

**B R E W E R**  
ATTORNEYS & COUNSELORS

January 18, 2023

**VIA NYSCEF**

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

Re: NYAG v. The National Rifle Association of America et al.,  
Index No. 451625/2020  
Motion Sequence No. 38

Dear Justice Cohen:

On behalf of the National Rifle Association of America, enclosed is a notarized affidavit of John C. Frazer, dated January 18, 2023, which was filed (without a notarized signature) yesterday, NYSCEF 1079, in opposition to the NYAG's Motion for Review of the Special Master's ruling dated November 29, 2022 (Motion Sequence No. 38).

Respectfully submitted,

/s/ Svetlana M. Eisenberg  
Svetlana M. Eisenberg

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ASSOCIATION OF AMERICA

cc: Counsel of Record (via NYSCEF)

Enclosure



the 33 email threads submitted to him for in camera review by the NRA, which involved representatives of the MMP Entities (as that term is defined below) or McKenna & Associates, are privileged.

4. This affidavit sets forth factual information pertinent to the Court's consideration of that request.

5. Based on my review of the documents at issue, I understand that they constitute email communications from various points in 2016 and 2018 and involve the MMP Entities and McKenna & Associates.

6. **The MMP Entities.** In or around 2016-2018, Membership Marketing Partners, LLC or its relevant affiliate(s) (the "MMP Entities") managed certain mailing lists, social media and other communications, membership recruitment and retention, donation outreach, and donation processing functions for the NRA.

7. At that time, the MMP Entities were integral to the dissemination on behalf of the NRA of highly regulated election and fundraising communications that required them to work hand-in-hand with NRA employees at the direction of NRA counsel to ensure compliance with applicable laws.

8. Under Virginia law, which, in part, governed their contracts with the NRA, the MMP Entities were the NRA's agents and fiduciaries. Furthermore, the MMP Entities had strict contractual confidentiality obligations to the NRA.

9. Based on my review of the documents, I believe that the MMP Entities needed to be involved in the communications at issue here (Document nos. 001 through 008, 027 through 030). This is because select individuals from the NRA and the MMP Entities were jointly analyzing legal issues for the purpose of providing and carrying out legal advice about

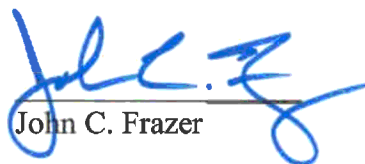
communications that the MMP Entities were disseminating and activities the MMP Entities were undertaking on behalf of the NRA.

10. **McKenna & Associates.** McKenna is a strategy-consulting firm that, in or around 2018, provided donor-relations, fundraising, and business-advisory services to the NRA. In or around 2018, McKenna had a contractual agency relationship with the NRA, which entailed strict contractual confidentiality obligations. During 2018, when the NRA faced a regulatory investigation and commenced a related civil lawsuit relating to certain insurance programs, McKenna provided advice about the insurance-program structure. Outside counsel, Squire Patton Boggs, was retained by McKenna for this purpose and worked directly with the NRA and the NRA's outside counsel. Around the same time, the NRA and McKenna explicitly discussed their common litigation interests and agreed to safeguard information subject to such interests.

11. Based on my review of the documents, it is clear to me that McKenna's involvement in the communications numbered 009 through 026 was necessary because McKenna was helping the NRA to restructure insurance products that were at the time the subject of an investigation and two lawsuits, and it was believed to be eminently plausible that the NRA and McKenna would become co-litigants if litigation activity surrounding these insurance products escalated.

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

Executed this 18<sup>th</sup> day of January, 2023.

  
John C. Frazer

SUBSCRIBED AND SWORN to, on this 18<sup>th</sup> day of January, 2023

Signature 

NOTARY PUBLIC  
My commission expires: 7/31/25

