



ALERT

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New York Appellate Court Curtails NY AG Investigatory Subpoena on Constitutional Grounds

On June 21, 2017, a New York appellate court curtailed on constitutional grounds an investigatory subpoena issued by the New York Attorney General. *In the Matter of Evergreen Assoc., Inc.*, 54 N.Y.S.2d. 135 (App. Div. 2017). Finding that the Attorney General's subpoena was not sufficiently tailored to avoid trampling Evergreen's and its staff members' First Amendment freedom of association, the Appellate Division modified the trial court's Order denying Evergreen's motion for a protective order and quashed the subpoena.

The Attorney General issued its subpoena in furtherance of its investigation concerning whether Evergreen, a nonprofit operator of unplanned pregnancy centers, violated New York statutes prohibiting the unauthorized practice of medicine. Using New York's test for determining the validity of investigatory subpoenas, the Appellate Division determined that certain requests in the Attorney General's subpoena should be quashed in their entirety as infringing Evergreen's First Amendment rights. As to other requests, the Appellate Division granted Evergreen's motion to the extent of directing Evergreen to produce any responsive documents to the trial court for *in camera* review to determine which were sufficiently related to the subject of the Attorney General's investigation.

Importance of the Decision

Evergreen appears to be the first reported decision by a New York court sustaining on constitutional grounds a motion to quash filed by the recipient of an Attorney General's investigatory subpoena. It serves as a reminder that however broad the authority of the Attorney General, it is, as we have [previously written](#), not limitless. Individuals and entities receiving investigatory demands should consider a motion to quash on substantive or procedural grounds, including raising constitutional challenges if warranted, should efforts to negotiate appropriately tailored requests prove unsuccessful. Although the New York procedural rules specify only that motions to quash be made "promptly," such a motion should generally be filed on or before the deadline for compliance with a subpoena.

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