

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

PEOPLE OF THE STATE OF NEW YORK, BY
LETITIA JAMES, ATTORNEY GENERAL OF
THE STATE OF NEW YORK,

Plaintiff,

v.

THE NATIONAL RIFLE ASSOCIATION OF
AMERICA, INC., WAYNE LAPIERRE,
WILSON PHILLIPS, JOHN FRAZER, and
JOSHUA POWELL

Defendants.

Index No. 451625/2020

**SUBPOENA
DUCES TECUM**

Hon. Joel M. Cohen

The People of the State of New York

To: Christopher Cox
c/o Thomas M. Buchanan, Esq.
Winston & Strawn LLP
1901 L St., N.W.
Washington, D.C. 20036

GREETINGS:

YOU ARE HEREBY COMMANDED, pursuant to the laws of the State of New York, that all business and excuses being laid aside, to produce to the office of the New York State Attorney General, Letitia James, Attention: James Sheehan, 28 Liberty Street, New York, New York 10005, in accordance with the instructions and definitions below, any and all documents requested in the attached Schedule that are in your possession, custody or control, including documents in the possession, custody and control of entities that you own or control in whole or in part. Your production of documents in response to this subpoena may be submitted by mail or electronic mail provided it is received by September 6, 2021, or any agreed upon adjourned date thereafter.

PLEASE TAKE NOTICE that such disclosure is sought or required because it is relevant and material to the prosecution of this action.

PLEASE TAKE FURTHER NOTICE that disobedience of this subpoena by (1) failing to deliver the documents and information requested in the attached schedule on the date, time

and place stated above or any agreed adjourned date and time or (2) failing to provide testimony at the date, time and place stated above or at any agreed adjourned date, may subject you to prosecution under New York or other applicable law.

Dated: August 17, 2021

By: /s James Sheehan

James Sheehan
Chief, Charities Bureau
New York State Attorney General's Office
28 Liberty Street
New York, New York 10005
(212) 416-8490
James.Sheehan@ag.ny.gov

SCHEDULE

A. Instructions

1. Please produce the Documents described in Section C of this schedule, in the accordance with the Instructions (Section A), Definitions (Section B) and format (Section D) described below.
2. Except as otherwise noted, this subpoena applies to all Documents in effect, created, recorded, compiled, transmitted or received from **January 1, 2019 through the present**.
3. The obligation to produce Documents pursuant to this subpoena is a continuing one. Responsive Documents located any time after a response is due or submitted shall be promptly produced at the place and in the manner specified herein.
4. All Documents shall be produced with an accompanying cover letter that includes a description of the Documents being produced and their contents, the source from which the Documents have been produced, and the number(s) of the request(s) in Section C to which each Document produced is responsive. If there are no Documents in Your possession, custody or control that are responsive to any particular request, so state in writing.
5. If any Document requested was formerly in Your possession, custody or control but is no longer available or no longer exists, submit a statement in writing and under oath that: (i) describes in detail the nature of the Document and its contents; (ii) identifies the person who prepared the Document; (iii) identifies all persons who have seen or had possession of the Document; (iv) specifies the dates on which the Document was prepared, transmitted or received; (v) specifies the date on which the Document became unavailable; (vi) specifies the reason why the Document is unavailable, including whether it has been misplaced, lost, destroyed or transferred, and, if it has been destroyed or transferred, specifies the conditions of and reasons for such destruction or transfer and the persons who requested and performed the destruction or transfer; and (vii) identifies all persons with knowledge of any portion of the contents of the Document.
6. If any Document requested is withheld on ground of privilege or other legal doctrine, submit with the production a statement in writing and under oath (e.g., a privilege log) that provides, for each Document withheld: (i) a description of the nature of the Document and its contents; (ii) the date of the Document; (iii) the Document's authors and recipients; and (iv) the legal ground for withholding it from production. If the legal ground is attorney-client privilege, please also indicate the names of the attorneys involved in the Document and the nature of their involvement (e.g., as authors). Such statement (or log) shall accompany each production. Further, for each Document withheld pursuant to this paragraph, the relevant production shall include placeholder pages equivalent in number to the page-length of the withheld Document.
7. Format for Production: Unless otherwise specified and agreed to by the Office of the Attorney General, responsive Documents shall be produced in their original format, whether hard copy or electronic.

B. Definitions

1. “You” or “Your” shall mean Christopher Cox, and any of Your employees, agents, attorneys, representatives, consultants, and any other persons acting on Your behalf.
2. “All” means “each and every.”
3. “And” and “or” shall be construed disjunctively or conjunctively, as necessary to bring within the scope of a request all responses and Documents that might otherwise be deemed outside the scope of that request.
4. “Any” means “any and all.”
5. “Arbitration Proceeding” means the arbitration between You and the NRA before the International Institute for Conflict Prevention & Resolution, Christopher W. Cox v. National Rifle Association of America, Case No. 1G-21-05-S (2019), as well as any scheduling order, preliminary, related or ancillary litigation, discovery, motion practice, rulings, or awards.
6. “Arbitrator” means the individual or individuals overseeing the Arbitration Proceeding, Christopher W. Cox v. National Rifle Association of America, Case No. 1G-21-05-S (2019).
7. “Concerning” or “relating to” means concerning, relating to, referring to, referencing, describing, evidencing, or constituting, either directly or indirectly and in whole or in part.
8. “Documents” is used in the broadest sense of the term and means mean all records and other tangible media of expression of any nature, including: originals, drafts or finished versions; annotated or nonconforming or other copies, however created, produced or stored (manually, mechanically, electronically or otherwise); electronic mail (“email”), instant messages, text messages, Blackberry or other wireless device messages; voicemail; books, papers, files, notes, correspondence, memoranda, reports, records, journals, summaries, registers, account statements, analyses, plans, manuals, policies, telegrams, faxes, wires, telephone logs, telephone messages, or message slips; minutes, notes, records or transcriptions of conversations, communications or meetings; video and audio tapes; disks and other electronic media; microfilm, microfiche; storage devices; press releases; contracts, agreements; calendars, date books, appointment books and diaries; notices and confirmations. A draft or non-identical copy is a separate Document. Documents existing in electronic form shall include all items that may have been removed from the email accounts, directories or other locations in which they are ordinarily stored to any other servers, folders, files, archives, or backup devices, whether or not deleted.

9. "Excess Benefit" shall have the same meaning as defined by the IRS including in Section 4958 of the Internal Revenue Code and such policy statements and guidelines as the IRS may publish.
10. "Excess Benefit Transaction" shall have the same meaning as defined by the IRS including in Section 4958 of the Internal Revenue Code and such policy statements and guidelines as the IRS may publish.
11. "IRS" means Internal Revenue Service, together with any of its divisions, officials, employees, and other Persons acting on its behalf.
12. "Final Arbitration Hearing" means the hearing in the Arbitration Proceeding, currently scheduled to begin in August 2021.
13. "Identify" or "identity" as applied to (i) any natural person means to provide her or his name, titles, aliases, screen names, and contact information, including each of her or his home and business addresses, email addresses, and phone numbers; (ii) any entity means to provide the name, d/b/a names, if any, and contact information; (iii) an account with a financial institution means to provide the name of the institution, its address, the names of the account holders, the account number, the type of account, all signatories on the account, and all individuals authorized to use a credit, debit, or ATM card relating to the account; (iv) a financial transaction means to provide the type of transaction (e.g., donation, grant, withdrawal, deposit, or disbursement), the amount, date, payor, grantor, donor or other party disbursing the funds, the payee, grantee, donee or other party receiving the funds, the reason for the transaction, and any applicable terms or restrictions; (v) an agreement means to provide the terms of the agreement and any amendments; and (vi) any other thing means to describe the thing in detail.
14. "NRA" means the National Rifle Association of America, Inc. (the "NRA") together with (i) any of its directors, officers, agents, employees, consultants, representatives, attorneys, and other persons acting on its behalf, (ii) any predecessors, successors, parent corporations, subsidiaries, divisions, assigns, "d/b/a" names, and affiliates, and (iii) any entities that, directly or indirectly, control, are controlled by, or are under common control with NRA, including by possessing, directly or indirectly, the power to direct or cause the direction of NRA's management and policies, whether through membership, the ownership of voting securities, by contract, or otherwise.
15. "Person" means any natural person or entity, including any corporation, company, limited liability corporation or company, partnership, limited partnership, association, or firm.
16. The singular form of any word shall include the plural and vice versa.
17. Any word used but not defined herein shall be construed consistently with its common meaning.

C. Documents to be Produced

1. All Documents relating to the Arbitration Proceeding, including without limitation:
 - a. All official transcripts of hearings held in connection with the Arbitration Proceeding, including without limitation the transcript of the Final Arbitration Hearing;
 - b. Any Documents used as exhibits during the Arbitration Proceeding, including without limitation any Documents used as exhibits during the Final Arbitration Hearing;
 - c. All submissions made to the Arbitrator during the Arbitration Proceeding, including without limitation briefs, and proffered testimonial and documentary evidence;
 - d. Any expert reports submitted in connection with the Arbitration Proceeding;
 - e. Any rulings from the Arbitrator concerning the Arbitration Proceeding;
 - f. A copy of any confidentiality agreements or orders relating to the Arbitration Proceeding, if any; and
 - g. All Documents relating to any settlement agreement or other stipulations or agreements reached between the parties to the Arbitration Proceeding.
2. All Documents relating to any demand by the NRA for repayment of any monies, benefits or other compensation paid directly or indirectly to You.
3. All Documents relating to any demand by you for repayment of any monies, benefits or other compensation paid directly or indirectly by You.
4. All Documents relating to any claims by the NRA that You received Excess Benefits while You were an NRA employee.
5. All Documents relating to any claims by You that other NRA officers, directors, or employees received Excess Benefits.
6. All Documents relating to any claims by the NRA that you participated in Excess Benefit Transactions with the NRA.
7. All Documents relating to any claims by you that the NRA or any of its officers, directors, or employees participated in Excess Benefit Transactions with the NRA.

D. Format for Production

Unless otherwise specified and agreed to by the Office of Attorney General, all responsive Documents must be produced in Concordance format in accordance with the following instructions.

1. Concordance Production Components. A Concordance production consists of the following component files, which must be produced in accordance with the specifications set forth below in Section 2.
 - A. *Metadata Load File*
 - B. *Extracted or OCR Text Files*
 - C. *Single-Page Image Files*
 - D. *Opticon Load File*
 - E. *Native Files*.
2. Production File Requirements.
 - A. *Metadata Load File*
 - Required file format:
 - UTF-8
 - .dat file extension
 - Field delimiter: (ASCII decimal character 20)
 - Text Qualifier: þ (ASCII decimal character 254). Multiple value field delimiter: ; (ASCII decimal character 59)
 - The first line of the metadata load file must list all included fields. All required fields are listed in Attachment 1.
 - Fields with no values must be represented by empty columns maintaining delimiters and qualifiers.
 - **Note:** All Documents must have page-level Bates numbering (except Documents produced only in native format, which must be assigned a Document-level Bates number). The metadata load file must list the beginning and ending Bates numbers (BEGDOC and ENDDOC) for each Document.
 - Accepted date formats:
 - mm/dd/yyyy
 - yyyy/mm/dd
 - yyyymmdd
 - Accepted time formats:
 - hh:mm:ss (if not in 24-hour format, You must indicate am/pm)
 - hh:mm:ss:mmm
 - B. *Extracted or OCR Text Files*
 - You must produce individual Document-level text files containing the full extracted text for each produced Document.

- When extracted text is not available (for instance, for image-only Documents) You must provide individual Document-level text files containing the Document's full OCR text.
- The filename for each text file must match the Document's beginning Bates number (BEGDOC) listed in the metadata load file.
- Text files must be divided into subfolders containing no more than 5000 files.

C. ***Single-Page Image Files (Petrified Page Images)***

- Where possible, all produced Documents must be converted into single-page tagged image format ("TIF") files. See Section 7.E below for instructions on producing native versions of Documents You are unable to convert.
- Image Documents that exist only in non-TIF formats must be converted into TIF files. The original image format must be produced as a native file as described in Section 7.E below.
- For Documents produced only in native format, You must provide a TIF placeholder that states "Document produced only in native format."
- Each single-page TIF file must be endorsed with a unique Bates number.
- The filename for each single-page TIF file must match the unique page-level Bates number (or Document-level Bates number for Documents produced only in native format).
- Required image file format:
 - CCITT Group 4 compression
 - 2-Bit black and white
 - 300 dpi
 - Either .tif or .tiff file extension.
- TIF files must be divided into subfolders containing no more than 5000 files. Documents should not span multiple subfolders, a Document with more than 5000 pages should be kept in a single folder.

D. ***Opticon Load File***

- Required file format:
 - Field delimiter: , (ASCII decimal character 44)
 - No Text Qualifier
 - .opt file extension
- The comma-delimited Opticon load file must contain the following seven fields (as indicated below, values for certain fields may be left blank):
 - ALIAS or IMAGEKEY – the unique Bates number assigned to each page of the production.
 - VOLUME – this value is optional and may be left blank.
 - RELATIVE PATH – the filepath to each single-page image file on the production media.
 - DOCUMENT BREAK – defines the first page of a Document. The only possible values for this field are "Y" or blank.

- FOLDER BREAK – defines the first page of a folder. The only possible values for this field are “Y” or blank.
- BOX BREAK – defines the first page of a box. The only possible values for this field are “Y” or blank.
- PAGE COUNT – this value is optional and may be left blank.
- **Example:**
ABC00001,,IMAGES\0001\ABC00001.tif,Y,,,2
ABC00002,,IMAGES\0001\ABC00002.tif,,,,
ABC00003,,IMAGES\0002\ABC00003.tif,Y,,,1
ABC00004,,IMAGES\0002\ABC00004.tif,Y,,,1

E. ***Native Files***

- Non-printable or non–print friendly Documents (including but not limited to spreadsheets, audio files, video files and Documents for which color has significance to Document fidelity) must be produced in their native format.
- The filename of each native file must match the Document’s beginning Bates number (BEGDOC) in the metadata load file and retain the original file extension.
- For Documents produced only in native format, You must assign a single Document-level Bates number and provide an image file placeholder that states “Document produced only in native format.”
- The relative paths to all native files on the production media must be listed in the NATIVEFILE field of the metadata load file.
- Native files that are password-protected must be decrypted prior to conversion and produced in decrypted form.
- You may be required to supply a software license for proprietary Documents produced only in native format.

3. **Production Folder Structure.** The production must be organized according to the following standard folder structure:
 - data\ (contains production load files)
 - images\ (contains single-page TIF files, with subfolder organization)
 \0001, \0002, \0003...
 - natives\ (contains native files, with subfolder organization)
 \0001, \0002, \0003...
 - text\ (contains text files, with subfolder organization)
 \0001, \0002, \0003...
4. **De-Duplication.** You must perform global de-duplication of stand-alone Documents and email families against any prior productions pursuant to this or previously related subpoenas.
5. **Paper or Scanned Documents.** Documents that exist only in paper format must be scanned to single-page TIF files and OCR’d. The resulting electronic files should be produced in Concordance format pursuant to these instructions. You must contact the

Assistant Attorney General whose telephone number appears on the subpoena to discuss (i) any Documents that cannot be scanned, and (ii) how information for scanned Documents should be represented in the metadata load file.

6. Structured Data. Structured data includes but is not limited to relational databases, transactional data, and xml pages. Spreadsheets are not considered structured data. You must first speak to the Assistant Attorney General whose telephone number appears on the subpoena.

A. Relational Databases

1. Database tables should be provided in d or other machine-readable, non-proprietary format, with each table in a separate data file. Each data file must have an accompanying data dictionary that explains the meaning of each column name and explains the values of any codes used.

2. Dates and numbers must be clearly and consistently formatted and, where relevant, units of measure should be explained in the data dictionary.

3. Records must contain clear, unique identifiers, and the data dictionary must include explanations of how the files and records relate to one another.

7. Media and Encryption. All Document sets over 2 GB must be produced on CD, DVD, or hard-drive media. All production media must be encrypted with a strong password, which must be delivered independently from the production media. Document sets under 2 GB may be delivered electronically. The OAG offers a secure cloud storage option that can be set up to receive media on a one-time basis, or the OAG will download media from the providing parties' server.

ATTACHMENT 1
Required Fields for Metadata Load File

FIELD NAME	FIELD DESCRIPTION	FIELD VALUE EXAMPLE¹
BEGDOC	Bates number assigned to the first page of the Document.	ABC0001
ENDDOC	Bates number assigned to the last page of the Document.	ABC0002
BEGATTACH	Bates number assigned to the first page of the parent Document in a Document family (<i>i.e.</i> , should be the same as BEGDOC of the parent Document, or PARENTDOC).	ABC0001
ENDATTACH	Bates number assigned to the last page of the last child Document in a family (<i>i.e.</i> , should be the same as ENDDOC of the last child Document).	ABC0008
PARENTDOC	BEGDOC of parent Document.	ABC0001
CHILDDOCS	List of BEGDOCs of all child Documents, delimited by ";" when field has multiple values.	ABC0002; ABC0003; ABC0004...
COMMENTS	Additional Document comments, such as passwords for encrypted files.	
NATIVEFILE	Relative file path of the native file on the production media.	.\Native_File\Folder\...\BEGDOC.ext
TEXTFILE	Relative file path of the plain text file on the production media.	.\Text_Folder\Folder\...\BEGDOC.txt
SOURCE	For scanned paper records this should be a description of the physical location of the original paper record. For loose electronic files this should be the name of the file server or workstation where the files were gathered.	Company Name, Department Name, Location, Box Number...
CUSTODIAN	Owner of the Document or file.	Firstname Lastname, Lastname, Firstname, User Name; Company Name, Department Name...
FROM	Sender of the email.	Firstname Lastname < FLastname @domain >
TO	All to: members or recipients, delimited by ";" when field has multiple values.	Firstname Lastname < FLastname @domain >; Firstname Lastname < FLastname @domain >; ...

¹ Examples represent possible values and not required format unless the field format is specified in Attachment 1.

CC	All cc: members, delimited by ";" when field has multiple values.	Firstname Lastname <FLastname @domain>; Firstname Lastname <FLastname @domain>; ...
BCC	All bcc: members, delimited by ";" when field has multiple values	Firstname Lastname <FLastname @domain>; Firstname Lastname <FLastname @domain>; ...
SUBJECT	Subject line of the email.	
DATERCVD	Date and time that an email was received.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
DATESENT	Date and time that an email was sent.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALBEGDATE	Date that a meeting begins.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
CALENDDATE	Date that a meeting ends.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
ATTACHMENTS	List of filenames of all attachments, delimited by ";" when field has multiple values.	AttachmentFileName.; AttachmentFileName.docx; AttachmentFileName.pdf;...
NUMATTACH	Number of attachments.	
RECORDTYPE	General type of record.	IMAGE; LOOSE E-MAIL; E-MAIL; E-DOC; IMAGE ATTACHMENT; LOOSE E-MAIL ATTACHMENT; E-MAIL ATTACHMENT; E-DOC ATTACHMENT
FOLDERLOC	Original folder path of the produced Document.	Drive:\Folder\...\...
FILENAME	Original filename of the produced Document.	Filename.ext
DOCEXT	Original file extension.	html, xls, pdf
DOCTYPE	Name of the program that created the produced Document.	Adobe Acrobat, Microsoft Word, Microsoft Excel, Corel WordPerfect...
TITLE	Document title (if entered).	
AUTHOR	Name of the Document author.	
REVISION	Number of revisions to a Document.	18
DATECREATED	Date and time that a Document was created.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
DATEMOD	Date and time that a Document was last modified.	mm/dd/yyyy, yyyy/mm/dd, or yyyyymmdd; hh:mm:ss AM/PM or hh:mm:ss
FILESIZE	Original file size in bytes.	
PGCOUNT	Number of pages per Document.	
IMPORTANCE	Email priority level if set.	Low, Normal, High

MD5HASH	MD5 hash value computed from native file (a/k/a file fingerprint).	
SHA1HASH	SHA1 hash value	
MSGINDEX	Email message ID	
CONVERSATIONINDEX	Email Conversation Index	

VERIFICATION

This response to the subpoena of the Attorney General of the State of New York dated August __, 2021, including production of the requested Documents, was prepared and assembled under my personal supervision from my records in accordance with the instructions and definitions set forth in such subpoena and is complete and correct to the best of my knowledge and belief. The Documents produced in response to this subpoena are authentic, genuine and what they purport to be.

(Signature of Official)

(Title)

(Type or Print Name of Above Official)

Subscribed and sworn to before me this ____ day of _____ 2021.

Notary Public

My commission expires _____

EXHIBIT B

Thompson, Stephen

From: James, Erica
Sent: Tuesday, August 17, 2021 5:19 PM
To: SFarber@winston.com; mxg@brewerattorneys.com; tmclish@akingump.com;
kent@correlllawgroup.com; mwerbner@werbnerlaw.com; WFleming@gagespencer.com; Sarah
Rogers; blb@brewerattorneys.com; taylor@hgdlawfirm.com; mmacdougall@akingump.com;
Loegering, Becca; wab@brewerattorneys.com; hevans@akingump.com;
samantha.block@akingump.com; francois@southernmedlaw.com; Marc Mandich; George Douglas
Cc: Connell, Monica; Stern, Emily; Sheehan, James
Subject: People v. NRA, et al. - Christopher Cox Subpoena
Attachments: Cox Subpoena Duces Tecum.pdf

Counsel,

Attached is a copy of a subpoena issued to Christopher Cox for the production of documents, which was served earlier today.

Regards,

Erica

Erica James | Assistant Attorney General

New York State Office of the Attorney General

28 Liberty Street, New York, NY 10005

Tel: (212) 416-8990 | Erica.James@ag.ny.gov

EXHIBIT C

B R E W E R
ATTORNEYS & COUNSELORS

September 5, 2021

VIA ELECTRONIC MAIL

Thomas M. Buchanan
Winston & Strawn LLP
1700 K. Street, N.W.
Washington, DC 20006-3817

***Re: Subpoena Duces Tecum
People of the State of New York by Letitia James v. National Rifle Association
of America, Inc., Index No. 451625/2020 (Sup. Ct. N.Y. Cnty.)***

Dear Mr. Buchanan:

As you know, we represent the National Rifle Association of America (“NRA”) in the above-referenced action (the “Action”). We write regarding the New York Attorney General’s (the “NYAG”) Subpoena Duces Tecum, dated August 17, 2021 (the “Subpoena”) served on your client, Christopher Cox, in the Action.

Reference is made to the Undertaking, executed by Mr. Cox on February 24, 2020, and by you on March 3, 2020 (the “Undertaking”), in connection with the arbitration proceedings initiated by Mr. Cox against the NRA (the “Arbitration”). Pursuant to the Undertaking, Mr. Cox and you undertook, among other things:

- I will not allow any third party to use any discovery materials produced to me by the NRA in these proceedings without the express written consent of the NRA. (Undertaking at p. 1, ¶ 3); and
- In the event that a third party requests any discovery materials produced to me by the NRA in these proceedings, I will not provide, produce, or otherwise share any such discovery materials without first allowing the NRA to review any such materials for responsiveness and any necessary redactions in order to protect the legal privileges of the NRA or its Board and the First Amendment rights of the NRA and its members and donors. (*Id.* at ¶ 5).

Further, pursuant to the Undertaking, Mr. Cox acknowledged and undertook, and undertook to instruct counsel accordingly, in relevant part that “to the extent the NRA produces to me or my counsel discovery materials that are protected by the attorney-client privilege, the attorney work product doctrine, or any other privilege”:

- The NRA and/or its Board of Directors is not waiving any applicable privileges pertaining to any such discovery materials, and the NRA's production to me of

September 5, 2021

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such discovery materials shall not be deemed to constitute waiver of any applicable privileges as to me or any other entity or individual. (Undertaking at p. 1, ¶ 1)

- In the event that a third party requests any such privileged discovery materials produced to me by the NRA in these proceedings, I acknowledge that I do not have, and never had, the authority to waive any applicable privileges on behalf of the NRA or its Board of Directors and I will not produce such documents to the requesting third party without first allowing the NRA to review any such material for responsiveness and any necessary redactions in order to protect the legal privileges of the NRA or its Board and the First Amendment rights of the NRA and its members and donors. (*Id.* at p. 2, ¶ 2).
- I understand that the foregoing applies to any discovery materials that are potentially privileged that are produced to me by the NRA in response to my discovery requests in the aforementioned arbitration proceedings. (*Id.* at p. 2, ¶ 4).

In addition, Rule 18 of the 2018 CPR Non-Administered Arbitration Rules as applicable in the Arbitration (the “CPR Rules”) provides:

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party.



Indeed, as a matter of law, documents and communications produced by the NRA to Mr. Cox in the Arbitration remain confidential and must be protected from production to the NYAG, which was not a party to the Arbitration. *See, e.g., Those Certain Underwriters at Lloyds, London v. Occidental Gems, Inc.*, 41 A.D.3d 362 (1st Dep’t 2007) (“The motion court also properly rejected the Special Referee’s recommendation that respondent produce documents and testimony from a confidential arbitration proceeding in Belgium, to which Occidental was not a party.”); *Pasternak v. Dow Kim*, 2013 WL 1729564 (S.D.N.Y. 2013) (motion to compel compliance with non-party subpoena denied when parties to a CPR arbitration agreed to treat the arbitration as confidential under Rule 18 of the CPR Rules, and court held that “[n]othing in the rules or any case law of which the Court is aware permits a non-party to a confidential arbitration to obtain materials from that arbitration . . . [the] subpoena, if enforced, would effectively require the Court to ignore the rules that governed the Dukhon Arbitration. The Court is not willing to do so.”) (citing, *inter alia*, *Occidental Gems, Inc.*).

B R E W E R

September 5, 2021

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The foregoing obligations incumbent upon Mr. Cox are in addition to his pre-existing obligations to maintain the confidentiality of the NRA's privileged documents and communications by virtue of his status as a former officer of the NRA.

Pursuant to Mr. Cox's obligations under the Undertaking, the CPR Rules, [REDACTED], and applicable law, the NRA hereby demands that Mr. Cox provide the NRA with any document production anticipated to be made in response to the Subpoena for review by the NRA prior to such production. The NRA will undertake to review the anticipated production expeditiously for documents protected by the attorney-client privilege, by the work product doctrine or those documents protected by the parties' confidentiality obligations in the Arbitration. See CPLR 3101(b)-(c); *Application of Dauer*, 237 A.D.2d 228 (1st Dep't 1997) (denial of motion to quash subpoena served on non-party insurance company which was former employer of individual defendant modified "to protect attorney-client confidences and attorney work product that might have been generated as a result of regulatory and other legal matters involving the individual defendant"); *In re Ehmer*, 272 A.D.2d 540, 541 (2d Dep't 2000) (information sought from nonparties through subpoena would be protected from disclosure if they "impermissibly tread upon attorney-client privilege or involve attorney work product").

Finally, the NRA notes that a confidentiality order has not yet been issued by the Court in the Action. The NRA requests that, under any circumstance, Mr. Cox refrain from producing confidential documents to the NYAG until such a confidentiality order is in place. Furthermore, the NRA requests that, if such a production is made, any confidential documents be given a stamp identifying them as confidential.

Please call me should you have any questions.

Sincerely,

/s/ Svetlana M. Eisenberg
Svetlana M. Eisenberg

EXHIBIT D

WINSTON
& STRAWN
LLP

North America Europe Asia

1901 L Street, NW
Washington, DC 20036
T +1 202 282 5000
F +1 202 282 5100

THOMAS M. BUCHANAN

Partner
(202) 282-5787
tbuchanan@winston.com

September 17, 2021

VIA EMAIL

Svetlana M. Eisenberg
Brewer, Attorneys & Counselors
750 Lexington Ave., 14th Fl.
New York, NY 10022

Re: *Subpoena Duces Tecum*
People of the State of New York by Letitia James v. National Rifle Association of
America, Inc., Index No. 451625/2020 (Sup. Ct. N.Y. Cnty.)

Dear Svetlana:

This letter is in response to the multiple communications we have received from the NRA regarding the New York Attorney General's subpoena duces tecum served on Mr. Cox.

Cox first informed the NRA of the subpoena on August 20, 2021 and asked whether the NRA would be objecting or moving to quash. The NRA did not respond. Cox reminded the NRA of the subpoena on September 4, two days before the production was due, and only then did the NRA begin to object. Yet, the NRA's objections were not filed with the Court even though the NRA, as a party to the arbitration and the pending action, has standing to move to quash. Since the NRA first objected, Cox has provided the NRA an opportunity to review the proposed production and identify documents that needed to be redacted for privilege and First Amendment concerns consistent with his duties based on the Undertaking. He has also provided the NRA ample opportunity to formally move to quash the subpoena. Cox believes that he has fulfilled his obligations under the "Undertaking, the CPR Rules, the Settlement Agreement, and applicable law."

Per Cox's request, the NRA is supposed to inform Cox of the documents it allows to be produced by close of business on September 17. Cox will expeditiously produce those documents to the NYAG. As discussed below, Cox's interprets the applicable law to require production of arbitration related materials including motions, expert reports, briefs, and orders. However, if the NRA disagrees with Cox's interpretation of the law, then the NRA should notify Cox and move to quash the subpoena by September 24, 2021. If the NRA does not move to quash the subpoena, this amounts to a waiver given the ample notice that Cox has provided to the NRA. The NRA



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cannot sit on its hands now, then later object given that it has plenty of notice of the subpoena and the pending production.

As the NRA noted in its September 5 letter, Rule 18 of the 2018 CPR Non-Administered Arbitration Rules that governed the arbitration provides:

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and *unless otherwise required by law* or to protect the legal right of a party. (emphasis added).

The NYAG's subpoena satisfies the exception to Rule 18's general confidentiality requirement that permits disclosure of confidential information if "otherwise required by law." New York law requires that parties served with a subpoena comply with the terms of the subpoena, and a party that fails to comply with a subpoena may be held in contempt of court. *See* CLPR 2308(a). Case law supports this understanding. *See, e.g. Gotham Holdings, LP v. Health Grades, Inc.*, 580 F.3d 664, 665 (7th Cir. 2009) ("even if the [confidentiality] agreement had purported to block disclosure [pursuant to a subpoena], such a provision would be ineffectual. Contracts bind only the parties. No one can 'agree' with someone else that a stranger's resort to discovery . . . will be cut off."); *see also Bailey v. Equifax Credit Info. Servs., Inc.*, 2014 WL 12861571, at *2 (N.D. Ga. Sept. 10, 2014) (same). Indeed, a "subpoena impose[s] . . . a legal duty" to produce documents, which means "they [can] be produced without any violation" of CPR confidentiality rules. *Veleron Holding, B.V. v. Stanley*, 2014 WL 1569610, at *5 (S.D.N.Y. Apr. 16, 2014).

Cox also believes that a New York Court would compel Cox to comply with the NYAG's subpoena because the NYAG brought suit under its powers to enforce New York's charitable organization laws. This situation is similar to *State ex rel. Balderas v. ITT Educ. Servs., Inc.*, 421 P.3d 849 (N.M. Ct. App. 2018). There, the State of New Mexico served subpoenas on two attorneys who had represented students in prior arbitration proceedings against their college during an investigation under the state's Unfair Practices Act. *Id.* at 851. The school objected to the subpoenas, arguing that the disclosure would violate the confidentiality clauses of students' enrollment agreements, which required that "[a]ll aspects of the arbitration proceeding. . . will be strictly confidential," and that there was "a public interest in keeping arbitration proceedings confidential." *Id.* at 851-52. The court concluded that the confidentiality provision was unenforceable as a matter of public policy, holding that "it would be contrary to public policy to allow [the school] to use the confidentiality clause . . . to shield itself from the State's investigation and litigation authorized under [a statute]." *Id.* at 855. The Court would reach the same result here.

Cox does not believe that the cases cited in your September 5 letter compel a different result. Although *Pasternak v. Dow Kim*, 2013 WL 1729564 (S.D.N.Y. Apr. 22, 2013)¹ addresses

¹ *Pasternak* also supports production here because the NRA waived confidentiality when it requested that Cox produce all the arbitration filings to counsel for the Creditor's Committee. The NRA cannot waive confidentiality whenever it

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CPR Rule 18, a more recent case in the Southern District reached the opposite conclusion when addressing nearly identical arbitration rules. In *Veleron Holding, B.V. v. Stanley*, the court made it very clear that parties “are not free to immunize materials that are relevant to some other dispute from disclosure in connection with a wholly separate dispute resolution proceeding.” 2014 WL 1569610, at *8. There, a non-party to an arbitration obtained via subpoena confidential documents from an arbitration with rules very similar to the CPR rules. *Id.* at *3. The court concluded that otherwise confidential information can still be disclosed when “for example . . . a party is under legal duty to disclose materials and documents[.]” *Id.* at *4. The court further concluded that “[n]o American court of which I am aware would ever accept that a party to an arbitration was shielded by rules . . . from producing documents or evidence in an American lawsuit pursuant to . . . subpoena.” *Id.* at *8. Indeed [the party’s] production of the [award] pursuant to a discovery subpoena duly served in accordance with the Federal Rules of Civil Procedure stands as Exhibit A for that proposition; BNP was a party to the [] Arbitration and is bound by the rules of that Tribunal, yet it could be and was compelled to produce to Morgan Stanley an award that is ‘confidential’ under [the] rules.” *Id.*

Cox plans to expeditiously produce all documents that the NRA agrees he may produce on September 17. Cox will allow the NRA another week to move to quash if the NRA truly believes that the subpoena is not valid and cannot compel the production of certain categories of documents. However, if the NRA has not moved to quash by September 24, then Cox has no choice but to produce the documents based on the applicable law. The NRA’s inaction risks putting Cox at risk of violating a valid subpoena. If the NRA believes it has a legal basis to quash, then it must do so promptly.

Sincerely,

/s/ Thomas M. Buchanan

Cc: Emily Stern, James Sheehan, Erica James, Monica Connell

benefits the NRA and then insist on confidentiality later and force Cox to incur the risk of being held in contempt. “Where a party voluntarily discloses privileged documents to an adversary in one proceeding, it cannot withhold the same documents on the basis of privilege in a subsequent proceeding, even if that subsequent proceeding involves a different adversary.”). 2013 WL 1729564 at *5 (quoting *Chevron Corp. v. Salazar*, 275 F.R.D. 437, 445 (S.D.N.Y. 2011)).