

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

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

Plaintiff,

v.

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

Defendants.

Index No. 451625/2020  
(Cohen, J.)

Motion Seq. No. 35

**PLAINTIFF'S PARTIAL OPPOSITION TO  
THE NRA'S MOTION FOR A SEALING ORDER**

LETITIA JAMES  
Attorney General of the  
State of New York  
28 Liberty St.  
New York, NY 10005

Stephen C. Thompson  
*Assistant Attorney General*

## ARGUMENT

Plaintiff People of the State of New York, by Letitia James, Attorney General of the State of New York, respectfully submits this memorandum of law in partial opposition to the motion of Defendant National Rifle Association of America (“NRA”) for a sealing order pertaining to documents filed by Plaintiff in connection with Motion Sequence No. 34.

Plaintiff disagrees with many of the factual assertions in the NRA’s motion papers. The NRA has moved the Special Master and this Court on four separate occasions to prevent the disclosure of the Frenkel Report, and each time the Special Master and this Court have ordered its production—most recently on November 30, 2022. *See generally* Mot. Seq. Nos. 33 and 34. Plaintiff respectfully directs the Court to the factual recitations contained in Plaintiff’s memoranda of law in connection with the underlying motion practice related to the Frenkel Report for its history and significance in this case. *See* NYSCEF 818, 892.

Following this Court’s October 17, 2022 order affirming the Special Master’s order directing production of the Frenkel Report, NYSCEF 859, the NRA refused to produce the same on privilege grounds. As a means of resolving the issue without the NRA having to make an emergency application for a stay to the Appellate Division, the parties agreed that the NRA would produce the Frenkel Report and certain other related documents immediately under an agreement that they would be maintained as highly confidential pending a resolution of the NRA’s appeal from the October 17, 2022 order.

Accordingly, Plaintiff does not object to the NRA’s motion to the extent sealing is conditioned on the NRA timely perfecting and succeeding on its appeal from the discoverability of the Frenkel Report. *See* NYSCEF 906 at 11.

However, should the NRA fail on its appeal, the Frenkel Report and references thereto in Plaintiff's papers should be unsealed. As this Court has held, "because confidentiality is the exception and not the rule, the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access." NYSCEF 756 at 5 (quoting *Maxim, Inc. v. Feifer*, 145 AD3d 516, 517 (1st Dep't 2016)) (internal quotation marks omitted). Here, the only bases the NRA alleges for sealing are that the Frenkel Report is privileged and non-discoverable, and that Plaintiff agreed to treat the Frenkel Report as highly confidential pending the NRA's appeals. NYSCEF 906 at 3. Therefore, if the discoverability of the Frenkel report is upheld in Plaintiff's favor, there will be no justification for the continued sealing of the Frenkel Report.

Dated: December 2, 2022  
New York, New York

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

/s/ Stephen Thompson

Stephen C. Thompson  
Assistant Attorneys General  
NYS Office of the Attorney General  
28 Liberty Street  
New York, New York 10005  
(212) 416-8391  
Yael.Fuchs@ag.ny.gov

MEGHAN FAUX, *Chief Deputy Attorney General for Social Justice*  
JAMES SHEEHAN, *Chief of Enforcement Section, Charities Bureau*  
EMILY STERN, *Co-Chief of Enforcement Section, Charities Bureau*

*Of Counsel*

**Attorney Certification Pursuant to Commercial Division Rule 17**

I, Stephen Thompson, an attorney duly admitted to practice law before the courts of the State of New York, certify that the Memorandum of Law in Partial Opposition to the NRA's Motion for a Sealing Order complies with the word count limit set forth in Rule 17 of the Commercial Division of the Supreme Court (22 NYCRR 202.70(g)) because the memorandum of law contains 426 words, excluding the parts exempted by Rule 17. In preparing this certification, I have relied on the word count of the word-processing system used to prepare this memorandum of law and affirmation.

Dated: December 2, 2022  
New York, New York

/s/ Stephen Thompson  
Stephen Thompson