

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK
COMMERCIAL DIVISION**

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

Plaintiff,

v.

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

Defendants.

§
§
§ **INDEX NO. 451625/2020**
§
§
§
§ **NOTICE OF APPEAL**
§
§
§
§
§
§
§
§

PLEASE TAKE NOTICE that the National Rifle Association of America (the “NRA”) hereby appeals to the Appellate Division of the Supreme Court of the State of New York, First Judicial Department, from the Decision and Order on Motion of the Supreme Court of the State of New York, New York County (Joel M. Cohen, J.S.C.), dated October 3, 2022 [NYSCEF 843], and entered in the Office of the New York County Clerk on the same date [NYSCEF 848].

A true and correct copy of the Decision and Order with Notice of Entry dated October 3, 2022 is annexed hereto as Exhibit A.

In the Decision and Order on Motion, the Supreme Court denied the NRA’s motion for review of the Special Master’s Second Amendment to Order regarding certain redacted documents [NYSCEF 670].

This appeal is taken from the denial of the NRA’s motion for review of the Special Master’s Second Amendment to Order regarding certain redacted documents as noted in the Informational Statement appended hereto.

Dated: New York, New York
November 2, 2022

By: /s/ Svetlana M. Eisenberg
William A. Brewer III
wab@brewerattorneys.com
Svetlana Eisenberg
sme@brewerattorneys.com
BREWER, ATTORNEYS & COUNSELORS
750 Lexington Avenue, 14th Floor
New York, New York 10022
Telephone: (212) 489-1400
Facsimile: (212) 751-2849

**COUNSEL FOR THE NATIONAL RIFLE
ASSOCIATION OF AMERICA**

Supreme Court of the State of New York

Appellate Division: First Judicial Department

Informational Statement (Pursuant to 22 NYCRR 1250.3 [a]) - Civil

Case Title: Set forth the title of the case as it appears on the summons, notice of petition or order to show cause by which the matter was or is to be commenced, or as amended.		For Court of Original Instance
PEOPLE OF THE STATE OF NEW YORK, BY LETITIA JAMES, ATTORNEY GENERAL OF THE STATE OF NEW YORK, <div style="text-align: center;">- against -</div> THE NATIONAL RIFLE ASSOCIATION OF AMERICA INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER, and JOSHUA POWELL		Date Notice of Appeal Filed
For Appellate Division		

Case Type	Filing Type
<input checked="" type="checkbox"/> Civil Action <input type="checkbox"/> CPLR article 75 Arbitration <input type="checkbox"/> CPLR article 78 Proceeding <input type="checkbox"/> Special Proceeding Other <input type="checkbox"/> Habeas Corpus Proceeding	<input checked="" type="checkbox"/> Appeal <input type="checkbox"/> Original Proceedings <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Eminent Domain <input type="checkbox"/> Labor Law 220 or 220-b <input type="checkbox"/> Public Officers Law § 36 <input type="checkbox"/> Real Property Tax Law § 1278 <input type="checkbox"/> Transferred Proceeding <input type="checkbox"/> CPLR Article 78 <input type="checkbox"/> Executive Law § 298 <input type="checkbox"/> CPLR 5704 Review

Nature of Suit: Check up to three of the following categories which best reflect the nature of the case.

<input type="checkbox"/> Administrative Review	<input type="checkbox"/> Business Relationships	<input type="checkbox"/> Commercial	<input type="checkbox"/> Contracts
<input type="checkbox"/> Declaratory Judgment	<input type="checkbox"/> Domestic Relations	<input type="checkbox"/> Election Law	<input type="checkbox"/> Estate Matters
<input type="checkbox"/> Family Court	<input type="checkbox"/> Mortgage Foreclosure	<input type="checkbox"/> Miscellaneous	<input type="checkbox"/> Prisoner Discipline & Parole
<input type="checkbox"/> Real Property (other than foreclosure)	<input checked="" type="checkbox"/> Statutory	<input type="checkbox"/> Taxation	<input type="checkbox"/> Torts

Informational Statement - Civil

Appeal			
Paper Appealed From (Check one only):		If an appeal has been taken from more than one order or judgment by the filing of this notice of appeal, please indicate the below information for each such order or judgment appealed from on a separate sheet of paper.	
<input type="checkbox"/> Amended Decree <input type="checkbox"/> Amended Judgement <input type="checkbox"/> Amended Order <input checked="" type="checkbox"/> Decision <input type="checkbox"/> Decree	<input type="checkbox"/> Determination <input type="checkbox"/> Finding <input type="checkbox"/> Interlocutory Decree <input type="checkbox"/> Interlocutory Judgment <input type="checkbox"/> Judgment	<input type="checkbox"/> Order <input type="checkbox"/> Order & Judgment <input type="checkbox"/> Partial Decree <input type="checkbox"/> Resettled Decree <input type="checkbox"/> Resettled Judgment	<input type="checkbox"/> Resettled Order <input type="checkbox"/> Ruling <input type="checkbox"/> Other (specify):
Court: Supreme Court		County: New York	
Dated: 10/03/2022		Entered: 10/03/2022	
Judge (name in full): Hon. Joel M. Cohen, J.S.C.		Index No.: 451625/2020	
Stage: <input type="checkbox"/> Interlocutory <input checked="" type="checkbox"/> Final <input type="checkbox"/> Post-Final		Trial: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If Yes: <input type="checkbox"/> Jury <input type="checkbox"/> Non-Jury	
Prior Unperfected Appeal and Related Case Information			
<p>Are any appeals arising in the same action or proceeding currently pending in the court? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, please set forth the Appellate Division Case Number assigned to each such appeal. 2022-03159 and 2022-01488</p> <p>Where appropriate, indicate whether there is any related action or proceeding now in any court of this or any other jurisdiction, and if so, the status of the case:</p>			
Original Proceeding			
Commenced by: <input type="checkbox"/> Order to Show Cause <input type="checkbox"/> Notice of Petition <input type="checkbox"/> Writ of Habeas Corpus			Date Filed:
Statute authorizing commencement of proceeding in the Appellate Division:			
Proceeding Transferred Pursuant to CPLR 7804(g)			
Court: Choose Court		County: Choose County	
Judge (name in full):		Order of Transfer Date:	
CPLR 5704 Review of Ex Parte Order:			
Court: Choose Court		County: Choose County	
Judge (name in full):		Dated:	
Description of Appeal, Proceeding or Application and Statement of Issues			
<p>Description: If an appeal, briefly describe the paper appealed from. If the appeal is from an order, specify the relief requested and whether the motion was granted or denied. If an original proceeding commenced in this court or transferred pursuant to CPLR 7804(g), briefly describe the object of proceeding. If an application under CPLR 5704, briefly describe the nature of the ex parte order to be reviewed.</p> <p>The paper appealed from is a Decision and Order on Motion (entered on October 3, 2022) by Hon. Joel M. Cohen denying the NRA's motion for review of the Special Master's Second Amendment to Order regarding redacted documents. The NRA seeks review of the Supreme Court's determination that multiple privileges invoked by the NRA with regard to several redacted records are inapplicable or were waived when shared with the NRA's tax advisor and outside auditor. The NRA requests that the Appellate Division vacate and reverse the Decision and Order, and find that the documents at issue are protected under one or more of the privileges invoked by the NRA. In the alternative, the NRA requests that the Appellate Division vacate and reverse the Decision and Order, and require that the Supreme Court conduct an in camera review of the documents at issue.</p>			

Informational Statement - Civil

Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.

PLEASE SEE ATTACHMENT

Party Information

Instructions: Fill in the name of each party to the action or proceeding, one name per line. If this form is to be filed for an appeal, indicate the status of the party in the court of original instance and his, her, or its status in this court, if any. If this form is to be filed for a proceeding commenced in this court, fill in only the party's name and his, her, or its status in this court.

No.	Party Name	Original Status	Appellate Division Status
1	People of the State of New York, by Letitia James, Attorney General of the State of New York	Plaintiff	Respondent
2	The National Rifle Association of America	Defendant	Appellant
3	Wayne LaPierre	Defendant	None
4	Wilson Phillips	Defendant	None
5	John Frazer	Defendant	None
6	Joshua Powell	Defendant	None
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			

Attorney Information

Instructions: Fill in the names of the attorneys or firms for the respective parties. If this form is to be filed with the notice of petition or order to show cause by which a special proceeding is to be commenced in the Appellate Division, only the name of the attorney for the petitioner need be provided. In the event that a litigant represents herself or himself, the box marked "Pro Se" must be checked and the appropriate information for that litigant must be supplied in the spaces provided.

Attorney/Firm Name: Monica Connell, New York State Office of the Attorney General

Address: 28 Liberty Street

City: New York State: New York Zip: 10005 Telephone No: 212-416-8965

E-mail Address: monica.connell@ag.ny.gov

Attorney Type: ☐ Retained ☐ Assigned ☒ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 1

Attorney/Firm Name: William A. Brewer III and Svetlana M. Eisenberg, Brewer, Attorneys and Counselors

Address: 750 Lexington Avenue, 14th Floor

City: New York State: New York Zip: 10002 Telephone No: 212-489-1400

E-mail Address: wab@brewerattorneys.com sme@brewerattorneys.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 2

Attorney/Firm Name: P. Kent Correll, Correll Law Group

Address: 250 Park Avenue, 7th Floor

City: New York State: New York Zip: 10177 Telephone No: 212-475-3070

E-mail Address: kent@correlllawgroup.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 3

Attorney/Firm Name: Seth Farber, Winston & Strawn, LLP

Address: 200 Park Avenue

City: New York State: New York Zip: 10166 Telephone No: 212-294-4611

E-mail Address: sfarber@winston.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 4

Attorney/Firm Name: William B. Fleming, Gage, Spencer & Fleming, LLP

Address: 410 Park Avenue, Suite 810

City: New York State: New York Zip: 10022 Telephone No: 212-768-4900

E-mail Address: fleming@gagespencer.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 5

Attorney/Firm Name: Thomas P. McLish/Akin Gump

Address: 2001 K Street, N.W.

City: Washington State: D.C. Zip: 20006 Telephone No: 202-887-4324

E-mail Address: tmclish@akingump.com

Attorney Type: ☒ Retained ☐ Assigned ☐ Government ☐ Pro Se ☐ Pro Hac Vice

Party or Parties Represented (set forth party number(s) from table above): 6

**Attachment to Information Statement
filed by the National Rifle Association of America
pursuant to 22 N.Y.C.R.R. 1250.3(a)**

Page 3 – “Issues: Specify the issues proposed to be raised on the appeal, proceeding, or application for CPLR 5704 review, the grounds for reversal, or modification to be advanced and the specific relief sought on appeal.”

A. The issues proposed to be raised on the appeal are:

- a. Whether the court below erred in holding that the attorney work product privilege codified in CPLR 3101(c) and invoked by the NRA with regard to several redacted records is inapplicable or was waived when shared with the NRA’s tax advisor and outside auditor.
- b. Whether the court below erred in holding that the trial preparation privilege codified in CPLR 3101(d)(2) and invoked by the NRA with regard to several redacted records is inapplicable or was waived when shared with the NRA’s tax advisor and outside auditor.
- c. Whether the court below erred in holding that the attorney-client privilege codified in CPLR 3101(b) and 4503(a)(1) and invoked by the NRA with regard to several redacted records is inapplicable or was waived when shared with the NRA’s tax advisor and outside auditor.

B. The grounds for reversal are:

- a. The lower court erred by:
 - i. Relying on inapposite authorities and otherwise failing to apply the controlling legal standards under CPLR 3101(b), 3101(c), 3101(d)(2), as well as 4593, and 3104(d) in ruling on the NRA’s motion for review of the Special Master’s Second Amendment to Order regarding certain redacted documents.
 - ii. Holding that waiver occurred.
- b. The lower court erroneously applied the standards governing the applicability of asserted privileges in connection with the redacted documents.

- c. In denying the NRA's motion for review of the Special Master's Second Amendment to Order regarding certain redacted documents, the lower court committed reversible error.

C. The specific relief sought on appeal is:

- a. The NRA requests that the Appellate Division (i) vacate and reverse the Decision and Order [NYSCEF 843, 848]; (ii) find the redacted documents are protected by one or more of the privileges asserted by the NRA; and (iii) hold the NRA did not waive the privileges when it shared certain communications related to the preparation of its Form 990 with its tax advisor and outside auditor.

EXHIBIT A

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

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

Plaintiff,

v.

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

Defendants.

**NOTICE OF ENTRY OF
DECISION AND ORDER**

Index No. 451625/2020

Motion Seq. No. 27

PLEASE TAKE NOTICE that attached is a true copy of a Decision and Order on Motion Sequence No. 27 by the Hon. Joel Cohen, dated October 3, 2022, which was duly entered in this action and filed in the office of the Clerk of the Supreme Court, New York County, on the 3rd day of October, 2022.

DATED: October 3, 2022

Respectfully submitted,

LETITIA JAMES
*Attorney General
of the State of New York*

/s Stephen Thompson

Stephen C. Thompson
Assistant Attorney General
NYS Office of the Attorney General
28 Liberty Street
New York, New York 10005
(212) 416-6183
Stephen.Thompson@ag.ny.gov

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03MPEOPLE OF THE STATE OF NEW YORK, BY LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK,

Plaintiff,

- v -

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

Defendants.

INDEX NO. 451625/2020

MOTION DATE 05/19/2022

MOTION SEQ. NO. 027

DECISION + ORDER ON
MOTION

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 027) 661, 662, 663, 664,
665, 666, 667, 668, 669, 670, 679

were read on this motion to

REVIEW SPECIAL MASTER'S ORDER

Upon the foregoing documents, and for the reasons stated on the record after oral
argument on September 29, 2022, it is hereby

ORDERED that Defendant NRA's motion to review the Special Master's Second
Amendment to Order regarding redacted Aronson Documents is **DENIED**.

This constitutes the decision and order of the Court.

10/3/2022

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

☐

CASE DISPOSED

☐

GRANTED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☒

DENIED

☒

NON-FINAL DISPOSITION

☐

GRANTED IN PART

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

OTHER

☐

REFERENCE

20221003084119JMC0HEN275AD029F6254E279D2528C26E530266

JOEL M. COHEN, J.S.C.