

B R E W E R
ATTORNEYS & COUNSELORS

January 10, 2023

VIA NYSCEF

Hon. Joel M. Cohen
Justice of the Supreme Court of the State of New York
Commercial Division, New York County
60 Centre Street
New York, NY 10007

Re: NYAG v. NRA et al., Index No. 451625/2020

Dear Justice Cohen:

On behalf of the National Rifle Association of America (the “NRA”), enclosed is a notarized affidavit of John C. Frazer, which was filed (without a notarized signature) yesterday (NYSCEF 1060, PDF file pages 21-28).

We filed the affidavit in redacted form in support of the NRA's motion for review—pursuant to CPLR 3104(d)—of the decision of the Special Master for Discovery dated December 27, 2022 (NYSCEF 1030 et seq.).

For the reasons stated in the NRA’s letter dated January 9, 2023 (NYSCEF 1062) (and subject to the same consent and reservation of rights by the NYAG), the NRA respectfully seeks permission to submit an unredacted version of this affidavit—and the documents referenced in the letter—to Your Honor for *in camera* review. That letter is also enclosed.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Svetlana M. Eisenberg
Svetlana M. Eisenberg

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COUNSEL FOR THE NATIONAL RIFLE
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cc: Counsel of Record (via NYSCEF)

Enclosures

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

§ 87(2)(g)

Hon. Joel M. Cohen

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3. In connection with the NRA's *in camera* submission, I reviewed each of the documents contained in the sample population, and, as I attested in support of the NRA's *in camera* submission, each such document reflects (i) confidential communications involving the NRA and its in-house or outside counsel generated to solicit, provide, and inform advice to the NRA about litigation and/or compliance matters; (ii) confidential attorney work product; and/or (iii) confidential trial preparation materials.

4. I understand that the Special Master determined certain of these documents to be non-privileged as part of the Ruling, in many instances based on purportedly unclear email/attachment relationships or the alleged presence of "blank" documents. When I reviewed the documents before the NRA's submission, I believed the email "family" relationships to be self-evident. I now provide additional clarification regarding documents which may have confused the Special Master according to footnotes in the Ruling. It is my understanding that this Affidavit is being submitted *in camera*; therefore, the testimony set forth here is not intended to be a waiver of any of the NRA's privileges, nor any work-product or trial-preparation protection.

5. **Documents No. 052-053 in the NRA's *in camera* sample were determined to be nonprivileged by the Special Master on the apparent ground that the cover email, Document No. 052, is "blank."** This was an email transmission from me to Sarah Rogers, who is one of the NRA's outside litigation counsel in this very lawsuit. At the time the email was sent,

[REDACTED] and Ms. Rogers served as outside counsel in connection with that matter. In addition, Ms. Rogers served as outside counsel in a then-pending lawsuit [REDACTED]

[REDACTED] The email was sent contemporaneous with several telephone calls Ms. Rogers and I exchanged; even though the body

of the email is “blank,” the content of the communication was clearly understood by me to consist of the attached draft [REDACTED] which contained tracked changes and comment “bubbles” reflecting edits by each of Ms. Rogers and myself. The subject line of the email, [REDACTED] [REDACTED] Privileged & Confidential,” reflected the subject matter and expected confidentiality of our conversation. The content of the attachment consisted of [REDACTED] [REDACTED] on which Ms. Rogers worked. Therefore, the NRA sought her legal advice, and the two of us formulated legal advice together which our markups [REDACTED] [REDACTED] [REDACTED] In addition, Ms. Rogers provided legal advice regarding [REDACTED] This email family is highly privileged, and reflects opinions and mental impressions of two NRA lawyers regarding matters that were (and remain) the subject of pending litigation, including this litigation.

6. **Document No. 55 is a communication between NRA counsel and a paralegal,** and is privileged. This conversation occurred because an NRA paralegal, Katherine Crowley, was filling out [REDACTED] [REDACTED] Ms. Crowley asked an in-house lawyer who reports to me, Stefan Tahmassebi, for advice on [REDACTED] [REDACTED] Mr. Tahmassebi drafted language for Ms. Crowley’s use that included [REDACTED] [REDACTED] He sent the language to me for review. Given her role as litigation counsel, I copied Ms. Rogers, specifically requesting

her legal advice. I discussed the need to draft [REDACTED]

[REDACTED] The remaining emails in the chain coordinate a call for that purpose.

7. **Documents No. 56-57 consist of an email communication (and attachment) transmitted among myself and an NRA paralegal.** Ms. Freeman was performing work in the NRA's in-house legal office in support of [REDACTED] Ms. Freeman had been asked to compile [REDACTED] [REDACTED] for use in analysis of [REDACTED]

[REDACTED] remaining segments in the email chain (which were composed after that meeting) consist of efforts by NRA staff to gather and review this information in connection with [REDACTED] and its affiliates. **Document No. 58** in the *in camera* sample is a similar, contemporaneous email from me to Ms. Freeman concerning the same list, indicating how I viewed and categorized different [REDACTED]

8. **Documents No. 59-68 of the NRA's *in camera* sample are emails and attachments deemed non-privileged or blank, but this assessment was incorrect.** All of these emails involve the same topic: the NRA's then-ongoing contract negotiation [REDACTED] [REDACTED] I was providing legal advice regarding contract terms, as well as regarding funding allocation for the contract, [REDACTED]

¹ I understand from counsel for the NRA that the portion of the email thread consisting of Mr. Ness's email message to Portia Padilla and Ms. Padilla's response to him has been produced.

[REDACTED]

These inquiries were purely in aid of legal advice. In response to my advice, [REDACTED]

[REDACTED] In response I indicated I would have OGC (my office, the Office of the General Counsel) review the latest version. I separately indicated that [REDACTED]

[REDACTED]—this comment, too, reflected legal advice and my legal opinion about [REDACTED]

[REDACTED]

Sarah Gervase, an Assistant General Counsel who reports directly to me, then provided legal advice on suggested edits [REDACTED] Document Nos. 61 and 65 in this set appear “blank,” but are actually text-free digital artifacts embedded in the emails transmitted in Document Nos. 60 and 64. Excluding these blank pages from the NRA’s in camera sample would give the impression of incomplete, altered email “families” based on metadata.

9. **Document No. 69 is an email chain among in-house counsel, outside counsel, and Board counsel reflecting legal advice regarding a matter highly relevant to then-pending and anticipated litigation.** Although the document largely speaks for itself, it is notable that [REDACTED] the NRA’s then-litigation adversary. I copied William Brewer and Sarah Rogers because they were counsel in the [REDACTED] litigation. Wit Davis, also copied, was counsel to the NRA Board of Directors, and provided legal advice regarding the Board’s obligations. I formulated a draft response and was seeking advice from the other counsel before sending it, because [REDACTED]

[REDACTED]

10. **Documents No. 79-80 of the NRA’s in camera sample consist respectively of (i) an email from me seeking legal advice from other NRA in-house attorneys concerning the**

[REDACTED], and (ii) an attached copy of the draft [REDACTED]. Both of the persons to whom I directed this email, Skipp Galythly and Matt Bower, are NRA in-house lawyers who, with respect to the NRA, wear no non-legal “hats.” [REDACTED]

[REDACTED] In my email, I sought an update from Mr. Galythly regarding an analysis that I had previously requested regarding the [REDACTED]

[REDACTED] Similarly, Mr. Bower routinely provides legal advice regarding campaign finance and lobbying compliance, and I asked him for an update on [REDACTED]

11. Documents No. 81-82 of the NRA’s *in camera* sample consist respectively of (i) an email from me providing legal advice regarding [REDACTED] and (ii) an attached copy of [REDACTED] Specifically, I was providing direction to David Warren, [REDACTED]

[REDACTED] where I closely analyzed the relevant statute and I was providing guidance to Mr. Warren in my capacity as the NRA’s lawyer.

12. Documents No. 90-93 of the NRA’s *in camera* sample are email chains wherein I gather information from NRA staff to formulate legal advice regarding [REDACTED]

[REDACTED]

13. **Document No. 94 of the NRA's *in camera* sample** consists of an email wherein I request that David Warren, Audit Committee Secretary, remind me about a legal item I wanted to add to the Audit Committee agenda.

14. **Document No. 95** of the NRA's *in camera* sample consists of an email from me to an outside NRA tax lawyer, Alex Reid of Baker Hostetler, relaying my legal assessments and seeking Mr. Reid's legal advice regarding [REDACTED]. Importantly, the issues on which I sought advice from Mr. Reid in this email are distinct from the issues concerning Mr. LaPierre's excess benefits on which the NYAG alleges "at issue" waiver (in connection with advice from another outside tax attorney, Don Lan). I carefully and prominently labelled this email CONFIDENTIAL AND PRIVILEGED ATTORNEY WORK PRODUCT because it related to the subject matter of pending and anticipated litigation, including this ongoing litigation by the NYAG.

15. **Documents No. 96-104** consist of emails and attachments requesting and reflecting legal advice about [REDACTED]. The email chain commenced in early November when I made a legal determination, in consultation with multiple NRA outside counsel, about [REDACTED].

[REDACTED]

[REDACTED] documents the Special Master deemed nonprivileged; in

context, however, these attachments form part of the content of the communication among NRA counsel and NRA [REDACTED] The entire discussion occurred at my direction, incorporated outside litigation counsel so they could be apprised and provide advice, and, to reflect this, was labelled “Privileged and Confidential.”

16. **Documents No. 107-109 of the NRA’s *in camera* submission consist of an email properly deemed privileged, plus two attachments.** In the cover email (Document No. 107), an NRA accountant asks Don Lan, an outside tax lawyer engaged by the NRA, for legal advice about [REDACTED] pertaining to two litigation matters—the NRA’s disputes with [REDACTED]

[REDACTED] For reference as part of this request, Mr. Rahman includes the NRA’s draft tax return and a draft related disclosure, which is labelled PRIVILEGED AND CONFIDENTIAL ATTORNEY WORK PRODUCT, reflecting counsel’s role in the drafting process.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 10th day of January, 2023.


John C. Frazer

SUBSCRIBED AND SWORN to, on this 10th Day of January, 2023

Signature 

NOTARY PUBLIC

My commission expires: 7/10/25

B R E W E R
ATTORNEYS & COUNSELORS

January 9, 2023

VIA NYSCEF

Hon. Joel M. Cohen
Justice of the Supreme Court of the State of New York
Commercial Division, New York County
60 Centre Street
New York, NY 10007

Re: NYAG v. NRA et al, Index No. 451625/2020

Dear Justice Cohen:

On behalf of the National Rifle Association of America (the “NRA”), we respectfully request permission to submit for Your Honor’s in camera review (i) certain documents submitted for in camera review to Judge Sherwood on December 17, 2022 as discussed in the NRA’s motion for review—pursuant to CPLR 3104(d)—of Judge Sherwood’s Decision dated December 27, 2022,¹ and (ii) an affidavit of the NRA’s Secretary and General Counsel John C. Frazer dated January 9, 2023.

The documents the NRA wishes to submit are (i) the documents that Judge Sherwood deemed to be non-privileged; and (ii) where applicable email messages to which such documents were attached.

The affidavit sets forth additional context related to the communications at issue (such as the purpose for which they were sent) and will be filed by the NRA in redacted form via NYSCEF.

The NYAG consents, but reserves the right to assert other arguments including to later argue that it should be permitted access to some or all such information submitted for in camera review.

We thank Your Honor for his consideration of this request.

Respectfully submitted,
/s/ Noah B. Peters
William A. Brewer III
Svetlana M. Eisenberg
Noah B. Peters
BREWER, ATTORNEYS & COUNSELORS

¹ The motion is dated January 9, 2023.

750 Lexington Avenue, 14th Floor
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**COUNSEL FOR THE NATIONAL RIFLE
ASSOCIATION OF AMERICA**

cc: All Counsel of Record (via NYSCEF)