

People v National Rifle Assn. of Am.

2023 NY Slip Op 32322(U)

July 10, 2023

Supreme Court, New York County

Docket Number: Index No. 451625/2020

Judge: Joel M. Cohen

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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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,
WAYNE LAPIERRE, WILSON PHILLIPS, JOHN FRAZER,
JOSHUA POWELL,

Defendants.

INDEX NO. 451625/2020

MOTION DATE 03/27/2023

MOTION SEQ. NO. 058

**DECISION + ORDER ON
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 058) 1716, 1717, 1718, 1719, 1720, 1721, 1722, 1723, 1724, 1725, 1726, 1727, 1728, 1729, 1730, 1731, 1732, 1733, 1734, 1735, 1736, 1737, 1738, 1739, 1740, 1741, 1742, 1743, 1744, 1745, 1746, 1747, 1748, 1749, 1750, 1751, 1752, 1753, 1754, 1755, 1756, 1757, 1790, 1791, 1792, 1793, 1803, 1804

were read on this motion to SEAL.

Defendant the National Rifle Association of America (“NRA”) moves to seal a report prepared by non-party Forensic Risk Alliance (“FRA”); (2) a whistleblower memorandum submitted to the NRA’s Audit Committee in the summer of 2018 (“Top Concerns Report”); and (3) certain American Express reports. The motion is **denied** without prejudice to the NRA renewing its motion to propose targeted redactions to the American Express (“AMEX”) documents within twenty (20) days of this order.

Plaintiff the People of the State of New York, By Letitia James, Attorney General of the State of New York (“OAG”) opposes the NRA’s motion. In response, the NRA withdrew its request to maintain the FRA report under seal (NYSCEF 1804). The Court finds that the NRA has not sustained its burden to establish that the 2018 Top Concerns Report should be sealed.

Similarly, the Court finds that the NRA has not sustained its burden to establish that the AMEX documents are confidential in their entirety. The Court will, however, permit the NRA a final opportunity to renew its motion to propose targeted redaction to the AMEX documents. The Court is providing this opportunity to protect personal identifying information with respect to non-parties.

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 NRA has not advanced compelling reasons for sealing the Top Concerns Memo. Contrary to the NRA’s argument, New York law requires covered entities to adopt policies to protect whistleblowers from retaliation; it does not mandate sealing from public view the

substance of the whistleblower's claims (*Joshi v Trustees of Columbia Univ. in City of New York*, 515 F Supp 3d 200, 204 [SDNY 2021], *affd*, 21-418, 2022 WL 3205883 [2d Cir Aug. 9, 2022] *citing Ferris v Lustgarten Found.*, 189 AD3d 1002 [2d Dept 2020]). The NRA does not argue that sealing of the Top Concerns Memo is necessary to protect any whistleblower.

With respect to the AMEX documents, the Court will provide the NRA with a final opportunity to propose targeted redactions to protect genuine confidentiality interests of non-parties (*Vergara v Mission Capital Advisors, LLC*, 187 AD3d 495 [1st Dept 2020]).

Accordingly, it is:

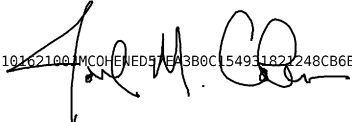
ORDERED that Defendant the NRA's motion is **DENIED** without prejudice to renewal concerning the AMEX documents within twenty days; it is further

ORDERED that all future motions to seal comply with the Part 3 Sealing Practices; it is further

ORDERED that NYSCEF Docket Entries 1576 (FRA report) and 1598 (Top Concerns Memo) shall be unsealed by the Clerk; it is further

ORDERED that NYSCEF Docket Entries 1609 through 1643 shall remain temporarily sealed and accessible only by the parties, their counsel, the Court and Court personnel until **August 7, 2023** or as otherwise directed by the Court.

This constitutes the Decision and Order of the Court.

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JOEL M. COHEN, J.S.C.

7/10/2023
DATE

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: