

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

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

INDEX NO.: 451625/2020  
Motion Seq. No. 23

Plaintiff,

-against-

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

Defendants.

and

THE NATIONAL RIFLE ASSOCIATION OF  
AMERICA,

Defendant-Counterclaim Plaintiff,

-against-

LETITIA JAMES, ATTORNEY GENERAL OF  
THE STATE OF NEW YORK, IN HER  
OFFICIAL AND INDIVIDUAL CAPACITIES,

Plaintiff-Counterclaim Defendants.

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**AFFIRMATION IN OPPOSITION TO RELIEF SOUGHT BY THE NYAG WITH  
REGARD TO HER SUBPOENA DUCES TECUM TO CHRIS COX**

I, Svetlana M. Eisenberg, an attorney duly admitted to practice law in the courts of the State of New York, hereby affirm the following under penalty of perjury pursuant to CPLR § 2106:

1. I am a partner at Brewer, Attorneys & Counselors, counsel for the National Rifle Association of America (the “NRA”) in the above-captioned action.
2. I am familiar with the facts and circumstances of this action and the arbitration discussed in this affirmation.

3. The International Institute for Conflict Prevention and Resolution (“IICPR”) is a provider of alternative dispute resolution services. Its Non-Administered Arbitration Rules (Effective March 1, 2018) provide that arbitrations conducted under IICPR’s auspices are “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.” See Exhibit 1, annexed hereto, which is a true and correct copy of the rules.

4. In 2019, the NRA and a former NRA employee, Christopher Cox, entered into an employment agreement in which they agreed that certain disputes between them would be resolved in a confidential Virginia-sitused IICPR arbitration pursuant to IICPR rules, including the confidentiality rule quoted above. They also agreed that disputes arising under the same agreement would be resolved under Virginia law.

5. Subsequently, a dispute arose between the NRA and Mr. Cox. They resolved it—as prescribed in the employment agreement—through a confidential IICPR arbitration in accordance with the IICPR rules. In connection with the arbitration, the NRA produced records to Mr. Cox pursuant to a series of undertakings by Mr. Cox and his counsel, which are quoted in the NRA’s letter to Mr. Cox dated September 5, 2021, which was filed with the Court as NYSCEF 402 (at pages 27-28).

6. On or about April 14, 2021, in the context of the NRA’s chapter 11 proceeding in the Northern District of Texas, while the arbitration was ongoing, the NRA and Cox jointly agreed to share pleadings from the confidential arbitration with counsel for the Unsecured Creditors’ Committee (the “UCC”). It was the UCC’s professionals, not the UCC, who asked to see copies of the operative arbitration pleadings. When I, on behalf of the NRA, asked Mr. Cox’s counsel

whether he had any objection to the NRA's sharing the pleadings with the UCC's professionals, as requested, he advised that he did not.

7. The OAG's statement (NYSCEF 515 at paragraph 8) in connection with its motion that "the NRA *required* Mr. Cox to provide all the arbitration materials to [UCC]" is inaccurate. (Emphasis added.) In fact, on October 8, 2021, the NRA wrote to Cox's counsel: "The NYAG's draft letter [to the Court] states that, according to you, the NRA *required* Mr. Cox to turn over pleadings from the arbitration to the UCC. *That is incorrect.* Instead, the NRA informed you of the UCC's request [and] *asked if Mr. Cox objected*, and you advised the NRA that he did not. In the same email, you advised that you would send the pleadings to the UCC. Please advise Ms. Connell that her characterization of those interactions *is incorrect.*" (Emphasis added.) In response, on October 13, 2021, Mr. Cox's counsel forwarded my email message to the OAG, stating, in part: "The NRA correctly paraphrases the email exchange between me and Ms. Eisenberg."

8. When the pleadings were provided with the NRA's consent to the UCC's professionals, the NRA understood that the Unsecured Creditors' Committee's professionals worked pursuant to its Bylaws, an excerpt of which is annexed hereto as Exhibit 2. Like a protective order might, the Bylaws strictly limited the use of the information. In fact, when the NRA shared the information, it understood that the professionals would not share the pleadings from the arbitration with the members of the UCC.

9. The Unsecured Creditors Committee's professionals' request for copies of pleadings in the NRA's arbitration against Cox was sent to the Debtors in or around April 2021. It was addressed by the parties to the arbitration shortly thereafter. As a result, materials shared with

the UCC's professionals did not include copies of anything but the pleadings in that arbitration filed up to that point. The arbitration concluded months later.

10. In the context of discovery in connection with a contested matter in the NRA's chapter 11 case, in which the NYAG was a party, the NRA produced to the NYAG a document the NRA had served on Mr. Cox in the arbitration. The document provided Mr. Cox with notice of the opinions that the NRA's expert witness formed in relation to the issues in the arbitration. Given that the NYAG claims that the production of that document effects waiver as to the rest of the arbitration materials, it is important to note that, in connection with its productions in the chapter 11 case, the NRA interposed in its Responses and Objections a reservation of rights, which stated in part: "Debtors' responses to the Requests are not intended to be, nor shall any such response be construed to be, a waiver of any objection, right, or remedy that the Debtors may assert now or in the future including, without limitation, objections regarding authenticity, relevance, or admissibility of any of the documents or information provided." A true and correct copy of the Responses and Objections served by the Debtors in the chapter 11 case are attached as Exhibits 3 and 4.

11. In the context of this lawsuit against the NRA and certain individuals, in August 2021, the NYAG served on Cox—a third party—a subpoena duces tecum, which, among other things, calls for materials related to the confidential arbitration. Although the subpoena calls for other categories of documents, Cox's counsel advised the NRA on or about September 29, 2021, that the draft production he prepared consists solely of documents related to various aspects of the arbitration.

12. When the dispute over the discoverability of arbitration-related materials arose in connection with the subpoena, as shown in the annexed Exhibit 5, which is a true and correct copy

of an email message on behalf of the NRA to the NYAG, the NRA made clear that it does not object to Mr. Cox's production of records that were produced to or by him in the arbitration to the extent those records are independently responsive to a different part of the NYAG's subpoena.

13. In addition, on or about October 14, 2021, in an effort to amicably resolve the dispute, the NRA offered to the NYAG that it would not object to the production of records produced to or by Cox in discovery in the arbitration. The NYAG, however, refused that request insisting on the production of all materials related to the arbitration.

14. In an effort to further narrow the disputed issues here, the NRA recently agreed to not object to the production of historical underlying documents even though Mr. Cox tagged them for the production merely because they constitute discovery exchanged in the arbitration.

15. The NRA's review of Cox's draft production in response to the subpoena identified multiple documents disclosing the identity of the NRA's donors that must be redacted before the documents are produced to the NYAG. After Mr. Cox prepared his draft production, I asked his counsel on behalf of the NRA whether he or they conducted an independent review of his draft production for such confidential, nondiscoverable and sensitive information. Cox's counsel stated that they had not and, instead, were relying on the NRA to do so. In addition, when Mr. Cox prepared records for production to the NYAG in response to her request for his records in 2019, his draft production contained several privileged documents reflecting privileged information belonging to the NRA. As the undertakings he and his counsel signed in the arbitration reflect, as an officer of the NRA he was privy to privileged information belonging to the NRA. In addition, he agreed that any inadvertent production of privileged records to him in the Aronson is subject to the NRA's ability to claw back such documents and does not constitute waiver vis-a-vis him or third parties, such as the NYAG.

Dated: December 22, 2021  
New York, New York

/s/ Svetlana M. Eisenberg  
Svetlana M. Eisenberg

**Certification of Compliance with Word Count**

I, Svetlana M. Eisenberg, an attorney duly admitted to practice law before the courts of the State of New York, certify that the foregoing Affirmation of Svetlana M. Eisenberg complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the Reply Affirmation contains 1,357 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this Affirmation.

By: /s/ Svetlana M. Eisenberg  
Svetlana M. Eisenberg  
*Attorney for Defendant Counterclaim-Plaintiff*  
*National Rifle Association of America*