



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU

212.416.6241
Emily.Stern@ag.ny.gov

July 5, 2022

Honorable 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 of the State of New York, by Letitia James, Attorney General of the State of New York v. The National Rifle Association of America, Inc. et al.*,
Index No. 451625/2020

Dear Justice Cohen:

Plaintiff, the People of the State of New York, by counsel, the Office of the Attorney General of the State of New York, respectfully writes in response to the June 29, 2022 letter submitted by Defendant National Rifle Association of America (“NRA”) and the July 1, 2022 letter from Defendant Wayne LaPierre (NYSCEF 731-739 and 741) seeking leave to enlarge the seven-hour deposition duration limit under Commercial Division Rule 11-d in regard to the deposition of former NRA president Peter Brownell or, in the alternative, for an order ruling Mr. Brownell’s still-open deposition to be inadmissible.

Plaintiff has no opposition to the request by the NRA and Mr. LaPierre to extend the deposition of Mr. Brownell. The parties stipulated and agreed in this action, and the Court so-ordered, that the seven-hour durational limit on depositions pursuant to Commercial Division Rule 11-d may be extended “**on a witness-by-witness basis and on the consent of the parties** or good cause shown to the Court.” (NYSCEF 462, p. 10.) Indeed, Plaintiff has suggested to the NRA that it cross-notice or re-notice Mr. Brownell to allow sufficient time for questioning if necessary. Even recently, Plaintiff asked the NRA to select a date for Mr. Brownell’s deposition without objection to continuation of the testimony. *See* Exhibit A (June 26, 2022 email). Accordingly, this application to the Court appears unnecessary.

To the extent that any application was necessary, Plaintiff believes that the request for an enlargement of the seven-hour limit should have made to the Special Master, as other requests to extend the deposition duration limits have been. It is a discovery issue that is within the Special Master’s authority and can be expeditiously addressed by him as discovery will soon close. In an email on June 29, 2022, Plaintiff asked counsel for the NRA why an application to the Court

was necessary, rather than an agreement between the parties or, if necessary, an application to the Special Master. *See* Exhibit B (June 29, 2022 email). The NRA has not responded to Plaintiff's inquiry. Nor, in accordance with Your Honor's individual practices, did the NRA and Mr. LaPierre submit their applications jointly with Plaintiff's response, as required. In the interests of proceeding in the most efficient way possible, Plaintiff has alerted the Special Master to these filings and will provide the same to him.

In any event, notwithstanding where the application is made, Plaintiff consents to extending the time for Mr. Brownell's deposition to allow the NRA and Mr. LaPierre (or any other party) to examine the witness, and, if necessary, the OAG time for appropriate re-direct examination.

Plaintiff objects to the alternative request by the NRA and Defendant Wayne LaPierre for a ruling on the admissibility of Mr. Brownell's deposition now. Any such request is at best premature. *Shaw v. Paramount Pictures Corp.*, 52 A.D.2d 568, 569 (1st Dep't 1976)(declining to rule on admissibility of deposition testimony as premature and permitting continued deposition); *Siniscalchi v. Cent. Gen. Hosp.*, 80 A.D.2d 849, 850 (2d Dep't 1981)(permitting new deposition preferable to limiting admissibility). In addition, we believe that such application would have to be made on a full record. Plaintiff, accordingly, reserves all further arguments and objections to any effort to bar the admission of Mr. Brownell's deposition testimony in further proceedings in this action.

In conclusion, the parties agree to the continued deposition of Mr. Brownell. To the extent that a court order is required to effectuate that, there is no, and has been no, objection to the same.

Respectfully,

/s/ Monica Connell

Monica Connell
Senior Litigation Counsel
Assistant Attorney General

cc: All Counsel of Record
Hon. O. Peter Sherwood, Special Master

From: [Connell, Monica](#)
To: [sbr \(sbr@brewerattorneys.com\)](mailto:sbr@brewerattorneys.com); [Svetlana Eisenberg \(sme@brewerattorneys.com\)](mailto:sme@brewerattorneys.com)
Subject: Scheduling
Date: Sunday, June 26, 2022 4:03:00 PM
Attachments: [image001.png](#)

Sarah and Svetlana,

As a housekeeping matter, do I understand correctly that the NRA is not going to actually take the depositions of the taxidermist, RSM, and Pete Brownell, as previously noticed?

Thanks,

Monica



Monica Connell
Senior Litigation Counsel
New York State Office of the Attorney General
28 Liberty Street, 19th Floor | New York, NY 10005
Tel: (212) 416-8965 | Monica.CConnell@ag.ny.gov

The information contained in this e-mail and any attachments to this e-mail is privileged and confidential information, and is intended only for the use of the individuals or entities named as addressees. If the reader of this message is not the intended recipient or the employee, agent, or service-provider responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender by telephone at 212-416-8965. The address, email address and fax numbers provided herein are not for service of papers absent express agreement to the same. Thank you.

From: [Connell, Monica](#)
To: [Svetlana Eisenberg](#); [Stern, Emily](#); [Shiffman, Steven](#)
Cc: [Sarah Rogers](#)
Subject: Re: NYAG v. NRA et al: Peter Brownell
Date: Wednesday, June 29, 2022 8:36:42 PM

Svetlana,

As we have long told you, we do not object to exceeding the 7 hours for Mr. Brownell and do not oppose your notice to depose him. We would reserve time to cross examine him if necessary based upon your questioning. We disagree with your assertion regarding the ability to use the Brownell deposition. Is there a reason you are going to Judge Cohen for this rather than the Special Master? Also, I'm sorry if I missed it, have we set a date for Mr. Brownell's deposition?

Thanks,

Monica

Get [Outlook for iOS](#)

From: Svetlana Eisenberg <sme@brewerattorneys.com>
Sent: Wednesday, June 29, 2022 7:37:49 PM
To: Connell, Monica <Monica.CConnell@ag.ny.gov>; Stern, Emily <Emily.Stern@ag.ny.gov>; Shiffman, Steven <Steven.Shiffman@ag.ny.gov>
Cc: Sarah Rogers <sbr@brewerattorneys.com>
Subject: NYAG v. NRA et al: Peter Brownell

[EXTERNAL]

Counsel,

The NRA will request that Judge Cohen: (i) order extending—pursuant to Commercial Division Rule 11-d(f)—the time/duration of Pete Brownell's examination to 10.5 hours; or (ii) in the alternative, declare that no portion of Mr. Brownell's deposition testimony is admissible at any evidentiary proceeding (or usable at summary judgment) against the NRA over the NRA's objection.

Your office previously advised that you have no objection to the first prong.

Can you please confirm by no later than noon tomorrow that your office opposes the declaratory relief the NRA seeks in the alternative?

Thank you.
Svetlana

Svetlana M. Eisenberg | Partner
Brewer, Attorneys & Counselors

750 Lexington Avenue, 14th Floor

New York, New York 10022

Office Direct: 212.224.8817

Office Main: 212.489.1400

Cell: 929.319.1731

Fax: 212.751.2849

sme@brewerattorneys.com www.brewerattorneys.com

BREWER

This communication (including any attachments) is intended for the sole use of the intended recipient, and may contain material that is confidential, privileged, attorney work product, and/or subject to privacy laws. If you are not the intended recipient, you are hereby kindly notified that any use, disclosure, or copying of this communication or any part thereof is strictly prohibited. If you have received this communication in error, please delete this communication, including any copies or printouts, and notify us immediately by return email or at the telephone number above. Brewer, Attorneys and Counselors asserts in respect of this communication all applicable confidentiality, privilege, and/or privacy rights to the fullest extent permitted by law. Thank you.