

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK:**

NATIONAL RIFLE ASSOCIATION OF AMERICA,	§	
	§	
	§	
Petitioner,	§	
	§	Index No. _____
v.	§	
	§	<u>VERIFIED PETITION FOR ORDER TO SHOW CAUSE</u>
LETITIA JAMES, IN HER OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF THE STATE OF NEW YORK,	§	
	§	Mot. Seq. 001
	§	
Respondent.	§	

The National Rifle Association of America (the “NRA”), upon this Verified Petition, along with the accompanying proposed Order to Show Cause, Memorandum of Law in Support of its Application for an Order to Show Cause, and Affirmation of Svetlana M. Eisenberg, together with accompanying exhibits, will move **at 2:15 p.m.** before this Court at 60 Centre Street, New York, NY for an order to show cause why an order should not be issued, pursuant to CPLR 2304 (motion to quash, fix conditions, or modify) and 3103 (protective orders): (a) fixing conditions of or modifying the Subpoena Ad Testificandum issued by the New York Attorney General, on July 26, 2019, to Lt. Col. Oliver North (“North”) (the “Subpoena”), and/or granting a protective order, to permit NRA counsel and NRA Board counsel to be present during the examination of North, and to lodge concise objections aimed at preserving privileges belonging to the NRA, its counsel, and its Board counsel, including communications protected by the attorney-client privilege, the work product doctrine, and as trial preparation material; (b) suspending the NYAG’s examination of North pursuant to CPLR 3103(b) pending the Court’s

ruling on the NRA's Petition; and (c) granting such other relief that the Court deems fair and appropriate.

Jurisdiction and Venue

1. The Verified Petition presents a Special Proceeding brought under Article 4 and Section 7804 of the CPLR.
2. The Court has jurisdiction over this matter pursuant to CPLR 2304.
3. Venue is proper in this Court because the Subpoena was issued in this county, commands testimony in this county, and commands a document production returnable in this county.

Parties

4. The NRA is a not-for-profit corporation organized under the laws of the State of New York with its principal place of business in Fairfax, Virginia. The NRA is America's leading provider of gun-safety and marksmanship education for civilians and law enforcement. It is also the foremost defender of the Second Amendment to the United States Constitution. The NRA has over five million members, and its programs reach millions more.
5. The respondent is the Attorney General for the State of New York.

Relevant Nonparty

6. Lt. Col. Oliver North is a former President of the NRA and a current member of the NRA Board of Directors. He was subpoenaed by the NYAG to produce documents and to appear for an examination.

Factual Allegations

7. On or about April 26, 2019, the Honorable Letitia James, Attorney General of the State of New York, issued document preservation notices to the NRA (Exhibit 1¹) and its affiliates, in which she stated that her office “is currently investigating conduct by the [NRA] and affiliated entities, including related party transactions between the NRA and its Board members; unauthorized political activity; and potentially false or misleading disclosures in regulatory filings.”

8. On July 29, 2019, Brendan Sullivan, counsel for North, sent an email message to the NRA’s Secretary and General Counsel. To the email message, Mr. Sullivan attached two things: (i) the Subpoena, dated July 26, 2019 (Exhibit 2); and (ii) a letter from Brendan Sullivan, dated July 29, 2019 (Exhibit 3).

9. The Subpoena Ad Testificandum and Duces Tecum, dated July 26, 2019, from the Attorney General of the State of New York is addressed to North and commands him to “appear and attend before Letitia James, . . . , on August 20, 2019 at 9:00 am . . . at the offices of the New York State Attorney General’s Office, 28 Liberty Street, New York, NY 10005, and to testify in connection with an investigation into potential violations of [the laws of the State of New York, including the Executive Law, the Estates, Powers and Trusts Law, and the Not-for-Profit Corporation Law] or any matter which the Attorney General deems pertinent thereto.”

10. The Subpoena also commands North to produce to the NYAG “any and all documents requested in the attached schedule that are in your possession, custody or control, including documents in the possession, custody and control of any agent you may have.” The Schedule specifies that North is commanded to produce “[a]ll documents concerning allegations

¹ All exhibits referenced in this Memorandum of Law are exhibits attached to the accompanying affirmation of Svetlana M. Eisenberg.

You [North] have made, or concerns You have raised, of financial impropriety, mismanagement, misuse or waste of assets, governance failures or other wrongdoing at the National Rifle Association of America, Inc. (“NRA”), including without limitation, the allegations or concerns addressed in (a) the April 18, 2019 letter You and Richard Childress directed to John Frazer, and Charles Cotton; and (b) Your memorandum to the Executive Committee of the NRA, dated April 25, 2019.”

11. By virtue of his positions as President and Board member at the NRA, North was afforded access to and learned of information, communications, and documents that are protected by the attorney-client privilege, the work product doctrine, and as trial preparation materials. He, however, is not the holder of the privileges. Rather, it is the NRA and/or its Board who has the prerogative to assert or waive privileges they respectively possess. In addition, work product protections cannot be waived without the consent of the counsel who holds them.

12. The letter attached to Mr. Sullivan’s email message to the NRA was a letter from Mr. Sullivan, dated July 29, 2019, in which Mr. Sullivan states in part: “The [NYAG] has assured us that they will be sensitive to protecting the NRA’s privilege when taking testimony. We also will be sensitive to protecting the NRA’s privilege. In addition, we plan to redact materials that are compelled by the [NYAG’s] subpoena to protect information that may be privileged to the NRA.”

13. The letter from Mr. Sullivan went on to state: “Lt.Col. North will comply with the New York Attorney General’s subpoena unless the NRA secures an order from a New York court directing Lt.Col. North not to comply.”

14. On August 10, 2019, counsel for the NRA informed North’s counsel that the NRA objects, for the reasons set forth in its letter (Exhibit 4), to North’s production of

documents to the NYAG until the NRA has reviewed those materials and ensured that all appropriate redactions have been made to ensure that “any privileges belonging to the NRA or its Board – including, without limitation, attorney-client privilege and the work product doctrine – can be properly asserted and logged.”

15. The NRA’s August 10, 2019 letter to North’s counsel also stated that the NRA’s counsel must be permitted to be present at the examination of North “in order to object to questions on privilege or attorney work product grounds and to caution [the witness], an NRA fiduciary, not to divulge protected information.”

16. On August 12, 2019, counsel for the NRA was sent 899 pages of documents North’s counsel prepared for production to the NYAG, which they “redacted . . . to protect material that potentially is privileged.” North’s counsel stated: “If there are additional redactions that you believe are necessary to protect privilege, please provide those redactions to me no later than Wednesday, August 14, at 3 PM ET.” (Exhibit 5).

17. In subsequent days, counsel for the NRA, worked diligently to review North’s draft production to the NYAG. The review of a portion of the production was completed on August 14, 2019, and the entire review was completed by approximately 5 p.m. on August 15, 2019. The review of the draft production only further underscored the NRA’s concern about the need to be present during North’s examination in order to protect the privileged information belonging to the NRA, its counsel, and its Board Counsel. The review identified a document that is wholly privileged on attorney-client privilege and work product grounds and needed to be withheld from the production in its entirety. In addition, there were 37 additional redactions that needed to be applied to the draft production, but that North’s counsel had not made.

18. By letter transmitted via electronic mail on August 15, 2019, at 12:58 p.m., the NRA's counsel sent a letter to the NYAG's office in which it again asserted the NRA's right, citing authorities, to be present at North's examination by the NYAG in order to make objections based on privilege.

19. Just before 5 p.m. on August 15, 2019, the NYAG's office called the NRA's counsel and informed them that the NYAG refused to allow NRA counsel to be present during North's examination.

20. The NRA will be severely prejudiced if it is not permitted to attend North's examination in order to object to the disclosure of the NRA's protected information by North. Given that the NRA's further review of North's production to the NYAG yielded additional claims of privilege, the NRA has real concerns that, absent NRA's counsel's presence, North may divulge protected information during his testimony. North's testimony before the NYAG is scheduled for August 20, 2019. The NRA therefore is forced to seek expedited relief from the Court.

21. When the NRA's counsel asked the NYAG if the NYAG would postpone North's testimony, in light of the NRA's concerns about the prejudicial effect of its privileged information being divulged, the NYAG's office responded that it would be burdensome and refused.

22. The NRA therefore submits this application for order to show cause to enable the NRA's attorneys to object to the disclosure of information immune from disclosure under the attorney client, work product or any other applicable privilege or immunity; and granting such other relief that the Court deems fair and appropriate.

Request for Relief

CPLR 2304 (Motion to Quash, Fix Conditions, or Modify)**CPLR 3103 (Protective Order)**

The NRA requests that the Court grant its application for an Order to Show Cause why an Order should not be issued, pursuant to CPLR 2304 (motion to quash, fix conditions, or modify) and 3103 (protective orders):

- (a) modifying the Subpoena from the NYAG, dated July 26, 2019 and/or issuing a protective order, to allow the NRA's attorneys and the NRA's Board counsel to be present for any examination by the NYAG of North, or any testimony by North, in response to the Subpoena, to enable the NRA's attorneys to object to the disclosure of information immune from disclosure under the attorney-client, work product or any other applicable privilege or immunity; and
- (b) suspending the NYAG's examination of North pursuant to CPLR 3103(b); and
- (c) granting such other relief that the Court deems fair and appropriate.

Dated: August 16, 2019
New York, New York

By: /s/ Svetlana Eisenberg
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*ATTORNEYS FOR THE NATIONAL
RIFLE ASSOCIATION OF AMERICA*

CERTIFICATION PURSUANT TO 22 N.Y.C.R.R. § 130-1.1a

Svetlana Eisenberg, an attorney duly admitted to practice before the Courts of the State of New York, hereby certifies that, pursuant to 22 N.Y.C.R.R. § 130-1.1a, the foregoing Memorandum of Law is not frivolous nor frivolously presented.

Dated: August 16, 2019
New York, New York

/s/ Svetlana Eisenberg _____
Svetlana Eisenberg

VERIFICATION

Svetlana M. Eisenberg, being duly sworn, deposes and says: I am an attorney for Petitioner in this proceeding. I have read the foregoing PETITION FOR AN ORDER TO SHOW CAUSE filed on behalf of the Petitioner The National Rifle Association of America and know the contents to be true to my own knowledge, except as to matters alleged on information and belief, and as to those matters that I believe to be true.

Svetlana M. Eisenberg
Svetlana M. Eisenberg

Sworn to me this 16th day of August 2019.

Raeann Bromark
Notary Public

