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Methods For Challenging State Civil Investigative Demands

WRITTEN BY

Ashley L. Taylor, Jr. | Michael A. Lafleur | Sydney Goldberg

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When a client receives a civil investigative demand, or CID, or equivalent subpoena from a state attorney general, the first question is always some version of "how can we move to quash this subpoena?"

Our team's reaction has historically been that federal law affords affirmative defenses grounded in the First Amendment or preemption that, while strong theoretically, are not likely to be effective for a number of reasons. In particular, such affirmative defenses are not ripe for review in a federal trial court until a state judge first considers them.

If that state judge issues an adverse ruling, however, any subsequent federal lawsuit seeking to raise the issue is likely subject to dismissal under the Anti-Injunction Act or on so-called abstention grounds. In other words, the client faces a classic dilemma that will not be ripe for consideration by a federal trial judge until it is moot.

That apocryphal adage holds considerable truth for businesses presented with a CID from a state attorney general that implicates First Amendment protections or otherwise inquires into matters that are beyond a state's authority to investigate due to preemption by federal law.

State attorney general CIDs and investigative subpoenas are almost invariably subject to challenge only in the courts of the issuing attorney general's home jurisdiction, even where there is a strong argument that a burdensome state investigation is barred by federal law.

The choice is either to prioritize negotiated narrowing and protective conditions over wholesale resistance — often the most effective strategy — or to raise federal constitutional and preemption arguments in a challenge to the state's investigation in the trial and appellate courts of the attorney general's home state. Usually, such a challenge is a losing proposition, with the unlikely possibility of an appeal to the U.S. Supreme Court from a final state court decision as the only potential avenue for a federal forum.

The Supreme Court's forthcoming opinion in First Choice Women's Resource Center v. Platkin could be a harbinger of significant change, but even if the petitioner is successful in First Choice, recent decisions and filings in ongoing challenges to enforcement actions by the Virginia and Massachusetts attorneys general underscore the

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uphill battle businesses still will face in getting a federal judge to hear their argument that a state investigation is prohibited by federal law.

Procedural Posture Matters: Where and How You Litigate CID Challenges

In our experience, federal courts are reflexively reluctant to block or limit investigations by a state attorney general acting in its parens patriae capacity in furtherance of well-established state public health and welfare prerogatives like the enforcement of their state's consumer protection laws.

Accordingly, federal judges generally actively search for ways to avoid reaching the merits of arguments that a state attorney general investigation should be enjoined or blocked, dismissing such claims on grounds of ripeness (i.e., the state court has not yet acted to enforce the CID); the Anti-Injunction Act, which generally forbids federal courts from enjoining proceedings in a state court, subject to narrow exceptions; or the various abstention doctrines, rooted in principles of federal-state comity, which preclude attempts to obtain federal judicial review of ongoing state administrative or judicial proceedings.

The First Choice matter's path to the Supreme Court is illustrative. The dispute arises out of a November 2023 investigative subpoena by New Jersey Attorney General Matthew Platkin to First Choice Women's Resource Centers, a collection of faith-based pregnancy centers, seeking broad categories of documents related to the solicitation of donations, including donor names and contact information.

According to New Jersey's Supreme Court brief, the state investigation seeks information regarding whether First Choice violated state laws concerning consumer fraud, solicitation requirements for charitable organizations, and the unlicensed practice of medicine "by misleading donors and potential clients into believing that it was providing certain reproductive health care services." First Choice denies any violation.

In December 2023, First Choice **filed** a lawsuit against Platkin in the U.S. District Court for the District of New Jersey under Title 42 of the U.S. Code, Section 1983, the primary federal right of action for private persons and businesses claiming violations by state or local officials of civil rights guaranteed under the U.S. constitution, and a notable exception to the Anti-Injunction Act.

The organization's suit alleges that Platkin's subpoena violated its First Amendment rights and seeks declaratory and injunctive relief.[1] However, the District Court of New Jersey dismissed the complaint as unripe because a state court had not yet issued an order enforcing the subpoena.[2]

First Choice appealed to the U.S. Court of Appeals for the Third Circuit. While that appeal was pending, however, Platkin brought an enforcement action against the organization in New Jersey Superior Court, which ordered First Choice to "respond fully to the Subpoena." The organization has produced some documents but objected to other demands, and state proceedings are ongoing.

The Third Circuit dismissed the appeal as moot due to the state-court order and remanded. On remand, First Choice argued that the attorney general's state-court enforcement suit and the state-court order requiring it to respond to the subpoena meant that its claims were ripe for review, but the district court rejected the argument and dismissed the matter again, finding that the subpoena had not yet been enforced.[3]

The Third Circuit **affirmed** in a December 2024 opinion.[4] It concluded that the suit is not ripe because First Choice:

can continue to assert its constitutional claims in state court as that litigation unfolds; the parties have been ordered by the state court to negotiate to narrow the subpoena's scope; they have agreed to so negotiate; the Attorney General has conceded that he seeks donor information from only two websites; and First Choice's current affidavits do not yet show enough of an injury.

The Third Circuit also expressed a belief that "the state court will adequately adjudicate First Choice's constitutional claims." The Supreme Court **heard the case** in early December 2025. A decision is expected in June 2026.

Notably, the U.S. solicitor general submitted an amicus brief in support of First Choice, arguing that "[a] party has standing to challenge a subpoena, and such a challenge is ripe, if the party faces a credible threat that the government will bring proceedings to enforce the subpoena."

The solicitor general contends that the Third Circuit's decision "puts petitioner in a Catch-22: If petitioner sues in federal court before litigating the state case, its claim will be unripe, but if it sues in federal court after litigating the state case, its claim could be precluded."

Meanwhile, a coalition of state attorneys general led by Massachusetts characterizes First Choice's argument as seeking "early access to federal court upon receipt of a state attorney general pre-litigation subpoena or CID," which the attorneys general argue would subvert their confidential investigative processes and "subject state attorneys general to unnecessary and expensive federal litigation, even where the subpoena has yet to be negotiated, narrowed, or enforced."

A finding for New Jersey could, for all practical purposes, require claims that a state attorney general CID intrudes upon interests protected by the First Amendment to be litigated in state trial and appellate courts in virtually all instances, with a petition for certiorari to the Supreme Court from the conclusion of those proceedings the only potential avenue for obtaining federal court review.

A ruling for First Choice could be a seminal event for the small group of state attorney general practices, but the potential effect of the decision is nonetheless unclear.

To the extent the Supreme Court rules for First Choice, will the court focus narrowly on so-called first-filed actions under Title 42 of the U.S. Code, Section 1983, by nonprofit organizations, trade groups or industry associations seeking to prevent alleged First Amendment violations involving donor list demands, or will the opinion have broader application?

Preemption is not in issue in First Choice. Consequently, the Supreme Court's decision in that matter is unlikely to have any effect on preemption cases.[5]

Doctrine Comparison: First Amendment Versus Federal Preemption

The light at the end of the tunnel: Where the First Amendment is reasonably asserted by a targeted entity, the First Amendment provides substantial protection.

For instance, notwithstanding the existence of parallel state court proceedings, the U.S. District Court for the Eastern District of Virginia preliminarily enjoined the Virgina attorney general's investigation into possible violations of the Virginia Solicitation of Contributions law by AJP Educational Foundation Inc., dba American Muslims for Palestine, a nonprofit organization that describes its mission as educating the American public about the cultural, historical and religious heritage of Palestine. The CID seeks information about American Muslims for Palestine's activities, finances and donors.

American Muslims for Palestine partially complied with the CID but brought a petition to modify or set aside the demand in the Richmond City Circuit Court, challenging the constitutionality of the CID's scope, particularly the demand for donor information. The state court denied American Muslims for Palestine's petition and ultimately issued a contempt order against the nonprofit for noncompliance.

American Muslims for Palestine appealed the contempt order to the Court of Appeals of Virginia, which on Dec. 9, 2025, denied them relief.[6]

While its state appeal from the Richmond City Circuit Court's contempt order was pending, American Muslims for Palestine filed suit on Oct. 17, 2025 — in AJP Education Foundation Inc. dba American Muslims for Palestine v. Miyares — against Virginia Attorney General Jason Miyares in federal court under Title 42 of the U.S. Code, Section 1983.

Notably, Miyares contended in the Eastern District of Virginia that First Choice has "no bearing on this matter because it will merely decide when a subpoena recipient's claims are ripe for adjudication in a first-filed action in federal court, and not the propriety of the subpoena requests themselves."[7]

The federal court stayed enforcement of the Richmond City Circuit Court's contempt order and enjoined enforcement of the CID "to the extent that it would require the disclosure of information protected by the First Amendment to the U.S. Constitution" until the conclusion of state proceedings.[8]

Miyares sought reconsideration and moved to dismiss on abstention and preclusion grounds. Argued Dec. 5, 2025, the attorney general's motion to dismiss remains under advisement, although the parties have since reported that they are in discussions regarding narrowing the CID requests. On Jan. 30, the court indicated that "no further action will be taken on the pending motions at this time," and ordered the parties provide a status report as to the outstanding CID requests by March 30.

American Muslims for Palestine's success to date in Virginia federal court is notable for that court's willingness to entertain the merits of the organization's claims notwithstanding the existence of parallel state judicial proceedings and speaks to the advantages that reasonably couching a CID challenge in First Amendment terms can bring for a targeted entity. The Supreme Court's pending decision in First Choice could pave the way for more such challenges.

However, the organization's success also stands in stark contrast to the treatment of the federal preemption arguments made by Kalshi and Robinhood in federal court in Massachusetts, underscoring how challenges to attorney general actions — including investigatory demands — often stall on ripeness before the merits are reached.

On Sept. 12, 2025, in Commonwealth of Massachusetts v. KalshiEX LLC, the Massachusetts attorney general **filed** a lawsuit in the Suffolk County Superior Court of Massachusetts against Kalshi, an online prediction market platform regulated by the U.S. Commodity Futures Trading Commission under the federal Commodity Exchange Act.[9]

Massachusetts argues that Kalshi's sale of sports-related event contracts to Massachusetts consumers amounts to a sports wagering operation that is impermissible absent licensing by the state Gaming Commission and compliance with state gaming laws. It sought a court order blocking Kalshi's business activity in Massachusetts in the interim, which the state court formally entered on Feb. 6.

Kalshi initially removed the case to federal court based on its defense that the Commodity Exchange Act preempts Massachusetts' gaming laws and that the CFTC has exclusive regulatory authority over the business, but the Massachusetts federal district court remanded.[10]

On Sept. 15, 2025, in Robinhood Derivatives LLC v. Campbell, Robinhood, which lists sports-related event contracts on the Kalshi platform, then **filed** its own federal suit in the U.S. District Court for the District of Massachusetts against the Massachusetts attorney general and the state Gaming Commission. Robinhood sought an injunction that would bar the attorney general from enforcing state gaming laws against it because of preemption by the Commodity Exchange Act, asserting that Massachusetts' investigation and the Kalshi enforcement action created an imminent threat to Robinhood's products offered on Kalshi's platform.

In November, the Massachusetts federal district court **dismissed** Robinhood's case as unripe, relying in part on the attorney general's stipulation that it would not pursue enforcement against Robinhood until the Kalshi litigation is adjudicated.[11] The business has since successfully moved for reconsideration, with the Massachusetts federal court allowing Robinhood to file an amended complaint.

The company's renewed motion for preliminary injunction, which Massachusetts opposes, is pending. And Polymarket US, Kalshi's competitor, filed its own federal lawsuit against Massachusetts on Feb. 9 — QCX LLC dba Polymarket US v. Campbell — also seeking to enjoin the attorney general's enforcement of state gambling laws against federally regulated derivatives exchanges.[12]

Meanwhile, in the Kalshi state-court litigation, the Massachusetts Superior Court has denied Kalshi's motion to dismiss the state's complaint on preemption grounds and entered a preliminary injunction requiring Kalshi to cease offering sports contracts to anyone located in Massachusetts by no later than March 8. Kalshi's appeal from the order is pending.[13]

The Supreme Court's decision in First Choice is unlikely to help Kalshi, Robinhood or Polymarket in their Massachusetts litigations because none raises a First Amendment claim. Although a First Choice decision conceivably could support Robinhood's ripeness arguments, most likely the old adage will apply: Robinhood's arguments will not be ripe for review by a federal trial judge until they are moot.

Industry Application: Tech, Health and Finance Under the State Attorney General CID Lens

It is also important to note that individual, for-profit businesses are unlikely to have a viable associational-privacy defense to a state attorney general CID or investigative subpoena.

Nor do state investigations typically trigger other First Amendment protections in the absence of a demand that clearly targets expressive choices or involves compelled narratives.

Rather, a federal preemption claim generally is the only feasible basis for a court-ordered halt to a state attorney general investigation that is available to businesses in the most frequently targeted industry sectors — healthcare/pharma and finance/tech. Such arguments require concrete enforcement immediacy and a credible articulation of undue burden to have any chance of prevailing. They are seldom successful regardless.

The, to date unsuccessful, preemption challenges by Kalshi and Robinhood to the Massachusetts attorney general's pending enforcement action against Kalshi in Massachusetts Superior Court are a case-in-point.

These subtle concepts are only observable by those practitioners who focus on state attorneys general litigation, as most litigators are not monitoring these developments in the law. But, if properly deployed, these arguments present a viable strategy upon which a corporation can resist CIDs issued by state attorneys general.

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[1] Under the AIA, a federal court may enjoin a state court proceeding if a federal statute explicitly allows for such an injunction. Examples of such laws include 42 U.S.C. § 1983 and certain bankruptcy provisions.

[2] First Choice Women's Res. Ctrs. v. Platkin, No. 3:23-cv-23076 (D.N.J.) (ECF 28) (Jan. 12, 2024).

[3] Id. (ECF 66) (Nov. 12, 2024).

[4] First Choice Women's Res. Ctrs. v. Platkin, No. 24-3124 (3rd Cir.) (Dec. 12, 2024).

[5] Nonetheless, First Amendment issues can be intertwined with preemption claims. In WinRed, Inc. v. Ellison, 59 F.4th 934 (8th Cir. 2023), for example, the Republican-affiliated political action committee WinRed unsuccessfully argued that because it is a federally registered PAC, the Federal Election Campaign Act preempted an investigation into its online fundraising practices by the Minnesota AG. Although he concurred that "the AG's investigation must be allowed to move forward," Eighth Circuit Justice Bobby E. Shepherd wrote separately to note his concern with the breadth of the CID, which he wrote "requests an extraordinary amount of sensitive information from a political organization, some of which has a tenuous relationship, at best, with the AG's investigation."

[6] AJP Educational Foundation, d/b/a American Muslims for Palestine v. Miyares, No. 1420-24-2 (Ct. App. Va. Dec. 9, 2025) (unpublished).

[7] AJP Education Foundation, Inc. v. Att'y Gen., No. 1:25-cv-1617 (E.D. Va.) (ECF 25, at 11) (Oct. 17, 2025).

[8] Id. (ECF 19) (Oct. 3, 2025).

[9] Commonwealth of Mass. v. KalshiEX LLC, No. 2584CV02525 (Mass. Super. Ct.) (filed Sept. 12, 2025).

[10] Commonwealth of Mass. v. KalshiEX LLC, No. 1:25-cv-12595 (ECF 35) (D. Mass.) (Oct. 28, 2025).

[11] Robinhood Derivatives, LLC v. Att'y Gen., et al., No. 1:25-cv-12578 (ECF 69) (Nov. 13, 2025).

[12] QCX LLC, d/b/a Polymarket US v. Att'y Gen., et al., No. 1:26-cv-10651 (ECF 1) (Feb. 9, 2026).

[13] Commonwealth of Mass. v. KalshiEX LLC, No. 2026-J-0143 (Mass. App. Ct.) (filed Feb. 9, 2026).

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