

High Court Clarity On Subpoenas Creates Murky Path For AGs

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Ashley L. Taylor, Jr., co-leader of Troutman Pepper Locke's State Attorneys General Practice Group, was quoted in the May 5, 2026, *Law360* article, "[High Court Clarity On Subpoenas Creates Murky Path For AGs.](#)"

- The ruling marked a meaningful shift in how and when companies can challenge state investigative demands, even though the case arose from a nonprofit's First Amendment claim, said Ashley Taylor Jr., co-leader of Troutman Pepper Locke's state attorneys general practice and a former Virginia deputy attorney general.
- "This gives a federal court a road map and a comfort level that it's OK for me to look at the CID and determine whether or not there's an injury in the CID itself," Taylor said, referring to civil investigative demands. "It creates opportunities to challenge CIDs much earlier in the process."
- Companies facing CIDs have had little success trying to quash them in state court, where attorneys general enjoy broad statutory authority and a home?court advantage, said Taylor, who instituted his firm's AG practice two decades ago.
- He has been telling his clients for years that challenging a subpoena "is not a fruitful exercise." But the Supreme Court's decision signals that federal courts will be more willing to intervene earlier, even before a subpoena is enforced, he said.
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- The ruling did not "fundamentally shift the balance of power, but it did change the strategic calculus for companies," Taylor said. Challenging a subpoena has become a realistic choice, he said.
- "Historically, it was not a viable option," Taylor said. "It was a theoretical option that I would always advise against. It now is something that you have to seriously consider in some cases."
- That shift is likely to reshape how companies approach negotiations with attorneys general, giving targets new leverage in deciding whether to challenge or narrow investigative demands, he said.
- "It creates a negotiating point," Taylor said. "Do I move to quash? Or do I engage in a negotiation around narrowing the CID, using the possibility of a motion to quash to really reshape the negotiation?"
- Taylor also predicted that attorneys general will respond by adjusting how they draft civil investigative demands, anticipating closer scrutiny from federal courts.
- He added that if investigative demands become easier to challenge, some attorneys general may bypass them altogether and proceed directly to litigation, since most state laws do not require a CID before filing suit.
- The ruling fit into a larger pattern of federal courts showing more willingness to scrutinize state investigative actions, Taylor said, citing the U.S. Supreme Court decisions in *NAACP v. Alabama ex rel. Patterson* in 1958, *Americans for Prosperity v. Bonta* in 2021 and *Susan B. Anthony List v. Driehaus* in 2014.
- "All of those cases indicated the Supreme Court's willingness to look across the fence and see what's going on," Taylor said.
- While many attorney general investigations involve routine consumer protection matters, Taylor said, the decision will likely have the greatest impact in politically charged disputes, where constitutional concerns are

more likely to be raised.

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- The biggest open question is how courts will apply the ruling going forward, Taylor said.
- “All this did was identify the issue,” he said. “It didn’t give you the answer. It made the issue viable. Now we know it’s a live issue.”

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