

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,

<u>/s/ Svetlana M. Eisenberg</u> Svetlana M. Eisenberg

BREWER, ATTORNEYS & COUNSELORS

750 Lexington Avenue, 14th Floor New York, New York 10022 Telephone: (212) 489-1400 COUNSEL FOR THE NATIONAL RIFLE ASSOCIATION OF AMERICA

cc: Counsel of Record (via NYSCEF)

Enclosures

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,	§ INDEX NO. 451625/2020
Plaintiff,	§
	§ Hon. Joel M. Cohen
v.	§
THE NATIONAL RIFLE ASSOCIATION OF AMERICA, ET AL.,	§ § §
Defendants.	§ § §
	§ §

IN CAMERA AFFIDAVIT OF JOHN FRAZER CONCERNING EMAILS AND ATTACHMENTS DEEMED NONPRIVILEGED OR "BLANK" IN CAMERA

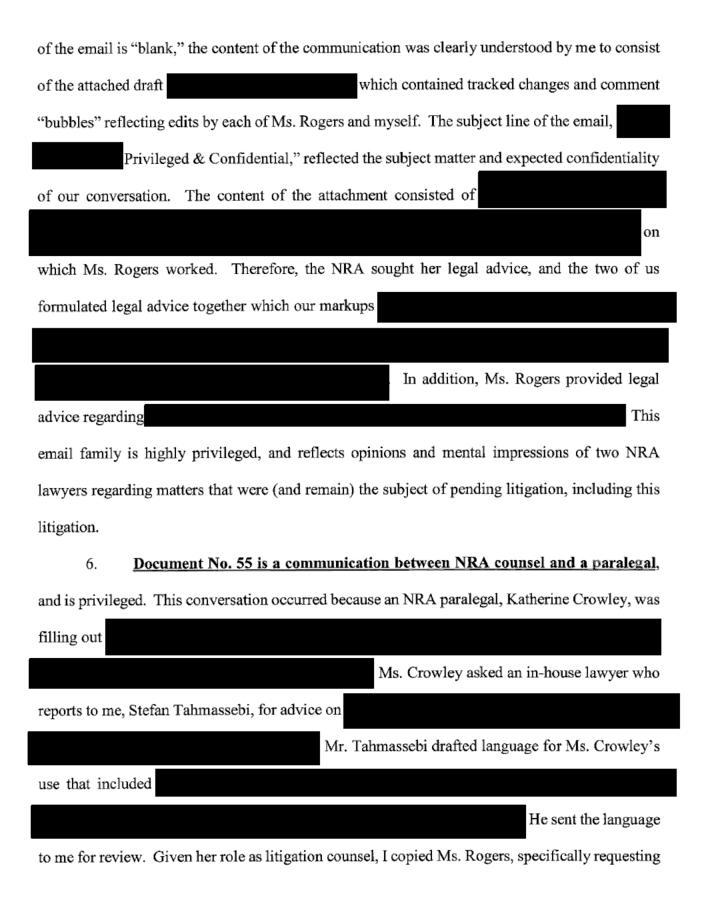
I, JOHN C. FRAZER, being duly sworn, depose and state:

- 1. I am the General Counsel of the National Rifle Association of America (the "NRA"). I am over the age of twenty-one, of sound mind, and competent to make this affidavit. I submit this affidavit in support of the NRA's Motion—pursuant to CPLR 3104(d)—for Review of the Special Master's Ruling Dated December 27, 2022 (the "Ruling").
- 2. In my capacity as General Counsel of the NRA, I am familiar with the matters addressed in this Affidavit and specifically reviewed the *in camera* documents referenced in this Affidavit. Many of the documents were authored by me or gathered from my files. To the extent I was not copied on any of the communications discussed below, I was able to reach the beliefs stated below based on my personal knowledge of the roles of the participants in those communications and the subject matter discussed in the communications.

- 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. <u>Documents No. 052-053</u> 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,

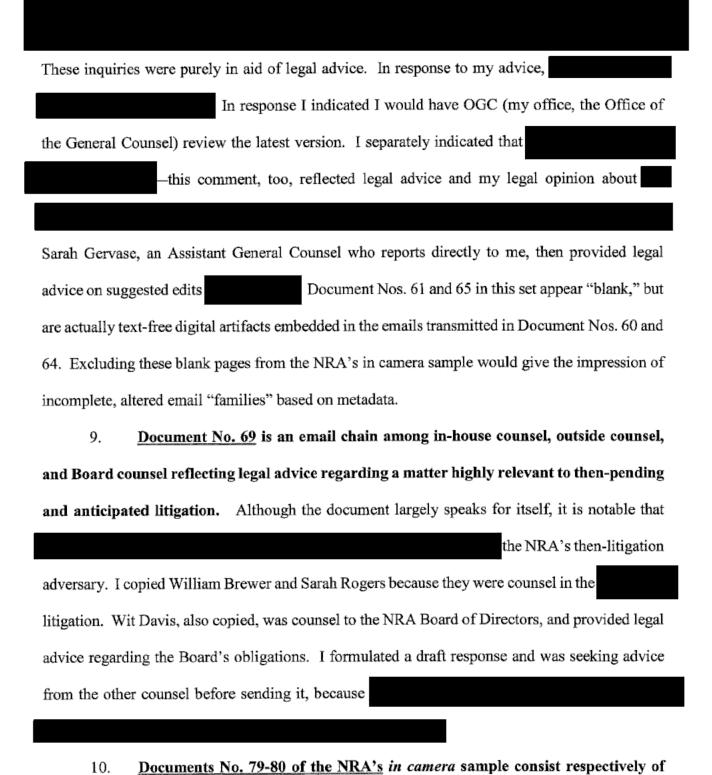
and Ms. Rogers served as outside counsel in connection with that matter. In addition, Ms. Rogers served as outside counsel in a then-pending lawsuit

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

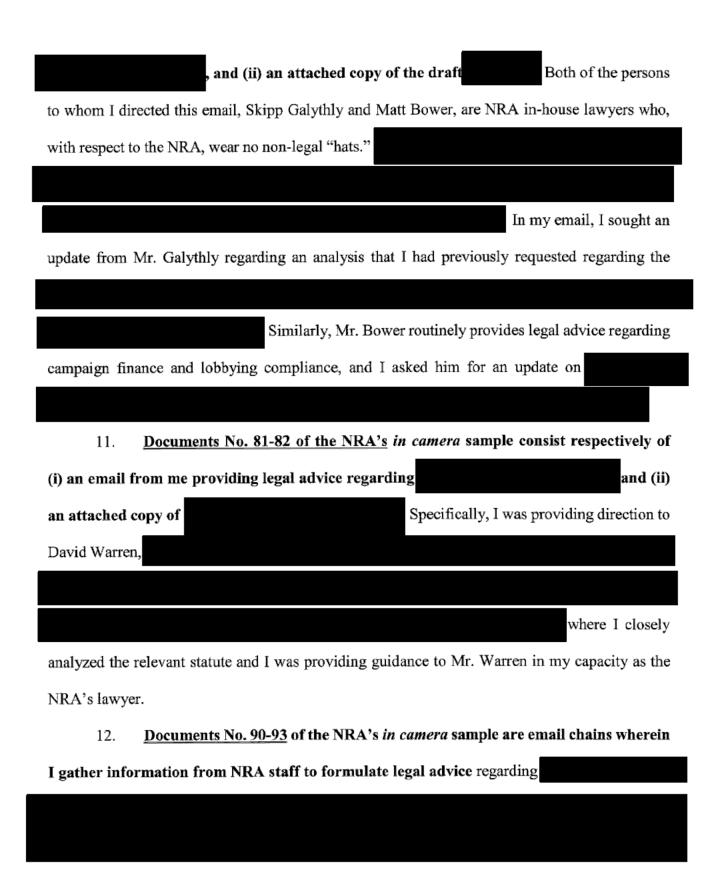


her legal advice. I discussed the need to draft		
	The remaining emails in	
the chain coordinate a call for that purpose.		
7. <u>Documents No. 56-57</u> consist of an email communication (and attachment)		
transmitted among myself and an NRA paralegal. Ms. Freeman was performing work in the		
NRA's in-house legal office in support of	Ms. Freeman had	
been asked to compile		
for use in analysis of		
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		
and its affiliates. Document No. 58 in the <i>in camera</i> sample is a similar, contemporaneous email		
from me to Ms. Freeman concerning the same list, indicating how I viewed and categorized		
different		
8. <u>Documents No. 59-68</u> of the NRA's in camero	a 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		
	I was providing legal	
advice regarding contract terms, as well as regarding funding allocation for the contract,		

 $^{^{1}}$ 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.



(i) an email from me seeking legal advice from other NRA in-house attorneys concerning the



- 13. <u>Document No. 94 of the NRA's in camera sample</u> 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. <u>Document No. 95</u> 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 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. <u>Documents No. 96-104</u> consist of emails and attachments requesting and reflecting legal advice about The email chain commenced in early November when I made a legal determination, in consultation with multiple NRA outside counsel, about

documents the Special Master deemed nonprivileged; in context, however, these attachments form part of the content of the communication among NRA counsel and NRA

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."

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 pertaining to two litigation matters—the NRA's disputes with

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

DALLAS | NEW YORK



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 New York, New York 10022 Telephone: (212) 489-1400

COUNSEL FOR THE NATIONAL RIFLE ASSOCIATION OF AMERICA

cc: All Counsel of Record (via NYSCEF)