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| Richard D. Emery  Andrew G. Celli, Jr.  Matthew D. Brinckerhoff  Jonathan S. Abady  Earl S. Ward  Ilann M. Maazel  Hal R. Lieberman  Daniel J. Kornstein  O. Andrew F. Wilson  Elizabeth S. Saylor  Katherine Rosenfeld  Debra L. Greenberger  Zoe Salzman  Sam Shapiro | Emery Celli Brinckerhoff & Abady llp  Attorneys At Law  600 Fifth Avenue at Rockefeller Center  10th floor  New York, New York 10020  Tel: (212) 763-5000  Fax: (212) 763-5001  www.ecbalaw.com | Charles J. Ogletree, Jr.  Diane L. Houk  Jessica Clarke  Alison Frick  David Lebowitz  Douglas E. Lieb  Alanna Kaufman  Emma L. Freeman  David Berman  Ashok Chandran  Daniel Treiman |

February 16, 2018

***By Email and By Hand***

Daniel P. Jaffe

Husch Blackwell LLP

60 East 42nd Street, Suite 4600

New York, NY 10165

*Re: Peterson v. Monsanto Co.* – Subpoena Issued to Avaaz

Dear Mr. Jaffe:

This firm represents the Avaaz Foundation (“Avaaz”), a global civic movement with over 46 million members worldwide. We received Monsanto’s subpoena in the *Peterson v. Monsanto* case pending in the Circuit Court of St. Louis, Missouri. We understand Monsanto has a legal right to obtain necessary discovery to defend against plaintiffs’ allegations, but we believe the information sought is irrelevant to the pending matter, that the request is overbroad and unduly burdensome, and that the subpoena violates our client’s First Amendment rights. Therefore, we are objecting to the subpoena in its entirety and request that you withdraw it.

The *Peterson* case involves the allegation that two men in Illinois contracted non-Hodgkin’s lymphoma cancer from exposure to Roundup®, a Monsanto product that contains glyphosate. Your subpoena purports to require Avaaz to provide you with copies, essentially, of all documents concerning Avaaz’s advocacy around Monsanto and glyphosate. Such documents would include and reflect Avaaz’s internal deliberations about its political efforts, its strategies for dealing with public officials in the United States and Europe, its communications with its 46 million members, and its communications with allies and other persons concerned about glyphosate. *All* such communications constitute core protected First Amendment speech, all involve the right of Avaaz and its members to work together and otherwise associate for political purposes, and *none* has anything to do with how Ronald Peterson and Jeff Hall got non-Hodgkin’s lymphoma.

**The information sought is irrelevant to the *Peterson and Hall* case.** According to the subpoena, there is *only one* reason it was issued, namely because, in a single paragraph of their 36-page lawsuit, Ronald Peterson and Jeff Hall alleged that “[s]everal countries around the world,” including the Netherlands, have banned herbicides containing glyphosate.

While it is true that several countries have banned glyphosate and those herbicides, like Roundup®, that contain glyphosate, that fact has no bearing on how Messrs. Peterson and Hall got cancer. Furthermore, Avaaz is an advocacy organization, not a medical or scientific one. Its campaigning and advocacy around glyphosate and Monsanto have relied on the public findings of scientists, government bodies, and regulators. Avaaz knows nothing about Mr. Peterson’s or Mr. Hall’s medical conditions beyond what they say in their complaint; indeed, Avaaz has never communicated with either of them. Finally, Avaaz has never lobbied or campaigned for the Netherlands to change its domestic laws concerning glyphosate.

It seems clear that the stated reason for Monsanto’s subpoena may simply be a pretext to obtain access to non-public information about Avaaz’s successful efforts to persuade the European Union not to rubberstamp a 15-year renewal of Monsanto’s license to market and sell glyphosate. While the outcome of Avaaz’s campaign to block licensure renewal may hinder Monsanto in its business, it is utterly irrelevant to the *Peterson and Hall* case. **The four specific advocacy efforts referenced in the subpoena[[1]](#footnote-1) occurred *after* Peterson and Hall had already stopped using Roundup® and *after* they had already been diagnosed with cancer.** Avaaz’s later advocacy to European officials has nothing to do with the *Peterson and Hall* case. Moreover, and quite apart from the timing issue, Avaaz’s internal deliberations about political strategy and its communications with its members and others are irrelevant to whether glyphosate is or is not carcinogenic, or whether Monsanto should or should not have known it was dangerous.

The subpoena, by its terms, also calls for the production of thousands of documents about Avaaz’s ongoing campaign to stop the merger between Monsanto and Bayer and its successful 2013 effort to block a Monsanto seed factory in Argentina. These campaigns were directed at other aspects of Monsanto’s business to which Avaaz objects—specifically, the production of genetically-modified seeds and the antitrust implications of a merger with Bayer. They were not directed at glyphosate and obviously are wholly unrelated to the issues in *Peterson and Hall*.

The mismatch between Messrs. Peterson and Hall’s legal claims and the documents requested by Monsanto’s subpoena suggest a hidden purpose: to harass and intimidate a citizens’ movement. This purpose is improper and is grounds to quash the subpoena. *See* CPLR 2304; *Kapon v. Koch*, 23 N.Y.3d 32, 38-39 (2014).

**The subpoena is unconstitutionally intrusive and it violates Avaaz’s speech and associational rights.** Avaaz’s activities concerning Monsanto and glyphosate —and every other aspect of its work—are protected by the First Amendment’s guarantees of freedom of speech and association. At its core, Avaaz communicates with its members to find out what issues matter most to them; it researches winning strategies to tackle those issues; it enables people to take join together to win meaningful change by signing petitions, making donations, and organizing events; it engages directly with government officials around the world; and it works alongside other organizations and people who share the same goals. Nothing could be more central to the First Amendment than this.

Forcing Avaaz to provide the material requested to Monsanto violates the Constitution. “The Supreme Court has long recognized that compelled disclosure of political affiliations and activities can impose just as substantial a burden on First Amendment rights as can direct regulation.” *AFL-CIO v. FEC*, 333 F.3d 168, 176 (D.C. Cir. 2003). To quash the subpoena on First Amendment grounds, Avaaz has a “light” burden to show harm to its or its members’ expressive activities. The burden then shifts to Monsanto to show a *compelling* need for the evidence. *N.Y. State Nat’l Org. for Women v. Terry*, 886 F.2d 1339, 1355 (1989).

The harm is clear. Avaaz cannot do what it does, free of intimidation and “chill,” if its opponents have free access to its work product. “Implicit in the right to associate with others to advance one’s shared political beliefs is the right to exchange ideas and formulate strategy and messages, and to do so in private. Compelling disclosure of internal campaign communications can chill the exercise of these rights.” *Perry v. Schwarzenegger*, 591 F.3d 1147, 1162-63 (9th Cir. 2010). And, given Monsanto’s history of investigating scientists, journalists, and farmers who oppose it,[[2]](#footnote-2) Avaaz is justifiably concerned about turning over the private information of its staff and members to Monsanto.

Monsanto has no need for the information it seeks by this overbroad subpoena, let alone a *compelling* one which the Constitution would require them to demonstrate. Avaaz’s strategy for convincing European officials not to reissue a 15-year license for glyphosate will have no bearing on, much less assist, Monsanto’s defense in the *Peterson and Hall* case.

**The subpoena is overbroad and imposes an undue burden on Avaaz.** Avaaz employs more than 100 people in 23 countries around the globe. These staffers, like Avaaz’s tens of millions of members, speak and write in many languages. Because Avaaz works collaboratively, nearly every one of its employees has worked on the glyphosate campaign, and the subpoena would require Avaaz to search *all* of their emails and files going back *years*. And, since Avaaz regularly consults lawyers in planning its campaigns, everything responsive will need to be reviewed for attorney-client privilege.

Avaaz has also engaged repeatedly with its 46 million members—in different configurations and in different languages—about glyphosate. These communications began years ago and, while they likely exist somewhere within the organization’s computer infrastructure, they would be extremely difficult to recover. The costs of doing so and of reviewing and producing such materials would be enormous—and devastating to Avaaz’s core mission.

In short, responding to the subpoena will cost Avaaz thousands of person-hours and hundreds of thousands of dollars, all for no legitimate reason. If Monsanto refuses to withdraw the subpoena, we will seek and obtain a protective order to avoid this undue burden. *See* CPLR 3103; *Application of R.J. Reynolds Tobacco Co.*, 136 Misc. 2d 282 (Sup. Ct. N.Y. Cnty. 1987).

\* \* \*

Please contact us if Monsanto is interested in dramatically narrowing the scope of the subpoena to focus on documents relevant to the *Peterson and Hall* case and not shielded by the First Amendment. Otherwise, please expect a motion to quash the entire subpoena.

Sincerely yours,

Andrew G. Celli, Jr.

Douglas E. Lieb

1. *I.e.*, the July 2016 letter to the European Chemicals Agency; the April 2016 letter to the European Commission of Health and Food Safety; the October 2017 letter to members of the European Parliament; and the June 2015 meeting with members of the staff of the European Parliament. [↑](#footnote-ref-1)
2. *See, e.g.*,CBS News, *Agricultural Giant Battles Small Farmers*, Apr. 26, 2008, https://www.cbsnews.com/news/agricultural-giant-battles-small-farmers; Donald L. Barrett & James B. Steele, *Monsanto’s Harvest of Fear*, Vanity Fair, May 2008, https://www.vanityfair.com/news/2008/05/monsanto200805. [↑](#footnote-ref-2)