by them before the courts in the special proceeding in New York Supreme Court Index No. 453196/2022 and the Appellate Division, First Department Case No. 2023-00672, as well as the federal District Court for the Northern District of New York Civil Action No. 22-cv-1337.

Your obligations under New York Rules of Professional Conduct 3.3 require you not only to refuse to make false statements of fact and law to a tribunal, but to take necessary steps to "correct a false statement of material fact or law previously made to the tribunal." RPC 3.3(a)(1); *see also, RPC 3.3(a)(3)*.

VDARE intends to seek injunctive relief pending appeal in the federal matter. Before doing so, we submit that it is imperative that you correct the record. Any attempt to enforce the subpoena dated June 2, 2022 would be premature and only add to the complexity of the litigation between the parties. The fact that the New York State proceeding clearly rests on ethically compromised submissions by your office is yet another ground for holding off on any attempt to enforce said subpoena. We ask that your office respond, in detail, to this letter before making any further submissions to the New York state courts – except, of course, for the corrections mandated herein.

Preliminarily, we should note that VDARE bought the Castle as a venue to hold conferences precisely because it has experienced more than a dozen cancellations for its planned conferences since 2016.

Let us begin with the false statements of fact and law made by your office regarding the Berkeley Springs Castle deeds, which you have used to justify your subpoena to the VDARE Foundation, Inc. dated June 23, 2022.

*At pp. 6-7 of DKT. 3 of New York Supreme Court Index No. 453196/2022*, your office submitted the following false statements to the New York Supreme Court:

In December 2020, VDARE conveyed the entirety of the Berkeley Springs Castle property—bought with charitable funds—to two West Virginia corporations incorporated by Lydia Brimelow, Peter’s wife and a VDARE director, five months earlier. VDARE conveyed the castle itself and the land that it sits on to the Berkeley Castle Foundation (BCF), a putative nonprofit corporation. And it conveyed the remaining land, consisting of eight parcels, to BBB, LLC, a for-profit corporation. Id. ¶ 28. These transactions by a New York charitable not-for-profit require submission of a petition by VDARE for review and approval by the Attorney General or the Supreme Court under Sections 510, 511, or 511-a of the Not-for-Profit Corporation Law. Each transaction also would require, under Section 509 of the N-PCL, approval by disinterested members of the VDARE Board of Directors. Because the Brimelows were together two of VDARE’s three directors according to VDARE’s 2020 Form 990 (the third being Peter Brimelow’s brother), no approval by disinterested directors could possibly have been granted. Each of the castle and compensation transactions is also a “related-party transaction” under Section 715 of the Not-For-Profit Corporation Law that requires review by disinterested board members to ensure fair consideration and examination of alternatives, contemporaneous record-keeping, and proper disclosure on Schedule L of the IRS 990. (Emphasis supplied as to false statements)

Every sentence above contains false and misleading statements of fact or law.

- VDARE has always had people other than Brimelows on its board, including in 2020.
- More importantly, VDARE, through action by its board, did NOT deed its Castle and grounds to two separate entities controlled by the Brimelows. Instead, VDARE deeded the Castle and grounds to two separate entities: BBB, LLC and the Berkeley Castle Foundation, Inc., *which are controlled by the VDARE Foundation itself*. Your office was

aware of this crucial distinction before going into court on December 16, 2022.

It is hornbook law, well settled in New York and everywhere else, that a corporation exists separate and apart from its individual members or stockholders, let alone its officers and directors. *e.g. Harris v. Stony Clove Lake Acres Inc.*, 202 A.D.2d 745, 747 (3<sup>rd</sup> Dept, 1994) (citing *Bowery Sav. Bank v. 130 E. 72nd St. Realty Corp.*, 173 A.D.2d 364, 569 N.Y.S.2d 732; *Breiterman v. Elmar Props.*, 123 A.D.2d 735, 736, 507 N.Y.S.2d 206, lv. dismissed 69 N.Y.2d 823, 513 N.Y.S.2d 1029, 506 N.E.2d 539). Corporate property is vested in the corporation itself, and not in the stockholders, let alone its officers or directors. “Property of the corporation... belongs to it and not to the stockholders.” *Popkin v. Dingman*, 366 F.Supp. 534, 539 (S.D. N.Y. 1973).

A corporation’s independent existence cannot be ignored (*Seagroatt Floral Co., Inc., Matter of*, 78 N.Y.2d 439, 450 (1991)); yet your office has ignored this fundamental aspect of corporate existence.

Lawyers within your office meant to give the tribunals the the false impression that the Brimelows took a castle which VDARE had acquired through charity and effectively deeded it to themselves for their personal enrichment. This deceptive intention is made clear by the following sentences:

Given the web of transactions among VDARE and Brimelow-controlled entities *already* discovered by the OAG, the identities of contractors are central to the OAG’s investigation. VDARE, and the Brimelows, cannot hide behind the First Amendment to shield self-interested transactions from regulatory scrutiny. (*at p. 16 of DKT. 3 of New York Supreme Court Index No. 453196/2022 – emphasis in the original*).

But your office intentionally omitted material facts from this representation. *cf.* Official Comment 3 to Rule 3.3. In particular, your office has known since the disclosures under the

Frisch cover letter of September 19, 2022 that the description "two West Virginia corporations incorporated by Lydia Brimelow" is completely deceptive.

- BBB, LLC, is not simply a “for profit corporation.” The operating agreement for BBB, LLC provided under Frisch cover of September 19, 2022 and which is set forth right at the beginning of the production at Bates stamped numbers VF 5–9 demonstrates that it is a single member LLC with the VDARE corporation as the sole member. *Exhibit 1, BBB, LLC Operating Agreement at VF 6.*
- As for Berkeley Castle Foundation, Inc., it too is a *VDARE-controlled entity*, not a “Brimelow-controlled entity.” The exhibit provided by your office at *DKT. 15 of New York Supreme Court Index No. 453196/2022* (submitted with the affirmation under perjury of Yael Fuchs of your office) indicates that the Berkeley Castle Foundation, Inc. is “a Type II supporting organization under IRC Section 509(a)(3).” *Exhibit 2, Tax Exemption Recognition Notice dated January 20, 2022, originally filed under DKT. 15 of New York Supreme Court Index No. 453196/2022.* Further, “A Type II supporting organization is supervised or controlled in connection with one or more publicly supported charities.” *Id.*

Right there, then, the AG’s office knew that Berkeley Castle Foundation, Inc. was not an entity supervised or controlled by any person or person (such as the Brimelows, as in the false representation to the courts), but by another charitable entity.

Indeed, the fact that Berkeley Castle Foundation, Inc. supports, and is supervised and controlled by VDARE, is evident from the Schedule L on VDARE’s own Form 990 on file with your office. *Exhibit 3, VDARE Form 990 Schedule L for 2020.* And while the AG’s office records that this document was received on April 26, 2023, it clearly already had access to such

information much earlier, such as when filing on December 16, 2022 in the special proceeding in *New York Supreme Court Index No. 453196/2022*. After all, your office obtained Berkeley Castle Foundation's tax exemption recognition notice dated January 20, 2022 through a subpoena or demand. *Exhibit 2, supra., Tax Exemption Recognition Notice dated January 20, 2022, originally filed under DKT. 15 of New York Supreme Court Index No. 453196/2022*. The same request would doubtless have revealed Berkeley Castle Foundation, Inc.'s Bylaws, the very first page of which recite that it supports VDARE Foundation. *Exhibit 4, Berkeley Castle Foundation, Inc.'s Bylaws*.

To reiterate, BBB, LLC and Berkeley Castle Foundation, Inc. are not "Brimelow-controlled entities"; and the VDARE board did not simply deed the Castle and properties "to two West Virginia corporations incorporated by Lydia Brimelow," rather, it deeded the Castle and properties to two West Virginia corporate entities *controlled entirely by VDARE itself*.

Your office knew all these facts when it went into the New York Supreme Court on December 16, 2022. But it deliberately distorted the record.

Unfortunately, the ethical violations do not stop there. New York's Rules of Professional Conduct also prohibit false statements of law to a tribunal. RPC 3.3(a)(1). And the quoted paragraph above from pp. 6-7 of DKT. 3 of New York Supreme Court Index No. 453196/2022 does just that.

Citing "Sections 510, 511, or 511-a of the Not-for-Profit Corporation Law", the quoted paragraph goes on to assert flatly that the deeds to BBB, LLC and Berkeley Castle Foundation, Inc. "require[d] submission of a petition by VDARE for review and approval by the Attorney General or the Supreme Court."

But this is plainly not true. Sections 510, 511, or 511-a of the Not-for-Profit Corporation

Law require review and approval of the Attorney General or the Supreme Court only where there is a disposition of all or substantially all of the assets of the charitable corporation. Here the AG's office clearly knew in advance of the filing that the Castle deeds were not “all or substantially all” of VDARE's assets:

1. First, as stated above, VDARE only conveyed the castle and property to other entities controlled by VDARE.
2. And even if conveyances to VDARE-controlled entities would otherwise have tripped Sections 510, 511, or 511-a , the conveyances could not have come within those sections because they were not dispositions of all or substantially all or VDARE's assets.

The AG's office *must have known* this before making these false representations of law on December 16, 2022 because VDARE's Char500 for 2019 showed net assets of \$3,544,673. (*Exhibit 5, VDARE Char500 for 2019 dated March 2, 2021*) and the Castle transactions (*viz.* the deeds to BBB, LLC and Berkeley Castle Foundation, Inc.) implicated just under \$1.4M.

Considering the deed to BBB, LLC: the final page of the deed (found at Bates stamped no. VF 49 of the production made to you under Frisch Cover Letter dated September 19, 2022) recited that the consideration received was “\$310,0000”). *Exhibit 6, Deed to BBB, LLC dated December 29, 2020 at VF 49.*

As for the conveyance to the Berkeley Castle Foundation, Inc.: The “Security Instrument” for the castle deed to Berkeley Castle Foundation, Inc. recited consideration of \$1,081,660.77. *Exhibit 7, Security Instrument dated December 29, 2020 at VF 17.*

Together, the two transactions total \$1,391,660.77, or just under \$1.4M. They are both publicly available documents; and in any event your office certainly had access to them prior to

your court filings because they were produced under the Frisch cover letter of September 19, 2022 at Bates stamped nos.VF 49 and VF 17 — *see Exhibits 6 and 7 above.*

If the Attorney General's office knew that VDARE had over \$3.5 M in net assets in 2019, there is no legitimate way it could have concluded that a disposition of approximately \$1.4M would have constituted "all or substantially all assets."

And VDARE's Char 500 for 2020 dated January 4, 2023 would only have confirmed that all or substantially all of VDARE's assets had not been disposed of with the castle transactions (*viz.* the deeds to BBB, LLC and Berkeley Castle Foundation, Inc. which only totaled \$1,391,660.77). *Exhibit 8, VDARE Char500 for 2020 dated January 4, 2023.* That document showed net assets of \$4,510,847. *Id.* (Significantly, your office appears to have received this document *before* your filings in state and federal court were complete.)

Thus, the statement: "These transactions by a New York charitable not-for-profit require submission of a petition by VDARE for review and approval by the Attorney General or the Supreme Court under Sections 510, 511, or 511-a of the Not-for-Profit Corporation Law" (found at pp. 6-7 of DKT. 3 of New York Supreme Court Index No. 453196/2022), is a knowingly false statement of law to a tribunal; and was known to be such at the time it was rendered. It once again violates New York's Rules of Professional Conduct 3.3, 3.4, 4.1, and 8.4.

Furthermore, these violations cannot be laid only at the feet of Yael Fuchs or Catherine Suvari. Insofar as there is a refusal to correct the record, the attorneys remaining in the actions and appeals would continue in violation of New York's Rules of Professional Conduct 3.3(a)(1) and 3.3(a)(3). Tarrying with ethical violations suggests unfitness an attorney's office under New York's Rule of Professional Conduct 8.4.

Let us turn now to the statement:



**Each transaction also would require, under Section 509 of the N-PCL, approval by disinterested members of the VDARE Board of Directors. Because the Brimelows were together two of VDARE's three directors according to VDARE's 2020 Form 990 (the third being Peter Brimelow's brother), no approval by disinterested directors could possibly have been granted.**

But this again misstates the facts and law as known by attorneys in the AG's office. In particular, by erroneously stating that Peter and Lydia Brimelow were "interested" in the castle deed transactions, the AG's office once again made the fundamental distortion of disregarding VDARE's corporate entity.

And the VDARE board is not required to be disinterested as to VDARE itself; in fact it is duty bound under Not-for-Profit Corporation Law § 717 to act in good faith for VDARE's interests.

Turn now to the statement: "Each of the castle and compensation transactions is also a 'related-party transaction' under Section 715 of the Not-For-Profit Corporation Law that requires review by disinterested board members to ensure fair consideration and examination of alternatives, contemporaneous record-keeping, and proper disclosure on Schedule L of the IRS 990."

But on the contrary, related party transactions under Section 715 are those in which "any director, officer or key employee" of the charitable organization "has an interest" in the party of the second part. And once again this turns out not to be the case, for the "person" interested in BBB, LLC and Berkeley Castle Foundation, Inc. is not a Peter Brimelow or a Lydia Brimelow: it is VDARE itself.

Again, the AG's office knew no later than September of 2022, when it received the subpoenaed documents provided under cover of the Frisch letter dated September 19, 2022, that

it was VDARE itself which held all the interest in BBB, LLC, not Peter or Lydia Brimelow. *e.g. Exhibit 1, supra., BBB, LLC Operating Agreement at VF 6.* And you knew, no later than when you acquired the documentation included with *Exhibit 2, supra., Tax Exemption Recognition Notice dated January 20, 2022, originally filed under DKT. 15 of New York Supreme Court Index No. 453196/2022* that the Berkeley Castle Foundation, Inc. was merely a “supporting organization” “supervised or controlled in connection with one or more publicly supported charities,” rather than being a “related party” entity from which the Peter or Lydia Brimelow derived personal profit.

The potential misuse of VDARE's \$1.4M castle is the biggest alleged red flag the AG's office used to justify the extremely invasive subpoena dated June 23, 2022. As it acknowledged elsewhere, it is the "critical" series of allegations that allegedly justify your subpoena.<sup>1</sup> *But literally every sentence you have said about those allegations at pp. 6-7 of DKT. 3 of New York Supreme Court Index No. 453196/2022 constitute false and misleading statements of fact and law to a tribunal, as shown above.*

Misdeeds by lawyers within your own office with regard to the false statements of fact and law at pp. 6-7, and 16 of DKT. 3 of New York Supreme Court Index No. 453196/2022 implicate a number of New York's Rules of Professional Conduct, including RPC 3.3(a)(1) and (3) and Official Comments 2, 5, 6A, 10, and 12 thereto; RPC 3.4(a) and (d); RPC 4.1 and Official Comment 1 thereto, *viz.* “...Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements.”; and RPC 8.4 and Official Comment 5 thereto, *viz.* “Lawyers holding public office assume legal

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<sup>1</sup> *Specifically, at DKT. 57 of New York Supreme Court Index No. 453196/2022 at p. 3.*

responsibilities going beyond those of other citizens. A lawyer's abuse of public office can suggest an inability to fulfill the professional role of lawyers.”

Alas, false statements by your office are not limited to pp. 6-7 and 16 of DKT. 3 of New York Supreme Court Index No. 453196/2022.

At ¶28, p. 6 of DKT. 4 of New York Supreme Court Index No. 453196/2022, Yael Fuchs repeated the false theme that BBB, LLC and Berkeley Castle Foundation, Inc. are “Brimelow-controlled entities,” rather than VDARE controlled entities. And for good measure, Ms. Fuchs added another, stating: “Transfer of charitable assets to a for-profit entity without fair consideration is a violation of both New York and federal law.”

Ms. Fuch's affirmation under penalty of perjury warrants special scrutiny. It is a direct violation of RPC 3.3. *See Official Comment 3 to RPC 3.3.*

Again, though, the AG's office knew that the transfer of land to BBB, LLC was not only a transfer to an entity wholly owned by VDARE (*viz. Exhibit 1, supra., BBB, LLC Operating Agreement at VF 6*), but that fair consideration was received. See the Bates-stamped document no. VF 106 produced to your office under the Frisch cover letter of dated September 19, 2022, a fair market opinion letter by Teresa White-Curtis of Perry Realty, LLC. *Exhibit 9, Letter of Perry Realty dated April 14, 2020.* It indicates a fair market price for the several parcels of Three Hundred Ten Thousand Dollars (\$310,000) as of April 14, 2020 for several parcels. That \$310,000 value corresponds exactly with the consideration recited on the deed to BBB, LLC. *Exhibit 6, supra. at VF 49.*

As for the rest of the property that had been acquired for \$1.4M earlier in 2020, as shown above, it was deeded to the Berkeley Castle Foundation, Inc. for \$1,081,660.77. *Exhibit 7, supra., Security Instrument dated December 29, 2020.* Together, the deeds total \$1,391,660.77,

almost exactly what VDARE had acquired the property for earlier in the year in an arms length transaction.

The catalogue of false statements of law and fact continued to burgeon: at ¶25, p. 6 of DKT. 4 of New York Supreme Court Index No. 453196/2022, Yael Fuchs affirmed under penalty of perjury that:

Upon information and belief, Peter Brimelow, Lydia Brimelow, and their three children moved into the Berkeley Springs Castle and have been using it as their primary family residence since March 2020.

This is another false statement, one which certainly misled the tribunal. (The Brimelows have never used the Castle as their primary residence and they have paid fair market rent for the period they spent there, as well as for the refurbished cottage into which they ultimately moved.)

Taken together with the false statement by Yale Fuchs at ¶28, p. 6 of DKT. 4 of New York Supreme Court Index No. 453196/2022, ¶¶25 and 28 give the false impression that the Brimelows took VDARE land, lived in it, and conveyed it to two other corporate entities that they control in their personal capacities. That false statement is confirmed by Catherine Suvari's later submission to the New York Supreme Court on January 18, 2023 in her Memorandum on Reply:

VDARE's counsel admits the critical facts that first triggered the Attorney General's scrutiny—Peter Brimelow, VDARE's founder and director, and his wife, Lydia Brimelow, also a director, used and continue to use a \$1.4 million charitable asset as their personal residence. See Frisch Aff. (Doc. No. 37) ¶ 16. VDARE's counsel attempted to excuse this apparent self-dealing by claiming that “the Brimelows paid rent to live in the cottage beginning in April 2021.” Id. What counsel neglected to mention is that the supposedly exonerating lease is yet further evidence of self-dealing. The lease is between Lydia Brimelow and BBB, LLC, a West-Virginia for-profit corporation she manages, and Lydia Brimelow signed the document as both landlord and tenant. Frisch Aff. Ex. H (Doc. No. 45) (copy of lease); Fuchs Aff. Ex. L (BBB, LLC registration showing Lydia Brimelow as manager). At best, therefore, the lease shows that Lydia Brimelow has been paying rent to herself to live on the castle property.

*DKT. 57 of New York Supreme Court Index No. 453196/2022 at p. 3.*  
(Emphasis supplied as to false statements of fact and law)

Of course, these false statements of fact and law clearly swayed Judge Krause, who stated in her decision:

Additionally, Respondent's filings themselves underscore the reasonableness of the Subpoena. Respondent admits the critical facts that first triggered Petitioner's scrutiny – Peter Brimelow, Respondent's founder and director, and his wife, Lydia Brimelow, also a director, used and continue to use a \$1.4 million charitable asset as their personal residence. See Frisch Aff. (Doc. No. 37).

Respondent argues that the Brimelows paid rent to live in the cottage beginning in April 2021, however the lease is between Lydia Brimelow and BBB, LLC, a West-Virginia for-profit corporation she manages, and Lydia Brimelow signed the document as both landlord and tenant. Frisch Aff. Ex. H (Doc. No. 45); Fuchs Aff. Ex. L (BBB, LLC registration showing Lydia Brimelow as manager.

There is thus direct evidence that not only did Yael Fuchs and Catherine Suvari make false statements of fact and law, not only did they conceal evidence at their disposal since receipt of the materials under cover of the Frisch letter dated September 19, 2022, but the tribunal was directly misled by these egregious ethical violations.

Surely Judge Krause, mindful of the fact that “Lawyers holding public office assume legal responsibilities going beyond those of other citizens” (Official Comment 5 to Rule 8.4 – *MISCONDUCT*) assumed that the AG's office would be scrupulously abiding by the Rules of Professional Conduct and would not be proffering false and misleading evidence, nor concealing known facts to paint a deceptive portrait of the Brimelows' interactions with VDARE.

Yet that is precisely what has occurred.

Having already succeeded in intentionally misleading the New York State Supreme Court, the Honorable Letitia James's office is now attempting to mislead the Northern District

Court of New York. Assistant Attorney Generals (or Special Counsel for Hate Crimes) Sheehan, Mendelson and Sawyer have all appeared in that case. At DKT 12–1 of Northern District of New York, Civil Action No. 22-cv-1337, James Sheehan, and Rick Sawyer have submitted a Memorandum of Law which contains false statements of law and fact identical in substance to those already addressed.

- Specifically, *see pp. 7-8 of DKT 12–1 of Northern District of New York, Civil Action No. 22-cv-1337.*
- Messrs. Sheehan and Sawyer compounded their errors by repeating clearly false statements of fact and law elsewhere in their Memorandum of Law, *as at p. 15 of DKT 12–1 of Northern District of New York, Civil Action No. 22-cv-1337.*
- And they continued this objectionable and unethical conduct at *p. 17 of DKT 12–1 of Northern District of New York, Civil Action No. 22-cv-1337.*
- And continued again at *p. 20 of DKT 12–1 of Northern District of New York, Civil Action No. 22-cv-1337.*

For the reasons already stated, these are false statements of fact and law and were known to be such when submitted to the Northern District of New York on January 18, 2023.

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To recap, then, the AG’s office has set forth false and misleading statements of fact and law in the following:

- *At pp. 6-7 of DKT. 3 of New York Supreme Court Index No. 453196/2022:*  
In December 2020, VDARE conveyed the entirety of the Berkeley Springs Castle property—bought with charitable funds—to two West Virginia corporations incorporated by Lydia Brimelow, Peter’s wife and a VDARE

director, five months earlier. VDARE conveyed the castle itself and the land that it sits on to the Berkeley Castle Foundation (BCF), a putative nonprofit corporation. And it conveyed the remaining land, consisting of eight parcels, to BBB, LLC, a for-profit corporation. Id. ¶ 28. These transactions by a New York charitable not-for-profit require submission of a petition by VDARE for review and approval by the Attorney General or the Supreme Court under Sections 510, 511, or 511-a of the Not-for-Profit Corporation Law. Each transaction also would require, under Section 509 of the N-PCL, approval by disinterested members of the VDARE Board of Directors. Because the Brimelows were together two of VDARE's three directors according to VDARE's 2020 Form 990 (the third being Peter Brimelow's brother), no approval by disinterested directors could possibly have been granted. Each of the castle and compensation transactions is also a "related-party transaction" under Section 715 of the Not-For-Profit Corporation Law that requires review by disinterested board members to ensure fair consideration and examination of alternatives, contemporaneous record-keeping, and proper disclosure on Schedule L of the IRS 990. (Emphasis supplied as to false statements)

- *At p. 16 of DKT. 3 of New York Supreme Court Index No. 453196/2022:*  
Given the web of transactions among VDARE and Brimelow-controlled entities already discovered by the OAG, the identities of contractors are central to the OAG's investigation. VDARE, and the Brimelows, cannot hide behind the First Amendment to shield self-interested transactions from regulatory scrutiny. (Emphasis supplied as to false statements)
- *At ¶28, p. 6 of DKT. 4 of New York Supreme Court Index No. 453196/2022:*  
Public filings indicate that, in December 2020, VDARE conveyed the entirety of the Berkeley Springs Castle property in two separate transactions to two West Virginia corporations that had been incorporated by Lydia Brimelow five months earlier. VDARE conveyed the castle itself and the land that it sits on to the Berkeley Castle Foundation (BCF), a putative non-profit corporation. VDARE conveyed the remaining land, consisting of eight parcels, to BBB, LLC, a for-profit corporation. Transfer of charitable assets to a for-profit entity without fair consideration is a violation of both New York and federal law. (Emphasis supplied as to false statements)
- *At ¶25, p. 6 of DKT. 4 of New York Supreme Court Index No. 453196/2022 (affirmed under penalty of perjury):*  
Upon information and belief, Peter Brimelow, Lydia Brimelow, and their three children moved into the Berkeley Springs Castle and have been using it as their primary family residence since March 2020. (Emphasis supplied as to false statements)

- At p. 3 of *DKT. 57 of New York Supreme Court Index No. 453196/2022*:  
VDARE’s counsel admits the critical facts that first triggered the Attorney General’s scrutiny—Peter Brimelow, VDARE’s founder and director, and his wife, Lydia Brimelow, also a director, used and continue to use a \$1.4 million charitable asset as their personal residence. See Frisch Aff. (Doc. No. 37) ¶ 16. VDARE’s counsel attempted to excuse this apparent self-dealing by claiming that “the Brimelows paid rent to live in the cottage beginning in April 2021.” Id. What counsel neglected to mention is that the supposedly exonerating lease is yet further evidence of self-dealing. The lease is between Lydia Brimelow and BBB, LLC, a West-Virginia for-profit corporation she manages, and Lydia Brimelow signed the document as both landlord and tenant. Frisch Aff. Ex. H (Doc. No. 45) (copy of lease); Fuchs Aff. Ex. L (BBB, LLC registration showing Lydia Brimelow as manager). At best, therefore, the lease shows that Lydia Brimelow has been paying rent to herself to live on the castle property. (Emphasis supplied as to false statements of fact and law)
- At pp. 7-8 of *DKT 12–1 of Northern District of New York, Civil Action No. 22-cv-1337*:  
 Later in 2020, Lydia Brimelow executed two transfers on behalf of VDARE conveying the entire castle property—a \$1.4 million charitable asset—to two West Virginia corporations she had founded earlier that year. See Fuchs Aff., Exs. F–I. One deed filed with the Morgan County, West Virginia, Register of Deeds conveyed the castle itself and the land it occupies to the Berkeley Castle Foundation, Inc., a not-for-profit established by Lydia Brimelow. Fuchs Aff., Exs. F, H. A second deed conveyed the remaining eight parcels of surrounding land to BBB, LLC, a for-profit corporation also established by Lydia Brimelow. Fuchs Aff., Exs. G, I. The sole signatory for both deeds was Lydia Brimelow. Fuchs Aff., Exs. F, G. Under the tagline “When nothing but a castle will do,” the Berkeley Castle Foundation now advertises the castle as a for-rent event space. <https://www.berkeleyspringscastle.com/contact.html> (last visited December 14, 2022). According to a publicly filed contract signed by Lydia Brimelow (as both landlord and tenant), the Brimelows now pay monthly “rent” to BBB, the for-profit corporation, to reside on the castle property. Fuchs Aff., Ex. J. In other words, the Brimelows used charitable funds to purchase property in which they reside, transferred the grounds to a for-profit corporation they control, and now pay rent to that company, in essence to themselves.  
There is a host of potential violations of New York charities law implicated in this series of transactions. As an example, transferring or approving a transfer of charitable assets from a charitable New York not-for-profit corporation to a for-profit entity without fair compensation is a violation of New York and federal law and a breach of the fundamental fiduciary responsibilities of directors and officers. See generally Fuchs Aff., Ex. A (petition to compel subpoena in state court). The castle transactions were



not reported on VDARE's 2020 IRS Form 990, as required by federal and New York law, nor were they submitted to the Charities Bureau or the New York Supreme Court for approval, as required by N-PCL §§ 510, 511, and 511a. See Fuchs Aff. at B. Even had they been submitted, neither the Charities Bureau nor the Court would have the authority to approve such a transaction because VDARE had no independent directors who could have approved it. See N-PCL § 510. (Emphasis supplied as to false statements of fact and law)

- At *p. 15 of DKT 12-1 of Northern District of New York, Civil Action No. 22-CV-1337*: Public records have already disclosed more than a million dollars in transactions between VDARE and two corporations established—and controlled—by VDARE's directors. As described above, such transactions could not have been approved by a disinterested board— because the board consisted entirely of Brimelows—and thus violated New York law. (Emphasis supplied as to false statements of fact and law)
- At *p. 17 of DKT 12-1 of Northern District of New York, Civil Action No. 22-cv-1337*: The Attorney General began investigating VDARE after it became apparent that the organization had used charitable funds to buy a castle for its directors to use as a family residence. Public records further showed that VDARE conveyed the entire castle property to two corporations established by director Lydia Brimelow and that the only signatory to those deeds was Lydia Brimelow herself. Fuchs Aff. Exs. E–H. Those transactions should have been disclosed to the IRS and reviewed by the Attorney General's office but were not. Those facts suggested of self-dealing, misappropriation, and breach of fiduciary duties by VDARE's directors, and false filings by VDARE with the Charities Bureau, in violation of New York law. Other potential violations of law were apparent from the face of documents VDARE submitted to the IRS and the Attorney General's Office. See generally Fuchs Aff., Ex. A; People by James v. VDARE Found., Inc., Index No. 453196/2022, Dkt. Nos. 3, 4 (Sup. Ct. N.Y. Cnty. Dec. 16, 2022) (setting forth the Attorney General's basis to investigate). (Emphasis supplied as to false statements of fact and law)
- At *p. 20 of DKT 12-1 of Northern District of New York, Civil Action No. 22-cv-1337*: Public records indicate that VDARE purchased a \$1.4 million medieval-style castle in West Virginia, and public statements by VDARE suggest that it was bought with donor funds. *Supra*, 2–3. Additional statements by VDARE and published on its website indicate that VDARE's directors, Peter and Lydia Brimelow, use that castle as a family residence. Id. Public records show that VDARE conveyed the castle to two corporations owned and controlled by Lydia Brimelow, and the only signatory on both deeds was Lydia Brimelow herself. *Supra*, 3–4. And a document filed publicly by VDARE indicates that the Brimelows pay “rent” to BBB, LLC, the for-profit corporation Lydia Brimelow established, to reside on the castle grounds. *Supra*, 4. Those

“related-party” transactions required disinterested board approval, disclosure on VDARE’s IRS Form 990, and the submission of a petition by VDARE for review and approval by the Attorney General or N.Y. Supreme Court. See N-PCL §§ 509, 510, 511, 511-a, 715; Internal Revenue Service Filing Information, Intermediate Sanctions—Excise Taxes, at <https://www.irs.gov/charities-nonprofits/charitable-organizations/intermediate-sanctions-excise-taxes> (last visited Dec. 15, 2022). Based on public records, none of those steps appears to have been taken. See generally Fuchs Aff., Ex. A; People by James v. VDARE Found., Inc., Index No. 453196/2022, Dkt. Nos. 3, 4 (Sup. Ct. N.Y. Cnty. Dec. 16, 2022) (setting forth the Attorney General’s basis to investigate). (Emphasis supplied as to false statements of fact and law)

*Every one of the above portions of the record need to be specifically corrected by the Attorney General’s office.*

The above statements are obviously *not* confined to the special proceeding under New York Supreme Court Index No. 453196/2022.

Most obviously, they are incorporated into the record before the Appellate Division, First Department at Case No. 2023-00672. Ms. Trento is the attorneys of record in that appeal and therefore under an obligation to correct the record in accordance with RPC 3.3(a)(1) and RPC 3.3(a)(3).

But false statements were are also directly made in and incorporated into the record before, the District Court for the Northern District of New York Civil Action No. 22-cv-1337. Messrs. Sheehan, Mendelson, and Sawyer are attorneys of record in that action and therefore under an obligation to correct the record in accordance with RPC 3.3(a)(1) and RPC 3.3(a)(3).

In light of the above, we expect that the Honorable Letitia James, Messrs. Sawyer, Sheehan, and Mendelson, and Ms. Trento will, no later than Friday, August 4, 2023 at the close of business, write to those tribunals and formally acknowledge that the AG’s office has previously violated New York’s Rules of Professional Conduct 3.3, 3.4, 4.1, and 8.4 in the

presentation of the record before them, but that you are now heeding your continuing obligation under RPC 3.3(a)(1) and RPC 3.3(a)(3) to correct same and strike the offending passages from the record.

The above are by no means the end of our concerns regarding the Office of Attorney General's false statements and ethical violations. There is, for example, almost certainly more to be said regarding any false innuendo that the amount of rent paid by Peter and Lydia Brimelow to BBB, LLC was not fair market value. But working through the vast material produced under Mr. Frisch's watch – and determining what the Office of Attorney General knew and when it knew it – is a labor intensive project that will require more time. For the nonce, it is imperative, and it is enough, that you address the matters raised herein.

Please advise on your stance at your earliest convenience.

I thank you for your time and attention herein, and remain

Very truly yours,

/s/

Frederick C. Kelly, Esq.

cc: Lydia Brimelow *Via Email*