



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES  
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE  
CHARITIES BUREAU

(212) 416-8965  
Monica.Connell@ag.ny.gov

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**By NYSCEF**

Honorable Joel M. Cohen  
Justice of the Supreme Court of the State of New York State  
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:

On behalf of the plaintiff, the People of the State of New York by the Office of the New York Attorney General ("NYAG"), we write in response to Defendant Joshua Powell's request for a discovery conference. NYSCEF 432.

Mr. Powell has not timely completed his production of document's responsive to the NYAG's demands largely due to his concerns regarding the handling of potentially privileged information. As a result, the NYAG has been unable to proceed with his deposition, which has had to be adjourned. The NYAG does not believe that judicial assistance should be required to resolve this issue. Mr. Powell's counsel should review the relevant documents, identify any potentially privileged documents on a log, and produce all non-privileged responsive documents.

The NYAG served document requests on Mr. Powell on or about July 20, 2021. The NYAG has been working collaboratively with Mr. Powell's counsel for months. However, to date, Mr. Powell's counsel has represented that they have refrained from reviewing a substantial number of responsive files out of concern that such files may include documents that NRA may consider to be privileged. In several meet and confers with Mr. Powell's counsel, we have reiterated that Mr. Powell is legally obligated to produce documents responsive to our document requests and counsel may place any privileged documents on a privilege log. Should there be any question, the parties can agree to a claw-back provision permitting a document to be withdrawn in the event that a privileged document is mistakenly produced. The NRA has already proposed entry of a such a stipulation under the Commercial Division Rules and the NYAG has communicated that it agrees to the same.

Mr. Powell is represented by competent counsel who are capable of reviewing documents, keeping a privilege log, and producing nonprivileged, responsive documents. We understand that Mr. Powell's counsel is concerned the NRA may use his compliance with our discovery requests as a basis for a future disqualification motion, but the threat of motion practice is not a legitimate reason to indefinitely shelve our discovery demands.

The NYAG objects to the NRA's proposal of pre-reviewing Mr. Powell's documents for privilege. The NRA is not entitled to pre-review the documents of a former executive with independent counsel and doing so here would be unnecessary and inefficient. The NRA is already months behind in its own document production, which has required the NYAG to postpone numerous depositions and will undoubtedly require an extension of fact discovery. In fact, the NRA has already proposed such an extension and the NYAG is in discussion with the NRA regarding the same. In addition, the NRA's attempts to pre-review documents of third parties have already caused delay here. *See, e.g.*, NYCEF 402; NYCEF 372 (fn.3) (letters concerning NRA interference in production of information by a former NRA officer and the NRA's independent auditor). Adding a layer of review to Mr. Powell's production would only cause further delay and raise issues with regard to whether the NRA is withholding documents based upon relevancy or other ground. Further, Mr. Powell has indicated that the documents at issue are inter-mingled with his own non-privileged information as well as materials that may be subject to his individual attorney-client privilege. NRA review would then cause prejudice and delay to the NYAG's attempts to obtain responsive information and potentially prejudice Mr. Powell as well. Conversely, the NRA is at no risk of being prejudiced by Mr. Powell's counsel conducting the review of Mr. Powell's documents. If the NRA concludes any documents produced by Mr. Powell are privileged, it can invoke the claw-back provision that it and the NYAG have agreed upon and claw them back.

The NYAG's position here is simple: We served timely document requests on Mr. Powell. We are entitled to the documents responsive to those requests and Mr. Powell is legally obligated to produce them. He may identify potentially privileged documents upon a privilege log.

Respectfully,

*/s/ Monica Connell*

Monica Connell  
Assistant Attorney General

cc: All Counsel of Record