

**People v National Rifle Assn. of Am.**

2023 NY Slip Op 34181(U)

November 30, 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 07/31/2023

MOTION SEQ. NO. 069

**DECISION + ORDER ON  
 MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 069) 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2093, 2100, 2101, 2102, 2103, 2104, 2105, 2111

were read on this motion to REVIEW DECISION OF SPECIAL MASTER.

Defendant the National Rifle Association of America’s (“NRA”) motion pursuant to CPLR 3104(d) to review certain privilege determinations made by the Special Master following a supplemental *in camera* review is **granted in part** and the Special Master’s determinations are modified as set forth below.

On April 20, 2023, the Court directed the Special Master to conduct a supplemental privilege review (NYSCEF 2032 [April 20, 2023 Transcript]; NYSCEF 2048 [Order]). The NRA and Plaintiff the People of the State of New York, by Letitia James, Attorney General of the State of New York (“OAG”), subsequently agreed on a protocol for the Special Master to conduct an *in camera* review of 146 “document families” consisting of 191 documents.

In a July 20, 2023, Decision (NYSCEF 2074 and NYSCEF 2075), the Special Master found 49 of the 146 families to be nonprivileged. The NRA challenges the Special Master’s

determinations as to 29 of those families. The Court granted the NRA leave to submit for *in camera* review in connection with this motion the documents that were reviewed by the Special Master (NYSCEF 2111).

The Court has reviewed the documents and modifies the Special Master's Decision as set forth below:

- Family 1 – The NRA's motion is **granted**, the family is privileged
- Family 2 – The NRA's motion is **granted**, the family is privileged
- Family 7 – The NRA's motion is **denied**, the family is not privileged
- Family 10 – The Decision is **modified**; only the emails to and from the terminated employee are nonprivileged, the balance of the family is privileged
- Family 15 – The NRA's motion is **denied**, the family is not privileged
- Family 16 – The NRA's motion is **denied**, the family is not privileged
- Family 22 – The NRA's motion is **granted**, the family is privileged
- Family 23 – The NRA's motion is **granted**, the family is privileged
- Family 33 – The NRA's motion is **granted**, the family is privileged
- Family 35 – The NRA's motion is **granted**, the family is privileged
- Family 45 – The NRA's motion is **denied**, the family is not privileged
- Family 52 - The NRA's motion is **denied**, the family is not privileged
- Family 56 – The Decision is **modified**; the portion that includes communications to and from counsel is privileged and the remainder is not privileged
- Family 57 – The NRA's motion is **denied**, the family is not privileged, including on the additional grounds that communications are with non-clients and third parties
- Family 65 - The NRA's motion is **denied**, including on the grounds that it reflects communications with an individual's personal counsel (which the NRA does not have standing to assert) and that it includes non-privileged communications with the audit committee
- Family 71 - The NRA's motion is **denied**, the family is not privileged
- Family 73 – The NRA's motion is **granted**, the family is privileged

- Family 88 – The NRA’s motion is **granted**, the family is privileged
- Family 95 - The NRA’s motion is **denied**, the family is not privileged
- Family 99 – The NRA’s motion is **denied**, the family is not privileged
- Family 100 – The NRA’s motion is **denied**, the family is not privileged
- Family 106 – The NRA’s motion is **denied**, the family is not privileged
- Family 109 – The NRA’s motion is **denied**, the family is not privileged
- Family 112 – The NRA’s motion is **granted**; the family is privileged, subject to further review if the privilege is waived by Defendants’ introduction at trial of evidence of subsequent remedial measures
- Family 114 – The Decision is **modified**; the top two emails on page D-246 are privileged and may be redacted, the remainder is not privileged
- Family 115 – The NRA’s motion is **granted**, the family is privileged
- Family 126 – The Decision is **modified**; the NRA may redact the top email on D-261 after “we were using them to” and the remainder is not privileged
- Family 135 – The NRA’s motion is **denied**, the family is not privileged

Accordingly, it is

**ORDERED** that the NRA’s motion to review the Special Master’s July 20, 2023, Decision is **GRANTED IN PART**; it is further

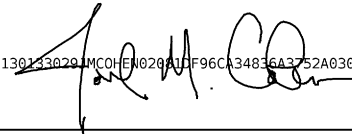
**ORDERED** that the NRA promptly produce the non-privileged and redacted document families as to which the motion was denied in whole or part.<sup>1</sup>

This constitutes the decision and order of the Court.

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<sup>1</sup> The NRA’s motion appears to include a challenge to the Special Master’s determination with respect to Family 58 (though elsewhere in its brief the reference is to Family 59), but that document was not provided for *in camera* review and thus the Court has no basis to review the Special Master’s ruling. The *in camera* collection included Family 59, which the Special Master determined to be privileged and presumably the NRA did not intend to challenge that determination. The NRA may supplement its production to obtain a ruling with respect to Family 58.

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JOEL M. COHEN, J.S.C.

11/30/2023

DATE

CHECK ONE:

CASE DISPOSED

NON-FINAL DISPOSITION

GRANTED

DENIED

GRANTED IN PART

OTHER

APPLICATION:

SETTLE ORDER

SUBMIT ORDER

CHECK IF APPROPRIATE:

INCLUDES TRANSFER/REASSIGN

FIDUCIARY APPOINTMENT

REFERENCE