

Akin Gump

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November 3, 2021

Hon. Joel M. Cohen
Justice of the Supreme Court of the State of New York
Commercial Division, New York County
60 Centre Street
New York, NY 10007

Re: *People v. NRA et al.*, Index No. 451625/2020

Dear Justice Cohen,

I write on behalf of our client, Joshua Powell, a defendant in the above-captioned matter. Mr. Powell is in the process of responding to document requests from the Office of the New York Attorney General (“NYAG”). We believe that responsive documents in Mr. Powell’s possession include material that the National Rifle Association (“NRA”) might contend is subject to the NRA’s attorney-client privilege. We respectfully request the Court’s assistance in order to ensure Mr. Powell is able to satisfy his discovery obligations in a timely manner.

Throughout Mr. Powell’s tenure with the NRA, he had many communications over email, text message and other media with Brewer, Attorneys & Counselors (“Brewer”), who have represented the NRA in many matters, including this case. Some or all of the documents reflecting those communications may be responsive to the NYAG’s document requests to Mr. Powell. Because those documents may constitute privileged attorney-client communications between the NRA (through its then-employee Mr. Powell) and the NRA’s counsel, we have thus far refrained from reviewing or producing any document that could potentially involve communication with Brewer and have segregated them from the document we are reviewing for production to the NYAG. Over the past month, we have attempted to resolve this matter directly with the NRA, but have reached an impasse regarding the review of the segregated documents. Once we received the document request, we promptly made the NYAG aware of our concerns and decision not to review or produce a subset of Mr. Powell’s documents. We have also kept them up to date about our continuing conversations with the NRA.

In our attempts to resolve this issue directly with the NRA, we requested that the NRA and Brewer consent to our review of the materials for purposes of determining which materials may be responsive to the NYAG’s document requests. We asked that the NRA agree that our review would not create any obligation on the part of Akin Gump towards the NRA or Brewer – including

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the creation of any confidential relationship or obligation to withdraw from representation of Mr. Powell as a result of reviewing those materials. Alternatively, we proposed that the NRA engage independent attorneys to review the materials and identify those that may be subject to the NRA's privilege. In response, the NRA suggested that we turn over the possibly privileged materials to them to make the decision as to which messages may be subject to the NRA's attorney-client privilege. This approach, however, is unacceptable because the potentially privileged communications are inter-mingled with Mr. Powell's own non-privileged writings as well as materials that may be subject to his individual attorney-client privilege. Giving counsel for the NRA access to those materials risks waiver of Mr. Powell's privilege or disclosure of other information to which the NRA is not entitled.

We propose that the Court sanction our review of the materials in order to assess any privilege concerns as quickly as possible and allow us to complete Mr. Powell's production of responsive documents over the coming weeks. We ask that the Court find that such review by us does not give rise to any valid claim by the NRA that we may no longer represent Mr. Powell in this matter, or otherwise prejudice Mr. Powell. Attorney Samantha Block and I represent Mr. Powell in this matter and are licensed to practice law in the state of New York. We will faithfully apply privilege where it exists. Additionally, attorneys at Akin Gump successfully make privilege determinations every day and the review of Mr. Powell's documents would be no exception. In the alternative, we request that the Court designate third-party contract attorneys to review the documents that have been identified as potentially privileged, again with a finding that such review would not prejudice Mr. Powell. This option would require significantly more time and resources. Without a resolution that ensures Mr. Powell will not be prejudiced by whatever process is followed to review Mr. Powell's potentially privileged communications with the NRA's counsel, we are unable to move forward.

Please let us know if you have any questions or if it would be helpful to arrange a time for the parties to conference.

Sincerely,

/s/ Thomas McLish

Partner

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Samantha Block
Hayley Booker
Monica Connell
Jonathan Conley
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