
In the Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,
Petitioner,

v.

MATTHEW J. PLATKIN, ATTORNEY GENERAL OF NEW
JERSEY,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE THIRD CIRCUIT

**BRIEF FOR THE COMMONWEALTH OF
MASSACHUSETTS, THE STATE OF
WASHINGTON, AND 18 OTHERS AS AMICI
CURIAE IN SUPPORT OF RESPONDENT**

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INTERESTS OF *AMICI CURIAE*

Amici, the Commonwealth of Massachusetts and the States of Washington, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and the District of Columbia (“*Amici States*”), share interests in preserving the broad authority of state attorneys general to obtain pre-litigation discovery through investigative subpoenas, often termed “civil investigative demands” (CIDs). Investigative subpoenas and CIDs are the workhorses of state civil investigations: attorneys general issue them to a variety of entities for a variety of reasons, including to investigate potential violations of state antitrust, consumer protection, data privacy, environmental, insurance, unlawful business practices, and other state laws. In most instances, a respondent simply produces the requested information. Where the respondent takes issue with a CID, typically state law provides a process for state judicial review.

The interests of *Amici* transcend the identities of the parties and the subject matter of the investigation at issue here. Although several briefs submitted in this matter paint this case as highly political—relating to pregnancy resource centers, nonparty Planned Parenthood, or abortion—this case is not about any of that. It involves the narrow but important procedural question of whether non-self-executing subpoenas and CIDs—which are state law powers used routinely by state attorneys general across the political spectrum to enforce the law and

serve the public interest—may be challenged in federal court, without demonstrating Article III injury and regardless of established state court processes for review or enforcement.

Petitioner’s position threatens the long-established powers of state attorneys general to issue non-self-executing subpoenas and CIDs without subjecting Amici States to federal court litigation over the scope of the discovery requests. Allowing the recipient of a subpoena or CID to immediately avail themselves of a federal forum upon receipt of an investigative request would undermine the authority of state attorneys general to conduct investigations, diminish the confidentiality protections afforded by state law to these investigations and the documents produced therein, and subject the states to time-intensive and costly litigation long before any constitutional questions have ripened for review.

SUMMARY OF THE ARGUMENT

State attorneys general play a critical role in the investigation and prosecution of potential violations of state law. They are endowed with broad common law, constitutional, and statutory authority to serve the public interest, including by enforcing state law. One frequently used—and vital—tool employed by state attorneys general is the investigative subpoena or CID. These forms of legal process typically are not self-executing, meaning parties who refuse to comply face no concrete penalties unless and until they are taken to court and the court imposes such penalties. Use of these requests is critical to the investigative authority of the state attorneys general, and attempts to restrict

or otherwise impede their use will prevent officials from fulfilling their common law, constitutional, and statutory duties to serve the public interest and enforce state law.

Subpoenas and CIDs are often used for non-adversarial information gathering. For example, the recipient may be a witness who has background information about an industry, or other information relevant to an open investigation. Other times, these tools are used to gather information directly from an individual or company under investigation for potential violations of state law. In either scenario, state attorneys general rely on subpoenas or CIDs as investigatory tools to obtain relevant information that will inform an investigation. In many cases, information provided in response to a CID will result in closing the investigation; in others, such information will support enforcement litigation.

These tools are widely used by attorneys general across the political spectrum to perform their jobs as chief law enforcement officers of their states. For example, just within this calendar year, the Attorney General of Florida issued subpoenas to (a) the gaming platform Roblox, requesting information about how the platform markets to children, sets age verification requirements, and moderates chat rooms;¹ (b)

¹ Press Release, Attorney General James Uthmeier Fights to Protect Children Online; Subpoenas Roblox for Child-Protection Policies and Procedures (Apr. 16, 2025), <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-fights-protect-children-online-subpoenas-roblox-child>.

Robinhood Crypto, LLC. to investigate whether Robinhood is violating Florida’s Deceptive and Unfair Practices Act by falsely promoting its cryptocurrency platform as the least expensive way to purchase cryptocurrency;² and (c) CDP (formerly the Climate Disclosure Project) and the Science Based Targets Initiative (SBTi) to investigate whether they violated state consumer protection or antitrust laws by coercing companies into disclosing proprietary data and paying for access under the guise of environmental transparency³—just to list a few. Similarly, in June 2025, the Missouri Attorney General issued a CID to Google, YouTube, Facebook and Instagram (Meta Platforms, Inc.) to determine whether the companies engaged in unlawful business practices by suppressing lawful speech and commerce related to firearms and ammunition on its platforms.⁴ And the California Attorney General issued an investigative subpoena to the Plastics Industry

² Press Release, Attorney General James Uthmeier Fights for Florida Crypto Investors, Launches Investigation Into Robinhood (July 10, 2025), <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-fights-florida-crypto-investors-launches-investigation>.

³ Press Release, Attorney General James Uthmeier Launches Investigation Into Climate Cartel for Potential Consumer Protection and Antitrust Violations (July 28, 2025), <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-launches-investigation-climate-cartel-potential>.

⁴ Press Release, Attorney General Bailey Issues a Demand Letter to Google and Meta in Investigation Over Censorship of Firearm-Related Content (June 27, 2025), <https://ago.mo.gov/attorney-general-bailey-issues-a-demand-letter-to-google-and-meta-in-investigation-over-censorship-of-firearm-related-content/>.

Association, Inc. seeking specific documents regarding the plastics industry's alleged campaign of deception surrounding the recyclability of plastic.⁵

Whether or not the attorneys general of Amici States would have initiated the investigation at issue here, Amici all share the concern that adopting Petitioner's and the United States' radical theory that receipt of a state investigative subpoena automatically creates Article III standing would encourage recipients of such subpoenas to file preemptive challenges in federal court, thereby frustrating *all* States' legitimate investigations before those investigations even get off the ground. This Court should not countenance that result. The bare receipt of a subpoena or CID does not constitute legal injury, even to a recipient like Petitioner, who asserts a right not to comply. Petitioner and others similarly situated have numerous options for protecting such claims of right: they are free to negotiate to narrow the scope of the subpoena, or they can raise in state court any defenses they have to the subpoena—including federal constitutional challenges—either when seeking to quash the subpoena or when opposing an attorney general's motion to enforce. State courts routinely and skillfully handle such discovery disputes and attendant questions of federal law.

⁵ Press Release, Attorney General Bonta Petitions Court to Compel Plastics Industry Association and American Chemistry Council to Fully Comply with Outstanding Investigative Subpoenas (May 28, 2024), <https://oag.ca.gov/news/press-releases/attorney-general-bonta-petitions-court-compel-plastics-industry-association-and>.

ARGUMENT

I. State Attorneys General Have Long Been Afforded Broad Investigatory Powers to Investigate and Enforce State Law

A. State Attorneys General Have Historically Had Broad Powers Rooted in Common Law

The position of attorney general originated in England where, in 1461, the king designated his attorney, John Herbert, the “Attorney General of England.” State Attorneys General Powers and Responsibilities, National Association of Attorneys General (NAAG) 3 (Emily Meyers, ed. 2018), <https://www.naag.org/wp-content/uploads/2021/02/Powers-and-Duties-4th-Edition-Chapter-1.0-Origin-and-Development-of-the-Office-Courtesy-Chapter.pdf>. Accordingly, the powers of state attorneys general have roots in common law, developing from king’s attorney to attorney for the public. *Com. ex rel. Hancock v. Paxton*, 516 S.W.2d 865, 867 (Ky. 1974) (“[U]nder the democratic form of government now prevailing the people are the king . . . so the Attorney General’s duties are to that sovereign rather than to the machinery of government.”).

Today, each of the fifty states and D.C., American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the Virgin Islands provides for a state office of the attorney general. Forty-four states established or acknowledged an attorney general in their state constitutions, and the remainder

created the position after statehood. State Attorneys General Powers and Responsibilities, *supra* at 33–35. These state attorneys general retain wide-ranging powers, still sounding in common law, constitution, and statute, such that they may determine what is in the public interest and subsequently act to protect the public. *See State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 268–69 (5th Cir. 1976) (“[T]he attorneys general of our states have enjoyed a significant degree of autonomy. Their duties and powers typically are not exhaustively defined by either constitution or statute but include all those exercised at common law. . . . And the attorney general has wide discretion in making the determination as to the public interest.”).

Most commonly, state legislative action related to the powers of the attorney general expands the office’s inherent authority. *See, e.g., Morley v. Berg*, 226 S.W.2d 559, 566 (Ark. 1950) (“[T]he Legislature has placed on the attorney general certain statutory duties, and also ‘all duties now required of him under the common law.’”); *Bell v. State*, 678 So.2d 994, 996 (Miss. 1996) (describing the state attorney general as “a constitutional officer possessed of all the power and authority inherited from the common law as well as that specially conferred upon him by statute.”). In some jurisdictions, state courts and state legislatures are prohibited from unilaterally abridging a state attorney general’s authority. *E.g., Env’t Prot. Agency v. Pollution Control Bd.*, 372 N.E.2d 50, 52 (Ill. 1977) (“[N]either the legislature nor the judiciary may deprive the attorney general of his common law powers under the Constitution.”); R.I. Const. art. IX, §12 (“The duties and powers of the . . . attorney-general . . . shall be the same under

this Constitution as are now established, or as from time to time may be prescribed by law.”). Other states that constitutionally recognize the attorney general’s common-law powers have “no doubt that the legislature may deprive the attorney general of specific powers; but in the absence of such legislative action, he typically may exercise all such authority as the public interest requires.” *Shevin*, 526 F.2d at 268; *see also* A.E. Dick Howard, Commentaries on the Constitution of Virginia 665–66 (1974) (“In most states where the constitution says that the attorney general’s duty shall be ‘as prescribed by law,’ this is taken to mean that he has such common law powers as have not been specifically repealed by statute—a conclusion sometimes bolstered by reference to early statutory adoption of the common law.”). Any such legislative action must be explicit in its limitation. *See* State Attorneys General Powers and Responsibilities, *supra* at 35.

B. For Decades, State Attorneys General Have Employed Non-Self-Executing Subpoenas to Carry Out Investigations and Enforce State Law

In addition to defending States’ interests in court when sued, state attorneys general may prosecute litigation on behalf of the people of their states to seek relief for violations of state law in proceedings commonly known as civil enforcement actions. Inherent in state attorneys general authority to enforce the law is the necessity of “exercis[ing] powers of original inquiry.” *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950). And because of the

public dimension of the violations, civil enforcement actions ordinarily are the result of extensive investigative efforts.

Since the nineteenth century, state attorneys general have retained their historical mandate to use their “large discretion . . . [in] matters of public concern,” *State ex rel. Attorney General v. Gleason*, 12 Fla. 190, 213 (1868), and over time, have frequently used those broad historical powers to pursue investigations and enforcement actions. *See, e.g.,* Cindy M. Lott et al., *State Regulation and Enforcement in the Charitable Sector*, Urban Inst. 11-12 (Sept. 2016) (tracing state attorneys general authority to enforce fiduciary duty in charitable trust matters to common law, though most states have since codified such authority starting with New Hampshire in 1943); *Schneiderman v. Rillen*, 930 N.Y.S.2d 855, 855 (N.Y. Sup. Ct. 2011) (“The Attorney General is permitted broad authority to conduct investigations, based on the complaint of others or on his own information, with respect to fraudulent or illegal business practices.”) (citation omitted).

For instance, even before 1900, states had a prominent role in antitrust regulation. *See* Doug Whelan, *Laboratories of Antimonopoly: A Blueprint for Unfair Methods of Competition Rulemaking in the States*, 52 Fordham Urb. L.J. 427, 435-36 (2024); *see also* Katherine Mason Jones, *Federalism and Concurrent Jurisdiction in Global Markets: Why a Combination of National and State Antitrust Enforcement is a Model for Effective Economic Regulation*, 30 Nw. J. Int’l L. & Bus. 285, 318 (2010) (“From the 19th century until today, a

significant body of law related to business and commercial activities has remained exclusively the province of state legislatures. For example, in the early 19th century, the primary means of regulating business activities was state enforcement of its own corporate law and other bodies of common law such as the law of partnership and unfair competition.”). Congress recognized as much in 1890 when it passed the Sherman Act, which provided a federal forum for antitrust actions that supplemented, but did not supplant, state efforts. *See* Herbert Hovenkamp, *State Antitrust in the Federal Scheme*, 58 Ind. L.J. 375, 375 (1983) (“The legislative history of the federal antitrust law indicates that Congress intended to leave state antitrust enforcement more or less intact but to provide an additional federal forum for dealing with restraints of trade which exceeded the jurisdiction of the courts of any particular state.”).

In the latter half of the twentieth century, state legislatures actively identified areas of public concern for state attorneys general and equipped them with tools to fulfill those statutory duties.⁶ As the

⁶ Part of the reason for this may have been a shift away from federal regulation, allowing focus on state sovereignty and state’s rights. *See, e.g.*, Ilya Somin, *Rehnquist’s Federalist Legacy*, Cato Inst. (Sept. 9, 2005) (describing the Rehnquist Court’s emphasis on federalism, limiting federal government power and elevating state sovereignty); Erwin Chemerinsky, *The Rehnquist Revolution*, 2 Pierce L. Rev. 1 (2004) (“[T]he Court is restricting congressional powers and aggressively protecting state governments.”); Jones, *supra*, at 325–26 (“A third increase in state antitrust enforcement in the 1980s corresponded to a decrease in federal antitrust enforcement during the Reagan era.

marketplace modernized, providing more goods and services with increasingly elaborate supply chains and less quality control, states recognized the local impact of unfair and deceptive practices on their residents. *See* William A. Lovett, *State Deceptive Trade Practice Legislation*, 46 Tul. L. Rev. 724, 730 (1972). In the late 1950s and early 1960s, states created mechanisms for deceptive practices enforcement. *See id.* at 729, n.13 (“The first states to begin their own deceptive trade practice enforcement were New York and Rhode Island in 1957, followed by Washington and Alaska in 1961”). Soon after, the Federal Trade Commission started working alongside the Council of State Governments and state officials to develop model legislation on consumer protection and antitrust matters. *Id.* at 730. The model legislation that came out of the collaboration,⁷ “The Unfair Trade Practices and Consumer Protection Act” (UTPCPA), inspired a wave of state action: by 1972, thirty-five states enacted legislation similar to the UTPCPA, and thirty-

A number of state attorneys general increased their level of interest in enforcing antitrust prohibitions because they considered this new enforcement policy to be inadequate to protect their citizens from illegal anticompetitive activities.”).

⁷ Federal-state collaboration and interstate collaboration is now common in a variety of matters. *See, e.g.,* Ingrid Ulrika Jernudd, *Federal Versus State Antitrust Enforcement: Furthering Competition Through Cooperation*, 21 Geo. J.L. & Pub. Pol’y 577, 580 (2023) (“Because of the widened role for state antitrust enforcement enabled by the Clayton Act and the HSRA, the National Association of Attorneys General established its Antitrust Task Force to better coordinate state efforts under the HSRA by 1983 After the Task Force was created, state antitrust enforcement increased, and the NAAG Task Force became a visible presence in the antitrust world.”).

four of these laws granted enforcement authority to state attorneys general.⁸ *Id.* at 734. At the time, twenty-six of these laws specifically allowed attorneys general to issue CIDs, a tool used to explore documents, records, witnesses, and other materials before deciding whether to initiate legal proceedings.⁹ *Id.* at 737.

To serve the public interest, state legislatures empowered state attorneys general offices to use CIDs to engage their broad investigatory powers without first filing suit. State attorneys general thus can ascertain whether actionable wrongdoing has occurred prior to deciding whether to litigate. *E.g.*, *Morton Salt Co.*, at 642–43 (state attorneys general “can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not”). Attorneys general open far more investigations than they file lawsuits.

Today, all state attorneys general employ CIDs, also called ‘pre-litigation subpoenas,’ ‘subpoenas,’ or ‘investigative demands’ in statute, as routine

⁸ These laws are often called Unfair or Deceptive Acts or Practices (UDAP) laws.

⁹ Congress created the federal CID in the 1962 Antitrust Civil Process Act, taking inspiration from state legislatures that already provided state attorneys general with CID authority by statute, to aid in Department of Justice antitrust investigations. *See* 15 U.S.C. § 1312 (1962); *see also* Wash. Rev. Code § 19.86.110 (1961).

instruments of state civil investigations.¹⁰ State legislatures gave state attorneys general power to use CIDs while investigating suspected violations of state laws related to consumer protection, charities, antitrust, data protection, civil racketeering, and false claims, among other subject areas. *See* Table A (listing exemplar statutes from each state, as well as the District of Columbia), attached hereto. State legislatures have clarified that CIDs are non-self-executing subpoenas, directing attorneys general to state courts for enforcement. *See, e.g.,* Vt. Stat. Ann. tit. 3, § 809a (outlining the procedures by which government agencies, including the attorney general, may enforce subpoenas in court); Ga. Code Ann. § 10-1-404 (describing how the state attorney general may seek an order compelling compliance with the CID in court); Idaho Code §§ 48-109, 48-110, 48-611, 48-614, (allowing the state attorney general to seek an order compelling compliance with an investigative demand); 820 Ill. Comp. Stat. 90/30 (“The Attorney General may compel compliance with investigative demands under this Section through an order by any court of competent jurisdiction”); N.M. Stat. § 57-12-12 (“After service of the investigative demand upon him, if any person neglects or refuses to comply with the demand, the attorney general may invoke the aid of the court in the enforcement of the demand.”).

¹⁰ Often, this variation in naming exists among a single state’s statutes.

II. Permitting Automatic Federal Litigation Upon Receipt of a CID Would Dramatically Hinder the Ability of State Attorneys General to Investigate and Enforce State Law

A. Recipients of Subpoenas or CIDs Have Legal Avenues to Vindicate Their Rights

Investigatory subpoenas and CIDs are vitally important to state attorneys general. But acting alone, a state attorney general cannot sanction a recipient for failing to comply with an investigative subpoena. Instead, enforcement is a matter for the state courts, which may order compliance with the terms of the subpoena, narrow it, and/or impose sanctions. This long-standing approach is utilized in most cases where a state attorney general issues a subpoena or CID and the recipient refuses to respond in full. Any litigant who can demonstrate Article III standing will of course have the federal courts open to them. But mere receipt of a CID is insufficient.

In a typical case, a CID recipient who believes a subpoena is objectionable will first contact the state attorney who signed the subpoena to negotiate and potentially narrow its scope. As in civil discovery, the issuing attorney evaluates the scope of the request, considering the respondent's concerns and existing records, and will typically narrow the requests or defer them until a later date in response to any legitimate concerns. If such negotiations fail to resolve the dispute and the recipient refuses to comply with the CID, the state attorney general's office may enforce

the subpoena in state court, or a recipient may file a motion to quash. *See, e.g., In re GlaxoSmithKline PLC*, 699 N.W.2d 749, 752 (Minn. 2005) (“The state served a CID on respondent . . . request[ing] the production of documents . . . Before any documents were produced, [respondent] and the state entered a Confidentiality Agreement that [] permitted [respondent] to mark documents as ‘confidential’[.]”); *In re Confidential Consumer Prot. Investigation (King Fuji)*, 512 P.3d 904, 909 (Wash. App. 2021) (recognizing that trial court’s “order enforcing the CID required the [attorney general] and [respondent] to meet and confer in good faith on the scope of documents and information to be produced by [respondent] and provided that if agreement could not be reached, the court would resolve whatever issues remained”); *In re Civil Investigative Demand No. 2016-CPD-50*, No. SUCV20162098BLS1, 2016 WL 7742940, at *3 (Mass. Super. Oct. 28, 2016) (ordering parties to meet and confer, observing “the Attorney General argues that it is premature to delve into relevancy, burdensomeness and privilege objections because the parties have not had a meaningful opportunity (as a result of [respondent’s] position that the CID should be set aside in toto) to ‘meet and confer’ regarding the scope of the requests”); *In re Att’y Gen. Subpoena re Terminix Int’l USVI, LLC*, 67 V.I. 70, 75 (Super. Ct. 2016) (addressing investigative subpoena issued by attorney general; “the Court believes it would be beneficial for the parties to meet and confer in a good faith effort to resolve as many of the discovery disputes as possible with minimal judicial intervention”).

However, even when disagreements over the scope of a CID move into state court, the court often instructs the parties to continue their negotiations. After all, the negotiations process is an efficient means to address the concerns of all parties. But if CID recipients were able to go directly to federal court, regardless of whether they satisfied Article III requirements, recipients would be disincentivized from negotiating after receiving a CID.

Further, the investigatory CID process is typically designed to protect confidentiality of responses. To safeguard a respondent's business and reputational concerns, state statutes often wholly exempt CID materials from public disclosure, including in response to FOIA or public records requests, and prevent voluntary sharing of the information. *See, e.g.*, Wash. Rev. Code § 19.86.110(7) (“documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof” produced in response to a CID shall not be produced “unless otherwise ordered by a superior court for good cause shown”; limiting voluntary sharing of documents and information); *State ex rel. Shriver v. Leech*, 612 S.W.2d 454, 459 (Tenn. 1981) (“[Tenn. Code Ann. §] 8-6-407 provides for the confidentiality of documents turned over to the attorney general pursuant to a civil investigative demand.”); *Commonwealth ex rel. Cameron v. Jones & Panda, LLC*, 656 S.W.3d 259, 263–64 (Ky. Ct. App. 2022) (“The [AG] is *required* to keep [investigative] subpoenas confidential and may make them public only to ‘the extent necessary for law enforcement purposes in the public interest.’”); *King Fuji*, 512 P.3d

at 908 (“The CID . . . was accompanied by orders the [attorney general] had obtained several days earlier [that] . . . prohibited [respondent] from disclosing the existence or contents of the CID to anyone but its counsel, retained jurisdiction over subsequent proceedings, and sealed the case file.”); *In re Mem’l Hermann Healthcare Sys.*, 274 S.W.3d 195, 199 (Tex. App. 2008) (Tex. Bus. & Comm. Code § 15.10(i)(1) “precludes the [attorney general] . . . from disclosing CID materials unless either (1) the producing person consents, or (2) the person seeking to examine the materials obtains a court order permitting access.”). Indeed, state attorneys general frequently issue CIDs instead of filing litigation to maintain the confidentiality of an ongoing investigation and the materials gathered therein. These confidentiality provisions protect targets of investigations from reputational injury prior to a formal decision to file, protect a case from scrutiny and prejudgment, and protect witnesses and victims who may fear reprisal or retaliation for cooperating with an investigation.¹¹

Petitioner’s request to have early access to federal court upon receipt of a state attorney general pre-litigation subpoena or CID subverts this confidential process and would subject state attorneys general to unnecessary and expensive federal litigation, even where the subpoena has yet to be negotiated, narrowed, or enforced.

¹¹ Petitioner and various amici devote significant attention to the acts of private third parties, but private parties do not direct or participate in state investigations and are not entitled to review CID responses, which are typically confidential by law, including after the conclusion of an investigation in many states.

B. Attorneys General Issue CIDs and Subpoenas for a Variety of Investigative Purposes

State attorneys general have plenary authority to issue and enforce requests for information in various forms, so long as they are germane to an investigation or some other legitimate purpose. *See, e.g., Congregation B’Nai Jonah v. Kuriansky*, 172 A.D.2d 35, 39 (N.Y. App. Div. 1991) (noting a state has a “profound interest in fighting corruption in the Medicaid industry” and enforcing its laws, which gives it broad authority to issue demands for information).

Often, CIDs are used for non-adversarial information gathering, such as issuing CIDs and investigative subpoenas to third parties. *See, e.g., Att’y Gen. v. Bodimetric Profiles*, 533 N.E.2d 1364, 1366–67 (Mass. 1989) (“The Attorney General . . . may require production of documents from a third party [using a CID] . . . to aid in the investigation.”); *In re KAHEA*, 497 P.3d 58, 63 (Hawai’i 2021) (addressing Attorney General’s use of an investigative subpoena to obtain bank records); *Benson v. People*, 703 P.2d 1274, 1276–79 (Colo. 1985) (CID to bank for bank records of investigative target). Thus, not every recipient of a CID or investigative subpoena is the target of an investigation.

This is an authority that all state attorneys general share. Irrespective of political ideology, attorneys general regularly utilize their investigatory subpoena and CID powers to investigate potential violations of state law that may affect the people of their states. These investigations traverse countless

subject areas, although a common subject involves the protection of consumers and their families from dangerous, inaccurately labeled, or misleading products. For example:

1. On August 26, 2025, Texas Attorney General Ken Paxton launched an investigation into baby food, looking into whether manufacturers are selling products that may be tainted with dangerous levels of heavy metals. Unsurprisingly, as an early step in the investigation, Attorney General Paxton issued CIDs to manufacturers such as Gerber and Plum Organics.¹²
2. In July 2025, Attorney General Paxton opened an investigation into food company Mars, Incorporated, issuing a CID for documents related to alleged deceptive trade practices that violate Texas consumers' rights.¹³ This investigation followed on the May 2025 investigation by the Texas Attorney

¹² Press Release, Attorney General Ken Paxton Launches Investigation into Major Baby Food Manufacturers for Selling Products Tainted with Dangerous Levels of Heavy Metals (Aug. 26, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-launches-investigation-major-baby-food-manufacturers-selling-products>.

¹³ Press Release, Attorney General Ken Paxton Announces Investigation into Food Company Mars for Deceptive and Illegal Practices (July 16, 2025), <https://texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-announces-investigation-food-company-mars-deceptive-and-illegal>.

General into General Mills, which resulted in General Mills announcing it would remove artificial dyes from its products.¹⁴

3. On April 16, 2025, Florida Attorney General James Uthmeier, touting “children’s safety and protection” as a top priority, issued a subpoena to the gaming platform Roblox, requesting information about how the platform markets to children, sets age verification requirements, and moderates chat rooms.¹⁵ The subpoena itself notes that it is not self-executing and that only upon “failure of a person without lawful excuse to obey a subpoena. . . the enforcing authority may apply to the circuit court for an order compelling compliance.”¹⁶

4. On April 17, 2024, then Missouri Attorney General Andrew Bailey launched an investigation into “illicit vape and marijuana products to ensure compliance with Missouri law.” The CIDs stated that “[t]he Attorney

¹⁴ *Id.*

¹⁵ Press Release, Attorney General James Uthmeier Fights to Protect Children Online; Subpoenas Roblox for Child-Protection Policies and Procedures (Apr. 16, 2025), <https://www.myfloridalegal.com/newsrelease/attorney-general-james-uthmeier-fights-protect-children-online-subpoenas-roblox-child>.

¹⁶ Office of the Attorney General, State of Florida, Consumer Protection Subpoena Duces Tecum to Roblox Corporation, <https://www.myfloridalegal.com/sites/default/files/2025-04/roblox-corporation-signed-subpoena.pdf>.

General has reason to believe that [the company being investigated] has used deception, fraud, false promise, misrepresentation, unfair practices, and/or the concealment, suppression, or omission of material facts in connection with the sale or advertisement of CBD, Delta-8, and Delta-9 THC products.”¹⁷

5. In August 2023, the corporate fraud section of the California Attorney General’s Office commenced an investigation into violations of the California Hybrid and Zero-Emissions Truck and Bus Voucher Incentive Project (“HVIP”). As part of the investigation, the Attorney General issued investigative subpoenas to two companies. The companies refused to fully comply with the investigative subpoenas, arguing the subpoenas failed to meet constitutional standards for enforcement because they sought irrelevant records and were excessive for the purposes of the inquiry. The California Court of Appeals ruled against the companies, noting the Attorney General’s investigative authority, the adequate description of the nature of the investigation, the relevance of the requests as “reasonably related” to the investigation, and the Attorney General’s willingness to work with the target as

¹⁷ Press Release, Attorney General Bailey Launches Consumer Protection Investigation to Combat Dangerous, Illicit Products (Apr. 17, 2024), <https://ago.mo.gov/attorney-general-bailey-launches-consumer-protection-investigation-to-combat-dangerous-illicit-products/>.

to the necessary production. *People v. GreenPower Motor Co., Inc.*, 113 Cal. App. 5th 43, 47, 53-58 (2025).

6. In February 2022, Montana Attorney General Austin Knudsen announced an investigation into social media company TikTok for possible violations of the Montana Unfair Trade Practices and Consumer Protection Act.¹⁸ The CID sought information regarding whether TikTok had violated Montana law by “intentionally distributing a dangerous product without adequate warning to consumers and by publicly misrepresenting the dangers its product poses to consumers.”¹⁹

7. In July 2021, Minnesota Attorney General Keith Ellison, New York Attorney General Letitia James, Connecticut Attorney General William Tong; and then Maryland Attorney General Brian Frosh served subpoenas and CIDs requesting information about their use of pre-checked boxes after several media outlets reported that political fundraisers from both major political parties (and in both federal and state elections) were

¹⁸ Press Release, Attorney General Knudsen launches investigation into TikTok (Feb. 28, 2022), <https://dojmt.gov/attorney-general-knudsen-launches-investigation-into-tiktok/>.

¹⁹ State of Montana First Civil Investigative Demand to TikTok, Inc. at 4, <https://dojmt.gov/wp-content/uploads/2022-03-03-MT-TikTok-CID-Final.pdf>.

misleading donors into making unintended recurring or additional contributions.²⁰

Not every case involving a subpoena or CID results in litigation. *See, e.g., Bund v. Safeguard Props. LLC*, C16-920 MJP, 2018 WL 4008039, at *3 n.2 (W.D. Wash. Aug. 20, 2018) (“In 2014, the Washington Attorney General . . . issued a [CID] to Safeguard which resulted in audits of ten of its property files; the [Attorney General’s] review resulted in no action being taken against Defendant, including no indication that the [Attorney General] believed that the mortgage contracts’ entry provisions were illegal or otherwise unenforceable.”); *S. Indiana Propane Gas, Inc. v. Caffrey*, 56 N.E.3d 1216, 1218 (Ind. Ct. App. 2016) (“The [Attorney General] also received complaints from other customers and sent [respondent] a [CID] requesting information concerning the corporation’s failure to distribute propane to its prepaid customers. . . . Subsequently, on December 23, 2014, the [Attorney General] closed its investigation and advised . . . that it would not pursue any further action against [respondent].”). Rather, the subpoena or CID is used as a preliminary

²⁰ *See, e.g.,* Shane Goldmacher, *How Trump Steered Supporters Into Unwitting Donations*, The New York Times (Aug. 7, 2021), <https://www.nytimes.com/2021/04/03/us/politics/trump-donations.html>. *See also* Defendants’ Memorandum of Law in Opposition to Plaintiff’s Motion for Preliminary Injunction, *WinRed, Inc. v. Keith Ellison, et. al.*, 21-cv-01575, Dkt. 39 (Aug. 19, 2021), at 7-9.

investigative tool that can help understand a potential problem or to engage with a target about questions.²¹

III. In the Absence of Article III Standing, State Courts Are Well Equipped to Handle Federal Constitutional Issues, and They Do So Every Day

Petitioner cautions that state attorneys general may misuse their broad powers and includes examples of what it considers abusive investigations. Pet. Br. 27-28. But the answer to hypothetical potential abuse is not to curtail the investigatory powers themselves, but rather to hold state attorneys general accountable within the systems that already exist for that purpose. Petitioner implies that state courts are ill-equipped to handle federal constitutional issues, or at least not as well-equipped as federal courts, and that its rights under the U.S. Constitution

²¹ In addition to the state court processes described above, state attorneys general are public officials accountable to the electorate. *See* Attorney General Office Characteristics, National Association of Attorneys General (NAAG), <https://www.naag.org/news-resources/research-data/attorney-general-office-characteristics/> (attorneys general directly elected in 43 states and appointed by the governor in 5). Moreover, state attorneys general are subject to the rules and codes that govern professional conduct for lawyers. *See* Ethics, National Association of Attorneys General (NAAG), <https://www.naag.org/issues/ethics/#:~:text=Government%20attorneys%20are%2C%20like%20all,unique%20constitutional%20and%20statutory%20obligations.>

can only be protected through the filing of 42 U.S.C. § 1983 claim in federal court. Backed by the United States, Petitioner advances a radical, alternative theory that mere receipt of a CID is enough to establish standing. This puts the cart before the horse—while § 1983 guarantees a federal forum for a plaintiff with Article III standing, it does not manifest standing for a plaintiff who lacks it. The argument also ignores both the legal and factual reality of American judicial federalism; state courts routinely and faithfully apply the U.S. Constitution.

Article VI of the Constitution mandates that “the Judges in every State shall be bound” by the U.S. Constitution, laws, and treaties, and that these are the “supreme Law of the Land.” State court judges in every jurisdiction swear such an oath. State courts regularly analyze and apply the U.S. Constitution in a broad range of civil and criminal cases. *See, e.g., Edenfield v. State*, 379 So.3d 5, 6–10, *reh’g denied*, 375 So.3d 930 (Fla. Dist. Ct. App. 2023), *review denied*, SC2023-1106, 2023 WL 8710101 (Fla. Dec. 18, 2023) (analyzing Florida criminal statute under Second Amendment and *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022)); *Sengupta v. Univ. of Alaska*, 139 P.3d 572, 576–78 (Alaska 2006) (analyzing First Amendment retaliation claim brought under § 1983); *State v. Akers*, 259 A.3d 127, 135–38 (Me. 2021) (analyzing warrantless search of criminal defendant’s curtilage under Fourth Amendment and Supreme Court precedent); *Leone v. Cnty. of Maui*, 404 P.3d 1257, 1261, 1270–78 (Hawai‘i 2017) (analyzing § 1983 inverse condemnation claim under Fifth Amendment Takings Clause). Federal and state law “together form one system of jurisprudence,

which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.” *Claflin v. Houseman*, 93 U.S. 130, 137 (1876).

This Court has consistently held that “state courts have the solemn responsibility equally with the federal courts to safeguard constitutional rights,” and steadfastly has refused to sanction any decision that would “reflect negatively upon a state court’s ability to do so.” *Trainor v. Hernandez*, 431 U.S. 434, 443 (1977) (cleaned up); *see also Huffman v. Pursue, Ltd.*, 420 U.S. 592, 611 (1975) (“Appellee is in truth urging us to base a rule on the assumption that state judges will not be faithful to their constitutional responsibilities. This we refuse to do.”). Thus, “[u]nder this system of dual sovereignty,” this Court has “consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States.” *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *Hawai’i Hous. Auth. v. Midkiff*, 463 U.S. 1323, 1325 (1983) (noting the “frank recognition that state courts, as judicial institutions of co-extant sovereigns, are equally capable of safeguarding federal constitutional rights”) (Rehnquist, J., in chambers).

The practical reality is that federal constitutional issues are part and parcel of state court litigation, and federal constitutional law is interwoven with day-to-day state court decision making. *See, e.g., Williams v. Taylor*, 529 U.S. 420, 436–37 (2000) (“state judiciaries have the duty and competence to vindicate

rights secured by the Constitution in state criminal proceedings”). Most importantly for the case at bar, state courts are entrusted to, and frequently, handle federal constitutional issues arising from CIDs and investigative subpoenas. *State v. Gator’s Custom Guns, Inc.*, 568 P.3d 278 (Wash. 2025), *as amended* (May 14, 2025) (Second Amendment); *Planned Parenthood of St. Louis Region & Sw. Missouri v. Bailey*, 715 S.W.3d 167 (Mo. Ct. App. 2025) (Fourth Amendment); *Brixen & Christopher Architects, P.C. v. State*, 29 P.3d 650 (Utah Ct. App. 2001) (Fourth Amendment); *State v. Brelvis Consulting LLC*, 436 P.3d 818 (Wash. App. 2018), *amended on reconsideration* (Mar. 12, 2019) (Fifth Amendment protection against self-incrimination); *Att’y Gen. v. Colleton*, 444 N.E.2d 915 (Mass. 1982) (Fifth Amendment protection against self-incrimination); *State v. CLA Estate Servs., Inc.*, 515 P.3d 1012 (Wash. App. 2022) (Fourteenth Amendment due process).

A. State Courts Properly Analyze First Amendment Claims in the Context of CIDs and Investigative Subpoenas

In addition to handling the full gamut of federal constitutional issues arising from CIDs and investigative subpoenas, state courts are well-equipped to address claims regarding First Amendment retaliation and associational speech in the context of CIDs and investigative subpoenas.

For example, in *In re KAHEA*, *supra*, the Hawai’i Supreme Court evaluated the propriety of an investigative subpoena the Hawai’i Attorney General issued to a bank for records relating to KAHEA, a

citizen group engaged in environmental protests.²² 497 P.3d at 62–63. KAHEA petitioned in the state trial court to quash the subpoena, arguing that the subpoena was retaliation for protected First Amendment speech and that it was “unreasonable, overly broad and oppressive.” *Id.* at 63–64. The Hawai‘i Supreme Court agreed with the lower’s court’s ruling that roughly half of what the subpoena requested was improper, noting:

[t]he Attorney General’s discretion under HRS § 28-2.5(a) is counterbalanced by courts’ powers under HRS § 28-2.5(e). This subsection gives trial courts leeway to hew unreasonable or oppressive subpoenas – with a battle ax, scalpel, or butter knife – as justice so requires. The

²² Petitioner mentions *In re KAHEA* only to (incorrectly) claim that courts cannot second guess Attorney General investigations. Pet. Br. 5. While the Hawai‘i Supreme Court affirmed the Attorney General’s broad discretion in determining whether an investigation is in the public interest, the court reaffirmed the judiciary’s role in ensuring such investigations complied with the U.S. and state constitution:

The Attorney General’s subpoena power under this statute is broad. But it is not unbounded. It is hemmed by the constitution and the safeguards of the statute itself. . . . A subpoena may always be challenged on state or federal constitutional grounds. And parties who feel compliance with a subpoena would be unreasonable or oppressive may move to quash or modify it under HRS § 28-2.5(e). But they cannot second-guess the Attorney General’s discretion under HRS § 28-2.5(a).

497 P.3d at 66.

circuit court in this case was an effective first line of defense against governmental overreach: it disallowed nine of the Subpoena’s eighteen requests and limited its scope to accounts related to the Aloha ‘Āina Fund.

497 P.3d at 66–67.

The Hawai‘i Supreme Court went on to analyze the merits of “KAHEA’s position that the Subpoena unconstitutionally encroaches on its First Amendment free speech rights,” under binding precedent from this Court and the Ninth Circuit. 497 P.3d at 67–71. The court agreed that “KAHEA’s opposition to development on Mauna Kea falls squarely within the heartland of the First Amendment’s protections,” and recognized that the Attorney General likely had a motive to investigate KAHEA given the parties’ adversarial relationship predating the subpoena. *Id.* at 69–70. Nevertheless, the court analyzed and rejected KAHEA’s First Amendment arguments because they failed on the merits, not because state courts are powerless to second-guess the Attorney General (as Petitioner and amici intimate). *Id.* at 67–71.

The Idaho Supreme Court similarly addressed a CID recipient’s First Amendment freedom of association arguments in *Children’s Home Soc’y of Idaho v. Labrador*, 572 P.3d 162 (Idaho 2025). One of the CID recipients argued that “the district court erred when it required her to answer a CID request that required that she provide a ‘list of all charitable organizations for which the person is a member, board

member, director, volunteer, or donor.” *Id.* at 180. The Idaho Supreme Court “agree[d] that the Attorney General’s request for all of [respondent’s] affiliations is overly broad and infringes on her freedom of association.” *Id.* at 181. The Idaho Supreme Court ruled that the trial court should have either limited or set aside the CID under Idaho Code § 48-611(2) and remanded the case to allow the trial court to do just that. *Id.* at 182.

Other state courts have analyzed First Amendment claims relating to CIDs and investigative subpoenas as well, including limiting those CIDs and subpoenas on state and federal grounds. *See, e.g., Meta Platforms, Inc. v. D.C.*, 301 A.3d 740, 755–60 (D.C. 2023) (analyzing First Amendment free speech and freedom of association arguments where Attorney General issued pre-suit subpoena regarding alleged misrepresentations to consumers regarding COVID-19 vaccine); *In re GlaxoSmithKline plc*, 732 N.W.2d 257, 267–69 (Minn. 2007) (analyzing First Amendment freedom of association arguments where Attorney General issued CID to investigate alleged antitrust violations; recognizing that trial courts have authority to limit or quash CIDs on First Amendment grounds); *Ex parte Lowe*, 887 S.W.2d 1, 2–4 (Tex. 1994) (analyzing First Amendment protections of Ku Klux Klan membership lists and other information; vacating contempt order arising from failure to comply with investigative subpoena in pre-suit fair housing investigation); *People v. DiCosola*, 33 N.E.3d 589, 593–95 (Ill. App. Ct. 2015) (analyzing investigative subpoena under First, Fourth, and Fifth Amendments; injunction entered for failing to comply with subpoena); *Lubin v. Agora, Inc.*, 882 A.2d 833,

842–49 (Md. App. 2005) (affirming trial court’s quashing of investigative subpoena for company’s subscriber lists in securities investigation; holding First Amendment protected such subscriber lists); *Evergreen Ass’n, Inc. v. Schneiderman*, 153 A.D.3d 87, 99–102 (N.Y. App. Div. 2017) (analyzing First Amendment challenge to attorney general subpoena investigating unauthorized practice of medicine; holding that subpoena was not retaliatory or politically-motivated but limiting subpoena on state law and First Amendment grounds).

B. Allowing State Courts to Continue Addressing Federal Constitutional Issues Arising from State Law CIDs and Investigative Subpoenas is Appropriate

Petitioners and certain amici argue that they will be left without a remedy unless they can file a § 1983 action in district court before a CID is enforced. Not so. Should the recipient of a CID or investigative subpoena decide they must vindicate their rights in court before an attorney general moves to enforce and before they experience Article III injury, state law allows them to move to quash or modify the CID or investigative subpoena. In state courts, CID recipients typically need not demonstrate standing or injury before filing an action to quash or modify the CID or investigative subpoena—receipt of the demand is all that is required. *See, e.g.*, Wash. Rev. Code § 19.86.110(8); Mass. Gen. Laws ch. 12, § 5N(9);

Or. Rev. Stat. § 646.618(2).²³ Just as with a § 1983 action, the recipient can ordinarily recover fees should it prevail in state court. *E.g.*, Wash. Rev. Code § 19.86.110(8). More than this, though, it makes legal and practical sense to allow state courts to address the legal viability of a CID or investigative subpoena's demands in the first instance.

First, the challenges that arise from CIDs and investigatory subpoenas are fact-intensive inquiries. State courts are more familiar with the CID and investigative subpoena process (which are creatures of state law) and the nuances of applicable state law, as well as the state and federal constitutional challenges arising therefrom. *See, e.g., Tesoro Petroleum Corp. v. State*, 42 P.3d 531, 541 (Alaska 2002) (“Given the

²³ Certain amici argue that the deadlines set forth in these types of statutes cause automatic injury even without attorney general action. They suggest that potential constitutional issues with a CID or investigative subpoena are not readily apparent within these timeframes, and that entities risk waiving fundamental constitutional defenses unless they retain counsel immediately. These arguments are unpersuasive, for at least two reasons. *First*, not only is it a bedrock aspect of civil procedure to identify and assert constitutional and other defenses within a short period in answering complaints and responding to discovery, but the argument also presumes that an extension of time cannot be accomplished with a simple phone call to the issuing attorney. *Second*, if accepted, this argument would require this Court to ignore its own long line of cases holding that the “question of waiver of a federally guaranteed constitutional right is, of course, a federal question controlled by federal law,” *Brookhart v. Janis*, 384 U.S. 1, 4 (1966), and that courts must “indulge every reasonable presumption against waiver of fundamental constitutional rights,” *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938) (cleaned up).

superior court’s extensive factual and legal inquiry, as well as the substantial modifications it made to the CID, we conclude that the superior court did not abuse its discretion.”); *GreenPower Motor*, 335 Cal. Rptr. 3d (analyzing California and federal law to evaluate propriety of investigative subpoenas); *Fulton Commons Care Ctr., Inc. v. James*, 227 A.D.3d 717 (N.Y. App. Div. 2024) (analyzing New York law to evaluate propriety of investigative subpoenas); *Brixen*, 29 P.3d at 655 (analyzing Utah and federal law to “evaluate whether the State met its statutory burden under each prong of the [state law] CID Test”). This Court has generally deferred to state courts applying the U.S. Constitution in the context of state law in the first instance. *See, e.g., San Remo Hotel, L.P. v. City & Cnty. of San Francisco, Cal.*, 545 U.S. 323, 347 (2005) (“State courts are fully competent to adjudicate constitutional challenges to local land-use decisions. Indeed, state courts undoubtedly have more experience than federal courts do in resolving the complex factual, technical, and legal questions related to zoning and land-use regulations.”); *Stone v. Powell*, 428 U.S. 465, 493 n.35 (1976) (“the argument that federal judges are more expert in applying federal constitutional law is especially unpersuasive in the context of search-and-seizure claims, since they are dealt with on a daily basis by trial level judges in both systems”).

Second, allowing state courts the first opportunity to interpret a CID or investigative subpoena is practical and desirable because it gives “the state court the first opportunity to consider a state statute or rule in light of federal constitutional arguments” and allows the state court to give the CID,

investigative subpoena, and the underlying state statutes “a saving construction in response to those [federal constitutional] arguments.” *D.C. Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983). Whether or not the state court employs constitutional avoidance, it may limit the CID or subpoena on state law grounds. *See, e.g., Evergreen Ass’n*, 153 A.D.3d at 101–03 (limiting investigative subpoena on state law and First Amendment grounds). Thus, a state court is in the best position to construe or limit the CIDs or subpoenas to avoid running afoul of the federal constitution, but also to limit or block the CID or subpoena on independent state court grounds. *See Cardinale v. Louisiana*, 394 U.S. 437, 439 (1969) (“[I]n a federal system it is important that state courts be given the first opportunity to consider the applicability of state statutes in light of constitutional challenge, since the statutes may be construed in a way which saves their constitutionality. Or the issue may be blocked by an adequate state ground.”).

State courts and this Court agree with the “longstanding principle of judicial restraint . . . that courts avoid reaching constitutional questions in advance of the necessity of deciding them.” *E.g., Camreta v. Greene*, 563 U.S. 692, 705 (2011) (quoting *Lyng v. Northwest Indian Cemetery Protective Ass’n*, 485 U.S. 439, 445 (1988)); *Tunstall v. Bergeson*, 5 P.3d 691, 696 (Wash. 2000) (where issue may be resolved on statutory grounds, court will avoid deciding issue on constitutional grounds). This is particularly true when federal constitutional issues can be avoided if a case can be decided on state law grounds. *See, e.g., St. Augustine Sch. v. Underly*, 78 F.4th 349, 358 (7th Cir. 2023) (recognizing “U.S.

Supreme Court’s preference for constitutional avoidance, if a difficult question can be resolved either by reliance on state law [] or on statutory grounds”) (citing *Railroad Comm’n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941)); *Potter v. City of Lacey*, 46 F.4th 787, 791 (9th Cir. 2022) (“It is well-established that [we] should avoid adjudication of federal constitutional claims when alternative state grounds are available....”) (citations omitted).

C. CID Recipients Have Always Had—and Continue to Have—a Viable Path to a Federal Forum: This Court

Although state courts routinely—and properly—address federal constitutional issues in the context of CIDs and investigative subpoenas, this does not mean that litigants are entirely shut out of a federal remedy once the CID is subject to judicial enforcement. To the contrary, for more than 200 years, this Court has recognized its authority to ensure state courts interpret federal law and the Constitution uniformly, establishing federal supremacy in these matters. *Martin v. Hunter’s Lessee*, 14 U.S. 304, 346-47 (1816); *see also Minnesota v. National Tea Co.*, 309 U.S. 551, 557 (1940) (U.S. Supreme Court is responsible for assuring “that state courts will not be the final arbiters of important issues under the federal constitution”).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

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APPENDIX

**APPENDIX A: Exemplar State Statutes
Governing Pre-Litigation Subpoenas and CIDS
to Investigate Potential Violations of State Law**

Alabama

Ala. Code § 13A-6-161 (pre-litigation subpoenas in human trafficking investigations); Ala. Code § 8-19-9 (pre-litigation subpoenas in consumer protection investigations); Ala. Code § 8-19H-5 (pre-litigation subpoenas in investigations of online obscene material for minors)

Alaska

Alaska Stat. § 45.50.592 (investigative demands in antitrust investigations); Alaska Stat. § 45.50.594 (investigative demands in false medical claims investigations); Alaska Stat. § 44.23.080 (administrative subpoena in investigations of child exploitation and endangerment); Alaska Stat. § 45.50.495 (pre-litigation subpoena in investigations of deceptive trade practices)

Arizona

Ariz. Rev. Stat. Ann. § 44-1524 (pre-litigation subpoenas in unfair competitive practices investigations); Ariz. Rev. Stat. Ann. § 44-1406 (investigative demands in antitrust investigations); Ariz. Rev. Stat. Ann. § 6-1242 (investigative demands in money laundering investigations)

Arkansas

Ark. Code § 20-77-904 (investigative in Medicaid fraud investigations); Ark. Code § 4-88-111 (investigative demands in deceptive trade practice investigations)

California

CA Gov. Code §11181 (pre-litigation subpoenas in investigations into business activities and subjects under the state attorney general's jurisdiction, violations of any rule promulgated by the office, and any other matters as provided by law)

Colorado

Colo. Rev. Stat. Ann. § 25.5-4-30 (CIDs in Medicaid fraud investigations); Colo. Rev. Stat. Ann. § 18-17-107 (CIDs in racketeering investigations); Colo. Rev. Stat. Ann. §§ 6-1-107; 6-1-108 (pre-litigation subpoenas in deceptive trade practice investigations); Colo. Rev. Stat. Ann. § 24-31-1207 (pre-litigation subpoenas for Colorado False Claims Act investigations); Colo. Rev. Stat. Ann. § 6-12-104 (pre-litigation subpoenas in investigations related to prohibited communications concerning patients); Colo. Rev. Stat. Ann. § 6-2-111.5 (pre-litigation subpoenas in Unfair Practices Act investigations); Colo. Rev. Stat. Ann. § 6-4-111 (pre-litigation subpoenas in Colorado Antitrust Act investigations)

Connecticut

Conn. Gen. Stat. § 3-129e (pre-litigation subpoena in Dodd-Frank Act investigations); Conn. Gen. Stat. § 35-42 (pre-litigation subpoena in Connecticut Antitrust Act investigations); Conn. Gen. Stat. § 53-392d (pre-litigation subpoenas in academic crime investigations); Conn. Gen. Stat. § 3-129f (pre-litigation subpoenas in investigations into allegations of intimidation based on bigotry or bias); Conn. Gen. Stat. § 3-129g (pre-litigation subpoenas in investigations related to potential interference with

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rights under state or federal law); Conn. Gen. Stat. § 22a-245 (pre-litigation subpoenas in waste management investigations)

Delaware

Del. Code Ann. tit. 6, § 2106 (investigative demands in antitrust investigations); Del. Code Ann. tit. 11, § 1509 (investigative demands in organized crime or racketeering investigations)

District of Columbia

D.C. Code § 28-4505 (CIDs in antitrust investigations); D.C. Code Ann. § 32-1455 (pre-litigation subpoenas in employment investigations); D.C. Code § 1-301.88d (pre-litigation subpoenas in unfair, deceptive, unconscionable, or fraudulent trade practices investigations)

Florida

Fla. Stat. § 542.28 (CIDs in antitrust investigations); Fla. Stat. § 501.206 (pre-litigation subpoenas in consumer protection investigations)

Georgia

Ga. Code Ann. § 10-1-403 (investigative demands in consumer protection investigations); Ga. Code Ann. § 23-3-125 (CIDs in false claims investigations); Ga. Code Ann. § 10-15-5 (CIDs in business records investigations)

Hawai'i

Haw. Rev. Stat. § 842-10 (CIDs in racketeering investigations); Haw. Rev. Stat. § 480-18 (CIDs in antitrust investigations); Haw. Rev. Stat. § 28-2.5 (pre-litigation subpoenas in investigations related to

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alleged violations of the law); Haw. Rev. Stat. § 28-5.2 (administrative subpoenas in charitable assets investigations); Haw. Rev. Stat. § 467B-9.3 (pre-litigation subpoenas in investigations related to the solicitation of funds from the public)

Idaho

Idaho Code § 48-611 (investigative demands in consumer protection investigations); Idaho Code § 48-109 (investigative demands in antitrust investigations)

Illinois

110 Ill. Comp. Stat. 26/35 (pre-litigation subpoenas in Illinois Credit Card Marketing Act investigations); 815 Ill. Comp. Stat. 505/3 (pre-litigation subpoenas in Illinois Consumer Fraud and Deceptive Business Practices Act investigations); 740 Ill. Comp. Stat. 175/6 (pre-litigation subpoenas in Illinois False Claims Act investigations); 740 Ill. Comp. Stat. 10/7.2 (pre-litigation subpoenas in Illinois Antitrust Act investigations)

Indiana

Ind. Code § 4-6-3-3 (CIDs in investigations related to consumer protection, environment, health, antitrust, regulated occupations, “or any other statute enforced by the attorney general”); Ind. Code § 24-15-9-1 (CIDs in consumer data protection investigations); Ind. Code § 16-21-15-4 (CIDs in investigations related to hospital mergers); Ind. Code § 24-4-23-16 (CIDs in investigations related to age verification for “adult oriented websites”); Ind. Code § 5-11-5.7-10 (CIDs in Medicaid false claims investigations); Ind.

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Code § 4-6-13-4 (pre-litigation subpoena in identity theft and fraud investigations)

Iowa

Iowa Code § 685.6 (CIDs in false claims investigations); Iowa Code § 715D.8 (CIDs in consumer protection investigations); Iowa Code § 714.16 (pre-litigation subpoenas in consumer fraud investigations)

Kansas

Kan. Stat. § 50-631 (pre-litigation subpoenas in consumer protection investigations); Kan. Stat. § 50-153 (pre-litigation subpoenas in antitrust investigations)

Kentucky

Ky. Rev. Stat. § 367.240 (investigative demands in consumer protection investigations); Ky. Rev. Stat. § 248.353 (pre-litigation subpoenas in tobacco discrimination investigations)

Louisiana

La. Stat. § 22:1931.10 (CIDs in insurance fraud investigations); La. Stat. § 51:1411 (CIDs in consumer protection investigations); La. Stat. § 3:3616 (CIDs in Right to Farm and Forest Act investigations)

Maine

Me. Rev. Stat. Ann. tit. 5, § 211 (pre-litigation CIDs in unfair trade practice investigations); Me. Rev. Stat. Ann. tit. 10, § 1107 (pre-litigation summons related to investigations into potential antitrust violations)

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Maryland

Md. Code Ann., State Fin. & Proc. § 16-303 (investigative demands in investigations related to debarment as a contractor for a public entity or the state); Md. Code Ann., State Gov't § 6-901 (pre-litigation subpoenas in health care fraud investigations); Md. Code Ann., Com. Law § 13-405 (pre-litigation subpoenas in Consumer Protection Act investigations); Md. Code Ann., Bus. Reg. § 6.5-102 (pre-litigation subpoenas in charitable assets investigations); Md. Code Ann., Com. Law § 11-205 (CIDs in antitrust investigations)

Massachusetts

Mass. Gen. Laws ch. 12, § 5N (CIDs in false claims investigations); Mass. Gen. Laws ch. 93A, § 6 (CIDs in consumer protection investigations); Mass. Gen. Laws ch. 93, § 8 (CIDs in antitrust investigations)

Michigan

Mich. Comp. Laws § 445.776 (investigative demands in antitrust investigations); Mich. Comp. Laws § 445.2586 (investigative demands in pyramid scheme investigations); Mich. Comp. Laws § 752.1008 (investigative demands in health care false claims investigations); Mich. Comp. Laws § 400.610 (investigative demands in Medicaid False Claims Act investigations)

Minnesota

Minn. Stat. Ann. § 8.31 (broad CID authorization for investigations into “violations of the law of this state respecting unfair, discriminatory, and other unlawful practices in business, commerce, or trade”)

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Mississippi

Miss. Code § 97-45-2 (pre-litigation subpoenas in identity theft investigations); Miss. Code § 7-5-59 (pre-litigation subpoenas in investigations related to computer crimes involving minors); Miss. Code § 43-13-221 (pre-litigation subpoenas in Medicaid fraud investigations); Miss. Code § 75-24-27 (pre-litigation subpoenas in consumer protection investigations); Miss. Code § 79-11-521 (pre-litigation subpoenas in investigations related to nonprofits or religious organizations); Miss. Code § 77-3-725 (pre-litigation subpoenas in Telephone Solicitation Act investigations); Miss. Code § 7-5-307 (pre-litigation subpoenas in insurance fraud investigations)

Missouri

Mo. Ann. Stat. § 407.040 (CIDs in deceptive advertising or sales practices investigations); Mo. Ann. Stat. § 127.040 (CIDs in investigations related to state election laws); Mo. Ann. Stat. § 407.472 (CIDs in charitable solicitations investigations); Mo. Ann. Stat. § 130.188 (CIDs in campaign financing investigations); Mo. Ann. Stat. § 416.091 (CIDs in antitrust investigations)

Montana

Mont. Code § 30-14-2817 (CIDs in consumer protection investigations); Mont. Code § 82-15-204 (pre-litigation subpoenas in price discrimination of petroleum products investigations)

Nebraska

Neb. Rev. Stat. Ann. § 87-1121 (CIDs in Data Privacy Act investigations); Neb. Rev. Stat. Ann. § 4-213 (in

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Foreign Adversary and Terrorist Agent Registration Act investigations); Neb. Rev. Stat. Ann. § 59-1611 (CIDs in antitrust investigations)

Nevada

Nev. Rev. Stat. § 598A.100 (investigative demands in unfair trade practices investigations)

New Hampshire

N.H. Rev. Stat. Ann. § 7:6-b (investigative demands in investigations related to the use of communication common carriers for unlawful purposes); N.H. Rev. Stat. Ann. § 147-A:8 (investigative demands in hazardous waste management investigations); N.H. Rev. Stat. Ann. § 159-F:3 (pre-litigation subpoenas in Firearms Purchaser's Privacy Act investigations); N.H. Rev. Stat. Ann. § 356:10 (pre-litigation subpoenas in antitrust investigations); N.H. Rev. Stat. Ann. § 358-A:8 (pre-litigation subpoenas in consumer protection investigations)

New Jersey

N.J. Stat. Ann. § 5:12-128 (CIDs in Casino Control Act investigations); N.J. Stat. Ann. § 2A:32C-14 (CIDs in false claims investigations); N.J. Stat. Ann. § 2C:41-5 (investigative demands in racketeering investigations); N.J. Stat. Ann. § 13:1E-130 (pre-litigation subpoenas in waste management investigations); N.J. Stat. Ann. § 56:9-9 (pre-litigation subpoenas in antitrust investigations); N.J. Stat. Ann. § 56:8-3 (pre-litigation subpoenas in unfair trade practices investigations)

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New Mexico

N.M. Stat. § 6-4-22 (CIDs in Tobacco Escrow Fund Act investigations); N.M. Stat. § 6-27-9 (CIDs in Affordable Housing Act investigations); N.M. Stat. § 47-6-25.1 (CIDs in New Mexico Subdivision Act investigations); N.M. Stat. §§ 57-22-9.1; 57-22-9 (CIDs related to charitable organization investigations or investigations under the Charitable Solicitations Act); N.M. Stat. § 57-1-5 (CIDs in restraints of trade investigations)

New York

Ag. & Mkts. Law § 408(5) (pre-litigation subpoenas in pet dealer investigations); Art & Cult. Affairs Law § 60.06 (sports memorabilia); Civ. Rights Law § 79-n(3) (pre-litigation subpoenas in investigations related to bias-related harassment or intimidation); Elec. Law § 17-214(2) (pre-litigation subpoenas in investigations related to voter intimidation or obstruction); Exec. Law § 63(12) (pre-litigation subpoenas in investigations related to consumer fraud); Exec. Law § 175(2)(h) (pre-litigation subpoenas in investigations related to charities regulation); Gen. Bus. Law § 349 (prelitigation subpoenas in investigations related to deceptive business practices); N-PCL 112(b)(6) (pre-litigation subpoenas in investigations of not-for-profit or charitable corporations)

North Carolina

N.C. Gen. Stat. § 75-10 (pre-litigation production demands in consumer protection and antitrust investigations); N.C. Gen. Stat. §§ 131F-23; 131F-24 (pre-litigation subpoenas in charitable solicitations and contributions investigations); N.C. Gen. Stat. § 1-

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614 (CIDs in false claims investigations); N.C. Gen. Stat. § 108A-63.1 (investigative subpoenas in health care fraud investigations)

North Dakota

N.D. Cent. Code § 50-24.8-12 (CIDs or administrative subpoenas in Medicaid fraud investigations); N.D. Cent. Code § 12-60-08.1 (administrative subpoenas to aid the criminal bureau in investigations); N.D. Cent. Code § 12.1-20-05 (administrative subpoenas in investigations related to “[l]uring minors by computer or other electronic means”); N.D. Cent. Code § 10-33-123 (pre-litigation subpoenas in nonprofit corporation investigations); N.D. Cent. Code § 51-09-04 (pre-litigation subpoenas in unfair discrimination in commerce investigations); N.D. Cent. Code § 51-10-05.1 (pre-litigation subpoenas in unfair trade practices investigations); N.D. Cent. Code § 13-07-07 (pre-litigation subpoenas in investigations related to consumer credit counseling services)

Ohio

Ohio Rev. Code Ann. § 1331.16 (CIDs in antitrust investigations); Ohio Rev. Code Ann. § 3734.43 (CIDs in solid and hazardous waste investigations); Ohio Rev. Code Ann. § 1345.06 (pre-litigation in consumer protection investigations); Ohio Rev. Code Ann. § 1334.07 (pre-litigation subpoenas in business opportunity plans investigations); Ohio Rev. Code Ann. § 4719.11 (pre-litigation subpoenas in telephone solicitation laws investigations); Ohio Rev. Code Ann. § 4549.47 (pre-litigation subpoenas in Odometer Rollback and Disclosure Act investigations); Ohio Rev. Code Ann. § 1349.52 (pre-litigation subpoenas

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related to investigations into consumer credit reporting agencies); Ohio Rev. Code Ann. § 4722.06 (pre-litigation subpoenas in Home Construction Service Law investigations); Ohio Rev. Code Ann. § 109.87 (pre-litigation subpoenas in Telemarketing and Consumer Fraud and Abuse Prevention Act investigations)

Oklahoma

Okla. Stat. tit. 15, § 757 (investigative demands in Consumer Protection Act investigations); Okla. Stat. tit. 79, § 210 (CIDs in antitrust investigations); Okla. Stat. tit. 18, § 552.14a (CIDs in Oklahoma Solicitation of Charitable Contributions Act investigations)

Oregon

Or. Rev. Stat. 646.618 (CIDs in Unlawful Trade Practices Act investigations); Or. Rev. Stat. 646.618 (CIDs in consumer protection investigations); Or. Rev. Stat. 646.750 (CIDs in antitrust investigations); Or. Rev. Stat. 180.775 (CIDs in false claims investigations); Or. Rev. Stat. 646A.589 (CIDs in investigations related to privacy statute violations); Or. Rev. Stat. 180.448 (CIDs in tobacco investigations)

Pennsylvania

18 Pa. Cons. Stat. Ann. § 911 (CIDs in racketeering investigations); 71 Pa. Stat. Ann. § 307-3 (pre-litigation subpoenas in consumer protection investigations); 73 Pa. Stat. Ann. § 232.5 (pre-litigation subpoenas in Price Gouging Act investigations); 62 Pa. Cons. Stat. Ann. § 4509 (pre-litigation subpoenas in antibid-rigging

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investigations); 62 Pa. Cons. Stat. Ann. § 4509 (pre-litigation subpoenas in radioactive waste disposal investigations); 73 Pa. Stat. Ann. § 2250.8 (pre-litigation subpoenas in Unsolicited Telecommunication Advertisement Act investigations); 18 Pa. Cons. Stat. Ann. § 5743 (administrative subpoenas in investigations related to the use of online services for the sexual exploitation of children)

Rhode Island

6 R.I. Gen. Laws § 6-13.1-7 (CIDs in deceptive trade practices investigations); 5 R.I. Gen. Laws § 5-38.3-5 (CIDs in Motor Vehicle Repair Shop Act investigations); 40 R.I. Gen. Laws § 40-8.2-14 (CIDs in medical assistance fraud investigations); 7 R.I. Gen. Laws § 7-15-7 (CIDs in racketeering and corrupt organizations investigations); 6 R.I. Gen. Laws § 6-36-9 (investigative demands in antitrust investigations)

South Carolina

S.C. Code Ann. § 39-5-70 (investigative demands in unfair trade practices investigations); S.C. Code Ann. § 23-3-75 (administrative subpoenas in investigations related to fraud-related offenses by financial institutions, communications providers, and private or public utilities); S.C. Code Ann. § 17-30-125 (administrative subpoenas to gain information related to an emergency incident involving incarcerated people or a person holding hostages)

South Dakota

S.D. Codified Laws § 37-24-12 (investigative demands in consumer protection and deceptive trade

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practices investigations); S.D. Codified Laws § 55-12-20 (investigative demands in cemetery care investigations); S.D. Codified Laws § 37-1-11.1 (pre-litigation subpoenas in antitrust investigations); S.D. Codified Laws § 37-30-18 (pre-litigation subpoenas telephone solicitation investigations)

Tennessee

Tenn. Code Ann. § 8-6-402 (authorizing the state attorney general to use broad CID power in investigations or inquiries); Tenn. Code Ann. § 47-18-3307 (CIDs in Tennessee Information Protection Act investigations); Tenn. Code Ann. § 4-21-204 (CIDs in employment, housing, and public accommodation investigations)

Texas

Tex. Bus. & Com. Code Ch. 17 § 17.61 (CIDs in consumer protection investigations); Tex. Bus. & Com. Code Ch. 15 § 15.10 (CIDs in antitrust investigations); Tex. Bus. & Com. Code § 610.003 (CIDs in unauthorized transaction investigations); Tex. Bus. & Com. Code § 541.153 (CIDs in data protection investigations); Tex. Bus. & Com. Code § 314A.201 (CIDs in hospital merger investigations); Tex. Civ. Prac. & Rem. Code § 140B.052 (CIDs in civil racketeering investigations)

Utah

Utah Code Ann. § 76-16-506 (in antitrust investigations); Utah Code Ann. § 26B-3-1114 (CIDs in Utah False Claims Act investigations); Utah Code Ann. § 4-41a-201.1 (CIDs in investigations related to anticompetitive behavior by cannabis production establishments and dispensaries); Utah Code Ann. §

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77-22a-1 (administrative subpoenas related to controlled substances investigations); Utah Code Ann. § 76-16-402 (pre-litigation subpoenas in unfair market discrimination investigations)

Vermont

Vt. Stat. Ann. tit. 9, § 2460 (pre-litigation subpoenas in consumer protection investigations); Vt. Stat. Ann. tit. 2, § 267a (pre-litigation subpoenas in investigations related to the registration of lobbyists); Vt. Stat. Ann. tit. 32, § 642 (CIDs in false claims investigations)

Virginia

Va. Code Ann. § 8.01-216.10 (CIDs in false claims investigations); Va. Code Ann. § 59.1-9.10 (CIDs in antitrust investigations); Va. Code Ann. § 59.1-201.1 (CIDs in consumer protection investigations)

Washington

Wash. Rev. Code 19.86.110 (CIDs in consumer protection investigations); Wash. Rev. Code Ann. § 19.09.410 (pre-litigation subpoenas in charitable solicitations investigations)

West Virginia

W. Va. Code Ann. § 46A-7-104 (pre-litigation subpoenas in West Virginia Consumer Credit and Protection Act investigations); W. Va. Code Ann. § 9-7-3 (pre-litigation in Medicaid fraud or abuse investigations); W. Va. Code Ann. § 47-18-7 (pre-litigation subpoenas in antitrust investigations)

Wisconsin

Wis. Stat. Ann. § 133.11 (pre-litigation subpoenas in investigations related to unfair trade practices, price discrimination, and other anti-competitive behavior)

Wyoming

Wyo. Stat. Ann. § 40-12-112 (pre-litigation subpoenas in consumer protection investigations); Wyo. Stat. Ann. § 40-3-111 (pre-litigation subpoenas in multilevel and pyramid schemes investigations); Wyo. Stat. Ann. § 9-2-2003 (investigative subpoenas related to audits); Wyo. Stat. Ann. § 9-1-618 (pre-litigation subpoenas in investigations related to whether a conveyance threatens national or state security); Wyo. Stat. Ann. § 9-1-640 (pre-litigation subpoenas in investigations related to the online exploitation or attempted exploitation of children)