

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M-----X
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, JOSHUA POWELL,Defendants.
-----XINDEX NO. 451625/2020MOTION DATE 11/25/2022MOTION SEQ. NO. 035**DECISION + ORDER ON
MOTION**

HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 035) 901, 902, 903, 904,
905, 906, 912

were read on this motion to

SEAL

Defendant The National Rifle Association of America (the “NRA”) moves for an order permitting the “Frenkel Report” (NYSCEF 894) to be filed under seal. The NRA also moves to permit documents (NYSCEF 892, 893) that refer to the Frenkel Report to be filed with redactions. Plaintiff the People of the State of New York by the Office of the Attorney General (“OAG”) consents to the relief requested on the condition that the NRA timely perfects its appeal from the order compelling production of the Frenkel Report. Accordingly, the NRA’s motion is GRANTED to the extent that the Frenkel Report and those portions of documents referencing the Frenkel Report shall remain under seal on the condition that the NRA timely perfects its appeal.

By Order dated July 15, 2022 (NYSCEF 806), the Special Master (Hon. O. Peter Sherwood [ret.]) directed the NRA to produce the Frenkel Report to the OAG. The Court confirmed the Special Master’s ruling by order dated October 17, 2022 (NYSCEF 859). The

NRA filed a notice of appeal on November 17, 2022 (NYSCEF 891). The NRA and the OAG agreed that the Frenkel Report would be produced as “highly confidential” pending the NRA’s appeal (NYSCEF 903).

Pursuant to § 216.1 (a) of the Uniform Rules for Trial Courts, this Court may seal a filing “upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties” (22 NYCRR § 216.1 [a]).

The Appellate Division has emphasized that “there is a broad presumption that the public is entitled to access to judicial proceedings and court records” (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). “Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public’s right to access” (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept 2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, 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’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

The Court has reviewed the Frenkel Report as well as the proposed redactions and finds that they comport with the applicable sealing standards as laid out in *Mosallem*, 76 AD3d at 348-50, and its progeny, in that they contain sensitive and potentially privileged material.

Accordingly, it is:

ORDERED that Defendant the NRA's motion is **GRANTED IN PART**; it is further

ORDERED that Defendant the NRA timely perfect its appeal from the Court's October 17, 2022 order as a condition of the relief set forth herein; it is further

ORDERED that the County Clerk shall maintain the Frenkel Report, NYSCEF Document Number 894, and those portions of NYSCEF Docket Numbers 892-893 referring to the Frenkel Report, under seal, so that the document may only be accessible by the parties, their counsel, it is further

ORDERED that the parties inform the Court when the appeal is decided; it is further

ORDERED as it related to future submissions, made by any party, that contain subject matter that the Court has authorized to be sealed by this Order, parties may file a joint stipulation, to be So Ordered, which will authorize the filing of such future submissions to be filed in redacted form on NYSCEF, provided that an unredacted copy of any redacted document is contemporaneously filed under seal; and it is further

ORDERED that nothing in this Order shall be construed as authorizing the sealing or redactions of any documents or evidence to be offered at trial.

This constitutes the Decision and Order of the Court.

3/14/2023

DATE

CHECK ONE:

APPLICATION:

CHECK IF APPROPRIATE:

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CASE DISPOSED

☐

GRANTED

☐

DENIED

☐

SETTLE ORDER

☐

INCLUDES TRANSFER/REASSIGN

☒

NON-FINAL DISPOSITION

☒

GRANTED IN PART

☐

OTHER

☐

SUBMIT ORDER

☐

FIDUCIARY APPOINTMENT

☐

REFERENCE

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JOEL M. COHEN, J.S.C.