



COHEN MILSTEIN

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May 13, 2016

*Via Email Only*

Andrew M. Grossman, Esq.  
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Dear Mr. Grossman:

The Virgin Islands Department of Justice (“VIDOJ”) has received your letter of May 10th and directed that I to respond to your questions on behalf of the Competitive Enterprise Institute (“CEI”).

VIDOJ has received your client’s objections, and has not made a decision on whether to move to compel or to withdraw or amend its subpoena to CEI. We will let you know when a decision has been made. In the meantime, OAG does not consider your client to be delinquent, out of compliance, or under an obligation to take any further action to preserve its rights.

The Government of the Virgin Islands will not compensate your client for its fees and costs. CEI has not produced any documents in response to the subpoena, which was issued pursuant to the Government’s statutory authority in the course of a law enforcement investigation.

While you have communicated your belief that the subpoena is unduly burdensome, the appropriate vehicle for addressing your objection is to meet and confer to discuss the scope and timing of your client’s response. By the attached letter, sent promptly after CEI’s statement to the media regarding its intent not to comply with the subpoena, the Attorney General invited CEI to discuss its concerns, but received no response.



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You also have contended that the subpoena violates CEI's First Amendment rights. VIDOJ strongly disagrees. This subpoena is part of an investigation into potential fraud, and it is well established that "the First Amendment does not shield fraud." *Illinois, ex rel. Madigan v. Telemarketing Associates, Inc.*, 538 U.S. 600, 612 (2003) (citing *Donaldson v. Read Magazine, Inc.*, 333 U.S. 178, 190 (1948) (the government's power "to protect people against fraud" has "always been recognized in this country and is firmly established")). "Spreading false information in and of itself carries no First Amendment privileges." *Herbert v. Lando*, 441 U.S. 153, 171 (1979). Furthermore, this subpoena neither restricts CEI's speech nor compels speech – it simply seeks the production of documents related to an investigation that is not targeting CEI, as the Attorney General previously explained. The First Amendment does not bar defamation plaintiffs from seeking documents about the press's editorial process, so it similarly does not bar law enforcement from seeking documents from a third party like CEI. *See Herbert*, 441 U.S. at 172–74.

Your client also has asked VIDOJ to revoke the issuance of the subpoena by the District of Columbia Superior Court and terminate the Superior Court action. Those are steps that OAG agrees to take within the next 5 court days, with the understanding that VIDOJ will reissue the subpoena, after notice to your client (through you, unless you instruct us otherwise), if OAG intends to move to compel your client's compliance with the subpoena in its current form.

If you have further questions, please do not hesitate to contact me or Renée Gumbs Carty at the VIDOJ, (340) 774-5666.

Sincerely,  
  
Linda Singer

Enclosure  
cc: Renée Gumbs Carty, VIDOJ