

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

-----X		
PEOPLE OF THE STATE OF NEW YORK,	:	IAS Part 57
by LETITIA JAMES, Attorney General of	:	Mot. Seq. No. 6
the State of New York,	:	
	:	
Petitioner,	:	Index No. 453196/2022
	:	
- against -	:	
	:	
VDARE FOUNDATION, INC.,	:	
	:	
Respondent.	:	
	:	
-----X		

MEMORANDUM OF LAW IN RESPONSE TO MOTION FOR A PROTECTIVE ORDER UNDER CPLR §3103(a)

Respondent, VDARE Foundation, Inc., respectfully submits its response to the Pseudonymous Authors’ Motion for a Protective Order under CPLR § 3103(a) (NYSCEF Doc. No. 192, Mot. Seq. No. 6).¹ This response is without prejudice to Respondent’s right and/or ability to seek further appellate and federal review of the prior orders and underlying free speech and associational issues raised therein.

Certain Pseudonymous Authors have intervened in this action seeking a protective order relative to this Court’s prior orders that might otherwise compel Respondent to produce documents to Petitioner that would compromise Movants’ right to engage in anonymous speech.

Protecting these and other pseudonymous content creators and otherwise protecting confidentiality has been an ongoing dispute. For Respondent to otherwise attempt to make a costly production without clearly articulated guidelines from this Court could trample the rights of third-parties and expose Respondent to the very harms this Court already recognized could occur

¹ This response is supported by the Affirmation of Jay M. Wolman, submitted herewith.

through disclosures. Thus, Respondent believes that any production should be made with certain protections in place.

To that end, if such disclosure is to be compelled, Respondent submits that it only be accomplished in accordance with the attached proposed orders. The first, appearing at Exhibit A filed herewith, is a proposed Confidentiality Protective Order, drawn verbatim from 22 NYCRR § 202.70[g], Rule 11-g/Appendix B. Entry of such order, in the form created by the courts, would allow VDARE Foundation, if it must make production, to designate and produce confidential material. The second, appearing at Exhibit B filed herewith, is a proposed Redaction Protocol Order, would protect pseudonymous content creators if documents identifying them must otherwise be produced. It is copied from the relief sought by the Pseudonymous Authors with minor edits. The term “content creators” is used in place of “authors”, as that is how VDARE Foundation refers to them and more broadly covers those who speak pseudonymously through audio/visual media, not merely the written word. It also clarifies that the redactions and logging thereof would be made by counsel for VDARE Foundation.

As the Movants note, VDARE Foundation has been reluctant to make a redacted production and then have to undertake the expense a second time if Petitioner’s version of the redaction protocol were adopted. Counsel for VDARE Foundation are officers of the Court and are governed by Part 1200, Rule 3.4(a), which would require them to make only those redactions which are proper; Petitioner offers no basis as to why there should be a VDARE Foundation exception to the ordinary rule that counsel for a responding party, rather than some third party outside their control, should perform a document review. Moreover, unlike agents utilized or hired by Respondent’s attorneys, transmitting unredacted documents to a third party outside VDARE Foundation’s control is precisely the harm (infringement of constitutional right to anonymous

speech) that the Redaction Protocol and Movants would seek to avoid. (*Compare People v. Osorio*, 75 NY2d 80, 84 [1989] (addressing preservation of privilege).

CONCLUSION

For the reasons set forth above, VDARE Foundation respectfully submits that this Court should grant Movants' motion and adopt Respondent's proffered Redaction Protocol and Confidentiality orders.

Dated: February 25, 2024

/s/ Jay M. Wolman

Jay M. Wolman

RANAZZA LEGAL GROUP, PLLC

Office Address:

353 Ocean Ave., Ste. 4E

Brooklyn, NY 11226

Mailing Address:

100 Pearl Street, 14th Floor

Hartford, CT 06103

Tel: 888-887-1776

Fax: 305-437-7662

ecf@randazza.com

Attorneys for Respondent

VDARE Foundation, Inc.