

EXHIBIT B

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1 ORAL ARGUMENTS
2 SUPREME COURT FOR THE STATE OF NEW YORK
3 COUNTY OF NEW YORK
4 PEOPLE OF THE STATE OF NEW :
5 YORK BY LETTIA JAMES, :
6 ATTORNEY GENERAL OF THE : Index No.
7 STATE OF NEW YORK : 451625/2020
8 Plaintiff, : (Cohen, J.)
9 :
10 v. :
11 :
12 THE NATIONAL RIFLE :
13 ASSOCIATION OF AMERICA, :
14 WAYNE LaPIERRE, WILSON :
15 PHILLIPS, and JOHN FRAZER :
16 and JOSHUA POWELL, :
17 Defendants. :
18 ----- :
19 :
20 :
21 :
22 :
23 :
24 :
25 :

ORAL ARGUMENTS VIA ZOOM
THURSDAY, MARCH 10, 2022
2:05 P.M.

REPORTED BY:
SILVIA P. WAGE, CCR, CRR, RPR
JOB NO. 5124075

ORAL ARGUMENTS

B E F O R E:

SPECIAL MASTER OF DISCOVERY
HONORABLE PETER SHERWOOD

A P P E A R A N C E S:

STATE OF NEW YORK ATTORNEY GENERAL

Attorneys for Plaintiffs

28 Liberty Street

New York, New York 10005

(212) 416-8401

Monica.connell@ag.ny.gov

Emily.stern@ag.ny.gov

BY: MONICA CONNELL, ESQ.

BY: EMILY STERN, ESQ.

BREWER ATTORNEYS & COUNSELORS

Attorneys for The National Rifle Association

750 Lexington Avenue

New York, New York 10022

212) 489-1400

Sme@brewerattorneys.com

BY: SVETLANA EISENBERG, ESQ.

CORRELL LAW GROUP

Attorneys for Defendant Wayne LaPierre

10 West Boscawen Street, Suite 26

Winchester, Virginia 22601

(540) 546-4703

Kent@correlllawgroup.com

BY: PHILLIP CORRELL, ESQ.

WINSTON & STRAWN LLP

Attorneys for Defendant Wilson Phillips

MetLife Building

200 Park Ave, New York, NY 10166

(212) 294-6700

Sfarber@winston.com

BY: SETH FARBER, ESQ.

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A P P E A R A N C E S (CONT.):

GAGE SPENCER & FLEMING LLP

Attorneys for Defendant John Frazer

410 Park Ave, #810

New York, New York 10022

(347) 348-0452

Wfleming@gagespencer.com

BY: WILLIAM FLEMMING, ESQ.

AKIN GUMP STRAUSS HAUER & FELD LLP

Attorneys for Defendant Joshua Powell

Bank of America Tower

One Bryant Park

New York, New York 10036

(212) 872-1000

Tmclish@akingump.com

Samantha.block@akingump.com

Hevans@akingump.com

BY: THOMAS McLISH, ESQ.

BY: SAMANTHA BLOCK, ESQ.

BY: HAYLEY EVANS, ESQ.

A L S O P R E S E N T:

DAWN WILSON, ESQ.

GANFER SHORE LEEDS & ZAUDERER

JONATHAN CONWAY, ESQ.

OFFICE OF THE ATTORNEY GENERAL

(OBSERVER)

MARK WEBNER, ESQ.

WEBNER LAW

(OBSERVER)

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SPECIAL MASTER: So, as I understand it, the subject for this afternoon has to do with the protective order. I noticed that every town did file a motion with the Court, but I don't recall seeing anything coming to me.

Could somebody educate me as to where the motion to quash is?

Is it still with Judge Cohen or somewhere between where he is and me and the ether?

MS. CONNELL: Your Honor, this is Monica Connell from the Attorney General's Office.

SPECIAL MASTER: Hi, there.

MS. CONNELL: Good afternoon.

Every town filed their motion to quash. The Attorney General's Office joined by letter and asked that the matter be referred to your Honor.

Subsequently, the NRA filed a cross-motion to compel at the February 25th argument on the Attorney General's motion to dismiss the NRA's amended counterclaims.

I raised this issue with the Judge

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1
2 and he thought it should go to you, but it seems
3 to sort of be in the ether, maybe someplace
4 between 60 Center Street and your office. I
5 don't know what else, if anything, has to be
6 done.

7 But it appears to be that probably
8 one of the movants would have to move it or, you
9 know, the NRA -- I mean, every town has consented
10 to have it referred to your Honor. I don't know
11 that the NRA has. But, again, the Judge said he
12 thought it was appropriate to be referred to,
13 your Honor.

14 SPECIAL MASTER: So, for this
15 afternoon anyway, I can exhale?

16 MS. CONNELL: I don't think -- it's
17 not going to be hard for you this afternoon, no.

18 SPECIAL MASTER: It has not landed on
19 my desk yet.

20 [REQUEST] Would somebody undertake to
21 get it to my desk please? Not this afternoon
22 anymore because, obviously, I haven't had a
23 chance to read it. But get it to me and we'll
24 deal with that.

25 So, with that my understanding is

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2 that the only thing I have then is the motion for
3 protective order.

4 Do I that have right?

5 MS. CONNELL: Yes, your Honor.

6 SPECIAL MASTER: How about from the
7 NRA's side?

8 Ms. Eisenberg, where are you?

9 MS. EISENBERG: I'm right here. Good
10 afternoon.

11 SPECIAL MASTER: Oh, there you are.

12 Do I have that right?

13 MS. EISENBERG: That's the only issue
14 for today, the NY AG's motion for protective
15 order.

16 SPECIAL MASTER: Yes, that's the
17 question.

18 MS. EISENBERG: Yes, I completely
19 agree.

20 SPECIAL MASTER: Alright. So let's
21 get started with that. I see that there must
22 have been a ten-hour deposition of someone named
23 Mr. Wang, I believe.

24 MS. CONNELL: Yes, William Wang.

25 SPECIAL MASTER: In the bankruptcy?

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MS. CONNELL: Yes, your Honor.

SPECIAL MASTER: Where, at least, some of these questions that you have on this notice of deposition were addressed there or attempted to be addressed there I gather.

Give me a sense as to whether or not that deposition is expected to be relied on in this case? And I guess I want to hear from you, Ms. Eisenberg.

MS. EISENBERG: Judge, yes, to the extent that it is admissible against the New York Attorney General, we certainly reserve the right to use --

SPECIAL MASTER: Okay. I just want to know.

MS. EISENBERG: -- Mr. Wang's statements against the New York Attorney General in this case. But sort of the implication of your question -- this is a different litigation and the New York Attorney General deposed in that case the same witness it's been deposing in this case. So they are, certainly, getting the second bite of the apple, which, in fact, is the third bite of the apple because they also deposed the

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witnesses during the investigation.

So, the fact that we already deposed Mr. Wang for seven hours should not in any way, shape or form stand in the way of our ability to notice and take this Rule 11F deposition. I believe I just answered your question, so I'll stop.

SPECIAL MASTER: You can relax a little bit because that's not where I was going, to tell you the truth.

Alright. So this is your motion. So I will hear from you. Keep in mind I have read your letter, the parties' letter. I've also read Judge Cohen's decision from recently where he addressed the motion to dismiss. I think those are the critical documents; of course, the notice of deposition as well.

But go ahead.

MS. CONNELL: Okay. Thank you.

Your Honor, this is a case about whether the NRA and certain of its current and former officers including its current highest officer Executive Vice President Wayne LaPierre and its current General Counsel and Board

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Secretary John Frazer have violated New York's nonprofit laws. The evidence of the violations and the knowledge relevant to the NRA's activities rests in the NRA in its current and former employees. The NRA has been and continues to be the master of such information.

A protective order is required here because the NRA's 11F notice improperly seeks wide-ranging discovery that is intrusive, harassing, unnecessary and caused for the discovery of privileged information in the deposition of Opposing Counsel.

Specifically, our objections are -- our primary objections, not waiving any objections asserted in the response to the notice -- is that the notice is fundamentally defective. The notice seeks deposition of Counsel for a party opponent without meeting the standard for such discovery. The notice is directed primarily at privileged information. And the notice seeks discovery relevant to counterclaims on which discovery is stayed and perhaps arguably moot.

In regard to defects in the notice, I won't spend much time on that. We noted them in

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our letters.

The notice while directed at the office of the Attorney General also purports to include Letitia James, the Attorney General herself in her individual and official capacities, all former Attorneys General, unnamed agencies of the State, unnamed state officers as having to answer the questions asked therein. It also purports to provide only a partial list of topics to be covered, which is inappropriate under Rule 11F. On those grounds we assert that the notice is defective and should be stricken.

But the larger issue and the more serious issue is that the NRA is seeking to take a deposition of its opponent's Counsel, exactly.

As I'm sure you're aware, depositions of Opposing Counsel are disfavored. To be permitted to be deposed Opposing Counsel, the NRA would have to establish that the materials --

SPECIAL MASTER: Let me put you for a minute. I was really intending -- and my fault for not being clearer on this -- to give you the opportunity to key up your position, which I think you've done and done quite well. And

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you're now getting into the specifics.

I want to give Ms. Eisenberg an opportunity to do the same thing.

But before I do that, let me -- well, let me do that and then I'll make a suggestion.

MS. CONNELL: I want to make sure I'm not wasting your time and doing what you want when you say get into the specifics. I was going to sort of start to talk about the matter's sought and this notice --

SPECIAL MASTER: Oh, my thought is that it is best addressed by looking at the individual requests and dealing with them one by one. Because we're going to have to get there sooner or later.

You can give me, you know, the 5,000 foot picture down from 30,000 feet. But maybe we should quickly get to sea level.

MS. CONNELL: Sure. I would say overall -- and we can go through the notice itself -- Matters 1 through 3 by the NRA's own admission seek to depose Opposing Counsel on work product, trial preparation and attorney-client protected matters that are irrelevant to the

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defense of this action, are not discoverable.

Matters 4 through 9 and 23 seek testament relevant to the NRA's counterclaims against the Attorney General in her individual and official capacities, which, again, that discovery is stayed.

And Matters 10 through 22, generally, seek information that is, essentially, a roadmap or an order of proof for the Plaintiff's trial preparation and presentation of this case including seeking mental processes and thoughts of Opposing Counsel and seeking information that is available from other sources including from NRA witnesses or nonparties or through documents and information already shared with the NRA in this action.

SPECIAL MASTER: Okay. Alright. Let me give Ms. Eisenberg a chance to give me her opening remarks and then, as I said, I think, I want to go to the individual requests.

MS. EISENBERG: Yes. Your Honor, my opening remarks are that request-by-request analysis is exactly how the NRA believes the motion should be decided. Devil in the details

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as always.

First question is whether the topics seeks information that is relevant. Second, if and if so, whether there's some issue that makes it nonetheless non-discoverable. So I 100 percent agree that we should do it on a topic-by-topic basis and appreciate your patience with hearing me out as to each, if I may.

So we can jump right into the specifics, if you'd like. Please let me know if you would like me to do that now.

SPECIAL MASTER: Okay. Well, I haven't given the proponent of the motion the opportunity to say very much. So I think what is proper is for us to give Ms. Connell an opportunity to speak and my notion is we'll talk about the particular request. She'll speak. You'll have an opportunity and we'll go back and forth like that, alright? Does that make sense?

MS. CONNELL: Sure.

SPECIAL MASTER: Go ahead.

MS. CONNELL: Your Honor, I wanted to take one step back and note my one little disagreement that I have, which is that where

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what you're seeking is the deposition of Opposing Counsel you don't just look at whether something -- whether information sought is relevant and proceed.

SPECIAL MASTER: We'll get there.
We'll get there.

MS. CONNELL: Right. It has to be a little bit more searching analysis.

SPECIAL MASTER: We'll get there.

MS. CONNELL: So I would say that something colors and taints this whole application.

And I want to say --

SPECIAL MASTER: Well, let me say this. My impression is that the issue of relevance, while it will come up with respect to some of these items is -- let me put it this way -- of lesser significance. There are a whole series of privileges and exceptions to broad discovery that apply. But they are specific. They're not -- it doesn't cover all of it.

MS. CONNELL: Definitely. I agree that we have to look at the matters one by one. I just wanted to set the stage.

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2 SPECIAL MASTER: Okay. Now, with
3 respect to one, two and three, which I take to
4 come down to -- if you really look, if you pay
5 attention to what you are being asked to inquire
6 into, did you look into the closets? It's all
7 about -- and, obviously, perhaps making light of
8 it.

9 But my thought is that those three
10 should be held for the end after we go through
11 all the others because when we do that, we may
12 end up with a much narrow set of questions with
13 respect to Nos. 1, 2 and 3. That's my notion.

14 MS. CONNELL: It's fine with me, your
15 Honor.

16 SPECIAL MASTER: Does that work for
17 you, Ms. Eisenberg?

18 MS. EISENBERG: Yes, your Honor.

19 SPECIAL MASTER: Great.

20 Okay. So let's start with four.

21 MS. CONNELL: So, your Honor, from
22 the Attorney General's views, this demand, this
23 request and some of the ones that follow go to
24 the NRA's counterclaims, its assertions that this
25 action was commenced in violation of the First

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Amendment, it was retaliatory or it was an instance of selective enforcement in its amended counterclaims. The NRA pleads at length these statements and sets out the statements made by the Attorney General.

And Judge Cohen has already expressed some scepticism regarding the need to delve further into this. He said you have the statements. They are what they are. So I'm paraphrasing. I'm not quoting exactly.

So, in our view, discovery on these issues and these statements, other objections being put aside has been stayed and should await a decision by Judge Cohen on the motion to dismiss the amended counterclaim, which, again, was argued February 25th.

SPECIAL MASTER: So what say you, Ms. Eisenberg, to the argument that we really should put off this particular item because it really relates to the counterclaim?

MS. EISENBERG: Just because the information is relevant to the counterclaims, it does not render it irrelevant to the claims and defenses.

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The Information Request 4 seeks is relevant --

SPECIAL MASTER: Let me cut you off for a minute.

Here's a dilemma that I think you face, if you are to pursue that now. If you're going to get depositions, you're going to get the depositions once. So, if you want to take the risk of going ahead and pursuing depositions now -- and I'm not deciding whether you're entitled to it or not.

If it turns out that your counterclaim survives, you're not going to see that witness again. Think about that. Do you hear --

MS. EISENBERG: Your Honor, I think the flip side --

SPECIAL MASTER: -- what I'm saying, once, okay?

MS. EISENBERG: Well, I don't agree that that's a fair outcome because discovery on claims --

SPECIAL MASTER: I'm giving you a choice, ma'am.

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MS. EISENBERG: Well, if that's my choice and I don't have a choice, then I would say --

SPECIAL MASTER: Well, you do have a choice but --

MS. EISENBERG: Well, then I would say --

SPECIAL MASTER: If I was sitting in your seat, I know what I'd do.

MS. EISENBERG: Well, I think what I will do then is secure your ruling and then if the counterclaims are -- I'm sorry. If the counterclaims survive, then we're going to omnibus the --

SPECIAL MASTER: And if you get the opportunity to depose the witness with respect to this question, then you do both of them at the same time where the witness appears once.

MS. EISENBERG: That's fine.

SPECIAL MASTER: Not twice.

MS. EISENBERG: That's fine. I think if what you're saying is I only get to take 111F deposition in the case regardless of whether the counterclaims --

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2 SPECIAL MASTER: I didn't say that.

3 Did I say that?

4 MS. EISENBERG: That's how I
5 understood you. Did I misunderstand you? You
6 said --

7 SPECIAL MASTER: I definitely didn't
8 say that, Ma'am.

9 THE STENOGRAPHER: I didn't get what
10 you said, sir.

11 SPECIAL MASTER: Pardon?

12 THE STENOGRAPHER: I didn't get what
13 you said because there was cross-talk. I'm
14 sorry.

15 SPECIAL MASTER: I asked her if I
16 said that, and because I didn't say that. But
17 she understood me to be saying that, no.

18 What I'm suggesting to you, Ms.
19 Eisenberg, goes entirely to the timing of the
20 deposition or depositions that you might take.

21 If you have -- if the person who is
22 the presented -- the offered witness with respect
23 to Matter No. 4 is Mr. Jones and you go ahead and
24 depose Mr. Jones today, you're not going to have
25 an opportunity to depose Mr. Jones again having

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1
2 been put on notice that he's only going to show
3 up once.

4 MS. EISENBERG: On what basis? I
5 don't understand.

6 SPECIAL MASTER: On what basis?
7 Burdensomeness, inefficiency.

8 MS. EISENBERG: Well, in that case, I
9 think that I would like to secure your ruling,
10 wait for Judge Cohen to rule on the counterclaims
11 and then if the counterclaims survive, this whole
12 exercise is sort of pointless. But if --

13 SPECIAL MASTER: We will --

14 MS. EISENBERG: I'm sorry, I wasn't
15 finished.

16 SPECIAL MASTER: No, go ahead.

17 MS. EISENBERG: But if the
18 counterclaims do not survive, then we will have
19 your ruling and however it's been narrowed or
20 permitted at all, we'll be ready to go.

21 SPECIAL MASTER: [RULING] you'll have
22 the opportunity at that point with respect to the
23 existing claims of the Plaintiff to argue that
24 you're entitled to inquire by way of depositions
25 as to Matter No. 5. It's not that you are losing

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2 the right to -- the opportunity rather to seek
3 the deposition as to No. 5. We're just deferring
4 it. That's all. Follow?

5 MS. EISENBERG: Well, but if the
6 counterclaims are dismissed, my position is that
7 I still get to inquire into No. 5 because it's
8 relevant to claims and defenses given the
9 counterclaims don't survive.

10 SPECIAL MASTER: You and I are in
11 violent agreement.

12 I was hoping I would get a smile.

13 MS. CONNELL: I'm laughing at that,
14 even though I'm in violent disagreement.

15 SPECIAL MASTER: Okay. Let's go.

16 MS. CONNELL: Your Honor, you
17 referred to Matter just now, but we had been
18 discussing Matter 4.

19 SPECIAL MASTER: Matter 4, thank you.

20 MS. CONNELL: I think Matter 5 is
21 much the same issue.

22 SPECIAL MASTER: Matter 5 is the
23 same, yes. Absolutely, right.

24 MS. CONNELL: Okay.

25 SPECIAL MASTER: Okay. Four and

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five, Ms. Eisenberg, is what we're talking about and we're just deferring it.

So we're up to Matter 6.

MS. CONNELL: So --

SPECIAL MASTER: The investigations including but not limited to facts, circumstances, documents and communications concerning authorizations of the commencement of the investigation and relevant specific dates such as -- and it goes on and on.

Yes.

MS. CONNELL: So, your Honor, I think this goes to the counterclaims, again, because it's looking at or inquiring into the reasons in how the investigation was commenced here. We objected to the term -- the definition of investigation as well as overbroad. But we also think it inquires into matters that have no relevance to the action that's currently pending in about which we're taking discovery and we also think it inquires into the -- it delves into matters protected by attorney work product and law enforcement and public interest privileges and it's asking for information or for someone to

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1
2 testify about how did we -- what do we normally
3 do in commencing investigation, what did we do
4 here, what was discussed here, what facts,
5 circumstances and documents were generated or
6 considered.

7 You know, your Honor, they have the
8 -- the NRA has the complete discoverable
9 investigatory file. We don't think this is a
10 proper demand for an 11F of Opposing Counsel.

11 And one other thing I will note and I
12 just want to note this here. This matter does
13 refer to the deposition of Mr. Wang.

14 The bankruptcy Court in response to a
15 30(b)(6) or corporate rep deposition served by
16 the NRA that sought information on something like
17 20 matters carved it down to 2 substantive
18 matters, one of which had to do with inquiring of
19 the AG as a regulatory matter as to what would
20 happen to the NRA's assets were it to be
21 dissolved. The other one had to do with
22 communications with certain nonparties.

23 The Judge there noted that such
24 communications could still be subject to
25 privilege. He didn't hold it. That wasn't the

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case. But he did recognize and he recognized quite clearly that demands that called for the thought processes or mental impressions of attorneys and sort of the inner workings of the Attorney General's office are not properly the subject of a deposition.

And I would argue that this falls under it and, frankly, we probably would have and could have pursued a mandamus about the bankruptcy Court's decision. But, in any event, Topic No. 17 appeared to us to be relevant and reasonable for an inquiry. We allowed Topic No. 13 to be inquired into.

So the NRA has inquired about the commencement of the investigation already and the commencement of the action.

SPECIAL MASTER: Ms. Eisenberg?

MS. EISENBERG: Your Honor, my client begs to differ. Every town organization by its own admission was formed as a counter wage to the NRA because every town disagrees with the NRA's political speech.

Guess what? Two months before the investigation into the NRA began, who was meeting

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with every town? James Sheehan, the head of the Charities Bureau, and Ms. Wood, the Attorney General's Office from the Executive Office.

So, in this case, even with the dissolution claims having been dismissed, the Attorney General seeks severe remedies including an injunction against my client from soliciting in the State of New York.

SPECIAL MASTER: What's the nature of the defense here, that the Attorney General lacks the authority to pursue this sanction or what?

MS. EISENBERG: Well, if she's going to stand up in front of the jury and talk to them how what she's trying to do is protect members and their donations and seek an injunction against solicitation in the State of New York, that goes to the merits of the very remedy that she seeks. And --

SPECIAL MASTER: What remedy? What remedy is that?

MS. EISENBERG: Injunction against solicitation of donations in the State of New York.

SPECIAL MASTER: I see, okay.

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Uh-huh.

MS. EISENBERG: So now in addition --

SPECIAL MASTER: So you are not trying to obtain information regarding whether or not she was authorized to commence the investigation and you're not seeking information with respect to the customary internal protocols of the Attorney General's office. That all has to do with the powers of the office.

MS. EISENBERG: I can explain, your Honor. I can see how it's confusing.

SPECIAL MASTER: Not otherwise.

MS. EISENBERG: Well, no. The issue is this. When I deposed Mr. Wang, Attorney General Wang, he says, well, it's true we didn't begin our investigation until after we met with every town, but guess what, we had an informal investigation under way since the fall.

And I say, well, that's interesting.

SPECIAL MASTER: Ma'am, I'm just asking whether or not you're asserting that this litigation is not authorized. I don't think you're saying that, or are you?

MS. EISENBERG: No, no.

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SPECIAL MASTER: Okay. So, then with respect to this question, you're asking about how they went about their investigation and I suppose the source of their authority and who they talked to.

Well, doesn't that run you into a number of privileges? One --

MS. EISENBERG: No, your Honor.

SPECIAL MASTER: If I may, let me finish.

One having to do with -- I think, Ms. Connell said this is an investigation that was done, conducted by lawyers in the Attorney General's office. So you've got the privilege and we're talking about work product privilege. You're seeking information you can gather in contemplation of litigation, which I think is privileged as well. Then -- I'm just going to hang this up.

And to say nothing of the investigative and the public interest privileges that Attorney Generals Offices across the country enjoy; isn't that right?

MS. EISENBERG: No, your Honor. If

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every town and James Sheehan met in February to discuss how they and his boss Letitia James disagree with the NRA's political speech and the laws of New York should be weaponized to destroy their political enemy, that is not covered by any privileges and no one is arguing that that is.

In addition, we already went through this process once. Ms. Stern who is on this call defended the deposition and she very capably asserted objections to those questions which she believed called for privileged information. And yet we managed to elicit quite a bit of information that was very relevant to the lawsuit there and additional information is needed to be elicited in this case.

So, if I were to say, Ms. Connell, what did you tell Ms. Stern about the strength of your case? 100 percent I wouldn't even ask that question.

But if I say, what did you and representatives of every town discuss, did you discuss that, did you discuss that? You both believe that my client is the source of this country's gun violence problem. They're not

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going to claim privilege and that can be handled on a question-by-question basis.

SPECIAL MASTER: Why do you say -- well, there's two things that you're saying there. No. 1, you're saying that the latter questions are fair game. My word, but I think that's what you mean.

But I would ask you, well, isn't that subject to the public interest privilege, that is, information that citizens provide to government officials?

MS. EISENBERG: Absolutely not, your Honor. The public interest privilege exists to incentivize whistle blowers and people who are genuinely considered about violations or possible violations of the law to come forward. And we have certainly met a prima facie burden here to show that that's not what was going on here.

Every town literally has a website dedicated to the NRA's alleged improprieties and boosts that its website has become the go to place for investigators like Attorney General James. And they don't hide the fact that the reason that they're doing it is because they

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disagree with the NRA's political speech. There is no reason that the privilege should apply there. That would be against public policy to apply that privilege in this situation.

SPECIAL MASTER: Well, the privilege is a little broader than you've just described. It does cover communications by citizens including whistle blowers speaking to their elected officials.

MS. EISENBERG: Well, I think, the Attorney General did not assert that in the deposition that I took last March and they allowed me to inquire into the substance of those communications.

So I would take the position that they've conceded that there's certainly room for questioning about what a conversation like that entailed.

SPECIAL MASTER: So you say in having allowed questions in deposition in the other matter. I assume you're talking about in the bankruptcy.

MS. EISENBERG: That's correct.

SPECIAL MASTER: That whatever they

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1
2 allowed there then serves as a waiver here; is
3 that right?

4 MS. EISENBERG: Yes, your Honor. And
5 they already --

6 SPECIAL MASTER: Wow. That's all I
7 can say.

8 MS. EISENBERG: And they already lost
9 that argument because they made the very same
10 arguments to the Judge there and the Judge
11 rejected it and Ms. Connell says --

12 SPECIAL MASTER: This is in the
13 decision in this pile of paper I have where the
14 Judge, apparently, dismissed the case, the
15 bankruptcy case?

16 MS. EISENBERG: That's what happened
17 on May 12th. But in March he permitted the NRA
18 to take a deposition of the 30(b)(6)
19 representative of the New York Attorney General.

20 And for Ms. Connell to say that there
21 were only two substantive topics, you know, it's
22 accurate in that there were two numbered items,
23 but one of them was to question them about the
24 Office's communications with five different
25 entities, Andrew Cuoma, Maria Vullo, Lisa

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Lacewell, every town, Ackerman. The Judge didn't have a blanket problem with any of that. So --

SPECIAL MASTER: Really?

MS. EISENBERG: So that argument they already lost.

SPECIAL MASTER: Ms. Eisenberg, let me just read this. I'm on Page 29 of the bankruptcy Judge decision, the motion to compel. It's dated March 19, 202.

"Topic 13, which is communications to various parties, I don't think touches on mental impression. Now, I do say on Topic 13 that there may be privilege there; for example, between the Attorney General of New York and the Governor of New York. I'm not deciding this morning, but I do make that observation."

But I don't think it's going to -- the privilege with communications between the Attorney General of New York and, for example, Ackerman and then several other parties that are on the list. I suppose you're saying then -- although you did say that earlier, oh, the bankruptcy Judge would have allowed inquiry with respect to communications between the Attorney

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General and the Governor. He said quite the contrary.

MS. EISENBERG: Well, he said, "there may be."

SPECIAL MASTER: Oh, I see. Okay. Alright. Got it.

MS. EISENBERG: And if they assert the privilege at the deposition, I am entitled to inquire into foundational elements for that.

SPECIAL MASTER: Well, apart from the political interest privilege, there is the issue of work product information collected in contemplation of litigation and, of course, we haven't touched on investigative privilege. Why don't we talk about those three.

Because it seems to me that you're asking for communications between the Attorney General's office lawyers and potential witnesses; isn't that covered by the work product privilege and the privilege relating to investigations in contemplation of litigation?

MS. EISENBERG: No. The attorney work product, specifically, specifies that it has to be work product of an attorney, something that

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he or she is skilled to do. If the conversation was about their antipathy towards my client's political speech, just because there were lawyers present doesn't turn it into work product.

Similarly, the trial preparation privilege is designed to provide a zone of privacy to an attorney preparing for a trial so that there can be an element of surprise at the trial. Again, if the topics that were discussed was their mutual dislike for my client and desire to resort to any measures possible to annihilate it, the trial preparation privilege wouldn't apply.

Similarly, the investigative privilege, I think, to apply it in this context if what occurred was their joint desire to destroy my client, I think, there's a very strong public policy reason to not apply it in this case.

SPECIAL MASTER: So let me -- I'm looking -- there are several cases that come to my attention, that were brought to my attention. Among those is Liberty Petroleum Realty versus Gulf, which talks about the deposition of

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Opposing Counsel.

Let me back up and say, look, isn't the information that you're seeking here information that is not within the personal knowledge of the lawyers and the Attorney General but rather information acquired as a result of their investigative efforts?

These aren't facts that they knew.

And --

MS. EISENBERG: No, it's actually the opposite. It's exactly the opposite. These are lawyers who turned themselves into witnesses. They know why they met with every town. They know why --

SPECIAL MASTER: They've got jobs as Assistant Attorney Generals. They know, yes. That's true. It comes within their job description.

MS. EISENBERG: Right. But I think you have to consider my argument in the context of our defenses. And the fact that what Letitia James is trying to do here is prevent my client from soliciting any donations in the entire State of New York forever. So, if someone is going to

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do that, I think, they ought to be scrutinized as to their motives.

And when the chief law enforcement of the State meets with the organization that was created for the very purpose of being a conduit to my client's political speech, that raises serious questions. And they are the ones who turned themselves into witnesses.

SPECIAL MASTER: Wait a minute.

MS. EISENBERG: I'm looking to understand what were the dynamics of that communication, what was happening contextually around it and how that affected the ultimate decision to initiate the investigation. And, of course, I'm going to bring it up at trial.

And if they want to say, well, we already had an informal investigation going on, if they want to be able to make that representation to the jury, I'm entitled to probe into whether they really did have an informal investigation going on before they met with every town and its outside Counsel.

SPECIAL MASTER: Aren't you putting the cart before the horse here?

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MS. EISENBERG: I don't understand, your Honor.

SPECIAL MASTER: You don't understand the metaphor "the cart before the horse"?

MS. EISENBERG: No, I don't understand how you're saying it applies here.

SPECIAL MASTER: Well, you're saying that because they're trying to prevent your client from soliciting donations forever in New York, because of that, you're entitled to ignore the privileges that applied on the front end.

But separate from that and perhaps more fundamentally is -- maybe I misunderstand what it is that's alleged here.

When I read Justice Cohen's decision of March 2nd where he said -- and let me read it. "The Attorney General's allegations in this case have proven held a grim story of greed, self-dealing and lacks financial oversight at the highest levels of the National Rifle Association."

And reading through his opinion, I noticed that he dismissed the claim seeking to dissolve the NRA. So that's no longer in the

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case. And what's left are the allegations in the complaint relating to alleged misconduct by one or more executives of the NRA in which the NRA seems -- and I think he says this -- is more the victim than the perpetrator.

MS. EISENBERG: Yes, but nonetheless there are --

SPECIAL MASTER: May I finish? May I finish?

MS. EISENBERG: I'm so sorry, your Honor.

SPECIAL MASTER: And if you look at those claims or claims having to do with, you know, greed, self-dealing, lack of financial oversight, those things and recognize -- you know, when I say this, these are only allegations and I recognize that it as such.

But the case as it stands right now really doesn't go to all the things that you're complaining about, does it?

MS. EISENBERG: Your Honor, it absolutely does.

SPECIAL MASTER: It has to do with your counterclaims, but it certainly doesn't have

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to do with the complaint in this case.

MS. EISENBERG: That's inaccurate. There are three claims that they asserted against my client, the NRA, that were not dismissed. They alleged --

SPECIAL MASTER: That's correct. That's correct.

MS. EISENBERG: Right, right. So the greed and alleged misuse of funds, yes, there are claims against individual Defendants to that effect.

But what I'm saying is that they accused my client of filing what they claim were materially false or misleading regulatory filings.

SPECIAL MASTER: And those were filings of the NRA, were they not?

MS. EISENBERG: Right. And on that basis they're looking to enjoin my client from soliciting funds in New York.

SPECIAL MASTER: Alright.

MS. EISENBERG: Sure, we're happy that the dissolution claim is no longer or the --

SPECIAL MASTER: It's very easy to

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address that, you know. Those filings were either accurate or not. That's pretty straightforward; isn't it?

MS. EISENBERG: But the remedy that they seek is discretionary, not --

SPECIAL MASTER: But what they allege either they prove that the NRA -- and I realize it's human beings that file it, not the organization, but they file it on behalf of the organization. They've either made false filings or not. And that's pretty straightforward. That's got nothing to do with all this other stuff you're talking about.

MS. EISENBERG: Right. But why alleged in the first place -- but to get to the remedy that you want and the remedy that they want is that we not be able to solicit in New York.

SPECIAL MASTER: Okay. But I'm still trying to understand why -- so I hear what you're having to say. I hear what you say about that. Let's not go on and on and around in circles with respect to that question.

[RULING] I'm going to go ahead and

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grant the motion with respect to Claim No -- I
guess it's No. --

MS. CONNELL: Six.

SPECIAL MASTER: -- 6 --

MS. CONNELL: Yes.

SPECIAL MASTER: (Continuing.) On
the ground that it seeks work product, that it is
also protected by the investigative privilege and
the public interest privilege.

So let's go on to No. 7, interviews
connected -- conducted by the Attorney General.
That's pretty much in the same kind of category
with respect to whether it's privileged or not.

You're asking for information and I
assume you're looking for the contents of notes
made by lawyers in connection with their
investigation and their preparation of their
claims in this case; in other words, attorney
work product. Isn't that right, Ms. Eisenberg?

MS. EISENBERG: Well, I mean, I think
you have to consider it in conjunction with
categories or Topics 1, 2 and 3 because the
Attorney General issued this letter and they
said, here's what we deem to be discoverable

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information. Here's our file.

I'm entitled to inquire into how comprehensively they searched and if it turns out that --

SPECIAL MASTER: So you want the lawyers' notes?

MS. EISENBERG: Well, I will concede that certain lawyer notes are going to be privileged and I'm not entitled to them.

SPECIAL MASTER: Do you want contents of the lawyer notes?

MS. EISENBERG: Well, I think, it depends on what the notes are about.

If the notes are about how to engage in anti-Second Amendment rhetoric to enjoin a political enemy from soliciting funds in New York, I don't think those notes would be privileged.

SPECIAL MASTER: But that issue -- those issues that you just described are nowhere in the complaint at this point, are they?

MS. EISENBERG: They are in the remedy that they seek.

SPECIAL MASTER: What they're

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1
2 claiming about are the things that I just quoted
3 out of the first paragraph of Justice Cohen's
4 decision. That's what's being alleged at this
5 point.

6 MR. CORRELL: Your Honor, this is
7 Kent Correll for Wayne LaPierre. If I could be
8 heard for a moment on this?

9 SPECIAL MASTER: Yeah, sure.

10 MR. CORRELL: Thank you.

11 There are allegations in the
12 complaint relating to -- that have been made in
13 an attempt to support the relief of removal of my
14 client as the elected leader of the NRA and the
15 relief sought there is quite broad.

16 As I read it, it is to exile him
17 permanently from the nonprofit community
18 nationwide. And in we're preparing our answer
19 and we will be asserting defenses as we did in
20 our original answer of unconstitutionality in
21 terms of the breadth of the relief sought, we
22 believe it's unconstitutional for a State
23 Attorney General to seek to oust the leader of a
24 nonprofit advocacy group for political purposes
25 nationwide.

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And in the case of NAACP versus Alabama, the Supreme Court agreed with the NAACP argument that attempt to oust -- to use a state nonprofit law to oust a nonprofit advocacy group from the state and effectively hinder it nationwide was unconstitutional. So the --

SPECIAL MASTER: It's been more than 40 years since I read that case. More than probably 50 years since I read that case.

Is that the one where the State was seeking the membership list of the NAACP, or do I have it wrong?

MR. COTTRELL: No, you've got it right, your Honor. You've got it right.

SPECIAL MASTER: Hey, what a memory. Not so bad after all.

MR. COTTRELL: And this may make you happy. If you haven't read the Americans for Prosperity case, the US Supreme Court recently re-affirmed resoundingly that, I believe, it was a unanimous holding in the NAACP case applying the same principle to a conservative advocacy group.

SPECIAL MASTER: How does that apply

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with respect to what we're talking about here?
Because the allegation against your client is
that he misused funds of this nonprofit, that he
took actions without consulting with his Board
and on and on and on.

It's, you know, as the Judge makes
reference to -- well, I read the first paragraph.
That was the big picture.

MR. COTTRELL: Yes, your Honor --

SPECIAL MASTER: It's very different
from the case you're talking about.

MR. COTTRELL: Your Honor, as you
pointed out, these are allegations and we have
not had our chance to tell our side of the story.
We've been working with allegations, many of
which I will tell you are unfounded and
exaggerated and we're dealing with highly
exaggerated claims for relief, some of which have
already been tossed by Judge Cohen as
inappropriate.

And, in fact, you may -- I don't know
if you noticed, but Judge Cohen also dismissed
the 18 cause of action finding the Attorney
General lacked authority to assert the

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1 nonstatutory unjust enrichment cause of action
2 that she asserted. So it's quite relevant in
3 terms of the relief sought to inquire into the
4 animus of this particular individual before she
5 became Attorney General, the promises she made to
6 donors and voters in order to get elected and
7 then the process by which she set about trying to
8 keep that promise to voters and donors to act in
9 accordance with the decision, which apparently
10 she had already made before she took office.
11

12 So I think that you've got to keep
13 the big picture in mind that there are very big
14 constitutional issues at play here. And to have
15 the Attorney General who made those statements
16 refusing to answer questions about the basis on
17 which she made those statements, the people who
18 prompted her to make those statements, the
19 donations she solicited based on those
20 statements, creates an appearance of impropriety
21 here that, I think, really runs against the
22 public interest, which is the very privilege that
23 the Attorney General has invoked in an attempt to
24 avoid disclosure.

25 So I emphatically support the NRA's

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position on this. We're asking about discovery, about openness here with someone who has talked very freely to the press and very freely to donors and voters about her attitudes about the NRA and their political views and what she intends to do to them and by implication to my client, who is the elected leader.

SPECIAL MASTER: Doesn't that all go to your counterclaim, sir? I don't know whether you enjoined from the counterclaims or not. I guess it's the NRA's counterclaims.

MR. COTTRELL: It's the NRA's counterclaims that we'll be answering soon. But we do have affirmative defenses that are based on unconstitutionality, which raised the very same issue.

SPECIAL MASTER: I see, okay.

That's -- go ahead. Go ahead, Ms. Connell.

MS. CONNELL: I'm sorry to intervene. I don't want my silence to be taken as a statement that I agree with any of the representations.

SPECIAL MASTER: I haven't given you

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much of an opportunity to speak.

MS. CONNELL: I don't want my silence to be taken as an agreement with regard to the description of Mr. Wang's testimony, which I would submit is inaccurate, or the holdings of the Court in NAACP versus Alabama and the Americans for Prosperity cases, which while they do relate to donor and member confidentiality, I don't believe are as broad as Counsel states or relevant to matter No. 7.

I will note that Mr. LaPierre has not asserted counterclaims. And I will note that when we're talking about bans on fundraising or prohibitions of fundraising, we're talking about that being imposed after we prove illegality.

What's relevant here is whether Mr. LaPierre or the NRA behaved in an illegal manner. And Executive Law 175 to reach to Ms. Eisenberg's statement about prohibition on fundraising or soliciting is it's imposed if somebody files false regulatory filings. It is a remedy for false filings. The defense is that the files were not false. It is -- it doesn't matter what our intention was. It arguably doesn't matter

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what the NRA's intention was. So I just think we're getting rather far afield.

If we look at Matter No. 7, the NRA has asked for -- because only the NRA has served the notice. Only the NRA has asserted counterclaims and only the NRA has opposed our motion of protective order. Matter 7 asks for interviews conducted by the OAG or any of your staff attorneys, investigators or representatives.

The NRA and all parties have received our entire discoverable investigatory file including transcripts where we've taken examinations, which were investigatory depositions, including, you know, everything, basically, that's not privileged and they got a privilege log too, your Honor. They've gotten what is discoverable investigatory file. They can go and speak to these witnesses. They're free to do that. And the cases hold that.

But what they don't get to do is depose Opposing Counsel about, hey, what was your interaction with these witnesses that you spoke to, what did they say to you, what were your

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notes, what were your thoughts, what's important to you. They don't get to do that. They know who we spoke to. They have a list of those witness and privilege log. They have the examinations for many of them.

They can certainly go out and speak to those people or read the documents that we provided to them. But I would suggest to you that Matter No. 7 is precluded by attorney work product, law enforcement privilege, public interest privilege and, potentially, other privileges as well depending on where or how far afield they want to go. So it's also vague, overly broad, unduly burdensome, et cetera.

MS. EISENBERG: Your Honor, may I address what was just said?

SPECIAL MASTER: Yes.

MS. EISENBERG: Thank you very much.

First as an aside, I did not mischaracterize Mr. Wang's testimony. I took his deposition, which I have re-read multiple times, and I would be grateful if Ms. Connell can please identify in which my characterization was inaccurate.

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MS. CONNELL: Sure.

MS. EISENBERG: I'm sure she will do that next time she speaks to --

MS. CONNELL: I'm happy to do that. Do you want me to do that now?

MS. EISENBERG: No, I would like you to let me finish my sentence first.

SPECIAL MASTER: Ms. Connell, please, not now.

MS. CONNELL: Sure.

Certainly, I'm sorry, your Honor.

MS. EISENBERG: Your Honor, you've said it a couple of times, well, doesn't it go to your counterclaims.

I repeat just because something is relevant to counterclaims does not render the information irrelevant to claims and defenses. And we can pretend like the cause of action and its elements have nothing to do with the remedy, but they actually have everything to do with the remedy because the only reason Attorney General James is prosecuting this claim for false filings is because she doesn't want the NRA to solicit in New York.

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2 Lastly, it's a catch 22. On
3 September 4, 2018 before she even became Attorney
4 General, Letitia James accused my client of being
5 a criminal enterprise. It's a catch 22 because
6 if she based those statements on something she
7 knows, my client is entitled to know what that is
8 because that can come up.

9 SPECIAL MASTER: I'm going to cut you
10 off, Ma'am, because that is nowhere in the
11 complaint in the case.

12 This case has everything to do at
13 this point with what Judge Cohen summarized in
14 that first paragraph of his decision. And I'm
15 going to focus on that.

16 MS. EISENBERG: I'm sorry. Can I
17 just finish what I was saying?

18 SPECIAL MASTER: Let me just finish.
19 Let me just finish.

20 No, go ahead. Sorry. I'll give you
21 the opportunity to speak and then we'll get on.

22 MS. EISENBERG: Thank you, sir.

23 So just to complete the catch 22
24 point...

25 Because either she had a basis for

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saying that my client was a criminal enterprise back in 2018, in which case to prepare for the trial and obtain full discovery, my client is entitled to know what it is that she relied on.

If she made that statement without any basis whatsoever, just because she disagrees with their political speech, that goes back to the point I was making before. She doesn't get to tell jurors and the Judge that she's seeking this relief because she wants to protect the membership.

Thank you.

SPECIAL MASTER: Alright. So, in looking at Matter No. 7, interviews conducted by the OAG and any of your staff attorneys, investigators and other representatives during and in connection with the investigation, that is clearly covered by a number of privileges. It is protected by -- as attorney work product. And the case supporting that notion are Liberty Petroleum Realty, which was cited by the Attorney General. There's People versus Capital Corp, a recent decision of my former colleague Justice Andrew Barach. There is SEC versus Rosenthal, a

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case in the Southern District of New York of 1997. There is People versus the State of New York versus Trump Entrepreneur Initiatives LLC by a former colleague of mine Justice Cynthia Kearn. There is EOC versus McCormick & Schmick's and I can go on and on and on and on about cases that say the very same thing.

And I have seen no cases that go in the other direction. It is also protected by the public interest privilege and the investigatory privilege. [RULING] So, on that grounds, the request to -- for a protective order with respect to matter No. 7 is granted.

Similar with respect to Matter No. 8 and Matter 8 asks for the all communications whether direct or indirect concerning the NRA and the OAG and any of the following person or entities including but not limited to any of their contractors, investigators, current or former officers, employees, attorneys, agents, representatives, predecessors in interest, affiliates and designees. Once again, we're talking about lawyers' investigative notes, which is, again, protected work product. It's covered

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by the public interest privilege. It's covered by the investigative privilege and, of course, it is incredibly broad and would in the ordinary course be the -- that request probably would have been rejected. [RULING] So, again, with respect to No. 8 the motion is granted.

MS. EISENBERG: Your Honor, may I be heard very briefly?

SPECIAL MASTER: Absolutely.

MS. EISENBERG: Thank you very much.

So I will now state to you what you said to me before. Isn't this putting the cart before the horse? And would your Honor be inclined to permit aid to the extent of did your office and Andrew Cuomo, Maria Vullo, et cetera, et cetera, talk about your positions on Second Amendment issues and about how you disagree --

SPECIAL MASTER: What's the relevance of that in this case given where the complaint is today?

MS. EISENBERG: The State of New York Attorney General is seeking to enjoin my client from soliciting donations in New York. That goes -- and I'm sure she will be representing --

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2 SPECIAL MASTER: And according to the
3 complaint, the allegations that would be -- form
4 the basis for finding of violations have to do
5 with the kind of conduct that Judge Cohen talked
6 about, which he described, once again, as a grim
7 story of greed, et cetera. It's about greed,
8 financial self-dealing, lacks financial
9 oversight, false filings, those kinds of things.
10 That's what the complaint alleges.

11 Yes, it seeks a remedy that the
12 Attorney General may never get to tell the truth.
13 But what's before me are those allegations having
14 nothing to do with the things that you're now
15 raising.

16 MS. EISENBERG: Well, your Honor, the
17 complaint also talks about her statutory
18 authority to protect the public and I'm sure that
19 --

20 SPECIAL MASTER: She does have that
21 authority. It's statutory.

22 MS. EISENBERG: Right. But if the
23 reason what she's doing here is because of her
24 animus towards the NRA and its political speech,
25 I think, I should be allowed to inquire into that

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in discovery because I am sure that in her opening statement she will introduce herself to the jurors as someone who is there to protect donors.

And unless you want to prohibit them from talking about their role and alleged purpose in bringing this case, I think, I should be allowed to inquire into their motivations.

SPECIAL MASTER: Well, what say you about Liberty Petroleum, People versus Richmond Capital, SEC versus Rosenfeld, People versus Trump Entrepreneurs, all those cases that I cited to you? What about that?

MS. EISENBERG: I think they're factually --

SPECIAL MASTER: I should ignore those cases?

MS. EISENBERG: No, your Honor. I think they're factually distinguishable. Here --

SPECIAL MASTER: Give me a case that supports your position.

MS. EISENBERG: Your Honor, I might not have a case, but I have commonsense. Your ruling today precludes me from asking the

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Attorney General's Office if they discussed their collective animus towards my client, which they share with every town. Your ruling is that that constitutes work product and somehow protects it and immunizes it. And I don't think that --

SPECIAL MASTER: I think you're mischaracterizing what I had to say. But go ahead.

MS. EISENBERG: I apologize. I didn't mean to attempt to mischaracterize.

But I think that what I said before about how here you have a bunch of lawyers who made themselves witnesses, no one asked them to meet with every town. No one asked Letitia James to badmouth my client before she had access to any evidence. Yet she did. So those cases that your Honor cited are distinguishable because they didn't have the egregious facts we have before we even have any discovery.

SPECIAL MASTER: Are you saying that the Attorney General is impotent to conduct an investigation until such time that a citizen contacts that office and only to the extent that she's heard from a citizen; is that what you're

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2 telling me?

3 MS. EISENBERG: No, that wasn't at
4 all what I was saying.

5 SPECIAL MASTER: I didn't think so,
6 but that seems to be what you're implying, that
7 somehow they can't go out and do an investigation
8 without having had a complaint.

9 MS. EISENBERG: What I'm saying is
10 that if they get together --

11 SPECIAL MASTER: That's what you
12 said, ma'am. Isn't it?

13 MS. EISENBERG: No. I said --

14 SPECIAL MASTER: Didn't you say that?
15 Should we ask the Reporter to read
16 back the record?

17 MS. EISENBERG: I said what?

18 SPECIAL MASTER: Should we ask the
19 Reporter to read back what you said?

20 MS. EISENBERG: Sure, that sounds
21 good.

22 SPECIAL MASTER: Would you read back
23 to her, Ms. Wage, the portion of her comments
24 where she talked about the Attorney General going
25 out and finding witnesses. I don't think she

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used the word without being -- I'm not sure.

3

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MS. EISENBERG: I can repeat what I said. I know now what you're saying.

5

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SPECIAL MASTER: If you would read back what she said before I responded to her.

7

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(Whereupon, a portion of the statement is read back as follows:

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"Ms. Eisenberg: But I think that what I said before about how here you have a bunch of lawyers who made themselves witnesses, no one asked them to meet with every town. No one asked Letitia James to badmouth my client before she had access to any evidence. Yet she did. So those cases that your Honor cited are distinguishable because they didn't have the egregious facts we have before" --

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SPECIAL MASTER: Go ahead.

MS. EISENBERG: So what I said --

SPECIAL MASTER: I heard what you said. I read it.

22

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MS. EISENBERG: And my client is entitled to inquire into whether or not they discussed their shared animus towards my client based on my client's political speech.

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MS. CONNELL: Your Honor, this is
Monica Connell.

Are we at No. 9 now, which is the
discussion with every town?

SPECIAL MASTER: We are talking about
No. --

MS. CONNELL: We were talking about
No. 8, but we seem to have focused on every town.

SPECIAL MASTER: No, I was talking
about eight.

MS. CONNELL: Okay.

SPECIAL MASTER: Seven and eight.

But let me just finish with Ms.
Eisenberg.

MS. CONNELL: Sure.

SPECIAL MASTER: That is just one
example, Ms. Eisenberg. I'm taking this from
Liberty Petroleum. So the Court says,
"Deposition of Opposing Counsel are disfavored
for three reasons. First, the practice of
attorneys deposing their adversary hardly seems
calculated to 'assist preparation for trial by
shaping the issues and reducing delay and
prolixity.'

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Second the practice of calling Opposing Counsel as a witness at trial is offensive to our conception of the adversarial process.

Third, the practice of deposing Opposing Counsel raises, at least, the possibility of attorney disqualification. This implicates not only the ethics of the profession but also the substantive rights of the litigants."

That's what we're talking about.

So let's go on.

MS. EISENBERG: Your Honor, I maintain that that case is inapposite and it's distinguishable.

SPECIAL MASTER: "Inapposite"? Wow, okay. Why do you say so, if I may ask?

MS. EISENBERG: Sure. If I refer you to Page 3 of my submission, which stated that the procedural setting of this lawsuit and her role in it is important. The Liberty Petroleum case illustrates that very clearly. That was a tortious interference case. Plaintiff noticed the deposition of defendant's lawyers to inquire

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about his communications allegedly inducing the contractual breach. So --

SPECIAL MASTER: That's very much on point. But if you prefer, I can give you another one. That's, essentially, the same thing.

How about People versus Richmond Capital? Let's see. Judge Barach says the documents there were notes of his oral communications with nonparty merchant witnesses, kind of like communications between the lawyers in the Attorney General office and the people that's on that long list that you gave me before, right. What Judge Barach says is -- is -- I'm trying to get to the beginning of it.

MS. EISENBERG: Your Honor, what is this citation for the case that you are referencing? I don't believe it was cited in the briefing?

MS. CONNELL: People versus Richmond Capital.

SPECIAL MASTER: People versus Richmond Capital Group, 2021 -- 2021 New York Law Journal Lexus at 1159. It is index No. 451368 of 2020 where Judge Barach -- again, this is a case

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brought by the Attorney General's office.

"Collectively, Richmond Capital's motion is a motion to compel the People of the State to produce un-redacted notes of oral communications with nonparty merchant witnesses, compel the Attorney General's office to produce un-redacted copies of communications previously produced invoking the law enforcement privilege with such nonparty merchant witnesses and, three, grant the Richmond Capital Respondents leave to recall any and all nonparty witnesses for deposition upon such production is denied in its entirety."

It sounds very much like what you're seeking here, Ma'am. The documents requested are protected from discovery under New York law because they are either materials prepared in anticipation of litigation or are product protected by law enforcement immunity and the Richmond Capital Respondents have failed to demonstrate substantial need for and yada, yada, yada.

MS. EISENBERG: Your Honor, two things --

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SPECIAL MASTER: Directly -- directly on point with the argument that you're making. Let's move on.

And you can find that in lots of other cases. These are not -- these are just samples of the cases that are out there, Ma'am.

MR. CORRELL: Your Honor, this is Mr. Correll again for Mr. LaPierre.

SPECIAL MASTER: Yes, sir.

MR. CORRELL: If I may be heard.

I'm looking at an article in the current version of New York Magazine in which the reporter says, "James and her staff spoke readily about her suit against the NRA," to this reporter.

How can James and her staff speak "readily" about this suit to reporters and then hide behind an investigative privilege and say they cannot be required to answer any questions to a litigant? I don't understand that.

SPECIAL MASTER: You don't understand but what she's seeking here are the communications, all communications between the AG's Office and nonparty witnesses.

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2 Take a look at the case I just
3 described, Richmond Capital Group and on and on.
4 I'm citing cases, sir. I'm looking at the -- you
5 know, I'm not pulling it out of the air.

6 MR. CORRELL: I understand.

7 And, your Honor --

8 SPECIAL MASTER: I'm being very
9 specific.

10 MR. CORRELL: I --

11 SPECIAL MASTER: And I've got a list
12 of cases.

13 MR. CORRELL: Sir, I'm being very
14 specific too. And I don't think any of those
15 cases involve a situation where the Attorney
16 General and her staff were speaking "readily" to
17 a reporter about a case that --

18 SPECIAL MASTER: With respect to --
19 with respect to Richmond Capital, I don't know
20 this for sure, but I would bet you -- I bet you a
21 latte that when the Attorney General's Office
22 filed a lawsuit against Richmond Capital, which
23 was about predatory lending, they issue a press
24 release. I'm willing to bet you they did that.

25 Right, Ms. Connell?

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MS. CONNELL: I'm almost certain,
your Honor. I wasn't involved in it. I will
note that the article --

SPECIAL MASTER: That has not changed
in the many many years since I was in that
office.

MS. EISENBERG: But, your Honor, that
case does not stand for the proposition that I'm
not entitled to ask Ms. Connell if her office got
together with every town to talk about how they
both despise the NRA's political speech. That
case does not stand for this proposition.

MS. CONNELL: First of all --

SPECIAL MASTER: I'm afraid it does.

Let's move on. Let's move on.

So I think we've done eight. Oh, no.
We haven't, specifically, done it.

There it says, your meetings and
communications with every town including but not
limited to the Attorney General's office meeting
with every town, et cetera.

You know what I would like to do with
respect to that one, if it's -- if it's okay with
everybody, the motion to quash by every town is

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coming my way. Why don't we address it then.
What do you think?

MS. CONNELL: Your Honor, the
Attorney General's Office has no objection to
that.

[RESERVATION] But we reserve the
objections asserted herein there, because, first
of all, we've already inquired about that. We
believe it's covered by a number of privileges.
We believe it's irrelevant. We believe it's
harassing. But we'll address that in that
context.

SPECIAL MASTER: But as it,
specifically, relates to this motion, this
incoming motion, aside from (INAUDIBLE) or
anybody else, do you have got a problem with
deferring this one until we hear that motion?

MS. EISENBERG: No, your Honor. No
objection at all.

And, just to be clear, Topic 8
contains multiple subcategories including G,
which refers to every tune.

So your Honor is going to defer his
ruling on the entirety of eight.

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SPECIAL MASTER: It says all meetings and communications with every town.

MS. WILSON: Your Honor, you're talking about matter No. 9 now. We're --

SPECIAL MASTER: No. 9, thank you. Thank you, Dawn.

MS. EISENBERG: What about eight?

SPECIAL MASTER: What about eight? I thought I covered that already.

MS. CONNELL: Yeah, I thought that the protective order was granted as of eight.

SPECIAL MASTER: Yeah, I granted the protective order with respect to that and we moved on to nine and now I'm dealing with nine.

[RULING] And with respect to nine, I think, it should be put off because I have an incoming.

MR. CORRELL: Your Honor, I think that the point is in 8G it relates to every town. So it overlaps. So that ruling would be inconsistent.

SPECIAL MASTER: So you can renew your request with respect to 8E at that time.

8 --

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MR. CORRELL: G, your Honor.

SPECIAL MASTER: C?

MR. CORRELL: G, your Honor.

MS. EISENBERG: "G" as in girl.

SPECIAL MASTER: 8D?

MS. WILSON: 8G as in giraffe.

SPECIAL MASTER: Laurelwood is every town?

MS. EISENBERG: No, "G" as in girl. It's capital G at the top of Page 13.

SPECIAL MASTER: Oh, "G" as in girl. I see it.

So the protective -- [RULING] the motion is granted but with leave to renew when we deal with respect to 8G only in connection with "every town." So let's put them altogether.

It's not my intention to bar you from re-raising it when we deal with the every town motion to quash.

MS. EISENBERG: Your Honor, may I ask you about 4 and 5?

Did I hear you correctly effectively denying the motion for a protective order but stating that the deposition will have to occur

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only after --

SPECIAL MASTER: No, what I think -- let's see. With respect to -- I thought it was one, two and three that I said we should BE put off until the end.

MS. EISENBERG: Right. And then for four and five you said later and you said, I couldn't agree with you more.

SPECIAL MASTER: And with four and five, I don't recall having said later.

Hold on. Let me take a look, though.

MS. CONNELL: You can just go to the counterclaims, your Honor, and statements by Attorney General James.

SPECIAL MASTER: Yeah, those relate to -- oh, I know what I said with respect to that. I gave you a choice. And your choice was you wouldn't pursue it now.

And the reason was, if you remember, we had a back and forth about that over how many times you're going to get -- if you were to get the opportunity to depose, how many times you are going to get the witness. And I said only once.

Alright. So let's move on.

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MS. EISENBERG: Your Honor, I don't understand your ruling. What if --

SPECIAL MASTER: Why don't you look at the transcript and you can come back to me if you really don't understand.

MS. EISENBERG: Thank you, your Honor. I appreciate it.

SPECIAL MASTER: Because I think there's a -- yeah, the misunderstanding here can probably be cleared up when you look at the transcript, alright.

We are now at ten. The alleged grounds for the OAG's request for judicial dissolution of the NRA under New York Nonprofit Law Section 1101 including but not limited to.

Isn't No. 10 now irrelevant since the very premise of the matter No. 10 is now off the table?

MS. EISENBERG: Your Honor, the NRA has no objection to the motion being granted as to that portion but, of course, without prejudice to the NRA's right to re-issue the notice if for some reason the dissolution claims were --

SPECIAL MASTER: Reinstated?

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2 MS. EISENBERG: Right.

3 SPECIAL MASTER: Okay. So it's going
4 to be -- [RULING] so I'm granting the motion for
5 protective order with respect to No. 10 on the
6 ground that it is irrelevant given Justice
7 Cohen's decision to dismiss the claim to dissolve
8 the NRA.

9 MS. CONNELL: Your Honor, this is
10 Monica Connell.

11 I believe that same reasoning would
12 apply TO 11, 12 and 13, which all relate to the
13 dissolution claims.

14 SPECIAL MASTER: That's where I was
15 going.

16 MS. CONNELL: Sorry. Apologies.

17 SPECIAL MASTER: The same with
18 respect to 11, 12. But again --

19 MS. EISENBERG: Your Honor, but is it
20 without prejudice?

21 SPECIAL MASTER: Let me finish. Let
22 me finish.

23 But, again, as I said to Ms.
24 Eisenberg earlier, that without prejudice to
25 re-raising those should the issue of dissolution

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of the NRA be revived at some later stage.

That relates to 13 as well, right?

MS. CONNELL: Yes.

SPECIAL MASTER: So 11, 12, 13.

And so now we're up to 14.

14 through 20 -- what's the last one -- 14 through 23, my impression about those -- and I'll hear from you first, Ms. Connell, on this and then Ms. Eisenberg.

[RULING] it seems to me that those are properly the subjects of interrogatories at a later stage because they really go to, you know, contentions and contention interrogatories are appropriate, as I understand the commercial division rules, as I recall them. So 11A something addresses that and limits that class of interrogatories to the late stages of fact discovery.

But, Ms. Connell, you're on.

MS. CONNELL: Yes, for the reasons that the Court's gone over and the decisions it cites, I think, these matters are clearly not appropriate for a deposition of the Attorney General's Office and Opposing Counsel. But it

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2 does seem to me like what the NRA's trying to get
3 at is probably more properly re-asserted in a
4 contention interrogatory.

5 And you are correct that the
6 commercial division rules call for service of
7 contention interrogatories later in fact
8 discovery.

9 SPECIAL MASTER: Ms. Eisenberg.

10 MS. EISENBERG: That's fine, your
11 Honor.

12 SPECIAL MASTER: Okay. So, I think,
13 we're done.

14 Anything else?

15 MS. EISENBERG: We did not discuss in
16 detail 1 through 3.

17 SPECIAL MASTER: Oh, you are so
18 right. You're so right.

19 MS. EISENBERG: And, also, No. 23 I
20 don't know if you already issued a ruling to
21 that.

22 SPECIAL MASTER: I said 11 through --
23 14 I thought through 23 but --

24 MS. EISENBERG: 23 is different. 23
25 deals with the Office's decision not to seek

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dissolution in other cases.

SPECIAL MASTER: The facts and circumstances leading to the OAG's decision not to seek dissolution in the enforcement action referenced in Exhibit B below.

MS. EISENBERG: And then we go on to list about eight cases where we believe facts for similar dissolution was not sought.

SPECIAL MASTER: So you want to depose somebody about issues that are in the case; isn't that right?

MS. EISENBERG: It goes back to the animus and the reason why they're seeking to preclude --

SPECIAL MASTER: The issue that you are seeking to depose somebody with respect to No. 23 involve issues that are in the case? I believe the answer is, no.

MS. EISENBERG: Your Honor, no objection to protective order motion being granted as to that, as long as it's without prejudice to the NRA's re-issuing the notice as to 23 in the event the dissolution claims are reinstated.

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SPECIAL MASTER: Well, it's not a question of restatement. Apparently, you want to know facts and circumstances leading to the OAG's decision not to seek dissolution in the enforcement actions referenced in Table B below. Obviously, that's not in the case and, therefore, I can't see any relevance.

[RULING] So the protective order is granted. Let's not go over this again and again please.

Let's go back to one, two and three.

MS. EISENBERG: Yes, your Honor. I appreciate that very much.

The Attorney General served a set of objections to our request for documents in which she asserted certain privileges but not those she ultimately asserted in her privilege log. She also claims that she gave to us everything she deems to be, quote, discoverable" that it's not a term of art that's defined anywhere.

We are not confident at all that the search for responsive, quote, "discoverable documents" was thorough. And by having become a party to this litigation, the Office certainly

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exposed themselves to the possibility of a deposition on the issue of discovery. Just because they are the Attorney General, they are not immune from all the attributes that come from being a plaintiff in a litigation.

Therefore, the NRA respectfully requests that the Court deny the motion for a protective order as to Items 1, 2 and 3.

SPECIAL MASTER: Well, Ms. Connell, I'll hear from you and then I've got a thing or two to say.

MS. CONNELL: Thank you, your Honor.

I would just refer the Court and the parties to the Volkswagen case, 41AD Second 827, that was cited in both of our letters.

In there the Court noted that it should be noted that the Attorney General is not a party plaintiff. Plaintiffs are the People and the Attorney General as the People's attorney sues on their behalf in a protective capacity. There the Court denied discovery from the Attorney General.

So, as an initial matter, the Attorney General is not the plaintiff here.

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We've repeatedly informed the NRA of that. She is not a party of (INAUDIBLE) discovery is appropriately sought.

Furthermore, your Honor, we have produced the documents to the NRA. We produced the index. We produced a privilege log with a certification saying what we looked at how we looked at it and what we withheld.

Any questions regarding that should have been the subject of a meet and confer and addressed towards the privilege log and/or a motion to compel. But to depose an AAG on this topic and these topics seems to me to be inappropriate and I'm sure Plaintiff's Counsel wouldn't want to submit to the same either.

But unlike them, we have produced our entire files. We have told them what we have. We have given it to them and we have given them a certified privilege log.

We're supposed to get our privilege logs from them today. So, hopefully, we will and with appropriate certification.

MS. EISENBERG: Objection to the characterizations. But I know, your Honor, you

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don't want to hear about that.

MS. CONNELL: This seems to go to me to very squarely to the issue of what the Opposing Counsel has done in response to claims, how it has acted, what it has carried through without any showing that it has done anything improper or that there's any real question here.

And I would say, your Honor, that the protective order should be granted as to Topics 1 through 3.

SPECIAL MASTER: So, Ms. Eisenberg, what say you?

MS. EISENBERG: Your Honor, I rest on my prior --

SPECIAL MASTER: Ms. Connell, I hear you.

You didn't meet and confer with respect to -- this is the kind of stuff that under -- normally addressed by me through initially meeting and conferring and then figuring out what specific searches need to be done, don't you think?

MS. EISENBERG: Your Honor, I did meet and confer with Ms. Connell and she --

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2 SPECIAL MASTER: On these specific
3 questions as to the adequacy of the EIS?

4 That's what you're talking about;
5 isn't it?

6 MS. EISENBERG: Yes. I,
7 specifically, asked her what she meant by
8 "non-discoverable" and we went in circles and I
9 didn't get an answer and, therefore, I'm entitled
10 to depose somebody under oath.

11 MS. CONNELL: Your Honor --

12 SPECIAL MASTER: I'm not following
13 you. I really am not.

14 MS. EISENBERG: Okay. So here's what
15 happened --

16 SPECIAL MASTER: Help me out. I
17 guess I'm a little slow today.

18 MS. EISENBERG: So, your Honor,
19 you're not at all and we appreciate your patience
20 with these various issues.

21 If I may explain. What happened was
22 the NRA served a request for documents. The NY
23 AG produced documents along with responses and
24 objections and in the responses and objections
25 they said, this is everything that's

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discoverable. So the meet and confer was about their definition of discoverable because, in my mind, you have 3101 that says everything that's necessary and material to claims or defenses is discoverable subject to privileges under 3101C, D and 4503.

And what I was trying to understand from Ms. Connell and her colleague -- I believe, it was either Ms. Sash or Ms. James -- was what, specifically, falls in between because in their mind once you set aside everything that's privileged, there's something else that they deem to be non-discoverable and it's unclear to me what that is.

SPECIAL MASTER: Well, I take it that for the last almost two hours we've been talking about things that are not discoverable. So you have some clarity on that at this point. And I don't know that there are additional things that need to be addressed.

[RULING] but why don't you and Ms. Connell meet and confer to see if there is anything -- any gaps left given the decisions that have been made today. Right, make sense?

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MS. EISENBERG: Thank you very much
Judge.

MS. CONNELL: Thank you.

SPECIAL MASTER: Anything else?
Anybody else?

MS. CONNELL: No, that's it. That's
it from the Attorney General. Thank you.

MS. WILSON: Your Honor -- I'm sorry.
I'm asking a technical question.

Who is going to order the transcript
and send it to the Judge?

MS. CONNELL: This is Monica Connell.
I understand the NRA and I are supposed to sort
of share this duty. I'll speak to Ms. Eisenberg.
I'm sure we can work it out. Ms. Eisenberg will
take care of it this time and sort out the
details, okay.

MS. WILSON: Thank you.

SPECIAL MASTER: I guess one last
thing I think we should do.

Since I heard that the every town
motion is coming my way, should we set a time for
having a conversation about that?

I assume it's going to come to me

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within the next day or two, right? I hope so anyway.

MR. FARBER: Judge, just one question.

SPECIAL MASTER: Yes, Mr. Farber.

MR. FARBER: There is one party to that that is not here. And so, just in terms of scheduling, maybe someone ought to consult with them.

SPECIAL MASTER: Why don't you all meet and confer and then propose a -- request some dates.

MS. EISENBERG: Certainly, your Honor.

MS. CONNELL: Sounds good. Thank you, your Honor.

SPECIAL MASTER: Alright. Thank you.

MS. CONNELL: Have a nice night. Thank you.

SPECIAL MASTER: Bye-bye.

(Time noted 3:46 p.m.)

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C E R T I F I C A T E

I, SILVIA P. WAGE, a Notary Public for the State of New York, Certified New Jersey Court Reporter, Certified Realtime Reporter and Registered Professional Reporter, do hereby certify that the foregoing is a true and accurate transcript of the proceeding as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.



Notary Public of the State of New York

My Commission expires November 29, 2022

Dated: March 12, 2022

[& - addresses]

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Civil Practice Law and Rules

Article 31 Disclosure, Section 3116

(a) Signing. The deposition shall be submitted to the witness for examination and shall be read to or by him or her, and any changes in form or substance which the witness desires to make shall be entered at the end of the deposition with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the witness fails to sign and return the deposition within sixty days, it may be used as fully as though signed. No changes to the transcript may be made by the witness more than sixty days after submission to the witness for examination.

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