

No. 24-781

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 *AMICI CURIAE* LOCAL
GOVERNMENT LEGAL CENTER,
NATIONAL ASSOCIATION OF COUNTIES,
NATIONAL LEAGUE OF CITIES,
AND INTERNATIONAL MUNICIPAL
LAWYERS ASSOCIATION
IN SUPPORT OF RESPONDENT**

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TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	iii
INTEREST OF AMICI CURIAE.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
I. Administrative subpoenas are a vital tool in enabling state and local governments to fulfill their police power obligations	3
A. Administrative subpoenas enable states and localities to address a wide range of potential wrongdoing	4
B. State and local administrative subpoenas have varying legislative origins, but none are self-executing, which enables recipients to challenge their enforcement in state courts	8
C. Federal complaints seeking to block state administrative subpoenas harm the public, create inefficiencies and delays, and undermine our federalist system.....	13

Table of Contents

	<i>Page</i>
II. History and tradition support the states' use of administrative subpoenas through their visitorial powers	15
CONCLUSION	22

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>Att’y Gen. v. Governors of the Foundling Hosp.</i> , (1791) 34 Eng. Rep. 760	16
<i>Barber v. Jackson Cnt’y Ethics Comm’n</i> , 935 S.W.2d 62 (Mo. Ct. App. 1996)	11
<i>Berman v. Parker</i> , 348 U.S. 26 (1954)	3
<i>Commonwealth v. Farmers & Mech. Bank</i> , 38 Mass. 542 (Mass. 1839)	19
<i>Commonwealth v. M’Closkey</i> , 2 Rawle 369 (Pa. 1830)	17
<i>Cuomo v. Clearing House Ass’n, L.L.C.</i> , 557 U.S. 519 (2009)	16, 22
<i>Dep’t of Fin. v. AT&T Inc.</i> , 239 A.3d 541 (Del. Ch. 2020)	12
<i>Fed. Mar. Comm’n v. Port of Seattle</i> , 521 F.2d 431 (9th Cir. 1977)	8
<i>Guthrie v. Harkness</i> , 199 U.S. 148 (1905)	22
<i>Hyatt v. State Franchise Tax Bd.</i> , 962 N.Y.S.2d 28 (App. Div. 2013)	12

Cited Authorities

	<i>Page</i>
<i>In re KAHEA</i> , 497 P.3d 58 (Haw. 2021)	12
<i>In re Murdock</i> , 24 Mass. 303 (Mass. 1828)	17
<i>King v. Aslop</i> , (1681) 86 Eng. Rep. 868	16
<i>Mass. Comm’n Against Discrimination v.</i> <i>Liberty Mut. Ins. Co.</i> , 356 N.E.2d 236 (Mass. 1976)	11
<i>Philips v. Bury</i> , (1694) 90 Eng. Rep. 1294	16
<i>Pork Motel, Corp. v. Kan. Dep’t of Health & Env’t</i> , 673 P.2d 1126 (Kan. 1983)	8
<i>State ex rel. Hoover v. Berger</i> , 483 S.E.2d 12 (W. Va. 1996)	12
<i>State ex rel. R.R. & Warehouse Comm’n v.</i> <i>U.S. Express Corp.</i> , 83 N.W. 465 (Minn. 1900)	20
<i>State v. Bruce</i> , 5 S.C.L. 264 (S.C. 1812)	17
<i>State v. Wilmington City Council</i> , 3 Del. 294 (1840)	17

Cited Authorities

	<i>Page</i>
<i>Trustees of Dartmouth College v. Woodward</i> , 17 U.S. 518 (1819)	16
<i>United States v. Morton Salt Co.</i> , 338 U.S. 632 (1950)	8, 22
<i>Univ. of Med. & Dentistry of N.J. v. Corrigan</i> , 347 F.3d 57 (3d Cir. 2003)	14

Statutes

<i>Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in November and December, 1833</i> (1834) . .	19
Administrative Procedures Act.	9, 10
Cal. Gov't Code § 11181 (West 2025)	9
Cal. Gov't Code § 11181(e)	9
California Business and Professions Code section 17200, <i>et seq.</i>	7
N.J. Stat. Ann. § 45:17a-33(c)(8) (West 2025)	10
N.J. Stat. Ann. § 56:8-4(a) (West 2025)	10
N.Y. CPLR Law § 2302 (McKinney 2025)	9

Cited Authorities

	<i>Page</i>
N.Y. CPLR Law § 2302(a)	9
N.Y. CPLR Law §2308(b)(1)	11
N.Y. Law Exec. § 63(12) (2010)	5
Tex. Gov’t Code Ann. §§ 2001–2009 (West 2025)	10
Tex. Ins. Code Ann. § 36.152 (West 2025)	10
Tex. Ins. Code Ann. § 36.152(a)	10
Tex. Ins. Code Ann. § 36.154(a)	11
 Other Authorities	
1 McQuillin Mun. Corp. §3:2	9
1 William Blackstone, <i>Commentaries</i>	17
2 Antieau Local Gov’t § 26.04	9
8 Cyclopedia of Federal Procedure § 26:24 (3d ed. 2025)	11
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Cited Authorities

	<i>Page</i>
James J. Fishman, <i>Charitable Accountability and Reform in Nineteenth Century England: The Case of the Charity Commission</i> , 80 Chi.-Kent L. Rev. 723 (2005)	21
Judge Glock, <i>The Forgotten Visitorial Power: The Origins of Administrative Subpoenas and Modern Regulation</i> , 37 Rev. Banking & Fin. L. 205 (2017) . . .	15-18, 20, 21
Timothy S. Haskett, <i>The Medieval English Court of Chancery</i> , 14 L. & Hist. Rev. 245 (1996)	18
Maya Kaufman, <i>Politically Influential Law Firm Under Investigation by NY AG</i> , Politico, Sept. 16, 2025, https://www.politico.com/news/2025/09/16/politically- influential-law-firm-under-iinvestigation-by-new- york-ag-00561739	4, 5
Merrit McAlister et al., <i>What Can Be Done About Backlogs?</i> , 107 Judicature 50 (2023)	14
Memorandum of Law in Support of Respondent's Motion to Compel Compliance with Investigatory Subpoena, <i>In re Application of Abrams Fensterman LLP to Quash Investigatory Subpoena</i> , No. 453019/24 (N.Y. Sup. Ct. Apr. 24, 2025)	12

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	<i>Page</i>
H.A. Mills, <i>The Law Relating to the Relief and Care of Dependents VI: The State Organization and Supervision of Charities</i> , 4 Am. J. Soc. 178 (1898)	21
Order to Comply with Administrative Subpoena, <i>City of Chicago v. Alumni Advantage, LLC</i> , No. 2023-CH-07849 (Ill. Cir. Ct. June 11, 2025)	6
Press Release, <i>Attorney General James Secures \$16.75 Million from Door Dash for Cheating Delivery Workers Out of Tips</i> (Feb. 24, 2025), https://ag.ny.gov/press- release/2025/attorney-general-james-secures-1675- million-door-dash-cheating-delivery-workers	5
Press Release, <i>Carr: Georgia Leads States in Reaching Settlement with Equifax, Secures \$425m in Consumer Restitution</i> (July 22, 2019), https://law.georgia.gov/ press-releases/2019-07-22/carr-georgia-leads- states-reaching-settlement-equifax-secures-425m . .	5
Press Release, <i>City Attorney’s Office, City Attorney reaches settlement with U.S. News & World Report that requires greater transparency in financial disclosures</i> (Sept. 4, 2025), https://sfcityattorney. org/2025/09/04/city-attorney-reaches-settlement- with-u-s-news-world-report-that-requires-greater- transparency-in-financial-disclosures	7

Cited Authorities

	<i>Page</i>
Press Release, City Attorney’s Office, <i>City Attorney secures over \$600,000 from predatory immigration consulting business</i> (Sept. 23, 2025), https://sfcityattorney.org/2025/09/23/city-attorney-secures-over-600000-from-predatory-immigration-consulting-business/ .	.8
Press Release, Mayor’s Press Office, <i>City of Chicago Brings False Claims Action Against Former Employee and Sham Property Management Company for Submitting Fraudulent Emergency Rental Assistant Applications</i> (Sept. 12, 2024), https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2024/September/False-Claims-Action-Submitting-Fraudulent-Emergency-Rental-Assistance-Applications.pdf .	6
Press Release, Mayor’s Press Office, <i>City of Chicago Reaches \$23.8M Settlement Agreement with E-Cigarette Maker Juul Labs for Marketing and Selling Products to Underaged Youth</i> (March 10, 2023), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2023/march/CityofChicagoReachesSettlementJuul.html .	7

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	<i>Page</i>
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Christopher Slobogin, <i>Subpoenas and Privacy</i> , 54 DePaul L. Rev. 805 (2005)	18
<i>The Revised Statutes of the State of New York as Altered by the Legislature</i> (1839)	19

INTEREST OF AMICI CURIAE¹

The Local Government Legal Center (“LGLC”) is a coalition of national local government organizations formed in 2023 to educate local governments regarding the Supreme Court and its impact on local governments and local officials and to advocate for local government positions at the Supreme Court in appropriate cases. The National Association of Counties, the National League of Cities, and the International Municipal Lawyers Association are the founding members of the LGLC.

The National Association of Counties (“NACo”) is the only national organization that represents county governments in the United States. Founded in 1935, NACo provides essential services to the nation’s 3,069 counties through advocacy, education, and research.

The National League of Cities (“NLC”), founded in 1924, is the oldest and largest organization representing U.S. municipal governments. NLC works to strengthen local leadership, influence federal policy, and drive innovative solutions. In partnership with 49 state municipal leagues, NLC advocates for over 19,000 cities, towns, and villages, where more than 218 million Americans live.

The International Municipal Lawyers Association (“IMLA”) has been an advocate and resource for local government attorneys since 1935. Owned solely by its more than 2,500 members, IMLA serves as an

1. This brief was prepared by counsel for amici curiae and not by counsel for any party. No outside contributions were made to this brief’s preparation or submission.

international clearinghouse for legal information and cooperation on municipal legal matters. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before the Supreme Court of the United States, the United States Courts of Appeals, and state supreme and appellate courts.

In this brief, amici offer their perspectives on the fundamental role of administrative investigational authority in state and local exercise of police powers, the adequacy of avenues for challenge in state courts, and the detrimental effect of diverting legitimate investigatory processes into federal court.

SUMMARY OF ARGUMENT

LGLC and its member organizations have a seminal interest in advocating for the police powers of state and local governments. These powers are grounded in our nation's fundamental principles of federalism, are fully consonant with longstanding historical antecedents, and properly place the duty for protecting constituents where it is best exercised—at the state and local level. As this brief illustrates, administrative subpoenas are a key mechanism in enabling states and localities to fulfill their protective responsibilities, allowing them to investigate—and where appropriate, confront and redress—a broad array of harms threatening their residents.

While state and local authority to issue administrative subpoenas is codified in various iterations by the states, in all cases, the subpoena recipients, subject matter, and

responses remain confidential unless challenged. Most significantly, state and local administrative subpoenas are not self-executing, requiring enforcement under the aegis of state courts. That trajectory provides recipients with ample opportunity to contest the particulars of the subpoenas, ensuring that their due process interests are protected while the objects of the investigation can continue unless quashed. Interruption of that trajectory via diversion to federal forums on peripheral grounds is inefficient, is preclusive, and undermines state and local police powers.

Moreover, the long history and tradition of visitorial powers dating back to the law of England in the 15th century and American law in the early 19th century underlies state and local administrative subpoenas.

In sum, administrative subpoenas are integral to federalism, are thoroughly grounded in the nation's history and tradition, and provide robust avenues for challenge. They are vital to the legitimate exercise of state and local police powers. And they should not be undermined by dilatory detours into federal courts.

ARGUMENT

I. Administrative subpoenas are a vital tool in enabling state and local governments to fulfill their police power obligations.

State and local police powers enable, and obligate, authorities to protect a wide expanse of public interests. *See Berman v. Parker*, 348 U.S. 26, 32 (1954) (“Public safety, public health, morality, peace and quiet, law and

order . . . are some of the more conspicuous examples of the traditional application of the police power.”). That duty necessitates constant vigilance and effective response. Whether they are policing noncompliance with regulations or combatting misrepresentation, fraud, conspiracy, or more execrable criminality, enforcement entities require muscular authority to investigate the underlying facts and circumstances.

At the state and local level, one invaluable tool in the arsenal needed to protect consumers, oversee industries, businesses, and professions, and ensure compliance with law, is the administrative subpoena. It is a demonstrably effective device for obtaining information on a confidential basis before the institution of formal legal proceedings—a device that can often reveal whether any litigation is even warranted.

A. Administrative subpoenas enable states and localities to address a wide range of potential wrongdoing.

The inquiry at issue in this case, where the Attorney General (“AG”) of New Jersey legitimately seeks information to confirm that a nonprofit entity is operating in compliance with New Jersey law, is but one example of the salutary uses of state and local administrative subpoenas. Many more can be cited, including in:

New York: A very recent example involves the New York AG’s issuance of administrative subpoenas to investigate a major law firm over its allegedly improper medical debt collection practices. *See* Maya Kaufman, *Politically Influential Law Firm Under Investigation*

by NY AG, Politico, Sept. 16, 2025, <https://www.politico.com/news/2025/09/16/politically-influential-law-firm-under-investigation-by-new-york-ag-00561739>. The AG is investigating whether the firm “violated state and federal debt collection laws” by allegedly “helping nursing homes collect on residents’ unpaid bills by suing friends or relatives who are authorized to make decisions on their behalf.” *Id.*

Another New York example is the state’s investigation of DoorDash’s alleged failure to pay tips to New York delivery drivers. That inquiry resulted in a settlement with DoorDash creating a fund to pay affected workers and new benefits to protect current workers. *See* Press Release, *Attorney General James Secures \$16.75 Million from Door Dash for Cheating Delivery Workers Out of Tips* (Feb. 24, 2025), <https://ag.ny.gov/press-release/2025/attorney-general-james-secures-1675-million-doordash-cheating-delivery-workers>. That settlement was pursuant to a New York law authorizing the AG to issue subpoenas in cases of “repeated fraudulent or illegal acts.” *See* N.Y. Law Exec. § 63(12) (2010).

Georgia: A notable win driven originally by administrative subpoena authority arose under the auspices of Georgia’s AG, leading a nationwide coalition of state attorneys general, who pursued Equifax into a \$425 million settlement regarding a data breach exposing the data of 56% of American adults. *See* Press Release, Carr: *Georgia Leads States in Reaching Settlement with Equifax, Secures \$425m in Consumer Restitution* (July 22, 2019), <https://law.georgia.gov/press-releases/2019-07-22/carr-georgia-leads-states-reaching-settlement-equifax-secures-425m>.

Florida: A further state example is the Florida AG's issuance of administrative subpoenas to several hospital systems to investigate their compliance with recently-issued federal executive orders. *See* Bonner R. Cohen, *Florida Takes New Approach to Hospital Price Transparency: Subpoenas*, The Heartland Institute, Aug. 6, 2025, <https://heartland.org/publications/florida-takes-new-approach-to-hospital-price-transparency-subpoenas/>. The investigation is based on allegations that the hospital systems are violating established price transparency requirements, an issue that is of particular concern to Florida, given its “extraordinary number of retirees [requiring] frequent hospitalization.” *Id.*

Chicago: At the local level, Chicago provides numerous examples of municipal agencies using administrative subpoenas to protect consumers and vulnerable members of society. In a recent case, the city subpoenaed a student loan company allegedly engaged in fraudulent business practices. *See* Order to Comply with Administrative Subpoena, *City of Chicago v. Alumni Advantage, LLC*, No. 2023-CH-07849 (Ill. Cir. Ct. June 11, 2025). In another matter, subpoenas were issued to investigate landlords who defrauded a city program intended to help renters struggling during the COVID-19 pandemic. *See* Press Release, Mayor's Press Office, *City of Chicago Brings False Claims Action Against Former Employee and Sham Property Management Company for Submitting Fraudulent Emergency Rental Assistance Applications* (Sept. 12, 2024), <https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2024/September/False-Claims-Action-Submitting-Fraudulent-Emergency-Rental-Assistance-Applications.pdf>. Chicago also issued subpoenas to investigate an e-cigarette

company that was illegally marketing its products to minors, resulting in a \$23.8 million settlement that will fund public health initiatives for youth. *See* Press Release, Mayor's Press Office, *City of Chicago Reaches \$23.8M Settlement Agreement with E-Cigarette Maker Juul Labs for Marketing and Selling Products to Underaged Youth* (March 10, 2023), https://www.chicago.gov/city/en/depts/mayor/press_room/press_releases/2023/march/CityofChicagoReachesSettlementJuul.html.

San Francisco: San Francisco routinely uses administrative subpoenas to protect the interests of its residents. In 2024, the City Attorney issued a Subpoena for Interrogatory Responses to U.S. News & World Report as part of a pending investigation concerning potential violations of California Business and Professions Code section 17200, *et seq.* The inquiry related to the publisher's methodologies for ranking hospitals and its failure to disclose payments received from ranked hospitals. As a result, consumers are now aware that hospitals displaying U.S. News certificates of approval have made payments to the publisher. *See* Press Release, City Attorney's Office, *City Attorney reaches settlement with U.S. News & World Report that requires greater transparency in financial disclosures* (Sept. 4, 2025), <https://sfcityattorney.org/2025/09/04/city-attorney-reaches-settlement-with-u-s-news-world-report-that-requires-greater-transparency-in-financial-disclosures/>.

Investigation has also been crucial in San Francisco's multi-year effort to curb the practices of an unlicensed attorney purporting to offer immigration services, culminating in a continuing injunction and assessment of \$600,000 in fines and legal expense reimbursement.

See Press Release, City Attorney's Office, *City Attorney secures over \$600,000 from predatory immigration consulting business* (Sept. 23, 2025), <https://sfcityattorney.org/2025/09/23/city-attorney-secures-over-600000-from-predatory-immigration-consulting-business/>.

B. State and local administrative subpoenas have varying legislative origins, but none are self-executing, which enables recipients to challenge their enforcement in state courts.

Administrative subpoenas are creatures of legislative origin. As this Court has long recognized, they arise from an agency's "power of inquisition . . . which is not derived from the judicial function." *United States v. Morton Salt Co.*, 338 U.S. 632, 642 (1950). Lower courts also recognize that the source of an agency's power of inquisition is legislative rather than judicial. *See, e.g., Fed. Mar. Comm'n v. Port of Seattle*, 521 F.2d 431, 433 (9th Cir. 1977) ("[T]he very backbone of an administrative agency's effectiveness in carrying out its [legislatively] mandated duties . . . is the rapid exercise of the power to investigate . . . and the right under appropriate conditions to have [courts] enforce its subpoenas.").

State agencies acquire inquisitory power directly from the legislature, and the parameters of that power are defined in state statutes. *See, e.g., Pork Motel, Corp. v. Kan. Dep't of Health & Env't*, 673 P.2d 1126, 1132 (Kan. 1983) ("Administrative agencies are creatures of statute and their power is dependent upon authorizing statutes, therefore any exercise of authority claimed by the agency must come from within the statutes."). Similarly, municipal agencies have inquisitory power as an extension of state

law. *See* 1 McQuillin Mun. Corp. §3:2 (“A municipal corporation is a creature of the state legislature.”); *see also* 2 Antieau Local Gov’t § 26.04 (“Many [municipal] agencies have the power to conduct inquiries and investigations”).

The specifics of administrative subpoenas vary among the states, but there are general trends that transcend partisan and ideological differences. One approach is for state legislatures to enact broad enabling statutes for all or most of their administrative agencies. These statutes are usually part of a state’s Administrative Procedures Act or similar frameworks. *See, e.g.*, Cal. Gov’t Code § 11181 (West 2025) (part of the California Administrative Procedures Act); N.Y. CPLR Law § 2302 (McKinney 2025) (part of the New York Civil Practice Law and Rules). Instead of discussing specific agencies or types of investigations, these statutes authorize subpoena power whenever an agency has legitimate investigatory authority.

For example, California provides, “In connection with any investigation or action authorized by this article, a department head may . . . [i]ssue subpoenas [for various testimony or evidence] pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state.” Cal. Gov’t Code § 11181(e). Similarly, New York permits issuance of administrative subpoenas by “an administrative proceeding or arbitration . . . or any member of a board, commission or committee authorized by law to hear, try or determine a matter or to do any other act” associated with an investigation. N.Y. CPLR Law § 2302(a). These broad statutes allow for a wide authorization of subpoena authority without regard to agency-specific missions or other considerations.

A second statutory approach is agency-specific, balancing broad authorization with the actual scope and purpose of each agency. Although these states may have a general Administrative Procedures Act, their agency-enabling acts provide specific powers, including the issuance of administrative subpoenas. *Compare* Tex. Gov’t Code Ann. §§ 2001–2009 (West 2025) (Administrative Procedure Act) *with* Tex. Ins. Code Ann. § 36.152 (West 2025) (subpoena authority for the Texas Insurance Commission). While this approach more narrowly defines the agencies with subpoena authority, the authorizing language is still fairly broad as to that agency’s investigative powers. *See, e.g.*, Tex. Ins. Code Ann. § 36.152(a) (“With respect to a matter that the commissioner has *authority to consider or investigate*, the commissioner may issue a subpoena applicable throughout the state.” (emphasis added)). Under this approach, other parts of the statutory framework must identify exactly the matters an agency has authority to investigate.

Under a third approach, states incorporate the authority to issue administrative subpoenas in statutes targeting specific criminal, civil, or procedural concerns. The statutes the New Jersey AG relied on here—the Consumer Fraud Act (“CFA”) and the Charities Registration & Investigation Act (“CRIA”)—illustrate this approach. *See* Pet. 6A. The CFA, for example, authorizes the AG to “issue subpoenas to any person . . . in aid of any investigation or inquiry.” N.J. Stat. Ann. § 56:8-4(a) (West 2025). Similarly, the CRIA authorizes the AG “[i]n order to accomplish the objectives of [the CRIA] . . . [to] issue subpoenas to compel” the production of evidence or testimony. *Id.* § 45:17a-33(c)(8). Both provisions give the authority to issue administrative subpoenas to a particular agency and only in relation to particular issues.

States incorporate various combinations of these approaches, with each creating a unique blend of statutes addressing administrative subpoenas.² However, one constant across the states is the requirement that state courts must direct the enforcement of administrative subpoenas; they are not self-executing. An administrative agency generally “lacks power to punish contempts by subpoenaed persons.” 8 *Cyclopedia of Federal Procedure* § 26:24 (3d ed. 2025). instead, an agency must seek an enforcement order from a state court before a party can be compelled to comply. *See, e.g.*, N.Y. CPLR Law § 2308(b) (1) (“Unless otherwise provided, if a person fails to comply with a [non-judicial] subpoena . . . [the agency] may move in the supreme court to compel compliance.”); Tex. Ins. Code Ann. § 36.154(a) (“On application of the commissioner in the case of disobedience of a subpoena . . . a district court may issue an order requiring a person subpoenaed to obey the subpoena.”).

This architecture allows recipients of administrative subpoenas to challenge their validity in state courts,

2. In addition to states authorizing administrative subpoenas by statute, at least one state supreme court has construed a statute giving an agency the power to investigate as implicitly also authorizing the issuance of administrative subpoenas. *See Mass. Comm’n Against Discrimination v. Liberty Mut. Ins. Co.*, 356 N.E.2d 236, 239 (Mass. 1976) (noting that without a liberal construction, “the broad remedial purposes of the legislation cannot be effectuated, and the [agency] will be unable to function effectively”). Other states that have considered the question, however, reject an implied authority to issue administrative subpoenas. *See, e.g., Barber v. Jackson Cnty Ethics Comm’n*, 935 S.W.2d 62, 67 (Mo. Ct. App. 1996) (“[A]gencies have no inherent authority to issue a subpoena.”).

whether the agency has applied for an order to compel or not. *See, e.g., State ex rel. Hoover v. Berger*, 483 S.E.2d 12, 17 (W. Va. 1996) (noting that because administrative subpoenas are non-self-executing, “the subject or target of an administrative subpoena . . . has an opportunity to challenge the subpoena before yielding [any] information”).

That is the process currently being followed in the previously mentioned New York AG investigation into a law firm’s alleged improprieties regarding nursing home debt collection. There, the recipient has moved to quash the subpoena in the appropriate forum for challenge to administrative subpoenas—state court. *See* Memorandum of Law in Support of Respondent’s Motion to Compel Compliance with Investigatory Subpoena, *In re Application of Abrams Fensterman LLP to Quash Investigatory Subpoena*, No. 453019/24 (N.Y. Sup. Ct. Apr. 24, 2025). Beyond that example, recipients can challenge administrative subpoenas on various grounds, including “privileges, privacy rights and the unreasonableness of an administrative subpoena.” *Id.*; *see also Hyatt v. State Franchise Tax Bd.*, 962 N.Y.S.2d 282, 293 (App. Div. 2013) (allowing a challenge where an administrative subpoena allegedly “subjects the [recipient] to harassment”). State courts can also hear challenges to administrative subpoenas based on alleged violations of the U.S. Constitution. *See, e.g., In re KAHEA*, 497 P.3d 58, 63 (Haw. 2021) (First Amendment challenge); *Dep’t of Fin. v. AT&T Inc.*, 239 A.3d 541, 550 (Del. Ch. 2020) (Fourth Amendment challenge).

In sum, a state agency’s authority to issue administrative subpoenas derives from statutory provisions, whether broad or narrow in scope. Regardless

of where that authority arises, enforcement of these subpoenas depends on an agency taking the additional step of applying to a state court for an order compelling compliance. Likewise, recipients of these administrative subpoenas are entitled to challenge their validity in state courts. These mechanics comport with our federalist system and protect the rights of subpoena recipients.

C. Federal complaints seeking to block state administrative subpoenas harm the public, create inefficiencies and delays, and undermine our federalist system.

As implicit above, respect for state sovereignty and state legislative policymaking militates that challenges to administrative subpoenas should be directed to state courts in the first instance. Beyond that policy rationale, there are more compelling logistical reasons: when recipients of state or local administrative subpoenas rush to federal court, they create inefficiencies and delays, in several ways. First, state agencies often issue administrative subpoenas without ever moving forward with an enforcement action. Rather, they use subpoenas solely to ask questions of recipients, initiate dialogue, or engage in other non-enforcement related activities. “Making a federal case out of it” when no enforcement action would have been brought in the first place is highly inefficient.

Federal litigation over state or local administrative subpoenas is inefficient in another way. Because the subpoenas are non-self-executing, a state agency must file an application with a state court to compel compliance. In cases where the recipient challenges the subpoena in

federal court before any state-level enforcement action has been initiated, state agencies lack the ability to move the federal court to compel compliance. The federal court will only have authority to grant or deny a motion to quash based on federal or diversity jurisdiction grounds, but cannot, of its own authority, compel the recipient to comply with the administrative subpoena. Because the mechanism of enforcement arises under state law, the agency will still require state court action to compel compliance. The resulting duplicative litigation—challenging a motion to quash in federal court and seeking enforcement in state court—expends extra time and resources for all parties involved, undermining state and local protection of constituents’ interests.

Delay is often at the heart of diversion to federal court. A recipient’s challenge to a subpoena in federal court, especially before a pending enforcement action, will inevitably “throw great amounts of sand into the gears of the administrative process.” *Univ. of Med. & Dentistry of N.J. v. Corrigan*, 347 F.3d 57, 64 (3d Cir. 2003). Under the best of conditions, a motion to quash will not be resolved by a federal court for several weeks; more realistically, resolution will take several months, given the caseloads of federal courts—and years if there is an appeal. *See* Merrit McAlister et al., *What Can Be Done About Backlogs?*, 107 *Judicature* 50, 51 (2023) (discussing increased court delays due to a 17% increase in case filings over the past twenty years).

Yet another inefficiency created by federal challenges to state administrative subpoenas is that they frustrate potential compromise. As noted above, state and local administrative subpoenas can lead to settlements—

mutually agreeable resolutions that are more efficient and durable than court orders. Recipients often negotiate to narrow the scope of subpoenas, reducing their cost and disruption while still providing the agency with the information it needs.³ Parties also may agree to engage in alternative dispute resolution methods such as mediation or negotiated settlement. But when recipients dash instead to federal court, delay ensues, and settlements may be frustrated.

II. History and tradition support the states' use of administrative subpoenas through their visitorial powers.

The validity of the governmental authority vested in administrative subpoenas is further confirmed in their provenance. While state and local authority to issue administrative subpoenas is a concomitant of their police powers under our federalist system, that authority has its origins in more fundamental “visitorial” powers of government. *See* Judge Glock, *The Forgotten Visitorial Power: The Origins of Administrative Subpoenas and Modern Regulation*, 37 *Rev. Banking & Fin. L.* 205, 208 (2017).

Visitorial powers originated in England in the 15th century. *Id.* at 213. Historically, the sovereign’s right of corporate visitation paralleled the right of the church to supervise its institutions and the right of the founder of a charitable institution to make sure his property

3. Indeed, the court below noted that the state court had ordered the parties to negotiate to narrow the subpoena’s scope and that the parties had agreed to do so. *See* Pet. 4a.

was rightly employed. *Cuomo v. Clearing House Ass’n, L.L.C.*, 557 U.S. 519, 525 (2009); *see also Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 564 (1819) (explaining that the right of visitation is a property right that is rooted in a corporate founder’s right to oversee his corporate charter). In other words, charitable or religious institutions had their own “visitor,” which mirrored a modern-day board of directors under corporate law. Glock, *supra*, at 213. These visitors obtained extensive power within the organization and could make large-scale changes without court intervention.

Early English courts generally upheld the power of these visitors to exercise extensive power and control over the organization. For example, in 1694, a professor from Exeter College, Oxford, who was expelled by a visitor, was unable to seek relief in court because the visitor was deemed supreme within the corporation. *Id.* at 213 (discussing *Philips v. Bury*, (1694) 90 Eng. Rep. 1294, 1300). In *Philips*, Chief Justice Holt emphasized that “the law gives [the founder] and his heirs a visitorial power, . . . an authority to inspect their actions, and regulate their behaviour, as he pleaseth.” 90 Eng. Rep. at 1294, 1300; *see also King v. Aslop*, (1681) 86 Eng. Rep. 868, 868 (explaining that “the visitor has an entire power, and there can be no appeal from him”); *Att’y Gen. v. Governors of the Foundling Hosp.*, (1791) 34 Eng. Rep. 760, 761 (“[q]uestions . . . which properly fall under the cognizance of the visitor of a charitable foundation, cannot be decided by a Court of Equity.”).

Over time, legal scholars developed theories for granting governmental actors the authority to exercise visitorial power over corporations. Blackstone, for

example, contended that the “founder of all corporations, in the strictest and original sense, is the king only, for only he can incorporate a society.” 1 William Blackstone, *Commentaries*, *468. Where there was no specific founder, Blackstone continued, the King was the de facto visitor, but only through the medium of the courts and based on the general laws of England. *Id.* at *469. As a result, charitable or religious corporations that had their own visitors were subject to writs that forced the corporations to live up to their charters. Glock, *supra*, at 214. Courts then began to sanction broad discretion in governmental actors to conduct visitorial investigations.

In the early 1800s, American state courts began to apply the expansive views of governmental visitorial power espoused by Blackstone. *Id.* at 219. For example, the South Carolina Supreme Court recognized that the Court of General Sessions possessed “visitorial jurisdiction . . . to regulate and correct [managers] in the exercise of their discretionary power.” *State v. Bruce*, 5 S.C.L. 264, 280 (S.C. 1812). The Massachusetts Supreme Court noted that the visitorial powers the court had due to its general jurisdiction allowed it to correct corporate misbehavior. *In re Murdock*, 24 Mass. 303, 324-25 (Mass. 1828). And the Pennsylvania Supreme Court emphasized that the powers and jurisdiction of the court were the same as the King’s Bench in that it had the power to grant writs of mandamus. *Commonwealth v. M’Closkey*, 2 Rawle 369, 383 (Pa. 1830); *see also State v. Wilmington City Council*, 3 Del. 294, 307 (1840) (explaining that visitorial jurisdiction is exercised by the Court of the King’s Bench).

Legislatures began to expand court power over corporations under the aegis of these visitorial powers.

State legislatures equipped equity courts to issue injunctions and obtain discovery through subpoenas because courts became “a responsive, quick, inexpensive, and desirable avenue of recourse for those who felt they had been wronged in ways that no other jurisdiction could remedy.” Timothy S. Haskett, *The Medieval English Court of Chancery*, 14 L. & Hist. Rev. 245, 265, 311 (1996).

Legislatures soon realized, however, how cumbersome it was for them to go through court channels every time they wanted to investigate corporate wrongdoing. Glock, *supra*, at 227. Early proponents of business regulation suggested that the power to summon and subpoena witnesses and documents could come directly from quasi-executive officials. *Id.* Thus, as a direct outgrowth of historical visitation powers, administrative subpoenas were born. *Id.* at 228.

In the late 1820s, states were particularly concerned about supervising and visiting banking and other financial corporations. To protect the public from financial risk, states needed to subpoena and view various documents and hidden accounts from these institutions well before they might raise civil or criminal liability. *Id.* In other words, “[w]ithout the ability to readily obtain the records of corporations . . . government agencies would be frustrated in their efforts to ensure that corporate tax laws, bank laws, securities laws, and a host of other regulatory statutes were enforced.” Christopher Slobogin, *Subpoenas and Privacy*, 54 DePaul L. Rev. 805, 814 (2005).

Georgia, New York, and Massachusetts were three of the earliest states to regulate financial institutions by use of administrative subpoenas. In 1833, the Georgia

legislature appointed an investigatory committee to subpoena the books of a failing bank, without court intervention. *Acts of the General Assembly of the State of Georgia Passed in Milledgeville at an Annual Session in November and December, 1833* 399-401 (1834). After the bank objected to an inspection of its books, the Georgia legislature agreed that it could not force production without an intervening court, while simultaneously emphasizing that public interests are served by exercising this visitorial discretion. *Id.*

Similarly, in 1829, New York passed legislation establishing bank commissioners who had the power to “visit and inspect the condition and affairs of any monied corporation.” *The Revised Statutes of the State of New York as Altered by the Legislature* 609 (1839). If the commissioners found any legal violations by the banks they investigated, the legislation required them to apply for injunctions through the Court of Chancery. *Id.* at 610.

Massachusetts followed in these footsteps in 1838, with the enactment of legislation establishing that bank commissioners “shall visit every bank and shall have free access to its vaults, books and papers, that they may examine under oath.” *Commonwealth v. Farmers & Mech. Bank*, 38 Mass. 542, 544 (Mass. 1839). In other words, the legislature assumed visitorial power over banks and allowed commissioners to issue subpoenas and summons without court intervention. *Id.* at 544-45. While commissioners could send subpoenas without the court’s pre-approval, the Massachusetts Supreme Court also held that the enforceability of the subpoenas would be determined solely by the state court. *Id.* at 545.

The fact that in each of these states court enforcement was needed for a subpoena to have any teeth shows that the use of administrative subpoenas was not an unchecked threat. Rather, they were a balanced mechanism that allowed states to conduct important investigations while simultaneously restraining the states from excessive invasions of privacy.

As an extension of bank regulations, states in the 1860s began to apply their recently provided administrative investigatory authority to the burgeoning railroad industry. For example, both Massachusetts and New York created railroad commissions that could summon witnesses and compel the production of books and papers. Glock, *supra*, at 234-35 (internal citations omitted). State courts acknowledged the visitorial powers of these commissions to investigate the railroad companies through subpoenas and other discovery tactics. *See, e.g., State ex rel. R.R. & Warehouse Comm'n v. U.S. Express Corp.*, 83 N.W. 465, 466 (Minn. 1900) (explaining that the Minnesota Railroad and Warehouse Commission would undoubtedly have the authority to visit and investigate a corporate railroad company because the “state has the right to know what its creature, or one of another sovereignty that it permits to come into the state, is doing”).

Additionally, states in the 1860s established Boards of Charities to visit and investigate charitable corporations. Glock, *supra*, at 233 n.107. These “advisory boards visit[ed] and investigate[d] the charitable . . . institutions, counsel[ed] with their boards of directors and employees, and [made] public the results of their investigations.”

H.A. Mills, *The Law Relating to the Relief and Care of Dependents VI: The State Organization and Supervision of Charities*, 4 Am. J. Soc. 178, 179 (1898). By the late 19th century, numerous state boards could visit and inspect private charities and asylums as long as they were receiving some sort of public aid. Glock, *supra*, at 233 n.107. Similarly, the British government in 1853 created a “Charity Commission . . . [with] investigatory and subpoena powers.” James J. Fishman, *Charitable Accountability and Reform in Nineteenth Century England: The Case of the Charity Commission*, 80 Chi.-Kent L. Rev. 723, 744 (2005). Therefore, visitorial inspection of charitable organizations through administrative subpoena power is a long-standing tradition spanning almost two centuries.

In the early 20th century, the idea of state visitorial power to inspect corporations “attained a broad consensus.” Glock, *supra*, at 236. Regulatory reformers understood that efficient inspection of business records was critical to a government’s ability to regulate corporations. *Id.* at 212. Both Oklahoma and Arizona, for example, implemented corporate commissions into their state constitutions. *Id.* at 236-37. As more governmental agencies were established across the country during the New Deal and World War II, it became clear that the agencies needed to retain their ability to execute policy through administrative subpoenas. Katherine Scherb, *Administrative Subpoenas For Private Financial Records: What Protection for Privacy Does the Fourth Amendment Afford?*, 1996 Wis. L. Rev. 1075, 1082 (1996).

This Court has emphasized that administrative subpoenas meet constitutional muster when the government

is exercising “nothing more than official curiosity.” *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950). The Court reasoned that “law-enforcing agencies have a legitimate right to satisfy themselves that corporate behavior is consistent with the law and the public interest.” *Id.*; see also *Clearing House*, 557 U.S. at 526 (“A State was the ‘visitor’ of all companies incorporated in the State, simply by virtue of the State’s role as sovereign.”); *Guthrie v. Harkness*, 199 U.S. 148, 157 (1905) (“[The] legislature is the visitor of all corporations founded by it.”).

Thus, an extensive history and tradition support the states’ ability to use administrative subpoenas to protect the public from corporate wrongdoing. Visitorial powers have been extended to various concerns, from financial institutions to private charities to railroads. First established by the King of England, this visitation authority has long been subject to review by state courts. Therefore, state courts can and should continue to be responsible for adjudicating administrative subpoenas when they are challenged. History and tradition show that state administrative subpoena power is a long-standing, balanced mechanism.

CONCLUSION

Administrative subpoenas are emblematic of our federalist system, drawing on extensive history and tradition and codified by legislatures in unique ways across the nation’s jurisdictions. Efficiency and federalism concerns dictate that administrative subpoena challenges must traverse through state forums first, rather than derailing legitimate investigatory efforts through dilatory

detours to federal court. The judgment below should be affirmed.

Respectfully submitted,

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