NO. 24-781

IN THE
Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,
Petitioner,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of New Jersey,
Respondent.

On Writ of Certiorari to the U.S. Court of Appeals for the Third Circuit

BRIEF FOR PETITIONER

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QUESTION PRESENTED

Where the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, is a federal court in a first-filed action deprived of jurisdiction because those rights must be adjudicated in state court?

PARTIES TO THE PROCEEDING

The Petitioner is First Choice Women's Resource Centers, Inc., and the plaintiff-appellant below.

The Respondent is Matthew Platkin, in his official capacity as Attorney General for the State of New Jersey, and the defendant-appellee below.

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STATEMENT OF JURISDICTION

The Third Circuit entered judgment on December 12, 2024. The petition was timely filed and then granted on June 16, 2025. Lower courts had jurisdiction under 28 U.S.C. 1331 and 28 U.S.C. 1292(a)(1). And this Court has jurisdiction under 28 U.S.C. 1254(1).

PERTINENT CONSTITUTIONAL PROVISIONS AND STATUTES

The pertinent statutes and constitutional provisions are set out verbatim in the attached appendix.

INTRODUCTION

In the 1950s, the NAACP was making headway in eliminating institutionalized racial discrimination—some thought too much headway. As part of an effort to oust the organization from southern states, state and local officials sought to compel the disclosure of the group's membership lists—from legislative subpoenas, *Gibson* v. *Florida Legislative Investigation Committee,* 372 U.S. 539, 540–41 (1963), and tax ordinances, *Bates* v. *City of Little Rock*, 361 U.S. 516, 517–19 (1960), to enforcement proceedings by state attorneys general, *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293, 294 (1961), and court-ordered productions, *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 451 (1958). The tactic worked. Fearing harassment and reprisals, members quickly disassociated from the NAACP, and the group's membership plummeted 50% in southern states between 1955 and 1957. Jack Greenberg, *Crusaders in the Courts* 221 (1994).

In *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958), this Court held Alabama's compelled disclosure unlawful. "It is hardly a novel perception," the Court wrote, "that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *Id*. at 462. Recognizing the "vital relationship between freedom to associate and privacy in one's associations," this Court held that the disclosure violated the NAACP's freedom to associate because "the consequences of this exposure" threatened to "induce members to withdraw from the [NAACP] and dissuade others from joining it." *Id*. at 462–63.

A similar deterrent effect on First Amendment rights is at issue in this case. New Jersey Attorney General Matthew Platkin has made no secret of his hostility towards pregnancy centers. He issued a consumer alert—drafted with the help of Planned Parenthood—complaining that such centers do not provide abortions. He also signed an open letter pledging to take action against pregnancy centers.

The Attorney General made good on that pledge by issuing a sweeping subpoena to First Choice Women's Resource Centers, Inc., a collection of five faith-based pregnancy centers. The Attorney General did not identify a single complaint against the nonprofit yet demanded that First Choice turn over years of sensitive information, including donor names and contact information. The subpoena threatened that failure to comply would subject First Choice to enforcement proceedings and contempt.

First Choice filed this action in federal court under 42 U.S.C. 1983, alleging that the subpoena chilled its associations with donors and its speech. The district court twice held these claims unripe. The first time, it followed *Google, Inc.* v. *Hood*, 822 F.3d 212, 225–26 (5th Cir. 2016), which held that an attorney general's investigative demand cannot be challenged in federal court unless first enforced in state court. The second time, after the parties agreed the case was ripe because the state court held the subpoena enforceable, the district court moved the goalpost. It concluded that First Choice's Section 1983 action would be ripe "only" once a state court required it to respond under "threat of contempt." Pet.App.42a. The Third Circuit affirmed, finding the case unripe because a subpoena recipient can "assert its constitutional claims in state court." Pet.App.4a.

That result conflicts with this Court's precedents and with the federal courts' unflagging obligation to decide federal questions. Under the Third Circuit's logic, the NAACP could not have availed itself of federal court if it received a subpoena from a hostile state. But Section 1983 was enacted to guarantee "a federal forum for claims of unconstitutional treatment at the hands of state officials." *Heck* v. *Humphrey*, 512 U.S. 477, 480 (1994). And the decision below both relegates First Choice to state court and ensures it will remain there. For res judicata will almost certainly bar its claims in federal court after a state court holds the subpoena enforceable.

Just like the takings claim in *Knick* v. *Township of Scott*, 588 U.S. 180 (2019), First Choice's federal claims are ripe without state adjudication because First Choice suffered an Article III injury the moment the Attorney General issued the subpoena. His demand for donor disclosure objectively chills First Choice's associational and speech rights, causing its donors to think twice before supporting the faith-based nonprofit. And the subpoena expressly threatened contempt for noncompliance along with onerous enforcement proceedings in state court (which he has aggressively pursued). Those injuries readily satisfy Article III.

The targets of state subpoenas extend far beyond pregnancy centers. They run the gamut of ideological and business interests, including large tech companies, professional sports leagues, energy companies, firearms groups, and immigrant and LGBTQ advocacy groups. When subpoenas violate the federal constitution, these groups should not be relegated to state court to enforce their rights. This Court should reverse.

STATEMENT OF THE CASE

I. Factual background

A. State attorneys general possess broad investigatory powers.

State attorneys general wield expansive investigatory powers. They may issue broad subpoenas and civil investigative demands for the production of information based on a subjective suspicion of wrongdoing. *E.g.*, N.J. Stat. Ann. § 56:8-3; accord N.J. Stat. Ann § 45:1-18; N.J. Stat. Ann. § 45:17A-33(c); Mass. Gen. Laws Ann. ch. 93A, § 6(1); N.H. Rev. Stat. Ann. § 358-A:8; Wash. Rev. Code Ann. § 19.86.110(1). The New Jersey Attorney General, for instance, says that he may issue a subpoena whenever he "believes" an investigation to be in the "public interest." J.A.331 n.4 (quoting N.J. Stat. Ann. § 56:8-3); accord, *e.g.*, Ky. Rev. Stat. Ann. § 367.240; Iowa Code Ann. § 714.16(3); Mo. Ann. Stat. § 407.040. Such broad statutory language has led the New Jersey Supreme Court to refer to the Attorney General's investigatory authority as the "power of inquisition." *In re Addonizio*, 248 A.2d 531, 539 (N.J. 1968); see also *In re KAHEA*, 497 P.3d 58, 66 (Haw. 2021) (concluding that in Hawaii not even state courts can "second-guess the Attorney General's discretion").

Under the Consumer Fraud Act, subpoenas issued by the Attorney General "have the force of law." N.J. Stat. Ann. § 56:8-4(a). When a person fails to "obey any subpoena issued by the Attorney General, the Attorney General may apply to the Superior Court and obtain an order ... [a]djudging such person in contempt of court." N.J. Stat. Ann. § 56:8-6(a). Additional statutory penalties include the

vacatur of a corporate charter and revocation of a business license. § 56:8-6(b)–(d). That is why these subpoenas warn recipients that failure to comply could subject them to contempt and other punishment. Pet.App.90a.

B. Pregnancy centers have faced increasing governmental and private hostility.

Government officials have shown increasing animosity towards the pro-life mission of pregnancy centers. And since this Court's decision in *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022), was leaked, these centers and pro-life organizations have endured nearly 100 criminal acts—including arson, assault, and violence—often with no governmental response. Pet.App.182a; *Tracking Attacks on Pregnancy Centers & Pro-Life Groups*, CatholicVote (Jan. 21, 2025), perma.cc/U5PP-MJ3Z (documenting 96 attacks).

Extremists have threatened pregnancy center supporters nationwide: "We will hunt you down and make your lives a living hell." *Jane's Revenge – Night of Rage Communique*, Jane's Revenge (June 26, 2022), perma.cc/Z9W4-8XMR. They threaten that their "war" on pregnancy centers will extend to supporters' cars, homes, and even lives. *Ibid.*

Some extremists have made good on these threats, vandalizing the home of at least one pregnancy center board member. Her windows were broken and her garage and driveway spray-painted in red, "Jeanne, if abortions aren't safe neither are you!" Francis X. Donnelly, *Pro-Life Pregnancy Center in Eastpointe, Board Member's House Spray-Painted with Graffiti*, Detroit News (Dec. 17, 2022), perma.cc/GL6F-PQUA.

C. The New Jersey Attorney General targets pregnancy centers.

In July 2022, the Attorney General established a "Strike Force" to pursue "civil and criminal enforcement actions" to promote abortion access. Press Release, N.J. Off. of Att'y Gen., AG Platkin Announces Actions to Protect Reproductive Health Care Providers and Those Seeking Reproductive Care in New Jersey (Dec. 7, 2022), perma.cc/8ZW7-TAPZ. The Strike Force coordinated a statewide "consumer alert" about pregnancy centers, complaining that these pro-life organizations—to no one's surprise—"do NOT provide abortion[s]." J.A.357. The alert cautioned citizens that pregnancy centers "[o]ffer free services (including pregnancy tests, ultrasounds, and adoption information) or supplies (including diapers and baby clothes)." J.A.358. The Attorney General makes the same charges on social media, where he warns that "[i]f you're seeking reproductive care, beware of Crisis Pregnancy Centers!" Attorney General Matt Platkin (@NewJerseyOAG), X (Dec. 7, 2022), perma.cc/38AU-XAMZ.

The Attorney General's consumer alert redirects women from pregnancy centers to Planned Parenthood. J.A.361. That's not surprising because, as a public records request revealed, the Attorney General enlisted Planned Parenthood to help write the alert, thanking them for their "partnership." Pet.App.191a–96a.

The Attorney General also co-authored an open letter with 15 other attorneys general accusing pregnancy centers of misleading consumers. J.A.363–80. His chief grievance: that pregnancy centers "do not provide abortions or abortion services." J.A.364.

He and his colleagues pledged to take "numerous actions" against those centers. J.A.377.

D. The Attorney General demands First Choice's donor identities, contact information, and other sensitive information.

The Attorney General made good on his pledge by serving two pregnancy centers with investigatory subpoenas. One of those centers is First Choice, a faith-based nonprofit that has long served New Jersey women, providing material support and medical services like ultrasounds and pregnancy tests under the direction of a licensed medical director. Pet.App.115a–16a. First Choice does not provide or refer for abortions, and it states so plainly and repeatedly on its client website. Pet.App.116a; First Choice Women's Res. Ctrs., https://1stchoice.org, perma.cc/678D-RPVS. First Choice is funded exclusively by private donations and provides all its services for free. Pet.App.180a.

The Attorney General's subpoena told First Choice: "You are hereby commanded to produce" documents and information responsive to 28 demands. Pet.App.89a–110a. Asserting three statutory bases, the Attorney General demanded, among other things, copies of *every* donor solicitation and *every* document or video provided to donors over a nearly three-year period. Pet.App.90a, 100a–02a. "Solicitation[s]" is broadly defined to include any request directly or indirectly for financial support, including but not limited to oral and written requests and mail and radio campaigns. Pet.App.100a (referencing N.J. Stat. Ann. § 45:17A-20). "Document" is also broadly defined to include every PDF, pamphlet, presentation, email, text message, or

audio file (as well as drafts of these materials). Pet.App.96a.

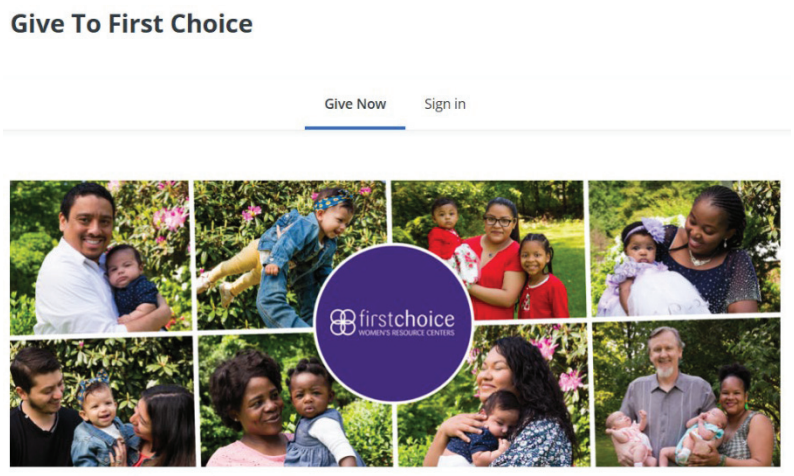
Most aggressively, the Attorney General demands the full names, phone numbers, addresses, and present or last known place of employment of every one of First Choice's donors who gave through any means other than one specific website marketed towards its donors. Pet.App.98a, 100a. That demand would require First Choice to disclose the identities behind some 5,000 individual donations—historically nearly half of First Choice's total contributions by number and more than 70% by amount. Pet.App.189a. And the subpoena twice threatens: "Failure to comply with this Subpoena may render you liable for contempt of Court and such other penalties as are provided by law." Pet.App.90a.

The Attorney General's professed concern was "whether First Choice's donors were misled" into believing First Choice provided abortions. J.A.35, 308–10. He said he needed donor names and contact information so that he could "contact a representative sample and determine what they did or did not know about their charitable giving." J.A.346. Yet his demand seeks the identities of those who could not possibly have been deceived—including, for example, everyone who gave at First Choice's benefit dinners or through church baby-bottle campaigns. And the Attorney General made this broad demand without identifying a single donor complaint.

The Attorney General's donor-confusion theory centered on the donation page on First Choice's client website. J.A.43; Pet.App.153a. But a donor reaches that page only by selecting "About" and then "Give" on the client website, which states repeatedly that

First Choice "is an abortion clinic alternative that does not perform or refer for termination services."[1] And the "About" tab also includes an FAQ page that answers the question "Do you do abortions?" with "No."[2]

Still, the Attorney General suggests a donor might end up on First Choice's donation page[3] without reading any of that language. And he complains that the donation page itself doesn't include First Choice's mission statement. J.A.43. But even if a donor somehow arrives at the donation page without understanding that First Choice is pro-life, that page would eliminate any confusion. J.A.383.



[1] *E.g.*, First Choice Women's Res. Ctrs., https://1stchoice.org, perma.cc/678D-RPVS; *Give to First Choice*, First Choice Women's Res. Ctrs., https://www.myegiving.com/App/Form/24dff450-d338-49d3-b2f9-7ac52352d9f4, perma.cc/FN65-36Z8.

[2] *FAQs*, First Choice Women's Res. Ctrs., https://-1stchoice.org/faqs/, perma.cc/3XZ6-FZ2K.

[3] *Give to First Choice*, *supra* note 1; J.A.383.

As shown above, the page prominently displays a photo collage of smiling families with their young babies. Compare that with Planned Parenthood's donation page, J.A.381–82, which nowhere pictures babies.

First Choice's donation form also explains that the platform is administered by "Ministry Brands Amplify" and directs donors to "contact your church or organization if you have questions or need assistance with your donation."[4]

After contributing, every donor who does not opt out of the mailing list receives monthly follow-up communications from First Choice highlighting its pro-life mission. As a sample month's newsletter shows, these mailings are avowedly pro-life, thanking donors for their "commitment to working [with First Choice] to save every life we possibly can." J.A.387; J.A.386 ("With each gift, your generosity accomplishes something truly meaningful, starting with the saving of innocent lives."). And they invite donors to say "Yes" once more "to sav[ing] innocent lives." J.A.387. The nonprofit's pro-life mission is even clear from the face of this sample envelope:

[4] *Give to First Choice*, *supra* note 1.

J.A.385.

E. The subpoena chills First Choice's associational and speech rights.

The subpoena's demands harm First Choice even without a court order enforcing them. Because of the "pattern of violence and intimidation" against pregnancy centers, First Choice is "concerned that if its donors' identities became public, they may be subjected to similar threats." Pet.App.182a. And since "[m]any donors desire for their donations and communications with First Choice to remain confidential," the threat of disclosing such information compromises First Choice's ability to recruit and retain donors, personnel, and affiliates. Pet.App.182a–84a; see also Pet.App.182a ("Failure to protect their identities would cause [donors] to cease donating to First Choice."). Simply put, the Attorney General's "demands harass First Choice and discourage individuals and entities from associating with [it]." Pet.App.139a.

Several donors whose confidential identities would be disclosed under the subpoena jointly submitted an anonymous declaration describing the present chill on their First Amendment-protected association. They testified that "[t]he possibility that our identities will be disclosed to a law enforcement official who is openly hostile to pro-life organizations threatens both First Choice's protected associational rights and our rights as well." Pet.App.177a. They also explained that "[e]ach of us would have been less likely to donate to First Choice if we had known information about the donation might be disclosed to an official hostile to pro-life organizations." *Ibid.* The donors regard the Attorney General's investigation as an imminent threat to their association with First Choice. Pet.App.178a.

To protect its donors' First Amendment rights, as well as its own, First Choice has refused to comply with the Attorney General's disclosure demand.

II. Procedural history

A. The federal district court holds this case unripe.

Given the ongoing threat to its First Amendment rights, First Choice filed this action in federal court and requested emergency relief. Pet.App.111a–47a. First Choice raised First Amendment associational and speech claims. Though the Attorney General did not contest justiciability, the district court dismissed the action *sua sponte*. Relying on *Google*, 822 F.3d 212, the lower court held that First Choice's Section 1983 claims are unripe until "the state court enforces the Subpoena." Pet.App.79a–80a. Even while so holding, the district court acknowledged the preclusion trap it was creating: a federal challenge to

a subpoena would "seldom if ever be ripe" because "res judicata principles will likely bar … a claim in federal court" after state-court adjudication. Pet.App.82a n.7.

The Attorney General then filed an enforcement action in state court. J.A.39–63. Meanwhile, First Choice appealed the federal ruling. And because the state-court action threatened to preclude its federal claims, First Choice sought an expedited appeal and an injunction pending appeal from the Third Circuit. Both were denied. J.A.64–68. First Choice also petitioned this Court for mandamus or certiorari before judgment, which this Court denied. *In re First Choice Women's Res. Ctrs., Inc.*, 144 S. Ct. 2552 (2024).

B. The state court enforces the subpoena without deciding the federal issues.

The state trial court granted the Attorney General's motion to enforce the subpoena and directed First Choice to "respond fully" within 30 days. Pet.App.70a. The court also instructed the parties to confer regarding the subpoena's scope. Pet.App.155a–56a, 170a. Yet the state court declined to reach First Choice's constitutional objections, finding them "premature." Pet.App.156a.

First Choice appealed to the Appellate Division of the New Jersey Superior Court. It also began conferring about the scope of the subpoena, served written responses and objections—including an objection to providing donor identities—and started producing documents. To date, First Choice has produced more than 2,300 pages of documents but has not disclosed any donor names or contact information.

C. The Third Circuit remands.

After the state court enforced the subpoena, both parties acknowledged that First Choice's federal suit was ripe. J.A.121. So the Third Circuit dismissed First Choice's appeal "as moot," noting that "[b]ased on subsequent developments in state court, it is now undisputed that [First Choice's] claims are ripe," and directed the district court to consider any request for an injunction "in the first instance." *Ibid.* On remand, First Choice renewed its request for a temporary restraining order and injunction.

D. The Attorney General moves to enforce the state court's order and for sanctions.

Back in state court, the Attorney General filed a motion "to enforce litigant's rights" and impose sanctions on First Choice. See Pet.App.62a. He insisted that the state court's order to "respond fully" required First Choice to hand over everything he demanded—including donor identities. See Pet.App.59a–66a.

The state court declined to rule because of First Choice's pending appeal to the Appellate Division. Pet.App.62a. So the Attorney General moved to temporarily remand the case to allow the trial court to consider his new motion. Pet.App.67a–68a. The state appellate court granted that motion. *Ibid.*

E. The federal district court dismisses this case as unripe a second time.

The federal district court then ruled on First Choice's emergency motion for an injunction, which had been pending nearly four months. It rejected the Attorney General's argument that the state court's prior order precluded federal review. Pet.App.26a–

29a. Yet despite the state court's enforcement of the subpoena, the district court again held the case not ripe. Pet.App.26a. This time, the district court said First Choice's claims would not be ripe until the state court "require[s] the subpoena recipient to respond to the subpoena under threat of contempt." Pet.App.42a. First Choice appealed and moved to expedite, which the Third Circuit granted. J.A.204–06.

Meanwhile, the state trial court denied the Attorney General's motion to enforce litigant's rights and for sanctions. The court explained that First Choice had complied with its order to "fully respond" by producing documents and serving responses and objections. Pet.App.64a–65a.

F. The Third Circuit affirms.

The day before oral argument in the Third Circuit, the Attorney General sent First Choice a letter. Supp.Pet.App.1a–3a. After nearly a year of litigation in five courts, he stated that "at this time," he was seeking the identities of only those donors who gave "through links on First Choice's client-facing websites." Supp.Pet.App.2a. Still, he "reserve[d] the right to seek identities of other donors as needed." *Ibid.*

Two days after argument, the Third Circuit issued a divided per curiam decision affirming the district court's dismissal. Pet.App.4a. Judge Bibas would have held "First Choice's constitutional claims ripe" as "indistinguishable from *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021)." Pet.App.3a n.†. But the majority held First Choice's claims were not yet ripe because First Choice could still assert its federal constitutional claims in state court:

> [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. We believe that the state court will adequately adjudicate First Choice's constitutional claims, and we expect that any future federal litigation between these parties would likewise adequately adjudicate them.

Pet.App.4a–5a. The majority did not explain these findings or say why it believed First Choice's declarations were insufficient to establish "enough of" an injury.

The Attorney General agreed not to pursue any further enforcement of the subpoena in state court while First Choice sought review from this Court. Pet.App.87a–88a. This Court granted certiorari.

SUMMARY OF THE ARGUMENT

For nearly three quarters of a century, this Court has recognized the right to maintain the confidentiality of one's associations from government disclosure demands. For even longer, Congress has guaranteed a federal forum for claims of unconstitutional treatment at the hands of state officials. 42 U.S.C. 1983. Yet the lower courts have consistently barred First Choice from raising its First Amendment associational and speech claims in federal court. The decision below carves out subpoena proceedings from

Section 1983's ambit, relegating to state court all federal constitutional claims raised by the target of a subpoena.

That result turns Section 1983 on its head and imposes a state-litigation requirement in violation of *Knick* v. *Township of Scott*, 588 U.S. 180 (2019). There is no reason why "a federal claim in a federal court must await an attempt to vindicate the same claim in a state court." *McNeese* v. *Board of Educ. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 672 (1963). Yet the guarantee of a federal forum "rings hollow" for the targets of state-investigatory demands "who are forced to litigate their claims in state court." *Knick*, 588 U.S. at 185.

It gets worse. Once a state court adjudicates First Choice's federal constitutional claims, res judicata will almost certainly bar First Choice from *ever* having those claims decided by a federal court. The target of a subpoena thus "finds himself in a Catch-22." *Id.* at 184–85. "He cannot go to federal court without going to state court first; but if he goes to state court and loses, his [constitutional] claim will be barred in federal court." *Ibid*.

Just like the federal claim in *Knick*, First Choice's constitutional challenge is ripe without state litigation because First Choice suffered an Article III injury from the moment the government took action. See *Twitter, Inc.* v. *Paxton*, 56 F.4th 1170, 1178 n.3 (9th Cir. 2022) (holding challenge ripe "even prior to" state litigation where plaintiff establishes "legally cognizable harm"). Namely, First Choice has shown that the Attorney General's donor disclosure demand objectively chills its associational and speech rights. That injury satisfies Article III.

First Choice also satisfies Article III because it has "alleged an actual and well-founded fear that the [subpoena] will be enforced against [it]." *Virginia* v. *American Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988). Here, a credible threat of enforcement is undeniable: the face of the subpoena expressly threatens enforcement and contempt penalties for noncompliance, and the Attorney General has already initiated burdensome enforcement proceedings in state court. In holding that the Attorney General's demand for donor identities does not give rise to a ripe Article III injury, the decision below contravenes the principle that "it is not necessary" for a plaintiff to "expose himself to actual arrest or prosecution to be entitled to challenge [government action] that he claims deters the exercise of his constitutional rights." *Steffel* v. *Thompson*, 415 U.S. 452, 459 (1974).

Nor can prudential concerns justify relegating subpoena recipients to state court. The prudential ripeness doctrine is inconsistent with federal courts' "virtually unflagging obligation … to exercise the jurisdiction given them." *Colorado River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976). And, in any event, the doctrine's factors do not support abdicating that duty here.

For all these reasons, this Court should reverse.

ARGUMENT

I. The state-litigation requirement deprives First Choice of its guaranteed federal forum.

The Third Circuit held that First Choice's claims are not ripe because the nonprofit "can continue to assert [those] claims in state court." Pet.App.4a. The

imposition of this state-litigation requirement turns Section 1983 on its head, in conflict with this Court's decision in *Knick*.

A. Section 1983 guarantees First Choice a federal forum.

Section 1983 "guarantees 'a federal forum for claims of unconstitutional treatment at the hands of state officials.'" *Knick*, 588 U.S. at 185 (quoting *Heck*, 512 U.S. at 480). Congress chose to "interpose the federal courts between the States and the people, as guardians of people's federal rights." *Patsy* v. *Board of Regents of Fla.*, 457 U.S. 496, 503 (1982) (citation modified). Thus, the "general rule" is that plaintiffs may bring constitutional claims under Section 1983 "without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available." *Knick*, 588 U.S. at 194 (citation modified). Indeed, this Court has long held that the "federal remedy is *supplementary* to the state remedy, and the latter need not be first sought … before the federal one is invoked." *Monroe* v. *Pape*, 365 U.S. 167, 183 (1961) (emphasis added), overruled on other grounds by, *Monell* v. *Department of Soc. Servs.*, 436 U.S. 658 (1978).

Knick v. *Township of Scott* is fatal to the lower court's creation of a state-litigation requirement. *Knick* overruled *Williamson County Regional Planning Commission* v. *Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). In *Williamson County*, a developer brought a Section 1983 takings claim against a zoning board. *Id.* at 194. This Court held the claim not "ripe" because the developer had not sought compensation "through the procedures the State ha[d] provided for doing so." *Ibid.*

The consequences of *Williamson County*'s state-litigation mandate became clear in *San Remo Hotel, L.P.* v. *City & County of San Francisco,* 545 U.S. 323, 345 (2005). The plaintiff there complied with *Williamson County* and brought an inverse condemnation action in state court, attempting to reserve its federal Fifth Amendment claim. *San Remo*, 545 U.S. at 331–32. But this Court held that the Full Faith and Credit statute, 28 U.S.C. 1738, required the federal court to give preclusive effect to the state court's decision. *San Remo*, 545 U.S. at 345. This meant that the state-court litigation that "gave rise to a ripe federal takings claim simultaneously barred that claim, preventing the federal court from ever considering it." *Knick*, 588 U.S. at 188. "The federal claim die[d] aborning." *Id.* at 185.

Like the state-litigation requirement at issue in *Knick*, the decision below renders "hollow" Section 1983's "guarantee of a federal forum." *Ibid.* First Choice is "forced to litigate [its] claims in state court." *Ibid.* Worse, the target of a state subpoena "finds himself in a Catch-22." *Id.* at 184. "He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court." *Id.* at 184–85. That violates the "settled rule" that "exhaustion of state remedies is not a prerequisite to an action" under Section 1983. *Id.* at 185 (citation modified).

The Attorney General nevertheless insists that First Choice's constitutional claims are not ripe because state law might provide a remedy. BIO.27. But that "is no answer" when Congress has guaranteed *federal* relief. *Monroe*, 365 U.S. at 183. Further, the Attorney General's proposed loophole would fit a Mack truck. If the availability of state-

court proceedings that might stop unconstitutional state action bars federal-court review, that would erase Section 1983 from the U.S. Code. But federal courts may not "decline the exercise of … jurisdiction simply because the rights asserted may be adjudicated in some other forum." *McNeese*, 373 U.S. at 674 n.6 (citation modified). First Choice's claims "are entitled to be adjudicated in the federal courts." *Id.* at 674.

The Attorney General suggests this Court need not worry about preclusion because the doctrine depends on case-specific facts and New Jersey law. BIO.31. He was much less circumspect below when he argued that his later-filed state-court enforcement action precluded First Choice's federal claims in federal court. J.A.143. He maintained that allowing First Choice to raise those claims would be "incompatible with preclusion's core principles," J.A.149, and asserted that both claim and issue "[p]reclusion bar[ ] [First Choice] from returning to [federal court] for a do-over." J.A.143.

Notably, the Attorney General *succeeded* in using preclusion to block Smith & Wesson from federal court in a similar case. There, the district court abstained from deciding Smith & Wesson's constitutional challenge to a subpoena issued by the Attorney General. *Smith & Wesson Brands, Inc.* v. *Attorney Gen. of N.J.*, 27 F.4th 886, 892–93 (3d Cir. 2022). And after the Third Circuit reversed, *ibid.*, the district court dismissed Smith & Wesson's first-filed constitutional claims as res judicata because the state court had since rejected them. *Smith & Wesson Brands, Inc.* v. *Attorney Gen. of N.J.,* 105 F.4th 67, 70 (3d Cir. 2024).

Such preclusion threats, as the district court acknowledged, loom large. Pet.App.82a n.7. Under 28 U.S.C. 1738, ordinary preclusion principles apply in Section 1983 cases, both as to issues actually litigated in state court, *Allen* v. *McCurry*, 449 U.S. 90, 96–98 (1980), and as to those that "could have been," *Migra* v. *Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 83–84 (1984). Thus, "a federal court *must* give to a state-court judgment the same preclusive effect as would be given that judgment under the law of the State in which the judgment was rendered." *Id*. at 81 (emphasis added).

Still, the Attorney General dismisses preclusion as no big deal since review of state-court rulings on federal issues might be possible in this Court. BIO.31. But Congress enacted Section 1983 to provide individuals deprived of constitutional rights by state officials "*immediate* access to the federal courts." *Patsy*, 457 U.S. at 504 (emphasis added). The remote *possibility* of this Court's review after years of state-court litigation is no substitute for the federal forum *guaranteed* by Section 1983.

B. The Attorney General's focus on "non-self-executing" subpoenas does not justify the state-litigation requirement.

The Attorney General makes much of whether the subpoena is "non-self-executing." See BIO.i–33 (using a variant of the phrase "self-executing" 36 times). But that red herring does not excuse the lower courts from exercising jurisdiction.

As an initial matter, virtually *all* subpoenas are "non-self-executing" because penalties for non-compliance require prior adjudication by courts. The

same is true of most regulations, statutes, and criminal prosecutions. But this does not mean would-be challengers must await adjudications (or even the filing of an enforcement action). They can bring suit when they suffer an Article III injury. Under the Attorney General's reasoning, federal courts would lack jurisdiction to adjudicate *any* pre-enforcement challenge. But of course they do not. *E.g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149 (2014) (allowing a pre-enforcement suit); *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118 (2007) (same).

Further, the subpoena's wording tells targets that it *is* "self-executing." The document cautions that "[f]ailure to comply with this Subpoena may render you liable for contempt of Court and such other penalties as are provided by law." Pet.App.90a. It does not say, "failure to comply with *a later court order* may render you liable."

In fact, subpoenas issued under the Consumer Fraud Act, like this one, "have the force of law." N.J. Stat. Ann. § 56:8-4(a). When a person fails to "obey any subpoena issued by the Attorney General, the Attorney General may apply to the Superior Court and obtain an order ... [a]djudging such person in contempt of court." N.J. Stat. Ann. § 56:8-6(a). The court may also revoke an organization's corporate charter and order "such other relief as may be required" until the organization "obeys the subpoena." N.J. Stat. Ann. § 56:8-6(b)–(d).

Critically, in his state-court enforcement action, the Attorney General alleged that First Choice had *already* violated the Charitable Registration and Investigations Act, the Consumer Fraud Act, and the Professions and Occupations Law "by failing to

produce the documents requested in the Subpoena." J.A.50 ("[First Choice] has violated CRIA by failing to produce the documents requested in the Subpoena."); J.A.53 ("[First Choice] has violated the CFA by failing to produce the documents requested in the Subpoena."); J.A.59 ("[First Choice] has violated the P&O law by failing to produce the documents requested in the Subpoena.").

Despite what the Fifth Circuit said in *Google*, 822 F.3d at 225, this Court's decision in *Reisman* v. *Caplin* does not justify a state-litigation requirement. In *Reisman*, two tax attorneys sought to enjoin an IRS summons that demanded disclosure of their work product. 375 U.S. 440, 441–42 (1964). The Court dismissed the action for "want of equity," holding that petitioners had an adequate remedy at law. *Id.* at 443. Because the IRS could not enforce the summons without a federal district court order, the attorneys would be able to raise their challenge before an IRS hearing examiner and then in federal court, all before the summons was executed. *Id.* at 445–46. This alternative remedy was adequate, the Court held, because the attorneys "would suffer *no injury* while testing the summons." *Id.* at 449 (emphasis added).

Reisman does not control here for three reasons. *First*, the plaintiffs there did not allege an ongoing First Amendment injury. The Court's decision turned on the fact that the attorneys' alleged injuries—appropriation of work product—had not yet materialized. *Id.* at 442, 449–50; *Twitter*, 56 F.4th at 1178 ("The key to the holding in *Reisman* was that there had not yet been an injury."). *Reisman* thus "is inapplicable" in a "First Amendment" case alleging "ongoing injuries." *Media Matters for Am.* v. *Paxton*, 138 F.4th 563, 582–83 (D.C. Cir. 2025).

In stark contrast, First Choice suffers ongoing First Amendment injury every day that the disclosure demand is not enjoined. First Choice's ability to associate with its supporters and to solicit donations—and its donors' ability to give to or associate with First Choice—have been objectively chilled from the moment it received the New Jersey Attorney General's subpoena. *Americans for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 606–07 (2021) ("*AFP*").

Second, *Reisman* was a case about equitable jurisdiction. Instead of considering ripeness or an Article III injury, this Court addressed only the adequacy of petitioners' alternative remedy at law and dismissed the action for "want of equity." 375 U.S. at 443. The dismissal was thus based on equitable jurisdiction. And unlike with equitable jurisdiction, an adequate remedy at law does not defeat jurisdiction under Section 1983. This Court has repeatedly held that a plaintiff may bring such a claim even when state law offers an adequate remedy. *E.g.*, *Monroe*, 365 U.S. at 183 (finding federal Section 1983 remedy "supplementary" to any state remedy). And *Knick* held that a federal plaintiff need not exhaust state-court remedies. 588 U.S. at 185.

Third, the alternative remedy at issue in *Reisman* guaranteed review of the plaintiffs' constitutional claims *in federal court*. Yet if First Choice is forced to litigate its constitutional claims in state court, preclusion will likely attach, and First Choice will be permanently denied its chosen federal forum. *Knick*, 588 U.S. at 184–85; see *Smith & Wesson*, 105 F.4th at 70 (holding Smith & Wesson's first-filed federal claim barred by res judicata because parallel state proceedings resolved the issue first).

In short, unlike the *Reisman* petitioners, First Choice has suffered and will continue to suffer multiple Article III injuries "while testing the summons" in state court. 375 U.S. at 449. Its claims are ripe for review.

C. The state-litigation requirement would shield state officials from Section 1983 liability.

State attorneys general possess sweeping authority to investigate individuals and organizations under their jurisdiction. As explained above, they may demand sensitive and even constitutionally protected information based on a subjective belief that the investigation is in the public interest.

Indeed, diverse groups from tech giants, oil and gas companies, and gun manufacturers to media groups, immigrant advocacy organizations, and pro-life pregnancy centers have faced invasive state-investigatory demands. State attorneys general have even investigated the political action committees of opposing political parties. *E.g.*, *WinRed, Inc.* v. *Ellison*, 59 F.4th 934, 937–38 (8th Cir. 2023); Graham Moomaw, *Miyares Takes Aim at Democratic Fundraising Platform ActBlue*, Va. Mercury (Aug. 5, 2024), perma.cc/4KTA-WWE9. Because of flawed federal rulings like the one below, some targets of state-investigative demands have already been denied their choice of a federal forum. *E.g.*, *Google*, 822 F.3d at 219; *Smith & Wesson*, 105 F.4th at 84; *Exxon Mobil Corp.* v. *Schneiderman*, 316 F. Supp. 3d 679, 699–704 (S.D.N.Y. 2018), aff'd in part, appeal dismissed in part sub nom., *Exxon Mobil Corp.* v. *Healey*, 28 F.4th 383 (2d Cir. 2022).

It is hardly surprising that such broad powers have led to allegations of abuse. *E.g.,* House Letter to AG Schwalb (Oct. 30, 2023), perma.cc/2H6S-9WRF (expressing concerns over donor privacy and "apparent political motivation[ ]" of investigation). And at a time when state attorneys general are accused of weaponizing their investigatory powers, the ability to seek federal redress under Section 1983 remains crucial. That is particularly true in a state like New Jersey, where the governor appoints (with the advice and consent of the senate) the attorney general, the State's supreme court justices, and all the State's lower-court judges. N.J. Const. art. V, § 4, ¶ 3 (attorney general); N.J. Const. art. VI, § 6, ¶ 1 (justices and judges).

The Third Circuit expressed confidence "that the state court will adequately adjudicate First Choice's constitutional claims." Pet.App.4a–5a. But in enacting Section 1983, the Reconstruction Congress was much less sure that state courts would be free from the influence of state politics. *Briscoe* v. *LaHue*, 460 U.S. 325, 363–64 (1983) (Marshall, J. dissenting) ("The Debates over the 1871 Act are replete with hostile comments directed at state judicial systems."). As this Court emphasized nearly two centuries ago, state affections run deep: "The constitution has presumed … that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control, or be supposed to obstruct or control, the regular administration of justice." *Martin* v. *Hunter's Lessee*, 14 U.S. 304, 347 (1816). Concerns about such loyalty are the premise behind diversity jurisdiction. See generally 28 U.S.C. 1332. And while judges will surely try to rule impartially, their political and institutional loyalties may unconsciously

sway their decisions. See *Hunter's Lessee*, 14 U.S. at 347. That might explain why the Attorney General has fought so hard to keep First Choice out of federal court.

Regardless, that a state court might get it right does not excuse the federal courts from their "virtually unflagging obligation … to exercise the jurisdiction given them." *Colorado River Water Conservation Dist.*, 424 U.S. at 817. That is no less true here than in *Knick*; constitutional claims against state-investigative demands "should be handled the same as other claims under the Bill of Rights." 588 U.S. at 202. By shuttering vital access to federal courts, the Third Circuit's state-litigation requirement is anathema to Section 1983. This Court should reverse.

II. State litigation is unnecessary because First Amendment chill and credible threat of enforcement establish ripe Article III injuries.

In requiring First Choice to litigate its federal claims in state court, the Third Circuit reasoned that First Choice had not yet established "enough of an injury." Pet.App.4a. But at the time of the subpoena's issuance, First Choice suffered multiple injuries-in-fact under Article III, which doesn't recognize gradations of injury. And because ripeness and injury-in-fact often "boil down to the same question," a plaintiff who satisfies Article III's injury-in-fact requirement also satisfies ripeness. *SBA List*, 573 U.S. at 157 n.5; *Trump* v. *New York*, 592 U.S. 125, 131 (2020) (per curiam).

Because First Choice's injuries, like Knick's, were inflicted when the challenged government action first occurred, state litigation is unnecessary to ripen First Choice's claims. Specifically, First Choice suffered two injuries-in-fact: (1) an objective chill of its associational and speech rights and (2) a credible threat of enforcement. Both establish a case and controversy under Article III.

A. The disclosure demand objectively chills First Choice's First Amendment rights.

The First Amendment protects First Choice's right to freely associate with and solicit contributions from its donors and to do so anonymously. Here, First Choice has suffered an injury-in-fact and its First Amendment claims are ripe because its associational and speech rights have been objectively chilled by the Attorney General's disclosure demand. See *Laird* v. *Tatum*, 408 U.S. 1, 11 (1972) (Article III injury can "arise from the deterrent, or 'chilling,' effect of governmental regulations that fall short of a direct prohibition"). That injury-in-fact is not "contingent" on any future proceeding but occurring every day the donor disclosure demand is not enjoined. *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580–581 (1985) (focus of ripeness is whether a claim involves "contingent future events") (citation modified).

1. The First Amendment protects against donor disclosure.

The First Amendment prohibits the government from "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of

grievances." U.S. Const. amend. I. "[I]mplicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others." *AFP*, 594 U.S. at 606 (citation modified). In particular, the freedom to assemble includes the "freedom to associate ... for the common advancement of ... beliefs and ideas." *Kusper* v. *Pontikes*, 414 U.S. 51, 56 (1973). That right "lies at the foundation of a free society," *Shelton* v. *Tucker*, 364 U.S. 479, 486 (1960), guaranteeing freedoms necessary for "the preservation of our democracy," *Gibson*, 372 U.S. at 558.

The right of association includes the right to associate *privately*. *Id.* at 555 (maintaining privacy is a "strong associational interest"); *AFP*, 594 U.S. at 619–20 (Thomas, J., concurring) (explaining that the "right to assemble includes the right to associate anonymously"). As this Court held in *Patterson*, the "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." 357 U.S. at 462. Thus, the right to associate extends to the "significant number of persons who support causes anonymously." *Watchtower Bible & Tract Soc'y of N.Y., Inc.* v. *Village of Stratton*, 536 U.S. 150, 166–67 (2002). Indeed, this Court has trumpeted "the vital relationship between freedom to associate and privacy in one's associations." *AFP*, 594 U.S. at 606–07 (quoting *Patterson*, 357 U.S. at 462).

Privacy in association furthers "a wide variety of political, social, economic, educational, religious, and cultural ends," and "is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by

the majority." *AFP*, 594 U.S. at 606–07 (citation modified). To put it simply, anonymity enables association and speech. See *Talley* v. *California*, 362 U.S. 60, 64 (1960). It promotes "free trade in ideas and beliefs." *Gibson*, 372 U.S. at 555. And it does so no matter an idea's "truth, popularity, or social utility." *NAACP* v. *Button*, 371 U.S. 415, 444–45 (1963). Throughout our nation's history, private associations have been crucial engines of speech precisely because they enable members to support a cause anonymously. As the NAACP put it in its reply brief in *Patterson*, "[t]he right of anonymity is an incident of a civilized society and a necessary adjunct to freedom of association and to full and free expression in a democratic state." Pet'r's Reply Br. at 3, *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958) (No. 91).

For this reason, "[t]he Constitution protects against the compelled disclosure of political associations and beliefs." *Brown* v. *Socialist Workers '74 Campaign Comm. (Ohio)*, 459 U.S. 87, 91 (1982). Disclosure demands "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley* v. *Valeo*, 424 U.S. 1, 64 (1976) (per curiam). It is thus unsurprising that this Court has "repeatedly found that compelled disclosure, *in itself*, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Ibid.* (emphasis added); *AFP*, 594 U.S. at 606–07; *id.* at 619–20 (Thomas, J., concurring) (compelled disclosures "directly burden[ ] the right to associate anonymously"). And because the compelled disclosure of donor names imposes "significant encroachments on First Amendment rights," *Buckley*, 424 U.S. at 64

& n.73, government demands for donor disclosure must satisfy exacting scrutiny, *AFP*, 594 U.S. at 618.

2. The disclosure demand objectively chills First Choice's associational rights.

First Amendment plaintiffs—including recipients of state-investigatory demands—satisfy Article III's injury-in-fact requirement when their rights to association or speech are objectively chilled. *AFP*, 594 U.S. at 618–19 (association); *Twitter*, 56 F.4th at 1178 n.3 (speech). It is well settled that plaintiffs may establish standing based on "the deterrent, or 'chilling,' effect of governmental [actions] that fall short of a direct prohibition against the exercise of First Amendment rights." *Laird*, 408 U.S. at 11. "When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals." *AFP*, 594 U.S. at 618–19. "The risk of a chilling effect on association is enough … '[b]ecause First Amendment freedoms need breathing space to survive.'" *Ibid.* (quoting *Button*, 371 U.S. at 433).

The "fundamental question" in cases alleging injury in the form of a chill on speech or association "is whether the challenged [action] objectively chills protected expression" or association. *Speech First, Inc.* v. *Cartwright*, 32 F.4th 1110, 1120 (11th Cir. 2022); *Speech First, Inc.* v. *Schlissel*, 939 F.3d 756, 765 (6th Cir. 2019) (same). In assessing whether an objective chill exists, courts consider whether the "[g]overnment action … is likely to deter a person of ordinary firmness." *Benham* v. *City of Charlotte*, 635 F.3d 129, 135 (4th Cir. 2011) (citation modified); *Rio*

Grande Found. v. *Oliver*, 57 F.4th 1147, 1164 (10th Cir. 2023) (objective chill is one that "would plausibly deter a reasonable person in the plaintiff's position"); *Brown* v. *Kemp*, 86 F.4th 745, 769 (7th Cir. 2023) (objective chill exists when "fear of enforcement against [plaintiffs] is reasonable"); *cf. National Rifle Ass'n of Am.* v. *Vullo*, 602 U.S. 175, 191 (2024) ("[A] plaintiff must plausibly allege conduct that, viewed in context, could be reasonably understood to convey a threat of adverse government action in order to punish or suppress the plaintiff's speech.").

Article III analysis is of course distinct from the merits. So a plaintiff need not show that government action "abridge[s]" its First Amendment rights. *Meese* v. *Keene*, 481 U.S. 465, 473 (1987). The question for standing "is whether the litigant is entitled to have the court decide the merits," *Warth* v. *Seldin*, 422 U.S. 490, 498 (1975), not "whether the alleged injury rises to the level of a constitutional violation," *Initiative & Referendum Inst.* v. *Walker*, 450 F.3d 1082, 1088 (10th Cir. 2006) (en banc). Where, as here, a plaintiff alleges an objectively reasonable chill on its association and speech, it "is entitled to walk through the courthouse door." *Wooden* v. *Board of Regents of Univ. Sys. of Ga.*, 247 F.3d 1262, 1280 (11th Cir. 2001) (citation modified).

The Attorney General's disclosure demand objectively chills First Choice's associational and speech rights. That is so for two reasons. *First*, this Court's cases recognize that a demand for donor disclosure strikes at the heart of the right to associate privately and necessarily chills associational rights. *Second*, the objective chill is particularly clear here because pro-life pregnancy centers and their

supporters are subject to harassment and violence nationwide, as detailed in First Choice's declarations.

a. Donor disclosure demands necessarily chill associational rights.

This Court's cases recognize that a donor disclosure demand necessarily chills First Amendment associational rights. Because the right to associate includes the right to associate *privately*, government demands for donor identities inevitably implicate the First Amendment.

This Court has long recognized the "significant encroachment[ ] on First Amendment rights … that compelled disclosure imposes." *Buckley*, 424 U.S. at 64. As this Court explained in *Buckley* and reiterated in *AFP*, heightened scrutiny of donor disclosure demands "is appropriate" because a "deterrent effect on the exercise of First Amendment rights … arises as an *inevitable result* of the government's conduct in requiring disclosure." *AFP*, 594 U.S. at 607 (citation modified; emphasis added) (quoting *Buckley*, 424 U.S. at 65).

Government demands for donor identities strike at the heart of the First Amendment right to associate privately. They necessarily give rise to an objective "fear of exposure of [the donors'] beliefs shown through their associations." *Patterson*, 357 U.S. at 463. That objective fear of disclosure risks "induc[ing] [supporters] to withdraw from the [a]ssociation" and refuse to support it. *Ibid.* The inevitable "deterrent or chilling effect" caused by a disclosure demand satisfies Article III. *Laird*, 408 U.S. at 11 (citation modified).

In *AFP*, for example, this Court noted that for "freedom of association" claims, which need "breathing space" to survive, the "risk of a chilling effect … is enough." 594 U.S. at 618–19 (citation modified). The Court was "unpersuaded" by the California Attorney General's attempt to "downplay the burden [of a disclosure requirement] on donors." *Id*. at 615–16. The Court emphasized that "[e]xacting scrutiny is triggered by 'state action which *may* have the effect of curtailing the freedom to associate,' and by the '*possible* deterrent effect' of disclosure." *Id*. at 616 (quoting *Patterson*, 357 U.S. at 460–61). *AFP* expressly rejected the argument that evidence of harm above and beyond disclosure—i.e., reprisals or harassment was necessary. *Id.* at 617. If the "risk of a chilling effect" is enough to facially invalidate government action on the *merits*, then it is sufficient for Article III. *Id.* at 618; cf. Pet.App.3a n.† (Judge Bibas finding this case to be "indistinguishable from" *AFP*).

Disclosure of donor identities and contact information is chilling even where the disclosure is made only to the government. *Shelton*, 364 U.S. at 486; *AFP*, 594 U.S. at 615–16. The First Amendment is "[p]remised on mistrust of governmental power." *Citizens United* v. *Federal Election Comm'n*, 558 U.S. 310, 340 (2010). That is why "each governmental demand for disclosure brings with it an additional risk of chill." *AFP*, 594 U.S. at 618. And donors may legitimately desire that the government not possess confidential information. *John Doe No. 1* v. *Reed*, 561 U.S. 186, 208 (2010) (Alito, J., concurring). Associational freedom may be hampered "simply by disclosing … associational ties" to the government. *AFP*, 594 U.S. at 616.

Here, First Choice's donors submitted declarations about this chill in the district court. Those donors explained that they "would have been less likely to donate to First Choice if [they] had known information about the donation might be disclosed to an official hostile to pro-life organizations." Pet.App.177a. In other words, the existence of the subpoena—without more—is likely to cause donors to avoid supporting First Choice.

Further, it is reasonable for donors to fear that names and contact details turned over to the government might be publicly disclosed. While the Attorney General and First Choice negotiated over a protective order, the Attorney General would not agree to meaningfully limit dissemination within the New Jersey government, proposing that any of his employees be allowed to see donor names. And even if broader protections were in place, that would be cold comfort. Confidential information is routinely leaked from state government bureaucrats as well as private sources. See *AFP*, 594 U.S. at 604–05 (detailing leaks). Hacking, negligence, or the intentional release of sensitive information is commonplace. Jeffrey Stinson, *Cyberattacks on State Databases Escalate*, Stateline (Oct. 2, 2014), perma.cc/6M5P-T5GV (recounting database attacks and breaches). And in today's cancel culture, reasonable concerns abound over what the public might do with sensitive information like personal phone numbers and home addresses. See *Reed*, 561 U.S. at 208 (Alito, J., concurring).

The inherent chilling created by a donor disclosure demand is magnified when a state official targets an unpopular group. Donors to unpopular causes may reasonably fear reprisal from both the

public and government officials. See *Reed*, 561 U.S. at 200. Just ask the NAACP. And when "fears of reprisal[s] … deter contributions," the public suffers from the "consequent reduction in the free circulation of ideas." *Buckley*, 424 U.S. at 71.

While any donor disclosure demand can chill First Amendment rights, this one is especially coercive. The subpoena "command[s]" First Choice to hand over donor names, phone numbers, and addresses, Pet.App.89a, while threatening that "[f]ailure to comply" will render First Choice "liable for contempt of Court and … other penalties." Pet.App.90a. And the Attorney General admits that he seeks to contact First Choice's donors. J.A.346. These facts would readily deter a person of ordinary firmness from exercising their associational rights. "One might suspect" that making First Choice and its donors "think[ ] twice" before exercising those rights "is the whole point." See *Smith & Wesson*, 27 F.4th at 896–97 (Matey, J., concurring).

b. Harassment and violence targets pregnancy centers nationwide.

Widespread harassment and violence endured by pregnancy centers nationwide confirm the objective chilling of First Choice's association with its donors. See *Patterson*, 357 U.S. at 462–63. As First Choice attested, in recent years pregnancy centers "have been subjected to an increased level of criminal acts, intimidation, and harassment." Pet.App.182a.

Indeed, political hostility toward pregnancy centers is at an all-time high. Government officials at every level have sought to silence and intimidate life-affirming viewpoints. Federal lawmakers, for

example, have targeted pregnancy centers with legislation that would weaponize the Federal Trade Commission against nonprofits that discuss pregnancy from a pro-life viewpoint. See Nick Popli & Vera Bergengruen, *Lawmakers Scramble to Reform Digital Privacy After Roe Reversal*, Time (July 1, 2022), perma.cc/7RAP-7B7Y. Individual legislators have gone so far as to call on the private sector to "shut [pregnancy centers] down all around the country." Jessica Chasmar, *Google to Crack Down on Search Results for Crisis Pregnancy Centers After Dem Pressure*, FOXBusiness (Aug. 25, 2022), perma.cc/7TS4-ZAWW. Meanwhile, state legislators have introduced over two dozen bills targeting pregnancy centers for offering alternatives to abortion. Adam Edelman, *Democrats Eye a New Approach to Rein in Crisis Pregnancy Centers*, NBC News (May 18, 2023), perma.cc/N8HUMYBQ.

State officials have also gotten in on the action. Attorneys General have filed lawsuits and threatened enforcement actions against pregnancy centers. See *e.g.*, *National Inst. for Fam. & Life Advocs.* v. *James*, 746 F. Supp. 3d 100, 110 (W.D.N.Y. 2024). They have issued consumer alerts and labeled pregnancy centers "fake clinics," accused them of employing "tactics" to get women to choose life, and lamented that pregnancy centers outnumber abortion clinics three to one. *E.g.*, J.A.357–62; Press Release, Off. of Att'y Gen. Maura Healey, AG Healey Warns Patients About Crisis Pregnancy Centers (July 6, 2022), perma.cc/7NMU-YUPX. The governor of Massachusetts even launched a $1 million billboard campaign targeting pregnancy centers throughout the state. Press Release, Mass. Exec. Off. of Health & Hum. Servs., Healey-Driscoll Administration Launches

First-in-the-Nation Public Education Campaign on the Dangers of Anti-Abortion Centers (June 10, 2024), perma.cc/3Z48-BJMU.

Attorney General Platkin is front and center in these oppressive efforts. Shortly after taking office, he established a "Strike Force" and directed it to pursue "civil and criminal enforcement actions" in the name of abortion access. Press Release, N.J. Off. of Att'y Gen., *supra*. The Attorney General then issued a statewide "consumer alert" against pregnancy centers because they "do NOT provide abortion[s]." J.A.357. On social media, the Attorney General admonished women to "beware of Crisis Pregnancy Centers!" @NewJerseyOAG, *supra*. And in an open letter co-authored with other attorneys general, he promised to take "numerous actions" against pregnancy centers. J.A.377.

Private hostility towards pro-life viewpoints is also at a fever pitch. After the leak of this Court's opinion in *Dobbs*, "a wave of vandalism and violence [was] unleashed against crisis pregnancy centers around the country." Jeff Jacoby, *Attacks on Pregnancy Centers, Like Attacks on Abortion Clinics, Should Be Intolerable*, Bos. Globe (July 17, 2022), perma.cc/S78B656D. Almost 100 pregnancy centers and pro-life organizations have been attacked. CatholicVote, *supra*.

In Asheville, North Carolina, vandals shattered the windows and doors of Mountain Area Pregnancy Services and spray-painted the message, "[I]f abortions aren't safe, neither are you!" Ingraham Angle, *Victim of Anti-Abortion Terrorism Joins Laura: We Will Not Back Down*, Fox News (June 7, 2022), https://perma.cc/W9TT-XCH2. In Orlando,

Florida, extremists "decapitated, mutilated, and dumped" three animals in front of a pro-life pregnancy center. Stephanie Buffamonte, *Decapitated, Mutilated Animals Left at Florida Pro-Life Pregnancy Center*, Fox35 Orlando (May 12, 2023), perma.cc/9V99-Z2K4. And in Buffalo, New York, a pregnancy center was firebombed (pictures below) and tagged with spray paint reading, "Jane Was Here." *CompassCare's Buffalo Office Firebombed by Abortion Terrorists*, CompassCare (June 7, 2022), perma.cc/P6NN-TCUT.

Some extremists promise worse violence. A post attributed to Jane's Revenge celebrates the vandalism of Avenues Pregnancy Clinic in Glendale, California, with messages like "Jane was here," "abort the court," and "if abortions aren't safe neither are you!" It chillingly declares:

> To all the conservatives, Fox News anchors, judges, cops, Christian extremists, or federal agents reading this:
>
> This attack is nothing in compare [sic] to what is in store for you. Some spray paint will be the least of your worries. For decades you have bombed abortion clinics and murdered doctors. We fight not just for abortion rights, but for trans liberation, ecological harmony, decolonization, the destruction of white supremacy and capitalism, and the uprooting of the entire global civilization.
>
> We will hunt you down and make your lives a living hell. You started this war but we will win it. So far its [sic] just been pregnancy crisis centers, but tomorrow it might be your cars, your homes, or even your lives. We support a diversity of tactics and we will not step down in this fight.

Jane's Revenge, *supra*.

Consistent with this ominous threat, vandals have targeted the homes of pregnancy center supporters. In Pointe Woods, Michigan, a pregnancy center's board member had her home's windows broken and her garage and driveway spray-painted with the threat, "Jeanne, if abortions aren't safe neither are you!" Donnelly, *supra*.

Given the animosity directed towards pregnancy centers, an individual of ordinary firmness aware of the Attorney General's demand would be chilled from associating with First Choice. Indeed, First Choice attested that the nationwide "pattern of violence and intimidation" against pregnancy centers magnified the chilling effect on the faith-based nonprofit, explaining its concern that "if its donors' identities became public, they may be subjected to similar threats." Pet.App.182a. And since "[m]any donors desire for their donations and communications with First Choice to remain confidential," the subpoena's threatened disclosure compromises First Choice's "ability to recruit new donors, personnel, and affiliates," as well as its ability to "retain current donors, personnel, and affiliates." Pet.App.182a–84a. Like many nonprofits, "[c]onfidentiality regarding information about donors, clients, personnel, and affiliates is critical to First Choice." Pet.App.181a–82a. The Attorney General's disclosure demand thus

injures First Choice's relationship with its supporters.

First Choice donors also testified that they viewed the Attorney General's subpoena as an imminent threat to their association with First Choice. Pet.App.178a. In their words, "[t]he possibility that our identities will be disclosed to a law enforcement official who is openly hostile to pro-life organizations threatens both First Choice's protected associational rights and our rights as well." Pet.App.177a. Each of them affirmed that they "would have been less likely to donate to First Choice if [they] had known information about the donation might be disclosed to an official hostile to pro-life organizations." Pet.App.177a. This unrebutted evidence shows that First Choice's associational relationship with its donors has been harmed.

The Attorney General's targeting of First Choice distinguishes this case from ones where the Court has found harm to be speculative. *E.g.*, *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398 (2013). Plaintiffs' theory of standing in *Clapper* was "substantially undermine[d]" by their "fail[ure] to offer *any* evidence that their communications ha[d] been monitored" under the challenged law. 568 U.S. at 411 (emphasis added). In other words, there was no evidence of any government action directed at plaintiffs, and the possibility of the government *ever* spying on them was built on layers of speculation. *Ibid.*

Here, in contrast, the Attorney General has issued a subpoena demanding First Choice's donor information. And he has pursued his demand through five different courts and now fifty briefs. Such adverse government action constitutes an injury-in-fact

because it is "compulsory in nature" and First Choice is "subject to the … compulsions that [it is] challenging." *Laird*, 408 U.S. at 11.

The Attorney General suggests that this Court should ignore First Choice's donor declaration because the declarants are supposedly no longer "covered by the subpoena." BIO.28. This refers to a letter the Attorney General sent on the eve of oral argument in the Third Circuit saying he no longer seeks disclosure from donors who contributed in ways identified in the declaration. *Ibid.* But this Court does not allow the government to avoid review by claiming it has reformed its ways. *Friends of the Earth, Inc.* v. *Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000).

"A defendant's voluntary cessation of allegedly unlawful conduct ordinarily does not suffice to moot a case." *Id.* at 174. Here, the Attorney General has not even attempted to "carr[y] the heavy burden of making absolutely clear that [he] could not revert to [his behavior]." *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 457 n.1 (2017) (citation modified). To be sure, the Attorney General claims to have "foresworn" seeking the identities of certain donors. BIO.24. Yet his letter was more circumspect, merely stating "*at this time* the State is only seeking the identities of individuals who may have donated through links on First Choice's client-facing websites." Supp.Pet.App.2a (emphasis added). And he expressly "reserve[d] the right to seek identities of other donors"—like those who submitted the declaration. *Ibid*. The Attorney General's voluntary narrowing is partial and revocable. Donors may still worry the Attorney General will "return to his old ways." *Friends of the Earth*, 528 U.S. at 189

(citation modified). And the Attorney General does not explain why the objective chill established by First Choice's donor declaration would be limited to any particular method of donation.

In any event, the Attorney General *still* demands protected donor identities. His late-breaking move does nothing to eliminate the chill imposed on First Choice or on the donors whose identities he continues to demand. See *Ellis* v. *Railway Clerks*, 466 U.S. 435, 442 (1984). The Attorney General's mending of his ways is too little, too late.

3. The disclosure demand objectively chills First Choice's speech.

The subpoena also objectively chills First Choice's speech. This Court has long recognized that "charitable appeals for funds" from or on behalf of nonprofits like First Choice are protected speech. *Village of Schaumburg* v. *Citizens for a Better Env't*, 444 U.S. 620, 632 (1980); see also *Riley* v. *National Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796 (1988). So too are donors' charitable contributions, which "serve[ ] as a general expression of support for [First Choice] and [its] views." *Buckley*, 424 U.S. at 21. Both are objectively chilled by the subpoena's compelled disclosure of donor identities.

This Court's decision in *Riley* is instructive. There, the State imposed requirements that would have the "predictable result" of rendering charitable "solicitations ... unsuccessful." *Riley*, 487 U.S. at 799. This diminished success would, in turn, "encourag[e]" fundraisers to "refrain from engaging in solicitations."

Id. at 800. Thus, the challenged regulations "necessarily chill[ed] speech in direct contravention of the First Amendment's dictates." *Id.* at 794.

The issuance of the Attorney General's subpoena, which threatens disclosure of donor identities, likewise deprives First Choice and its donors of "being able to speak with a measure of security." *Ibid.* As long as the subpoena is not enjoined, donors "will be faced with the knowledge that every [gift] … will subject them to potential [disclosure]." *Id.* at 793–94. "[T]he predictable result is that [they] will be encouraged to … refrain from engaging in [donations] that result in an unfavorable disclosure." *Id.* at 800. Indeed, First Choice's declarations show that many donors would likely cease making contributions to First Choice if their identities were subject to disclosure. See Pet.App.177a, 182a–84a. "Whether one views this as a restriction of [First Choice's] ability to speak, or a restriction of the [donors'] ability to speak, the restriction is undoubtedly one on speech, and cannot be countenanced here." *Riley*, 487 U.S. at 794 (citations omitted).

B. First Choice is subject to a credible threat of enforcement.

In addition to the present objective chilling injury caused by the donor disclosure demand, First Choice suffers the additional Article III injury of a credible threat of enforcement of the subpoena. Pre-enforcement review has a long and storied pedigree. See *Terrace* v. *Thompson*, 263 U.S. 197, 215–16 (1923) (refusing to require the plaintiff to bet the literal farm before challenging government action). A threat of enforcement is "sufficiently imminent" to constitute an injury-in-fact and thus ripen a claim when the

plaintiff alleges: (1) the intent to engage in conduct arguably affected with a constitutional interest; (2) that the intended conduct is "arguably" restricted or burdened; and (3) a credible threat of enforcement. *SBA List*, 573 U.S. at 159.

1. It is beyond peradventure that First Choice is engaged in conduct "'affected with a constitutional interest.'" *Ibid.* (quoting *Babbitt* v. *Farm Workers*, 442 U.S. 289, 298 (1979)). First Choice associates with its donors to advance its pro-life mission, and it solicits support from those donors. The First Amendment undoubtedly protects such speech and association. See *supra* at II.A.1–3.

2. Nor is there any question that First Choice's freedoms to associate and speak freely are at least "arguably" burdened by the Attorney General's subpoena. *SBA List*, 573 U.S. at 162. The Attorney General's demand for donor information chills and burdens First Choice's First Amendment rights "on its face." See *Babbitt*, 442 U.S. at 302; *supra* at II.A.3.

3. First Choice also faces a credible threat of enforcement. The Article III analysis "must begin with the recognition that, where threatened action by *government* is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat." *MedImmune*, 549 U.S. at 128–29. It is therefore well established that one "does not have to await the consummation of threatened injury to obtain preventive relief." *Pennsylvania* v. *West Virginia*, 262 U.S. 553, 593 (1923). Where "an individual is subject to … a threat" of enforcement, an actual "enforcement action is not a prerequisite to challenging the law." *SBA List*, 573 U.S. at 158.

This Court has previously inferred a credible threat of enforcement based on "past enforcement against the same conduct" and a failure to disavow. *Id.* at 164–65. Here, no inference is needed. When the Attorney General issued the subpoena, he specifically targeted First Choice and expressly threatened it with an enforcement action compelling disclosure on pain of contempt. Pet.App.90a ("Failure to comply with the Subpoena may render you liable for contempt of Court and such other penalties as are provided by law."). And far from a disavowal, the Attorney General has initiated those enforcement proceedings and moved the state court to sanction First Choice for failing to disclose donor information. See Pet.App.62a.

That First Choice faced a credible threat of enforcement when it filed its lawsuit is plain because the Attorney General launched an enforcement action in state court just a few weeks later. That enforcement action establishes the credibility of that threat. *Cf. Murthy* v. *Missouri*, 603 U.S. 43, 59 (2024) ("past injuries" are relevant for their "predictive value").

Given those enforcement proceedings, it is impossible to conclude that a credible threat of enforcement did not exist when First Choice filed its complaint. Indeed, in *SBA List*, the threat of administrative proceedings followed by the threat of later prosecution satisfied Article III. 573 U.S. at 166. So too here. The burdensome state-court enforcement proceedings (which the Attorney General has already initiated) combined with the threat of sanctions (which the Attorney General has already asked for) renders First Choice's claims unquestionably ripe for pre-enforcement review.

The threat of enforcement in this case is even more credible than the threat deemed sufficiently imminent in *SBA List*. There, plaintiffs challenged a generally applicable statute they claimed to have not violated. Here, First Choice challenges a targeted subpoena from the state's highest law enforcement officer—a disclosure demand with which it refuses to comply. An even greater threat of enforcement exists here than in the mine run of pre-enforcement actions. In contrast to cases like *Steffel*, where the plaintiff was subject to a generally applicable law, First Choice was singled out for a disclosure demand.

What's more, *SBA List* involved potential administrative proceedings where the only penalty was a reprimand. *SBA List*, 573 U.S. at 153. While referral for later prosecution was possible, only five in 500 commission investigations faced such a fate. Tr. of Oral Arg. at 39–40, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149 (2014) (No. 13-193). Here, the Attorney General has already pursued a statutorily authorized enforcement order against First Choice because it refused to hand over donor information. See N.J. Stat. Ann. § 56:8-6(a). And in his state-court enforcement action, he alleged that First Choice had *already* violated the Charitable Registration and Investigations Act, the Consumer Fraud Act, and the Professions and Occupations Law "by failing to produce the documents requested in the Subpoena." J.A.50, 53, 59. He has also moved for sanctions in those state-court proceedings. Pet.App.62a.

The enforcement proceeding is also more burdensome than the enforcement action at issue in *SBA List*. First Choice has been forced to defend itself against robust state-court litigation, including multiple rounds of briefing and oral argument before

the state trial court and an appeal—with no end in sight. See *SBA List*, 573 U.S. at 165 (describing time and energy spent on administrative proceedings as harm); *ibid.* ("[A]dministrative action … may give rise to harm sufficient to justify pre-enforcement review."). During a process now stretching on for over a year, the parties have submitted *a dozen* briefs in state courts.

The Attorney General advances an argument that would end all pre-enforcement suits, positing this case is not ripe because state courts might protect First Choice's donor identities. BIO.27. But that eventuality exists in *every* pre-enforcement case. *SBA List*, 573 U.S. at 161. That state proceedings may result in a "rul[ing] completely or partially in [plaintiff's] favor" does not defeat review. *Ohio C.R. Comm'n* v. *Dayton Christian Schs., Inc.*, 477 U.S. 619, 625 n.1 (1986). A similar argument could have been made in this Court's seminal pre-enforcement cases: The fact that "the plaintiffs in *Steffel* or *Doran* m[ight] have prevailed had they in fact been prosecuted" did not matter. *Ibid.* Nor does the fact that First Choice might ultimately prevail on its constitutional claims.

This is especially true in First Amendment cases where "the prospect of ultimate failure of such prosecutions by no means dispels their chilling effect on protected expression." *Dombrowski* v. *Pfister*, 380 U.S. 479, 494 (1965). Rather, "[t]he threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *Button*, 371 U.S. at 433; *ibid.* (exercising pre-enforcement review of First Amendment claims); see also *American Booksellers*, 484 U.S. at 393 (chilling harms "can be realized even without an actual prosecution").

In short, a credible threat of enforcement exists here in spades. Far beyond a "history of past enforcement," the threat of enforcement was spelled out in black and white and issued directly to First Choice. The Attorney General cannot plausibly claim that this specific, direct threat was not credible, since he is *currently* seeking to enforce his subpoena in state court.

III. Prudential ripeness does not render First Choice's claims nonjusticiable.

To the extent the decision below rests on the judge-made doctrine of prudential ripeness, its error is twofold. First, that doctrine cannot justify withholding federal review over an Article III case or controversy. Second, prudential ripeness is easily satisfied.

Prudential ripeness, unlike the constitutional principles discussed above, is "not derived from Article III." *Lexmark Int'l* v. *Static Control Components*, 572 U.S. 118, 126 (2014); see also *SBA List*, 573 U.S. at 167. Rather, it originates from the application of discretionary equitable remedies in the administrative-law context. *Abbott Lab'ys* v. *Gardner*, 387 U.S. 136, 148–49 (1967). Specifically, the doctrine was engineered by courts to "protect the agencies from judicial interference" and avoid "entangl[ement]" in "abstract disagreements over administrative policies." *Ibid.*

Yet as this Court has repeatedly recognized, the "prudential ripeness doctrine" cannot be reconciled with this Court's "recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging."

SBA List, 573 U.S. at 167 (citation modified). Indeed, federal courts "have no more right to decline the exercise of jurisdiction which is given … than to usurp that which is not given." *Cohens* v. *Virginia*, 19 U.S. 264, 404 (1821). That First Choice has established an Article III injury should end the inquiry. See *SBA List*, 573 U.S. at 167 (calling into question "the continuing vitality of the prudential ripeness doctrine"). *Knick* thus rejected a similar attempt to impose a "state-litigation requirement" under a "prudential ripeness" theory. 588 U.S. at 204 (citation modified).

Even if the prudential ripeness doctrine had any bearing here (it does not), the "fitness and hardship factors are easily satisfied." *SBA List*, 573 U.S. at 167. As to fitness, First Choice's association and speech claims are "purely legal, and will not be clarified by further factual development." *Ibid.* (citation modified). The subpoena has chilled First Choice's speech and association from the moment it was served. The Attorney General has steadfastly refused to walk back his demand that First Choice disclose at least some of its donor identities, and the parties' negotiations are at an impasse. Future such negotiations will not resolve First Choice's associational claims. The only variable is whether the state court will order production on pain of contempt. Yet instead of making First Choice's claims any more fit for review, such an order would likely preclude federal review altogether. Res judicata would bar a federal court from deciding First Choice's federal claims where a state court has done so.

As to hardship, "denying prompt judicial review would impose a substantial hardship on [First Choice]," which experiences ongoing, irreparable

harm to its First Amendment rights each day the donor disclosure requirement is not enjoined. *SBA List*, 573 U.S. at 167–68. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality opinion). For nearly two years, the Attorney General has aggressively pursued the names and contact information of First Choice's donors. First Choice's associational rights and its relationship with both current and future donors are harmed every day that unlawful demand is not enjoined.

* * *

The Attorney General's attempt to manufacture procedural roadblocks to evade federal court review fails for the simple reason that his subpoena has objectively chilled First Choice's associations and speech. These delicate First Amendment's freedoms need breathing space to survive. And the right to keep donor identities confidential "is especially important" for "shielding dissident expression." *AFP*, 594 U.S. at 606–07 (citation modified). Yet the Attorney General targeted an ideological opponent with a subpoena demanding that it disclose its donor names and contact information. Given the coerciveness of the subpoena, the recent threats and violence directed at those centers, and the Attorney General's undisguised animosity towards pregnancy centers, the chill attested to by First Choice and its donors is eminently reasonable. "One might suspect" that chilling First Choice's freedoms was "the whole point." *Smith & Wesson*, 27 F.4th at 897 (Matey, J., concurring).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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APPENDIX OF STATUTES AND CONSTITUTIONAL PROVISIONS

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U.S. Constitution, Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

42 U.S.C. 1983
Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

N.J. Stat. Ann. § 45:17A-33
Violations; penalties

a. For purposes of the "Administrative Procedure Act," P.L.1968, c. 410 (C.52:14B-1 et seq.), the Attorney General or his designee shall constitute the agency head and have the final decision making power.

b. After notice and an opportunity for a hearing, the Attorney General may revoke, or suspend any registration upon a finding that the registrant or any officer, director, trustee or principal salaried executive staff employee of a registrant or any other person subject to the provisions of P.L.1994, c. 16 (C.45:17A-18 et seq.):

(1) Has filed a registration statement containing false or misleading facts or omitting material facts;

(2) Has violated or failed to comply with any of the provisions of this act or the rules adopted under authority of this act;

(3) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;

(4) Has been convicted of any criminal offense committed in connection with the performance of activities regulated under this act or any criminal offense involving untruthfulness or dishonesty or any criminal offense relating adversely to the registrant's fitness to perform activities regulated by this act. For the purposes of this paragraph, a plea of guilty, non vult, nolo contendere or any other similar disposition of alleged criminal activity shall be deemed a conviction;

(5) Has had the authority to engage in charitable activities denied, revoked or suspended by New Jersey or any other state or jurisdiction;

(6) Has been adjudged liable in an administrative or civil proceeding involving theft, fraud or deceptive business practices including, but not limited to, any finding of unlawful practice or practices related to the solicitation of contributions or the administration of charitable assets, regardless of whether that finding was made in the context of an injunction, a proceeding resulting in penalties, consented to in an assurance of voluntary compliance or any similar order or legal agreement with any state or federal agency;

(7) Has engaged in other forms of misconduct as may be determined by rules adopted by the Attorney General.

c. Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in, any act or practice declared unlawful by this act, or when the Attorney General determines it to be in the public interest to inquire whether a violation may exist, the Attorney General may:

(1) Require any person to file, on a form to be prescribed by the Attorney General, a statement or report in writing under oath, or otherwise, concerning any relevant and material information in connection with an act or practice subject to this act;

(2) Examine under oath any person in connection with any act or practice subject to this act;

(3) Inspect any location from which the activity regulated by this act is conducted;

(4) Examine any goods, ware or items used in the rendering of any of the services contained in this act;

(5) Require an audited financial statement of the financial records of the organization or person registered, exempted or required to be registered under this act, prepared in accordance with generally accepted accounting principles or other comprehensive basis of accounting approved for use by the Attorney General by regulation which has been audited in accordance with generally accepted auditing standards by an independent certified public accountant and any management letters prepared by the auditor in connection with the audit commenting on the internal accounting controls or management practices of the organization;

(6) Examine any book, document, account, computer data, literature, publication or paper maintained by or for any organization or person registered, exempted or required to be registered under this act, in the course of engaging in the activities regulated by this act;

(7) Apply to Superior Court for an order to impound any record, book, document, account, computer data, literature, publication, paper, goods, ware, or item used or maintained by any organization or person registered, exempted or required to be registered under this act in the regular course of engaging in the activities regulated by this act or rules adopted under this act;

(8) In order to accomplish the objectives of this act, or the rules adopted under this act, hold investigative hearings as necessary and issue subpoenas to compel the attendance of any person or the production of

books, records, computer data, literature, publication or papers at any investigative hearing or inquiry.

d. Any person who engages in any conduct or an act in violation of any provision of this act and who has not previously violated this act shall, in addition to any other relief authorized by this or any other law, be liable for a civil penalty of not more than $10,000 for the first violation of this act.

For a second violation of this act, or if a person is found liable for more than one violation of this act within a single proceeding, the liability for the second violation shall not exceed a civil penalty in the amount of $20,000.

For a third violation of this act, or if a person is found liable for more than two violations of this act within a single proceeding, the liability for a third or any succeeding violation shall not exceed a civil penalty in the amount of $20,000 for each additional violation.

In lieu of an administrative proceeding or an action in the Superior Court, the Attorney General may bring an action for the collection or enforcement of civil penalties for the violation of any provision of this act. The action may be brought in a summary manner, pursuant to the "Penalty Enforcement Law of 1999," P.L.1999, c. 274 (C.2A:58-10 et seq.) and the Rules Governing the Courts of the State of New Jersey governing actions for the collection of civil penalties, in the Municipal Court or Special Civil Part of the Law Division of the Superior Court in the municipality or county where the offense occurred. Process in the action may be by summons or warrant. If the defendant in the action fails to answer the action, the court shall, upon finding that an unlawful

act or practice has been committed by the defendant, issue a warrant for the defendant's arrest in order to bring the person before the court to satisfy the civil penalties imposed.

In an action commenced pursuant to this section, the court may order restored to any person in interest any moneys or property acquired by means of an unlawful act or practice. An action alleging the unregistered practice of the activities regulated by this act may be brought pursuant to this section or, where injunctive relief is sought, by an action commenced in the Superior Court. In an action brought pursuant to this act, the Attorney General or the court may order the payment of attorney's fees and costs for the use of the State.

e. Whenever it shall appear to the Attorney General that a violation of this act has occurred, is occurring, or will occur, the Attorney General, in addition to any other proceeding authorized by law, may seek and obtain in a summary proceeding in the Superior Court an injunction prohibiting the act or practice. In the proceeding the court may assess a civil penalty in accordance with the provisions of this act, order restoration to any person in interest of any moneys or property, real or personal, acquired by means of an unlawful act or practice and may enter any orders necessary to prevent the performance of an unlawful practice in the future and to remedy fully any past unlawful activity.

f. Upon the failure of any person to comply within 10 days after service of any order of the Attorney General directing payment of penalties, attorney's fees, costs or restoration of moneys or property as authorized by

this act, the Attorney General may issue a certificate to the Clerk of the Superior Court that the person is indebted to the State for the payment. A copy of the certificate shall be served upon the person against whom the order was entered. The clerk shall immediately enter upon the record of docketed judgments the name of the person so indebted and of the State, a designation of the statute under which each payment was directed, the amount of each payment, a listing of property ordered restored, and the date of the certification. The entry shall have the same force and effect as the entry of a docketed judgment in the Superior Court and the Attorney General shall have all rights and remedies of a judgment creditor, in addition to exercising any other available remedies.

g. If a person fails or refuses to file any statement or report, or fails or refuses to grant access to premises from which activities regulated by this act are conducted in any lawfully conducted investigative matter, or fails to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

(1) Adjudging that person in contempt of court and assessing civil penalties in accordance with the amounts prescribed by this act;

(2) Enjoining the conduct of any practice in violation of this act; or

(3) Granting other relief as required.

h. If a person who refuses to testify or produce any computer data, book, paper, or document in any proceeding under this act for the reason that the testimony or evidence, documentary or otherwise,

required of him may tend to incriminate him, or convict him of a crime, is directed to testify or to produce the computer data, book, paper, or document by the Attorney General, he shall comply with the direction.

A person who is entitled by law to and does assert a privilege, and who complies with the direction of the Attorney General, shall not thereafter be prosecuted or subject to any penalty or forfeiture in any criminal proceeding which arises out of and relates to the subject matter of the proceeding. No person so testifying shall be exempt from prosecution or punishment for perjury or false swearing committed by him in giving the testimony or from any civil or administrative action arising from the testimony.

i. In addition or as an alternative to revocation or suspension of a registration, the Attorney General may, after affording an opportunity to be heard and finding a violation of this act:

(1) Assess civil penalties in accordance with this act;

(2) Direct that any person cease and desist from any act or practice in violation of this act or take necessary affirmative corrective action with regard to any unlawful act or practice;

(3) Order any person to restore to any person aggrieved by an unlawful act or practice any money or property, real or personal, acquired by means of any unlawful act or practice, except that the Attorney General shall not order restoration in a dollar amount greater than those moneys received by the registrant or his agent or any other person violating this act;

(4) Order the payment of attorney's fees and costs for the use of the State; or

(5) Authorize the release of sums from any bond maintained pursuant to this act in satisfaction of assessments.

j. Whenever a person engages in any act or practice in violation of this act the Attorney General may, after notice and opportunity to be heard and upon a finding that the act or practice has occurred, enter an order:

(1) Directing the person to cease and desist from that unlawful act or practice;

(2) Assessing civil penalties in accordance with this act;

(3) Directing that person restore to any person aggrieved by the unlawful act or practice any money or property, real or personal, acquired by means of the unlawful act or practice, except that the Attorney General shall not order restoration in a dollar amount greater than those moneys received by the registrant, agent or any other person violating this act;

(4) Directing payment of attorney's fees and costs for the use of the State; or

(5) Authorizing the release of sums from any bond maintained pursuant to P.L.1994, c. 16 (C.45:17A-18 et seq.) in satisfaction of assessments.

k. When it shall appear to the Attorney General that a person against whom an order pursuant to this section has been entered has violated the order, the Attorney General may initiate a summary proceeding in the Superior Court for enforcement of the order. Any person found to have violated such an order shall

be ordered to comply with the prior administrative order and may be ordered to pay civil penalties in the amount of not more than $25,000 for each violation of the order. If a person fails to pay a civil penalty assessed by the court for violation of an order, the court assessing the unpaid penalty is authorized, upon application of the Attorney General, to grant any relief which may be obtained under any statute or court rule governing the collection and enforcement of penalties.

l. In any administrative proceeding on a complaint alleging a violation of this act, the Attorney General may issue subpoenas to compel the attendance of witnesses or the production of computer data, books, records, or documents at the hearing on the complaint as provided by this act.

m. In addition to any other action or remedy available under this act, a charitable organization aggrieved by a violation of paragraph (4) or (8) of subsection c. of section 15[1] of this act may initiate a civil action or assert a counterclaim in any court of competent jurisdiction against the violator. Upon establishing the violation, the charitable organization shall recover treble its damages or treble the violator's profits, whichever is greater. In all actions under this subsection the court shall award reasonable attorney's fees, filing fees and reasonable costs of suit.

n. Notwithstanding any other provision of this section to the contrary, a parent organization may be held accountable for actions related to information filed on behalf of a local unit only if the parent organization

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[1] N.J.S.A. § 45:17A-32

has filed information knowing that the information is false or misleading or knowing that material facts are omitted.

o. Notwithstanding any other provision of this section to the contrary, any local unit that has provided to its parent organization timely, truthful and complete information and otherwise conducted itself in compliance with the provisions of this act, shall not be held accountable for the misconduct of a parent organization, including, but not limited to, the failure of the parent organization to file timely reports on behalf of the local unit.

N.J. Stat. Ann § 45:1-18
Investigative powers of boards, director or attorney general

Whenever it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:

a. Require any person to file on such form as may be prescribed, a statement or report in writing under oath, or otherwise, as to the facts and circumstances concerning the rendition of any service or conduct of any sale incidental to the discharge of any act or practice subject to an act or regulation administered by the board;

b. Examine under oath any person in connection with any act or practice subject to an act or regulation administered by the board;

c. Inspect any premises from which a practice or activity subject to an act or regulation administered by the board is conducted;

d. Examine any goods, ware or item used in the rendition of a practice or activity subject to an act or regulation administered by the board;

e. Examine any record, book, document, account or paper prepared or maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in practices subject to an act or regulation administered by the board. Nothing in this subsection shall require the notification or consent of the person to whom the record, book, account or paper pertains, unless otherwise required by law;

f. For the purpose of preserving evidence of an unlawful act or practice, pursuant to an order of the Superior Court, impound any record, book, document, account, paper, goods, ware, or item used, prepared or maintained by or for any board licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in a practice or activity subject to an act or regulation administered by the board. In such cases as may be necessary, the Superior Court may, on application of the Attorney General, issue an order sealing items or material subject to this subsection;

g. Require any board licensee, permit holder or registered or certified person to submit to an

assessment of skills to determine whether the board licensee, permit holder or registered or certified person can continue to practice with reasonable skill and safety; and

h. Whenever a board, the director through the Attorney General, or the Attorney General investigates a consumer complaint, the board, director or the Attorney General, as applicable, shall render a final disposition of the inquiry within 120 days of the filing of the complaint; except that the 120-day period shall be tolled, based upon the documented approval of the Attorney General or the Attorney General's designee, whenever additional time is required: to obtain information, records or evidence sought pursuant to this section that is necessary for the investigation or disposition of the consumer complaint; for the board, director or the Attorney General, as the case may be, to consider additional information furnished more than 30 days after the filing of the complaint; to conduct an administrative hearing in a contested case; for expert consultation related to the subject matter under investigation; because a complaint is, or becomes, the subject of a criminal investigation or prosecution; or for other good cause shown due to extraordinary or unforeseen circumstances. The number of consumer complaints for which tolling of the 120-day period is approved shall be reported to the Attorney General on a monthly basis, and this information shall be provided to the Legislature on a semi-annual basis. Nothing in this subsection shall be construed as affecting the jurisdiction of a board, the director through the Attorney General or the Attorney General.

In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and the board, director or Attorney General may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.

N.J. Stat. Ann. § 45:1-19
Failure or refusal to file statement or report, refusal of access to premises or failure to obey subpena; penalty

If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:

a. Adjudging such person in contempt of court; or

b. Granting such other relief as may be required; or

c. Suspending the license of any such person unless and until compliance with the subpena or investigative demand is effected.

N.J. Stat. Ann. § 56:8-3
Investigation by Attorney General; powers and duties

When it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this act, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may:

(a) Require such person to file on such forms as are prescribed a statement or report in writing under oath or otherwise, as to all the facts and circumstances concerning the sale or advertisement of merchandise by such person, and such other data and information as he may deem necessary;

(b) Examine under oath any person in connection with the sale or advertisement of any merchandise;

(c) Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary; and

(d) Pursuant to an order of the Superior Court impound any record, book, document, account, paper, or sample of merchandise that is produced in accordance with this act, and retain the same in his possession until the completion of all proceedings in connection with which the same are produced.

N.J. Stat. Ann. § 56:8-4
Additional powers

a. To accomplish the objectives and to carry out the duties prescribed by this act, the Attorney General, in addition to other powers conferred upon him by this act, may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, promulgate such rules and regulations, and prescribe such forms as may be necessary, which shall have the force of law.

b. In an action brought by the Attorney General, any commercial practice that violates State or federal law is conclusively presumed to be an unlawful practice under section 2 of P.L.1960, c. 39 (C.56:8-2). Nothing in this subsection shall be construed to restrict the scope of unlawful practices under Section 2 of P.L.1960, c. 39 (C.56:8-2) in actions not brought by the Attorney General.

N.J. Stat. Ann. § 56:8-6
Failure or refusal to file statement or report or obey subpoena issued by Attorney General; punishment

If any person shall fail or refuse to file any statement or report, or obey any subpoena issued by the Attorney General, the Attorney General may apply to the Superior Court and obtain an order:

(a) Adjudging such person in contempt of court;

(b) Granting injunctive relief without notice restraining the sale or advertisement of any merchandise by such persons;

(c) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this State or revoking or suspending the certificate of authority to do business in this State of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(d) Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.