NO. _____

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 PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

JAMES A. CAMPBELL
ERIK C. BAPTIST
GABRIELLA M. MCINTYRE
DALTON A. NICHOLS
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176

ERIN M. HAWLEY
Counsel of Record
JOHN J. BURSCH
LINCOLN DAVIS WILSON
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(202) 393-8690
ehawley@adflegal.org

Counsel for Petitioner First Choice Women's Resource Centers, Inc.

QUESTION PRESENTED

New Jersey's Attorney General served an investigatory subpoena on First Choice Women's Resource Centers, Inc., a faith-based pregnancy center, demanding that it turn over most of its donors' names. First Choice challenged the Subpoena under 42 U.S.C. 1983 in federal court, and the Attorney General filed a subsequent suit to enforce it in state court. The state court granted the Attorney General's motion to enforce the Subpoena but expressly did *not* decide First Choice's federal constitutional challenges. The Attorney General then moved in state court to sanction First Choice. Meanwhile, the district court held that First Choice's constitutional claims were not ripe in federal court.

The Third Circuit affirmed in a divided per curiam decision. Judge Bibas would have held the action ripe as indistinguishable from *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595, 618–19 (2021). But the majority concluded First Choice's claims were not yet ripe because First Choice could litigate its constitutional claims in state court. In doing so, the majority followed the rule of the Fifth Circuit and split from the Ninth Circuit. It did not address the likely loss of a federal forum once the state court rules on the federal constitutional issues.

The question presented is:

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.

CORPORATE DISCLOSURE STATEMENT

Petitioner First Choice Women's Resource Centers, Inc., incorporated as a 501(c)(3) faith-based organization under the laws of New Jersey, is neither a subsidiary nor a parent company of any other corporation under the laws of the United States, and no publicly traded corporation owns 10 percent or more of its stock.

LIST OF RELATED PROCEEDINGS

Supreme Court of the United States, No. 23-941, *In re: First Choice Women's Resource Centers, Inc.*, order entered May 13, 2024.

U.S. Court of Appeals for the Third Circuit, No. 24-3124, *First Choice Women's Resource Centers, Inc.* v. *Platkin*, order entered December 12, 2024.

U.S. Court of Appeals for the Third Circuit, No. 24-1111, *First Choice Women's Resource Centers, Inc.* v. *Platkin*, orders entered February 15, 2024, and July 9, 2024.

U.S. District Court for the District of New Jersey, No. 3:23-cv-23076-MAS-TJB, *First Choice Women's Resource Centers, Inc.* v. *Platkin*, orders entered January 12, 2024, and November 12, 2024.

Superior Court of New Jersey, Appellate Division, Case No. A-003615-23T4, *Platkin et al.* v. *First Choice Women's Resource Centers, Inc.*, orders entered November 7, 2024, and January 17, 2025.

Superior Court of New Jersey, Chancery Division, Essex County, No. ESX-C-22-24, *Platkin et al.* v. *First Choice Women's Resource Centers, Inc.*, orders entered June 18, 2024, September 20, 2024, and December 2, 2024.

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING ii
CORPORATE DISCLOSURE STATEMENT ii
LIST OF RELATED PROCEEDINGS iii
APPENDIX TABLE OF CONTENTS vi
TABLE OF AUTHORITIES ix
DECISIONS BELOW 1
STATEMENT OF JURISDICTION 1
INTRODUCTION 2
STATEMENT OF THE CASE 6
I. Factual background 6
A. The Attorney General perpetuates a wave of hostility toward pregnancy centers. 6
B. The Attorney General demands donor identities and other sensitive information from First Choice. 7
C. The Subpoena chills First Choice's association and speech rights. 9
II. Procedural history 10
A. The district court holds this case unripe. 10
B. The state court enforces the Subpoena without deciding the federal issues. 11
C. The Third Circuit remands. 12
D. The state court denies the Attorney General's motion to enforce litigant's rights. 12

E. The district court holds this case unripe—again. 13

F. The Third Circuit joins the Fifth in requiring state-court proceedings to ripen federal constitutional claims challenging a state subpoena. 14

REASONS FOR GRANTING THE PETITION 15

I. The circuits are split on when litigants can bring federal challenges to state investigatory demands. 16

II. The Third Circuit erred in relegating federal challenges to state investigatory demands to state court. 21

A. The Third Circuit's state-litigation requirement deprives First Choice of its guaranteed federal forum. 21

B. The Third Circuit's state-litigation requirement violates this Court's First Amendment precedents..... 24

III. The question presented is exceptionally important. 28

IV. This case presents an ideal vehicle to resolve this exceptionally important issue. 34

CONCLUSION 36

APPENDIX TABLE OF CONTENTS

United States Court of Appeals
for the Third Circuit
Opinion in Case No. 24-3124
Issued December 12, 2024 ..... 1a

United States District Court
for the District of New Jersey
Memorandum Opinion
Case No. 3:23-cv-23076
Issued November 12, 2024..... 6a

Superior Court of New Jersey
Chancery Division, Essex County
Order to Enforce Litigant's Rights
Case No. ESX-C-22-24
Issued December 2, 2024 ..... 59a

Superior Court of New Jersey, Appellate Division
Order Granting Temporary Remand
Case No. A-003615-23T4
Issued November 7, 2024..... 67a

Superior Court of New Jersey
Chancery Division, Essex County
Order Granting Order to Show Cause
Case No. C-000022-24
Issued June 18, 2024..... 69a

United States District Court
for the District of New Jersey
Memorandum Opinion
Case No. 3:23-cv-23076
Issued January 12, 2024..... 71a

Stipulation and Order
Superior Court of New Jersey
Chancery Division, Essex County
Stipulation and Order
Case No. ESX-C-22-24
Entered January 3, 2025 ..... 85a

Subpoena from the State of New Jersey
to First Choice Women's Resource Center, Inc.
Dated November 15, 2023..... 89a

Complaint for Declaratory and Injunctive Relief
United States District Court
for the District of New Jersey
Case No. 3:23-cv-23076
Filed December 13, 2023..... 111a

Transcript of Decision
Superior Court of New Jersey
Chancery Division, Essex County
Case No. ESX-C-22-24
Dated May 28, 2024 ..... 148a

Declaration of Counsel for Donors to First Choice
Women's Resource Centers, Inc.
U.S. District Court for the District of New Jersey
Case No. 3:23-cv-23076
Filed July 19, 2024..... 174a

Declaration of Aimee Huber
U.S. District Court for the District of New Jersey
Case No. 3:23-cv-23076
Filed July 19, 2024..... 179a

Supplemental Declaration of Aimee Huber
U.S. District Court for the District of New Jersey
Case No. 3:23-cv-23076
Filed August 2, 2024 ..... 188a

Emails between K. Wojtowicz and S. Iyer
Re: NJ AG crisis pregnancy center alert draft
Dated October 17, 18, & 26, 2022 ..... 191a

Emails from S. Iyer to R. Sutocky, K. Wojtowicz
Re: Data privacy alert for providers
Dated October 26 & December 6, 2022 ..... 194a

TABLE OF AUTHORITIES

Cases

Americans for Prosperity Foundation v. *Bonta*,
594 U.S. 595 (2021)..... i, 3, 6, 9, 24–27

Bennett v. *Hendrix*,
423 F.3d 1247 (11th Cir. 2005)..... 25

Constantine v. *Rectors & Visitors of George Mason University*,
411 F.3d 474 (4th Cir. 2005) 24–25

Dobbs v. *Jackson Women's Health Organization*,
597 U.S. 215 (2022)..... 6

Exxon Mobil Corp. v. *Healey*,
28 F.4th 383 (2d Cir. 2022) 20

Exxon Mobil Corp. v. *Schneiderman*,
316 F. Supp. 3d 679 (S.D.N.Y. 2018) 20, 29

Felder v. *Casey*,
487 U.S. 131 (1988)..... 23, 31

First Choice Women's Resource Centers, Inc. v. *Attorney General New Jersey*,
2024 WL 3493288 (3d Cir. July 9, 2024) 12

Google, Inc. v. *Hood*,
822 F.3d 212 (5th Cir. 2016) 3, 10, 16–18, 29

Harmon Law Offices, P.C. v. *Attorney General*,
991 N.E.2d 1098 (Mass. App. Ct. 2013)..... 32

Heck v. *Humphrey*,
512 U.S. 477 (1994)..... 4, 21

In re Addonizio,
248 A.2d 531 (N.J. 1968) 32

In re Investigation of KAHEA,
497 P.3d 58 (Haw. 2021)..... 33

Knick v. *Township of Scott*,
588 U.S. 180 (2019)..... 4, 22–24

McNeese v. *Board of Education for Community Unit School District 187*,
373 U.S. 668 (1963)..... 22

Media Matters for America v. *Bailey*,
2024 WL 3924573 (D.D.C. Aug. 23, 2024) 19

Media Matters for America v. *Paxton*,
732 F. Supp. 3d 1 (D.D.C. 2024)..... 20

Mitchum v. *Foster*,
407 U.S. 225 (1972)..... 31

Monroe v. *Pape*,
365 U.S. 167 (1961)..... 22

NAACP v. *Alabama ex rel. Patterson*,
357 U.S. 449 (1958)..... 5, 26, 35

Nebraska Press Association v. *Stuart*,
427 U.S. 539 (1976)..... 25

Obria Group, Inc. v. *Ferguson*,
2025 WL 27691 (W.D. Wash. Jan. 3, 2025)..... 19, 29

Publius v. *Boyer-Vine*,
237 F. Supp. 3d 997 (E.D. Cal. 2017)..... 20

Reisman v. *Caplin*,
375 U.S. 440 (1964)..... 27

Second Amendment Foundation v. *Ferguson*,
2024 WL 97349 (W.D. Wash. Jan. 9, 2024) 20

Smith & Wesson Brands, Inc. v. *Attorney General of New Jersey*,
105 F.4th 67 (3d Cir. 2024) 23, 29, 35

Smith & Wesson Brands, Inc. v. *Attorney General of New Jersey*,
27 F.4th 886 (3d Cir. 2022) 23, 27

Sprint Communications, Inc. v. *Jacobs*,
571 U.S. 69 (2013)..... 23, 31

State ex rel. Danforth v. *Independent Dodge, Inc.*,
494 S.W.2d 362 (Mo. Ct. App. 1973) 32

Twitter, Inc. v. *Paxton*,
56 F.4th 1170 (9th Cir. 2022).....3, 17–18, 24, 28

U.S. News & World Report, L.P. v. *Chiu*,
2024 WL 2031635 (N.D. Cal. May 7, 2024) 20

WinRed, Inc. v. *Ellison*,
59 F.4th 934 (8th Cir. 2023)..... 30

Statutes

28 U.S.C. 1254..... 1

42 U.S.C. 1983..... i, 2

71 Pa. Stat. and Cons. Stat. § 307-3..... 33

815 Ill. Comp. Stat. Ann. 505/3 32

Ala. Code § 8-19-9 32

Alaska Stat. § 45.50.590 32

Ark. Code Ann. § 4-88-111..... 32

Ga. Code Ann. § 10-1-397 32

Ga. Code Ann. § 10-1-404 32

Haw. Rev. Stat. § 28-2.5(a) 32, 33

Iowa Code § 714.16 32
Ky. Rev. Stat. Ann. § 367.240 33
Mass. Gen. Laws Ann. ch. 93A, § 6(1) 32
Md. Code Ann., Com. Law § 13-405 33
Miss. Code Ann. § 75-24-17 17
Miss. Code Ann. § 75-24-27 33
Mo. Ann. Stat. § 407.040 32
Mont. Code Ann. § 30-14-113 33
N.C. Gen. Stat. Ann. § 75-10 33
N.D. Cent. Code Ann. § 51-15-04 33
N.H. Rev. Stat. Ann. § 358-A:8 33
N.J. Stat. Ann. § 45:1-18 31
N.J. Stat. Ann. § 45:1-19 12
N.J. Stat. Ann. § 45:17A-33 ..... 12, 31, 32
N.J. Stat. Ann. § 56:8-3 31
N.J. Stat. Ann. § 56:8-6 12
N.Y. Gen. Bus. Law § 343 33
N.Y. Gen. Bus. Law § 352 33
Or. Rev. Stat. Ann. § 646.618 33
R.I. Gen. Laws § 6-13.1-7 33
Tenn. Code Ann. § 47-18-106 33
Tex. Bus. & Com. Code Ann. § 17.61 33
Wash. Rev. Code Ann. § 19.86.110 33
Wis. Stat. Ann. § 136.03 33

Other Authorities

Attorney General Rob Bonta, Open Letter from Attorneys General Regarding CPC Misinformation and Harm, State of California Office of the Attorney General (Oct. 23, 2023) 7, 28

CatholicVote, Pregnancy Centers Attack Tracker.... 6

Consumer Alert, New Jersey Division of Consumer Affairs (Dec. 1, 2022) 7

Graham Moomaw, *Miyares takes aim at Democratic fundraising platform ActBlue*, Virginia Mercury (Aug. 5, 2024) 30

House Letter to AG Schwalb (Oct. 30, 2023) 30

Senate Finance Comm., *How State Attorneys General Target Youth and Adults by Weaponizing the Medicaid Program and their Health Oversight Authority* (Apr. 16, 2024)..... 30

The Federalist No. 51 (James Madison) 33

Rules

New Jersey Rule of Court 4:67-1(a)..... 12

DECISIONS BELOW

The November 12, 2024 memorandum opinion of the United States District Court for the District of New Jersey dismissing this action for lack of jurisdiction and denying a TRO and preliminary injunction is reported at 2024 WL 4756044 and is reprinted at App.6a. The December 12, 2024 order of the United States Court of Appeals for the Third Circuit affirming the district court is reported at 2024 WL 5088105 and is reprinted at App.1a. The June 18, 2024 order of the New Jersey Superior Court, Chancery Division, Essex County, is unreported and reprinted at App.69a, and the November 7, 2024 order of the New Jersey Superior Court, Appellate Division is unreported and reprinted at App.67a.

STATEMENT OF JURISDICTION

This Court has jurisdiction under 28 U.S.C. 1254(1). The judgment of the court of appeals was entered on December 12, 2024.

INTRODUCTION

This case presents the ideal vehicle in which to address a recurring question that has divided the circuits and will ordinarily escape this Court's review. That question concerns when the target of a state investigatory demand—whether a subpoena or a civil investigative demand—may avail itself of the federal forum guaranteed by 42 U.S.C. 1983. Under the decision below, such a target is relegated to state court to litigate its federal constitutional claims, even if the subpoena is unlawful, the target has suffered an objectively reasonable chill of its First Amendment rights, and the target filed its federal lawsuit *before* the state official filed in state court. The Court should grant the petition and provide clarity to the lower courts on this important question.

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 or refer for abortion. He also signed an open letter pledging to take legal action against pregnancy centers. The Attorney General made good on that pledge by issuing an invasive Subpoena to First Choice Women's Resource Centers, Inc., a collection of five medically-licensed centers that offer free medical services and material support to women facing unplanned pregnancies. Though the Attorney General could not identify a single complaint, he demanded that First Choice turn over years of sensitive internal information—including donor information about nearly 5,000 contributions.

Faced with the far-reaching infringement of its First Amendment association and speech rights, First

Choice filed this section 1983 action in federal court seeking emergency relief. First Choice alleged that the Subpoena had chilled both its associations with donors and its speech. Yet the district court twice held First Choice's claims unripe. The first time, it followed *Google, Inc.* v. *Hood*, 822 F.3d 212, 225 (5th Cir. 2016), which held that an attorney general's investigative demand cannot be challenged in federal court unless first enforced in state court. Then, on remand from the Third Circuit (after the parties stipulated the case was ripe because a New Jersey trial court held the Subpoena enforceable), the district court doubled down. It concluded that First Choice's section 1983 action would "only" be ripe once a state court required it to respond under "threat of contempt." App.42a.

The Third Circuit affirmed in a 2–1 decision. Judge Bibas would have held the case ripe, finding it indistinguishable from *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595, 618–19 (2021). App.3a. But the majority—joining the Fifth Circuit and splitting from the Ninth—held that First Choice's claims were unripe because "[i]t can continue to assert its constitutional claims in state court as that litigation unfolds." App.4a. In doing so, the panel majority failed to grapple with the Ninth Circuit's conclusion that a constitutional challenge to an attorney general's investigative demand is ripe "even prior to" state litigation if the plaintiff alleges "objectively reasonable chilling of its speech or another legally cognizable harm." *Twitter, Inc.* v. *Paxton*, 56 F.4th 1170, 1178 n.3 (9th Cir. 2022). Instead, the Third Circuit affirmed the district court's dismissal for lack of subject matter jurisdiction, deepening the acknowledged circuit split between the

Fifth and Ninth Circuits, and nearly guaranteeing that First Choice will lose its choice of federal forum.

The conclusion that a section 1983 claim is unripe because it can be litigated in state court is plainly wrong. 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). It would defeat that purpose to dismiss a federal case because the recipient of a government investigative demand can "assert its constitutional claims in state court." App.4a. The Third Circuit's rule is also contrary to "the settled rule" that state litigation is "not a prerequisite" to a federal section 1983 action. *Knick* v. *Twp. of Scott*, 588 U.S. 180, 184–85 (2019) (cleaned up). There is no subpoena exception to section 1983.

It gets worse. Just like this Court in *Williamson County*, the Third Circuit contemplated future federal litigation of those constitutional claims. Yet res judicata will almost certainly bar First Choice from having its federal claims decided by a federal court. The target of a subpoena thus "finds himself in a Catch-22." *Knick*, 588 U.S. 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.* In other words, the Third Circuit's requirement that a state court first assess First Choice's constitutional claims means that a federal court will never get to do so. If this result sounds like one that this Court would reject, that is because the Court did just that—in *Knick*.

Certiorari is warranted because state investigative demands are the very sort of thing that

section 1983 is supposed to police. *E.g.*, *NAACP* v. *Ala. ex rel. Patterson*, 357 U.S. 449, 461–66 (1958). And the civil investigatory powers of state attorneys general are expansive. State law authorizes attorneys general to issue investigative demands based on a subjective suspicion of wrongdoing or a subjective determination that the demand is in the public interest. In recent years, state attorneys general have made increasing use of these broad investigative powers—sometimes employing them to target political opponents.

Indeed, the targets of these investigatory demands 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.

This case provides an ideal vehicle to review the question presented. In the usual case, review will prove elusive. A case involving the federal ripeness determination is unlikely to arise out of the Third or Fifth Circuits because those courts have relegated such litigation to the state courts. And by the time the issue reaches this Court from another circuit, it is likely to be moot or precluded by parallel state-court proceedings.

This case presents a unique scenario where, despite parallel state proceedings, the question of federal jurisdiction remains live. That is because the state court's order enforcing the Subpoena expressly did not resolve First Choice's constitutional objections. Plus, the Attorney General has now agreed to stay proceedings pending disposition of this petition and any merits review, ensuring that subsequent developments will not moot the case.

The Attorney General's Subpoena causes First Choice, its donors, and all those it associates with to think twice before speaking and associating with the faith-based nonprofit. That injury satisfies Article III. See *Ams. for Prosperity*, 594 U.S. at 618–19. The Third Circuit erred in holding that federal jurisdiction over a challenge to a non-self-executing subpoena depends upon prior state litigation. This Court should grant certiorari and reverse.

STATEMENT OF THE CASE

I. Factual background

A. The Attorney General perpetuates a wave of hostility toward pregnancy centers.

Since *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022), pro-life pregnancy centers have met with increased hostility. In that time, pregnancy centers have faced nearly 100 criminal acts—including arson, graffiti, assault, and threats of assassination and violence. App.182a; *Tracking Attacks on Pregnancy Centers & Pro-Life Groups*, CatholicVote, https://perma.cc/YXE6-QCRP (Nov. 12, 2024) (documenting 95 attacks).

After *Dobbs*, the Attorney General established a "Strike Force" to pursue enforcement actions and "strategic initiatives" to promote abortion access.[1] The Strike Force prepared a statewide "consumer

[1] See Press Release, New Jersey Office of the Attorney General, Acting AG Platkin Establishes "Reproductive Rights Strike Force" to Protect Access to Abortion Care for New Jerseyans and Residents of Other States (July 11, 2022), https://perma.cc/WZ6B-KLT6.

alert" to warn New Jerseyans about the obvious—that pro-life pregnancy centers "do NOT provide abortion[s]." Consumer Alert, New Jersey Division of Consumer Affairs, https://perma.cc/5J8A-D4LB (Dec. 1, 2022). His alert cautions that pregnancy centers "[o]ffer free services (including pregnancy tests, ultrasounds, and adoption information) or supplies (including diapers and baby clothes) to individuals seeking … reproductive health care services." *Ibid.*

The consumer alert redirects women from pregnancy centers to Planned Parenthood. *Ibid.* That's predictable because the Attorney General enlisted the abortion provider's help to write the alert. He forwarded a draft to Planned Parenthood for feedback and incorporated the group's input. App.191a–96a.

The Attorney General also co-authored an open letter falsely accusing pregnancy centers of misleading consumers. Attorney General Rob Bonta, Open Letter from Attorneys General Regarding CPC Misinformation and Harm, State of California Office of the Attorney General (Oct. 23, 2023), https://perma.cc/DL74-3K6L. His chief grievance: that pregnancy centers "do not provide abortions or abortion services." *Id.* at 1. The letter pledged "numerous actions" against them. *Id.* at 8.

B. The Attorney General demands donor identities and other sensitive information from First Choice.

As promised, the Attorney General took action against pregnancy centers. He served two with investigatory subpoenas. One is First Choice—a pregnancy center that has been serving New Jersey women with free, licensed medical services and

material support since 1985. App.116a. Like other pregnancy centers, First Choice is a faith-based nonprofit that advocates pro-life views. App.117a. It does not provide or refer for abortions, and it states so plainly on every page of its client website. App.116a. First Choice is funded exclusively by private donors and provides its services for free. App.180a.

The Attorney General cited three statutory bases for his Subpoena: the New Jersey Consumer Fraud Act (NJCFA), the Charitable Registration and Investigation Act (CRIA), and his investigative authority over Professions and Occupations (P&O). App.90a. He made 28 demands for documents and information from First Choice, including the identity of every one of its donors who gave through any means other than one specific donor website. App.100a–10a. The Attorney General's professed concern was that a donor might have given based on the mistaken belief that First Choice was a pro-abortion organization. Br. of Def-Appellee at 6–8, *First Choice Women's Res. Ctrs., Inc.* v. *Att'y Gen. N.J.*, 2024 WL 5088105 (3d Cir. Dec. 12, 2024) (No. 24-3124), Doc.43.

The breadth of the Attorney General's demand is staggering. It requires First Choice to disclose donor information for some 5,000 individual contributions. App.110a. It would include everyone who gave at First Choice's benefit dinners and through church baby-bottle campaigns—even though such donors could not possibly be confused about First Choice's pro-life mission. And the Attorney General made his broad demand for donor identities without identifying a single donor complaint.

C. The Subpoena chills First Choice's association and speech rights.

The Subpoena harms First Choice even without a court order enforcing it. Because of the "pattern of violence and intimidation" against pregnancy centers, First Choice is "concerned that if its donors' identities [become] public, they may be subjected to similar threats." App.182a. And since "[m]any donors desire for their donations and communications with First Choice to remain confidential," disclosing such information would compromise its "ability to recruit new donors, personnel, and affiliates," as well as hinder its ability to "retain current donors, personnel, and affiliates." App.182a–83a. "Failure to protect their identities would cause them to cease donating to First Choice." App.182a. As this Court made clear in *Americans for Prosperity*, even the *threat* of disclosure is likely to scare away donors. 595 U.S. at 618–19.

Several donors whose 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." 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." App.177a. It's thus unsurprising that the donors regard the Attorney General's investigation as an imminent threat to their association with First Choice. App.178a.

The Subpoena has also chilled First Choice's speech. The Attorney General demanded the identities of First Choice's staff, App.107a–08a, and First Choice became concerned those staff members would be subject "to harassment such as First Choice was experiencing." App.181a. First Choice thus censored its speech by removing several videos of its staff sharing client stories from its public YouTube channel. *Ibid.* This "leav[es] the public with only videos that do not identify staff, even though those videos are less impactful than those containing first-person testimony." *Ibid.*

II. Procedural history

A. The district court holds this case unripe.

Given the imminent threat to its First Amendment rights, First Choice filed this action in federal court and requested emergency relief before the Subpoena's compliance date. App.111a–47a. First Choice raised various First Amendment claims, including claims of First Amendment retaliation. Though the Attorney General did not contest jurisdiction, the district court dismissed the action sua sponte. Relying on the Fifth Circuit's decision in *Google, Inc.* v. *Hood*, 822 F.3d 212, the lower court held that First Choice's section 1983 claims were unripe until "the state court enforces the Subpoena." App.80a. The district court acknowledged the preclusion trap its holding created: a federal challenge to an investigatory demand would "seldom if ever be ripe" because "res judicata principles will likely bar … a claim in federal court" after state-court adjudication. App.82a n.7.

After the district court dismissed this lawsuit, the Attorney General filed an enforcement action in state court.

First Choice promptly appealed the district court decision. And given that the state court action threatened to preclude First Choice's federal claims, it sought both an expedited appeal and an injunction pending appeal from the Third Circuit. Both were denied. Order Denying Emergency Motion, *First Choice*, 2024 WL 3493288 (No. 24-1111), Doc.20; Order denying Motion to Expedite Appeal, *First Choice*, 2024 WL 3493288 (No. 24-1111), Doc.29. First Choice then petitioned this Court for mandamus or certiorari before judgment, which the Court denied. *In re First Choice Women's Resource Centers, Inc.*, No. 23-941 (U.S. May 13, 2024).

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

The state trial court then held the Subpoena enforceable. It granted the Attorney General's request to direct First Choice to respond to the Subpoena "in full." App.158a. Yet the state court declined to reach First Choice's constitutional objections, finding them "premature." App.156a. The court held "that there are no ripe constitutional arguments" and that those issues were "preserved." App.157a; App.162a. The state court also reserved a decision on the scope of the Subpoena under state law, directing the parties to confer. App.155a–56a.

First Choice appealed. It also began conferring about the scope of the Subpoena, served timely 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 protected donor information.

C. The Third Circuit remands.

After the state court enforced the Subpoena, both parties acknowledged that First Choice's federal suit was ripe. *First Choice Women's Res. Ctrs., Inc.* v. *Att'y Gen. N.J.*, No. 24-1111, 2024 WL 3493288, at *1 (3d Cir. July 9, 2024). They disagreed only on what relief was warranted—First Choice argued that the Third Circuit should grant an injunction pending appeal and summarily reverse the district court, while the Attorney General asked the Third Circuit to dismiss the appeal as moot and remand to the district court. *Ibid.* The Third Circuit granted the Attorney General's motion to remand the appeal "as moot" and noted that "[b]ased on subsequent developments in state court, it is now undisputed that [First Choice's] claims are ripe." *Ibid.*

The Third Circuit said the district court could consider an injunction "in the first instance." *Ibid.* On remand, First Choice thus renewed its emergency request for an injunction.

D. The state court denies the Attorney General's motion to enforce litigant's rights.

Back in state court, the Attorney General filed a motion "to enforce litigant's rights" under N.J. Stat. Ann. §§ 45:17A-33, 45:1-19, 56:8-6, and New Jersey Rule of Court 4:67-1(a). See App.59a. He insisted that First Choice hand over everything demanded by his Subpoena—including donor identities—and requested sanctions. See App.59a–66a.

The state court declined to rule while First Choice's state-court appeal was pending. App.62a. So the Attorney General moved for—and the Appellate Division granted—his motion to temporarily remand to the trial court to consider his motion to enforce litigant's rights and for sanctions. App.67a–68a.

E. The district court holds this case unripe—again.

The federal district court then ruled on First Choice's emergency motion for an injunction, which had been pending nearly four months. Despite the state court's enforcement of the Subpoena and the Attorney General's motion for sanctions, the district court held the case *still* not ripe. App.26a. This time, it 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." App.42a; App.26a. First Choice immediately appealed and moved to expedite. Judge Bibas granted that motion. Order Granting Mot. to Expedite, *First Choice*, 2024 WL 5088105 (No. 24-3124), Doc.12.

Meanwhile, the state trial court denied the Attorney General's motion to enforce litigant's rights and for sanctions because First Choice had complied with the court's order to respond "in full" to the Subpoena. App.64a–65a. The state court also reiterated that it had never ruled on the merits of First Choice's constitutional claims. App.64a.[2]

---

[2] On January 17, 2025, the state appellate division dismissed First Choice's pending appeal of the state court's enforcement order finding it not final. Order on Mot., *Att'y Gen. N.J.* v. *First Choice Women's Res. Ctrs., Inc.*, No. A-003615-23T4 (N.J. Sup. Ct. App. Div. dismissed Jan. 17, 2025).

F. The Third Circuit joins the Fifth in requiring state-court proceedings to ripen federal constitutional claims challenging a state investigative demand.

The Third Circuit joined the Fifth Circuit in requiring state-court litigation as a precursor to a federal section 1983 challenge to a state investigative demand. App.4a. Judge Bibas would have held "First Choice's constitutional claims ripe" as "indistinguishable from *Americans for Prosperity Foundation*." App.3a. But the majority held that First Choice's claims were not yet ripe because "[i]t can continue to assert its constitutional claims in state court as that litigation unfolds." App.4a. The majority emphasized its confidence that "the state court will adequately adjudicate First Choice's constitutional claims." App.4a–5a.

The Third Circuit failed to recognize the preclusive effect of such an adjudication—wrongly assuming that subsequent federal review could occur. App.5a. It then stated that "First Choice's current affidavits do not yet show enough of an injury," without addressing what those affidavits alleged or explaining how a First Amendment injury could exist while not being "enough" to establish jurisdiction. App.4a.

The Attorney General agreed that he would not pursue any further enforcement of the Subpoena in state court while First Choice seeks review from this Court. App.87a–88a. This petition follows.

REASONS FOR GRANTING THE PETITION

For a century and a half, Congress has provided the targets of a state official's malfeasance with a federal forum in which to raise their constitutional claims. Yet the Third and Fifth Circuits have eliminated that forum for the targets of state investigative demands. Section 1983 does not carve out subpoenas from its guarantee of a federal forum. This Court's review is necessary to instruct the lower federal courts on whether a section 1983 challenge to an investigative demand is unripe until litigated in state court. This Court should grant review for four reasons.

First, the courts of appeal are divided over whether a recipient of an investigatory demand must first go to state court before challenging the demand in federal court. The Third and Fifth Circuits impose this state-court litigation requirement, but the Ninth Circuit holds that a concrete injury caused by the challenged subpoena satisfies Article III.

Second, the decision below is irreconcilable with two different lines of this Court's precedent. This Court has recognized that section 1983 does not impose a state-court litigation requirement and that First Amendment chill satisfies Article III's injury requirement. Despite those rulings, and regardless of whether the target of an investigative demand has already suffered an Article III injury, the Third and Fifth Circuits hold that federal jurisdiction over a section 1983 challenge to a state investigative demand depends upon a prior state-court proceeding.

Third, this issue is exceptionally important. State attorneys general have jaw-dropping authority to issue these demands, whether framed as subpoenas

or civil investigatory demands. They often have the power to investigate based on a mere suspicion of wrongdoing. And in today's charged political climate, suspicions abound. Yet the Third and Fifth Circuits relegate section 1983 challenges to these demands to state court—eliminating one of the most effective checks on unconstitutional state action.

And *fourth*, this Court may never see a better vehicle in which to provide clarity on the question presented. Parallel state proceedings will almost always moot or preclude the jurisdictional question presented here. This case is unusual precisely because the state court has not decided First Choice's federal claims. And the Attorney General has agreed to stay further state-court enforcement pending disposition of this petition. This Court should seize this rare opportunity and grant review.

I. The circuits are split on when litigants can bring federal challenges to state investigatory demands.

The Third Circuit's decision exacerbates a conflict over an important jurisdictional question: whether the target of a state investigatory demand may file suit in federal court under section 1983 upon suffering an Article III injury or whether it must first undergo state-court proceedings. Two circuits—the Fifth Circuit and the divided Third Circuit panel below—hold that a non-self-enforcing demand (which requires a state-court order for the imposition of sanctions) may be challenged in federal court only *after* state-court litigation has ripened the challenge. *Google*, 822 F.3d at 224–25; App.4a–5a. The Ninth Circuit, in contrast, has expressly disagreed with the Fifth Circuit's decision in *Google*. Consistent with this

Court's state-court exhaustion caselaw, the Ninth Circuit has held that, even where a demand is not "self-enforcing," a section 1983 plaintiff may challenge it in federal court upon suffering cognizable harm. *Twitter*, 56 F.4th at 1175–76.

This conflict merits this Court's review.

1. The Fifth Circuit imposes a categorical rule that a challenge to a non-self-enforcing investigatory demand is not ripe until the demand has been litigated in state court. In *Google*, the Fifth Circuit considered a First and Fourth Amendment challenge to a subpoena served by the Mississippi Attorney General. 822 F.3d at 219. The Fifth Circuit held that the case was unripe, applying its "cases considering federal administrative subpoenas that … were non-self-executing." *Id.* at 224. The Fifth Circuit explained that Mississippi law, like federal administrative law, gave the Attorney General "no authority to enforce" the subpoena, but rather required him to "request an order" to compel from the state courts, which would be enforceable through contempt. *Id.* at 225 (citing Miss. Code Ann. § 75-24-17). The Fifth Circuit held that "comity should make [the court] less willing to intervene when there is no current consequence," especially because "the same challenges raised in the federal suit could be litigated in state court." *Id.* at 225–26. It therefore concluded that "neither the issuance of the non-self-executing administrative subpoena nor the possibility of some future enforcement action created an imminent threat of irreparable injury ripe for adjudication." *Id.* at 228. The court did not explain *how* a litigant could obtain a federal-court ruling on a constitutional issue after a state court has already resolved it.

2. The Ninth Circuit expressly split with the Fifth Circuit and held that the target of a state investigation's challenge is ripe where the demand has caused injury. In *Twitter, Inc.* v. *Paxton*, the Ninth Circuit considered the social media company's challenge to a demand issued by the Texas Attorney General. 56 F.4th at 1172. Even though Texas law required the Attorney General to resort to state court to enforce the demand, which means it was "not self-executing," the Ninth Circuit expressly rejected the Fifth Circuit's categorical holding that the recipient may never establish standing "prior to the [demand's] enforcement" in state court. *Id.* at 1176, 1178 n.3 (citing *Google*, 822 F.3d at 225). Rather, the recipient's "objectively reasonable chilling of its speech or another legally cognizable harm" satisfied Article III, allowing a federal court to rule and redress that harm immediately. *Ibid.*

3. Here, a divided Third Circuit panel took the same approach as *Google* and held that First Choice's first-filed section 1983 action was not ripe because the group could "assert its constitutional claims in state court." App.4a. The majority began by characterizing the case as seeking to prevent the Attorney General "from enforcing a non-self-enforcing investigatory subpoena." App.3a. It then determined that the case was unripe because First Choice "can continue to assert its constitutional claims in state court," and added that "the parties have been ordered by the state court to negotiate to narrow the subpoena's scope." App.4a. The majority was unconcerned about rejecting First Choice's first choice of a federal forum, saying it "believe[d] that the state court will adequately adjudicate First Choice's constitutional claims." App.4a–5a. The lower court also wrongly

assumed that future federal litigation would "adequately adjudicate" First Choice's constitutional claims, App.5a, failing to explain how a federal case following the state court's ruling would not be res judicata.

Judge Bibas dissented. He concluded that the case was ripe and "indistinguishable from *Americans for Prosperity Foundation*." App.3a.

4. The district courts are also hopelessly split on this issue.

a. Just last month, a federal district court dismissed as unripe a section 1983 challenge to the Washington State Attorney General's investigation of a pregnancy center. *Obria Grp., Inc.* v. *Ferguson*, No. 3:23-cv-06093, 2025 WL 27691, at *1 (W.D. Wash. Jan. 3, 2025). The court held that the action would not ripen—regardless of allegations of chill and economic harm—until first litigated in state court. *Id.* at *10.

b. In a pair of cases that Media Matters filed in the District of Columbia—one against the Missouri Attorney General and one against the Texas Attorney General—the courts reached the opposite conclusion.

In the Missouri case, the district court rejected the state's *Google*-based argument that, where the target of a state investigative demand "'can raise its First Amendment defense' in state court, then a federal challenge is not ripe." *Media Matters for Am.* v. *Bailey*, No. 24-cv-147 (APM), 2024 WL 3924573, at *9 (D.D.C. Aug. 23, 2024) (cleaned up). Instead, the court held that "Plaintiffs' retaliation claim is plainly ripe as they have come forward with evidence of harm: Defendant's actions chilled their protected expression." *Ibid.*

Similarly, in the Texas case, the district court held that the plaintiffs had amply "demonstrate[d] some likelihood of a chilling effect on their rights" to justify preliminary injunctive relief. *Media Matters for Am.* v. *Paxton*, 732 F. Supp. 3d 1, 29 (D.D.C. 2024) (cleaned up). Texas's ripeness arguments failed to recognize that "Plaintiffs are *already* suffering First Amendment harm in the form of chilled protected activities." *Ibid.* (emphasis in original). This case has been fully briefed and argued before the D.C. Circuit.

c. In *Exxon Mobil Corp.* v. *Schneiderman*, the Southern District of New York followed *Google* and agreed that there was "no reason why a state's non-self-executing subpoena should be ripe for review" before litigation in state court. 316 F. Supp. 3d 679, 695 (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) (cleaned up). The court found the case ripe because the state courts *had* compelled Exxon to comply with the New York Attorney General's investigative demands. *Id.* at 696. But because Exxon could have litigated its federal claims in state court, the district court held they were barred by claim preclusion. *Id.* at 699–704.

d. And in *U.S. News & World Report, L.P.* v. *Chiu*, the district court relied on *Google* and dismissed as unripe a challenge to a subpoena issued by a city attorney because it was not self-executing and did not "require immediate compliance." No. 24-cv-00395-WHO, 2024 WL 2031635, at *14 (N.D. Cal. May 7, 2024); see also *Second Amend. Found.* v. *Ferguson*, No. C23-1554 MJP, 2024 WL 97349, at *4 (W.D. Wash. Jan. 9, 2024) (appeal pending) (dismissing challenge to subpoena as unripe); cf. *Publius* v. *Boyer-Vine*, 237 F. Supp. 3d 997, 1027–28 (E.D. Cal. 2017)

(applying the *Google* framework to a First Amendment challenge to a state demand letter requesting that WordPress take down certain content).

These cases collectively demonstrate that the lower courts desperately need guidance on the question presented here.

II. The Third Circuit erred in relegating federal challenges to state investigatory demands to state court.

A. The Third Circuit's state-litigation requirement deprives First Choice of its guaranteed federal forum.

The Third Circuit erred in joining the Fifth Circuit and holding that federal jurisdiction over a section 1983 challenge to a state investigative demand is predicated on prior state litigation. According to the Third Circuit, First Choice's First Amendment claims are not yet ripe because it "can continue to assert its constitutional claims in state court as that litigation unfolds." App.4a; see also App.4a–5a ("believ[ing] that the state court will adequately adjudicate First Choice's constitutional claims"). That ripeness ruling rests on a mistaken understanding of section 1983 and First Amendment standing.

Section 1983 guarantees "a federal forum for claims of unconstitutional treatment at the hands of state officials." *Heck*, 512 U.S. at 480. 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 (emphasis added, quotation omitted).

Yet under the Third Circuit's mistaken view, "the guarantee of a federal forum rings hollow" for subpoena recipients "who are forced to litigate their claims in state court." *Id.* at 185. No matter how unlawful a subpoena—the target of an investigatory demand may not avail herself of federal court unless and until a state court adjudicates her constitutional claims.

This is particularly troublesome given that section 1983's very purpose is to secure a federal forum for violations of federal law by state officials. As this Court has observed, it would defeat this purpose to hold that a litigant's right to assert "a federal claim in a federal court must await an attempt to vindicate the same claim in a state court." *McNeese* v. *Bd. of Educ. for Cmty. Unit Sch. Dist. 187*, 373 U.S. 668, 672 (1963). 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). This is as true for constitutional challenges to a state investigative demand as for any other federal claim.

Worse still, the state-court adjudication that the Third Circuit demands will simultaneously ripen and bar First Choice's constitutional claim, as the district court acknowledged here. App.82a. Under the Third Circuit's logic, the target of a state subpoena "finds himself in a Catch-22." *Knick*, 588 U.S. 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 claim

will be barred in federal court." *Ibid.* As in *Knick*, this "preclusion trap should tip us off that the state-litigation requirement rests on a mistaken view" of the Constitution. *Ibid.*

A prior Third Circuit case illustrates how this preclusion trap works. The court there concluded that a district court had erred in dismissing a constitutional challenge to a subpoena under *Younger* abstention. *Smith & Wesson Brands, Inc.* v. *Att'y Gen. of N.J.*, 27 F.4th 886, 892–93 (3d Cir. 2022). But by the time that jurisdictional question reached the Third Circuit, the state court had already "summarily rejected" the constitutional objections in parallel proceedings. *Id.* at 890. So, on remand, the district court dismissed the first-filed constitutional claims as barred by res judicata. *Smith & Wesson Brands, Inc.* v. *Att'y Gen. of N.J.*, 105 F.4th 67, 70 (3d Cir. 2024). The Third Circuit then affirmed. *Ibid.*; accord *Exxon Mobil*, 316 F. Supp. 3d at 699–704. That ruling handed to state courts the authority over constitutional challenges to state investigations—and given preclusion, it did so permanently. *Knick*, 588 U.S. at 188–89.

Here, the Third Circuit expressed confidence "that the state court will adequately adjudicate First Choice's constitutional claims." App.4a–5a. But in enacting section 1983, Congress was much less sure that state courts would be free from the influence of state politics. See *Felder* v. *Casey*, 487 U.S. 131, 141 (1988). Regardless, the mere possibility that a state court might get it right does not excuse the federal courts from exercising their "virtually unflagging" jurisdiction to decide a federal question, *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 77 (2013) (cleaned up), any more than did the possibility that a

state court might find an uncompensated taking to be unconstitutional in *Knick*. Constitutional claims against state investigative demands "should be handled the same as other claims under the Bill of Rights." *Knick*, 588 U.S. at 202. The Third Circuit erred in holding otherwise.

B. The Third Circuit's state-litigation requirement violates this Court's First Amendment precedents.

The Third Circuit's ripeness rule also conflicts with this Court's First Amendment precedents. A First Amendment plaintiff under section 1983—including the recipient of a state investigatory demand—may bring a claim in federal court if its right to associate or speak has been chilled. *Ams. for Prosperity*, 594 U.S. at 618–19. "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" but also by the "risk of a chilling effect on association." *Ibid.* That risk of chill "is enough, because First Amendment freedoms need breathing space to survive." *Ibid.* (cleaned up).

A plaintiff asserting First Amendment retaliation claims against an attorney general's investigative demand—as First Choice does here—satisfies ripeness "even prior to" state litigation if the plaintiff alleges "objectively reasonable chilling of its speech or another legally cognizable harm." *Twitter*, 56 F.4th at 1178 n.3. The plaintiff need not show that retaliatory conduct "caused her to cease First Amendment activity altogether." *Constantine* v. *Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500–01 (4th Cir. 2005). Rather, "[t]he cause of action targets conduct

that tends to *chill* such activity, not just conduct that freezes it completely." *Ibid.* (emphasis omitted). Thus, "for purposes of a First Amendment retaliation claim under § 1983, a plaintiff suffers adverse action if the defendant's allegedly retaliatory conduct would likely deter 'a person of ordinary firmness' from the exercise of First Amendment rights." *Ibid.* (cleaned up); *Bennett* v. *Hendrix*, 423 F.3d 1247, 1254 (11th Cir. 2005) (same).

First Choice's First Amendment retaliation claims are ripe because the Attorney General's investigative demand would not only deter "a person of ordinary firmness" from exercising her First Amendment rights but also because First Choice has come forward with evidence that such harm has occurred. It is well settled that "a threat of criminal or civil sanctions after publication 'chills' speech." *Neb. Press Ass'n* v. *Stuart*, 427 U.S. 539, 559 (1976). Here, the Attorney General has already obtained a state-court order enforcing his Subpoena, and he has moved the state court to award sanctions and attorneys' fees for noncompliance. App.69a; see also App.59a. Those threats reasonably chill First Choice's association and speech rights.

The chill on First Choice's associational rights is particularly clear. Judge Bibas dissented below because he found this case "indistinguishable from *Americans for Prosperity Foundation*." App.3a. As this Court held there, for "freedom of association" claims, the "risk of a chilling effect … is enough." *Ams. for Prosperity*, 594 U.S. at 618. Applying this standard, 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." *Ibid.* (quoting *NAACP*, 357 U.S. at 460–61).

Here, First Choice's declarations show not just a possible chill on its associational freedoms, but an actual one. App.181a–83a. The Attorney General's sweeping Subpoena demands that First Choice disclose the identities behind nearly half of its donations by number and almost 70% of its donations by amount. App.189a. Because pregnancy centers have been subject to a "pattern of violence and intimidation" since *Dobbs*, First Choice is "concerned that if its donors' identities became public, they may be subjected to similar threats." App.182a. And since "[m]any donors desire for their donations and communications with First Choice to remain confidential," the Subpoena's threatened disclosure of such wide-ranging information compromises First Choice's "ability to recruit new donors, personnel, and affiliates," as well as its ability to "retain current donors, personnel, and affiliates." App.182a–83a.

First Choice has substantiated all these harms. In an anonymous sworn declaration, multiple First Choice donors testified that they viewed the Attorney General's Subpoena as an imminent threat to their association with First Choice. App.177a–78a. 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." 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." App.177a. Yet the Third Circuit dismissed all this as "not yet ... enough of an injury," without a word of explanation—other than to cite the possibility of relief in state proceedings. App.4a.

The Attorney General's demand has also reasonably and actually chilled First Choice's speech. Faced with the Subpoena's demand for staff identities, App.107a–08a, First Choice removed from its YouTube channel several videos sharing client success stories, despite their positive impact on its ministry. App.181a. First Choice censored this speech because it contained information identifying the center's staff and because it was concerned about their safety. *Ibid*. First Choice worried that, given the Attorney General's public investigation, identifying staff would subject them "to harassment such as First Choice was experiencing." *Ibid*.

As to First Amendment harm, it is no answer to say that injury has not occurred because the state court has yet to compel First Choice to disclose protected donor information. The chill on association or speech is itself the injury. "When it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the Constitution." *Ams. for Prosperity*, 594 U.S. at 610 (cleaned up). Such chill is exactly the effect one would expect from serving these onerous investigative demands. *Smith & Wesson*, 27 F.4th at 896–97 (Matey, J., concurring). "One might suspect that is the whole point" of issuing the subpoena. *Ibid.*

The Attorney General's reliance below on *Reisman* v. *Caplin*, 375 U.S. 440 (1964), and the other federal administrative subpoena cases, is misplaced.

Those cases do not involve section 1983 claims or situations where plaintiffs suffered a chilling injury from the subpoena itself. This case, in contrast, "involves the First Amendment, under which a chilling effect on speech can itself be the harm." *Twitter*, 56 F.4th at 1178. Where, as here, a plaintiff suffers a concrete injury that has already occurred, the subsequent review provided by *Reisman* cannot right that wrong. And while litigating an administrative subpoena before a federal agency does not preclude subsequent litigation in federal court, the opposite is true for a state-court ruling on a federal challenge to a state subpoena.

Forcing First Choice into state court despite direct evidence of a chill on First Amendment rights cannot be squared with this Court's caselaw. This Court should grant review and reverse.

III. The question presented is exceptionally important.

The question presented is profoundly important on multiple levels. *First*, it is important to protect the constitutional rights of pregnancy centers amid state hostility and private violence. Since the leak of the *Dobbs* draft opinion in 2022, these centers have been subject to a shocking level of violence and intimidation. And many state attorneys general have pledged to use every tool in their arsenal to crack down on them, precisely because pregnancy centers "do not provide abortions." See Bonta, Open Letter, *supra*, at 1. Those state officials have made good on those threats by subjecting resource-strapped centers to overbearing investigatory demands, often without identifying a single complaint. See, *e.g.*, *Obria*, 2025

WL 27691, at *1–2 (demanding donor information based on "possible" deceptive marketing).

Second, the importance of this issue spans broad ideological divides, threatening the rights of businesses, nonprofits, and political action committees of all stripes. Beginning with the business community, a vast array of companies—including large tech giants, gun sellers, and petroleum companies—have faced state investigatory demands, and some 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*, 316 F. Supp. 3d at 695.

The nonprofit world—as illustrated by the experiences of groups on both the left and the right—has also been targeted by invasive state investigative demands. Consider the Obria Group, a network of pro-life pregnancy centers and medical clinics. The Washington Attorney General subpoenaed over a decade's worth of the group's information based on what he called "possible" deceptive marketing and "possible" unfair collection and use of consumer data. *Obria*, 2025 WL 27691, at *1–2. And on the other side of the political spectrum, Media Matters—a nonprofit "progressive research and information center"—has been served with investigative demands by several states. See *supra* at 19–20. In addition, immigrant and LGBTQ advocacy groups in the Fifth Circuit have already been forced to litigate their federal challenges to state investigative demands in state court. See *Annunciation House Inc.* v. *Paxton*, No. 2024DCV0616, slip op. (Tex. Dist. Ct., El Paso Cnty. July 2, 2024) (challenging investigative demand in state court); *PFLAG, Inc.* v. *Tex. Att'y Gen.*, No. D-1-

GN-24-001276, slip op. (Tex. Dist. Ct., Travis Cnty. Mar. 1, 2024) (same).

Some state attorneys general have also investigated the political action committees of opposing political parties. WinRed, Inc.—a political action committee that "centralize[d] donations to Republican-affiliated candidates and committees"—is being investigated over allegations that consumers were being "charged for regular contributions that they did not intend." *WinRed, Inc.* v. *Ellison*, 59 F.4th 934, 936–37 (8th Cir. 2023) (cleaned up). Meanwhile, ActBlue—an online Democratic fundraising platform—is being investigated based on allegations of campaign finance fraud. Graham Moomaw, *Miyares takes aim at Democratic fundraising platform ActBlue*, Virginia Mercury (Aug. 5, 2024), https://perma.cc/4KTA-WWE9.

Federal legislators have already highlighted the seeming politicization of many state investigations. Republican lawmakers have expressed concerns over an investigation into certain conservative nonprofits and their leaders. House Letter to AG Schwalb (Oct. 30, 2023), https://perma.cc/2H6S-9WRF. They question the "apparent political motivations" and raise "concern[s] about potential infringement on free association and donor privacy." *Ibid.* And Democrat senators have accused some states of trying "to obtain private medical records from the health care providers of transgender children and adults" to "further ideological and political goals." Senate Finance Comm., *How State Attorneys General Target Youth and Adults by Weaponizing the Medicaid Program and their Health Oversight Authority* (Apr. 16, 2024), https://perma.cc/QAU4-W5KU.

Third, federal courts have a compelling interest in whether they may entertain a first-filed federal challenge to a state investigatory demand. As noted above, the "central purpose" of section 1983 is to provide relief "to those deprived of their federal rights by state actors." *Felder*, 487 U.S. at 141. The "state courts' failure to secure federal rights" during the Reconstruction Era led Congress to pass section 1983 "to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum* v. *Foster*, 407 U.S. 225, 241–42 (1972). Given that history, it is passing strange to exempt *state* investigations from the federal forum guaranteed by section 1983.

The Third and Fifth Circuits relegate the recipients of state investigative demands to second-class constitutional status by depriving them of their federal forum. This result is out of step with this Court's direction that the federal courts must assume jurisdiction where it exists. Indeed, this Court has narrowed the various abstention doctrines precisely because they conflict with the federal courts' "virtually unflagging" obligation to exercise their jurisdiction. *Sprint*, 571 U.S. at 77.

Fourth, this case is critically important to ensure that the targets of state investigative demands have the federal backstop that section 1983 provides. The Attorney General here, for example, has the power to investigate entities and individuals civilly based upon a mere suspicion of wrongdoing. N.J. Stat. Ann. § 56:8-3; accord N.J. Stat. Ann. § 45:1-18; N.J. Stat. Ann. § 45:17A-33(c). Those broad investigative powers may also be employed whenever he subjectively believes an investigation to be in the "public interest." N.J. Stat. Ann. § 56:8-3; accord N.J.

Stat. Ann. § 45:17A-33(c). The New Jersey Supreme Court has aptly characterized this authority as the "power of inquisition" because it allows the Attorney General to "investigate merely on the suspicion that the law is being violated, or even just because [he] wants assurance that it is not." *In re Addonizio*, 248 A.2d 531, 539 (N.J. 1968). But it's not just a Jersey thing.

Many other states confer the same expansive powers on their attorneys general. *E.g.*, Haw. Rev. Stat. § 28-2.5(a); Iowa Code § 714.16(3); Mass. Gen. Laws Ann. ch. 93A, § 6(1); Mo. Ann. Stat. § 407.040. For instance, Missouri's investigative "procedure is entirely unilateral, and is intended solely for the benefit of the attorney general." *State ex rel. Danforth* v. *Indep. Dodge, Inc.*, 494 S.W.2d 362, 366–67 (Mo. Ct. App. 1973). In Iowa, failing to comply with an investigative demand invites the same crippling sanctions as in New Jersey. Indeed, the Iowa attorney general can seek a court order that grants injunctive relief to restrain the recipient's commercial activity, dissolves its corporation, revokes its license, or provides other relief until the recipient "obeys." Iowa Code § 714.16(6)(c). Massachusetts even purports to excuse its attorney general from "the burden of showing the validity of a demand." *Harmon L. Offs., P.C.* v. *Attorney General*, 991 N.E.2d 1098, 1104 (Mass. App. Ct. 2013). Other states grant similarly sweeping investigative powers.[3]

---

[3] See, *e.g.*, Ala. Code § 8-19-9 ("in aid of any investigation"); Alaska Stat. § 45.50.590 (if the AG "determines"); Ark. Code Ann. § 4-88-111 (when the AG "determines"); Ga. Code Ann. §§ 10-1-397, -404 ("[w]henever it may appear"); 815 Ill. Comp. Stat. Ann. 505/3 ("[w]hen it appears"); Ky. Rev. Stat. Ann. §

Some states even confer investigative power on their attorneys general that the other branches of state government cannot check. Hawaii's attorney general may conduct investigations whenever he "determines that an investigation would be in the public interest." Haw. Rev. Stat. § 28-2.5(a). That determination "rests squarely with the Attorney General," and not even state courts can "second-guess the Attorney General's discretion." *In re Investigation of KAHEA*, 497 P.3d 58, 66 (Haw. 2021).

It's no surprise that government authority to investigate based on a mere suspicion of wrongdoing or a discretionary view of what serves the public interest may lead to abuse. "If angels were to govern men, neither external nor internal controls on government would be necessary." The Federalist No. 51 (James Madison). State attorneys general on both sides of the political aisle have been accused of misusing this authority to issue demands against their ideological and political opponents. Even if these accusations turn out to be false, it is important that a

---

367.240 ("public interest"); Md. Code Ann., Com. Law § 13-405 ("[i]n the course of any examination" or "investigation"); Miss. Code Ann. § 75-24-27 ([t]o accomplish the objectives and to carry out the duties prescribed in this chapter"); Mont. Code Ann. § 30-14-113 ("[w]hen it appears"); N.H. Rev. Stat. Ann. § 358-A:8 (whenever the AG "believes"); N.Y. Gen. Bus. Law §§ 343, 352 ("[w]henever it shall appear"); N.D. Cent. Code Ann. § 51-15-04 ("[w]hen it appears"); N.C. Gen. Stat. Ann. § 75-10 ("shall have power, at any and all times"); Or. Rev. Stat. Ann. § 646.618 ("when it appears"); 71 Pa. Stat. and Cons. Stat. § 307-3 ("shall be authorized"); R.I. Gen. Laws § 6-13.1-7 ("when it appears"); Tenn. Code Ann. § 47-18-106 ("public interest"); Tex. Bus. & Com. Code Ann. § 17.61 ("[w]henever ... believes"); Wis. Stat. Ann. § 136.03 ("to facilitate its investigations"); Wash. Rev. Code Ann. § 19.86.110 (whenever the AG "believes").

federal forum exists for suits challenging those investigative demands.

Whether federal courts remain open for the targets of these state investigative demands is a critical question that this Court should resolve.

IV. This case presents an ideal vehicle to resolve this exceptionally important issue.

This case may be the unicorn that allows this Court to review an important issue that would otherwise escape review. The preclusion trap imposed by the Third and Fifth Circuits' state-litigation requirement will deprive this Court of the ability to review the jurisdictional issue in most cases.

The ripeness question is unlikely to arise from the Fifth Circuit (or the Third Circuit in a subsequent case) because challenges to future investigative demands must be litigated in state court. See *supra* at 29–30 (citing *Annunciation House* and *PFLAG*). Many district courts across the country are imposing that same requirement. See *supra* at 19–21. While subsequent state proceedings may ripen the federal dispute, it will also moot the question presented here: whether section 1983 litigants may be forced to litigate first in state court. And because the federal ripeness question will not be part of any state court litigation, this Court will not be able review the question coming up from the state courts.

The only possible scenario for this Court's review of the question presented would involve a case like this where a lower federal court holds a case challenging an investigative demand unripe. But given the pace of litigation, the Catch-22 preclusion trap brought about by parallel state proceedings will

almost certainly have sprung by the time the issue reaches this Court. Once the state court rules on the merits of the constitutional claims, the jurisdictional question will be moot, and further federal litigation will be barred by res judicata.

This case is the rare situation where the question presented has survived parallel state proceedings. This is because—despite the Attorney General's best efforts—First Choice's constitutional claims have yet to be addressed in the parallel state-court action. The state court "specifically did not rule" on First Choice's constitutional claims. App.63a.

Nor is there any danger that the state court will do so prior to this Court's review. The Attorney General has agreed to stay state court proceedings during the pendency of this petition, and should the Court grant review, until after the Court issues its mandate. App.87a–88a. This stay provides this Court an unusual and ideal opportunity to review the lower court's conclusion that a first-filed federal action challenging a state investigatory demand is not ripe until litigated in state court.

This Court's review of the question presented is also warranted, because without it, the constitutionality of investigative demands for donor information will largely evade federal court review. As noted above, preclusion will attach upon the state court's ruling on those federal claims, thus preventing federal courts from resolving them. *E.g.*, *Smith & Wesson*, 105 F.4th at 84 (demonstrating this preclusion concern). While a stalwart few might defy a state court contempt order through the state court system and seek this Court's review, see *NAACP*, 357 U.S. at 451–54, the price is high and the outcome

uncertain. The risks of resisting a contempt order—loss of business license, crippling financial penalties, nonprofit dissolvement, attorneys' fees, and even jail time—are daunting. Few will endure those risks, especially given the small chance of obtaining this Court's review. Granting the petition will thus help preserve federal court review of important First Amendment questions concerning the disclosure of donor information.

In sum, this case provides a truly unique opportunity for this Court to reach the question whether a section 1983 challenge to an investigatory subpoena is not ripe in federal court until litigated in state court. The answer to that question is clearly no. This Court should grant review.

CONCLUSION

The Court should grant a writ of certiorari.

Respectfully submitted,

JAMES A. CAMPBELL
ERIK C. BAPTIST
GABRIELLA M. MCINTYRE
DALTON A. NICHOLS
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176

ERIN M. HAWLEY
Counsel of Record
JOHN J. BURSCH
LINCOLN DAVIS WILSON
ALLIANCE DEFENDING FREEDOM
440 First Street, NW
Suite 600
Washington, DC 20001
(202) 393-8690
ehawley@adflegal.org

JANUARY 21, 2025

APPENDIX

APPENDIX TABLE OF CONTENTS

United States Court of Appeals
for the Third Circuit
Opinion in Case No. 24-3124
Issued December 12, 2024 ..... 1a

United States District Court
for the District of New Jersey
Memorandum Opinion
Case No. 3:23-cv-23076
Issued November 12, 2024..... 6a

Superior Court of New Jersey
Chancery Division, Essex County
Order to Enforce Litigant's Rights
Case No. ESX-C-22-24
Issued December 2, 2024 ..... 59a

Superior Court of New Jersey, Appellate Division
Order Granting Temporary Remand
Case No. A-003615-23T4
Issued November 7, 2024..... 67a

Superior Court of New Jersey
Chancery Division, Essex County
Order Granting Order to Show Cause
Case No. C-000022-24
Issued June 18, 2024..... 69a

United States District Court
for the District of New Jersey
Memorandum Opinion
Case No. 3:23-cv-23076
Issued January 12, 2024..... 71a

Stipulation and Order
Superior Court of New Jersey
Chancery Division, Essex County
Stipulation and Order
Case No. ESX-C-22-24
Entered January 3, 2025 ..... 85a

Subpoena from the State of New Jersey
to First Choice Women's Resource Center, Inc.
Dated November 15, 2023..... 89a

Complaint for Declaratory and Injunctive Relief
United States District Court
for the District of New Jersey
Case No. 3:23-cv-23076
Filed December 13, 2023..... 111a

Transcript of Decision
Superior Court of New Jersey
Chancery Division, Essex County
Case No. ESX-C-22-24
Dated May 28, 2024 ..... 148a

Declaration of Counsel for Donors to First Choice
Women's Resource Centers, Inc.
U.S. District Court for the District of New Jersey
Case No. 3:23-cv-23076
Filed July 19, 2024..... 174a

Declaration of Aimee Huber
U.S. District Court for the District of New Jersey
Case No. 3:23-cv-23076
Filed July 19, 2024..... 179a

Supplemental Declaration of Aimee Huber
U.S. District Court for the District of New Jersey
Case No. 3:23-cv-23076
Filed August 2, 2024 ..... 188a

Emails between K. Wojtowicz and S. Iyer
Re: NJ AG crisis pregnancy center alert draft
Dated October 17, 18, & 26, 2022 ..... 191a

Emails from S. Iyer to R. Sutocky, K. Wojtowicz
Re: Data privacy alert for providers
Dated October 26 & December 6, 2022 ..... 194a

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-3124

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

v.

ATTORNEY GENERAL OF NEW JERSEY

On Appeal from the United States District Court
for the District of New Jersey
(D.C. No. 3:23-cv-23076)
District Judge: Honorable Michael A. Shipp

Argued: December 10, 2024

Before: BIBAS, CHUNG, and ROTH, *Circuit Judges*

(Filed: December 12, 2024)

OPINION*

Erin M. Hawley
Lincoln D. Wilson **[ARGUED]**

---

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

ALLIANCE DEFENDING FREEDOM
440 First Street NW
Suite 600
Washington, DC 20001

Erik Baptist
Dalton A. Nichols
ALLIANCE DEFENDING FREEDOM
44180 Riverside Parkway
Lansdowne, VA 20176
Counsel for Appellant

Jeremy Feigenbaum **[ARGUED]**
OFFICE OF THE ATTORNEY GENERAL OF NEW JERSEY
25 Market Street
Richard J. Hughes Justice Complex
P.O. Box 112
Trenton, NJ 08625

Meghan Musso
OFFICE OF THE ATTORNEY GENERAL OF NEW JERSEY
124 Halsey Street
Newark, NJ 07101
Counsel for Appellee

Olivia F. Summers
REGENT UNIVERSITY
1000 Regent University Drive
Virginia Beach, VA 23464
Counsel for Amici Pennsylvania Pregnancy Wellness Collaborative, New Jersey Right to Life, and National Institute of Family & Life Advocates in Support of Appellant

Preston Carter
Marcus Waterman
GIVENS PURSLEY
P.O. Box 2720
Boise, ID 83701

Ilya Shapiro
MANHATTAN INSTITUTE
52 Vanderbilt Avenue
New York, NY 10017
Counsel for Amicus Manhattan Institute in Support of Appellant

Preston Carter
Marcus Waterman
GIVENS PURSLEY
P.O. Box 2720
Boise, ID 83701
Counsel for Amici Institute for Free Speech and Religious Freedom Institute in Support of Appellant

PER CURIAM†

First Choice sued the Attorney General of New Jersey to prevent him from enforcing a non-self-enforcing investigatory subpoena that requested, among other things, First Choice's donor records and identities. The case has proceeded in concurrent litigation in both state and federal court, and it has

† Judge Bibas dissents and would find First Choice's constitutional claims ripe because he believes that this case is indistinguishable from *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021).

traveled up and down both court systems. It is now before us on the question of whether First Choice's constitutional claims are ripe.

We review the District Court's dismissal for lack of subject matter jurisdiction de novo. *Metro. Life Ins. Co. v. Price*, 501 F.3d 271, 275 (3d Cir. 2007). At the pleadings stage, we "accept as true all well-pled factual allegations in the complaint and all reasonable inferences that can be drawn from them." *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 32 (3d Cir. 2011) (internal quotation marks omitted).

"A foundational principle of Article III is that an actual controversy must exist not only at the time the complaint is filed, but through all stages of the litigation." *Trump v. New York*, 592 U.S. 125, 131 (2020) (internal quotation marks omitted). Plaintiffs must demonstrate standing, including "an injury that is concrete, particularized, and imminent rather than conjectural or hypothetical." *Id.* (internal quotation marks omitted). Claims must also be ripe, both to be encompassed within Article III and as a matter of prudence. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5, 167 (2014).

Having considered the parties' arguments, we do not think First Choice's claims are ripe. It 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. *See Tafflin v. Levitt*, 493 U.S. 455, 458 (1990); *Bonta*, 594 U.S. 595. Therefore, we affirm the judgment of the District Court dismissing the case for lack of subject matter jurisdiction.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Plaintiff, v. MATTHEW J. PLATKIN, in his official capacity as Attorney General for the State of New Jersey, Defendant.	Civil Action No. 23-23076 (MAS) (TJB) **MEMORANDUM OPINION**

SHIPP, District Judge

This matter comes before the Court upon Plaintiff First Choice Women's Resource Centers, Inc.'s ("Plaintiff" or "First Choice") motion for a temporary restraining order ("TRO") and preliminary injunction ("PI"). (ECF No. 41.) Defendant Matthew J. Platkin, in his official capacity as Attorney General for the State of New Jersey ("Defendant" or the "State"), opposed (ECF No. 44), and Plaintiff replied (ECF No. 45). On October 15, 2024, the Court held oral argument on Plaintiff's motion. (ECF No. 61.) After consideration of the parties' arguments and submissions, Plaintiff's motion is denied.

I. BACKGROUND

For purposes of considering the instant motion, the Court summarizes its previous decision,

subsequent developments in this case, and relevant guiding precedent. For all other factual and procedural background, the parties are directed to this Court's previous Memorandum Opinion dismissing Plaintiff's Complaint (the "Previous Opinion"). (Previous Op. 11, ECF No. 28.)

A. The Previous Opinion

On January 12, 2024, this Court found that Plaintiff's constitutional claims relating to a non-self-executing state administrative investigatory subpoena (the "Subpoena") served upon it by the State were not yet ripe for this Court's review. (*Id.* at 8.) The more nuanced reason for this finding, as expressed in the Previous Opinion, was because the statutes from which the Subpoena derived its power (the "Authorizing Statutes") required a state court to first enforce the Subpoena before Plaintiff could be required by law to comply with it. (*See id.* at 7-9); N.J. STAT. ANN. § 56:8-6 (the Consumer Fraud Act (the "CFA")) (allowing the State to move before the New Jersey Superior Court for relief should a plaintiff not comply with an investigatory subpoena served on it by the State); N.J. STAT. ANN. § 45:17A-33(g) (the Charities Registration & Investigation Act (the "CRIA")) (same). In other words, the Court found that it lacked subject-matter jurisdiction over Plaintiff's claims because there was no ripe controversy where Plaintiff simply could decline to comply with the Subpoena with no legal consequence. Instead, the Court found, "Plaintiff's claims related to the Subpoena's enforceability in this matter would ripen only after the contingent future event that forms the basis of its alleged injury occurs, i.e., if and when the state court enforces the Subpoena in its current form."

(Previous Op. 8.) Accordingly, Plaintiff's Complaint was dismissed without prejudice until such time, if ever, that its claims ripened.

B. Appellate Efforts & State Court Proceedings

On January 22, 2024, Plaintiff filed its appeal of this Court's subject-matter jurisdiction findings in the Third Circuit Court of Appeals (the "Third Circuit"). (ECF No. 32.) While Plaintiff's appeal to the Third Circuit was pending, the State initiated enforcement proceedings in the New Jersey Superior Court, Chancery Division, Essex County (the "Superior Court") citing Plaintiff's failure to comply with the Subpoena. (May 20, 2024 Hearing Tr. 8, ECF No. 41-11; Def.'s Superior Court Order to Show Cause Mem. 19, ECF No. 44-9 (requesting that the State-initiated proceedings proceed "in a summary manner pursuant to [N.J. STAT. ANN.] § 45:17A-33(e), § 56:8-8, [N.J. Ct. R.] 4:67-1(a), and [N.J. Ct. R.] 1:9-6" and that First Choice be directed to "fully comply with the Subpoena within thirty days").) Plaintiff responded by filing a motion to quash the Subpoena, as permitted by New Jersey law, and the Honorable Lisa Adubato, J.S.C., presided over the enforcement proceeding. (May 20, 2024 Hearing Tr. 4, 8); N.J. Ct. R. 1:9-2 ("The court on motion made promptly may quash or modify [a] subpoena [in a civil action] . . . if compliance would be unreasonable or oppressive."). Judge Adubato held oral argument on May 20, 2024, and on May 28, 2024, Judge Adubato issued a bench decision allowing the matter to commence by order to show cause as a summary proceeding and denying Plaintiff's motion to quash. (May 20, 2024 Hearing Tr. 66; May 28, 2024 Bench Decision 17, ECF No. 41-4; June 18, 2024

Order (the "Initial Compliance Order"), ECF No. 41-3.) Judge Adubato's Order memorializing her bench decision required First Choice to fully respond to the Subpoena within thirty days of the Order, but did not threaten contempt should First Choice fail to do so. (Initial Compliance Order *3[1].)

In denying Plaintiff's motion to quash, Judge Adubato expressly stated that she considered Plaintiff's constitutional arguments. (May 28, 2024 Bench Decision 23 ("I did consider all of, you know, those types of arguments when looking at what were made—constitutional arguments that were made . . . .").) Judge Adubato ultimately found, however, that those issues were not ripe or formidable enough to merit quashing the Subpoena. (May 28, 2024 Bench Decision 16 ("This [c]ourt finds that the [State] has not, at this very preliminary juncture of this matter, violated any statutory or constitutional tenets which would lead to a quashing of the [S]ubpoena . . . ."); *id.* at 22 ("My determination, as pointed out by the [State] here, is that there are not ripe constitutional arguments."); *id.* at 29 ("You're asking me to get into the idea of the association and how that's going to, on its face, be a constitutional violation of your client's rights[,] and I've already decided that it isn't, based on the reasons that I've given.").) Judge Adubato also instructed First Choice that her decision with respect to the motion to quash was final, but that she anticipated further discussion on the constitutional issues. (*Id.* at 32 ("In large part, the constitutional arguments, number one, as I already indicated, are

[1] All page numbers preceded by an asterisk correspond with the page number in the document's ECF header.

premature, and number two, not as a way of weighing this in recalcitrance, I think was the word - - not looking at that, I'm looking at the fact that there is, built into my order, the belief that the parties will confer going forward, and it's possible that the concerns of [Plaintiff] could be addressed in an agreement between the parties. So I don't find that the irreparable harm has been established."); *id.* at 13-15 (crediting language from the New Jersey Appellate Division where it found that a subpoena recipient subject to subpoena enforcement proceeding would suffer "no hardship" where a court declined "to address [the subpoena recipient's] constitutional arguments" because the subpoena recipient "preserved its claims" and "the parties, in conjunction with the trial court . . . can take steps to protect any proprietary materials identified during discovery").)

Shortly after Judge Adubato's May 28, 2024 bench decision, the State filed a motion to dismiss First Choice's appeal to the Third Circuit representing that Plaintiff's appeal before it was moot because, given the May 28, 2024 bench decision and accompanying Initial Compliance Order, Plaintiff's constitutional claims were ripe. (*See* Certified Order, ECF No. 38.) First Choice did not oppose that its claims were ripe for a federal court's review. (*See id.* (providing the language of the Third Circuit in remanding this matter where the Third Circuit indicated that "it is now *undisputed* that [Plaintiff's] claims are ripe") (emphasis added).) Accordingly, with nothing left disputed between the parties, the Third Circuit found that Plaintiff's appeal was moot and remanded the matter to this Court for consideration. (*Id.*) On subsequent remand, Plaintiff filed a renewed

TRO. (ECF No. 41.) The State opposed (ECF No. 44), and Plaintiff replied (ECF No. 45).

On September 20, 2024, while Plaintiff's renewed motion was pending before this Court, Judge Adubato held another hearing to assess new motions filed by the parties after her Initial Compliance Order. (*See* Sept. 20, 2024 Hearing Tr., ECF No. 56-1.) Specifically, Judge Adubato heard from the parties as to: (1) Plaintiff's motion for a protective order;[2] (2) the State's motion to enforce litigant's rights;[3] and (3) Plaintiff's motion to stay the Initial Compliance Order "in light of the pending federal proceedings."[4] (*Id.* at 8, 11-12.) Ultimately, however, Judge Adubato declined to decide the parties' new motions. (*Id.* at 16.) In denying the State's motion to enforce litigant's rights, Judge Adubato noted that she was "not necessarily declining the motion [or] making any substantive ruling" as to compliance. (*Id.* at 16.) Instead, Judge Adubato decided to hold the State's motion to enforce her previous order "in abeyance" pending a decision by the Appellate Division on whether the Superior Court correctly refused to

---

[2] Judge Adubato considered Plaintiff's motion "a reconsideration motion [of her motion to quash ruling] based on [this Court] having jurisdiction." (Sept. 20, 2024 Hearing Tr. 8.)

[3] To this end, Judge Adubato further characterized the State's motion as asking the Court to compel Plaintiff to comply with her previous order, which ordered Plaintiff to produce all documents requested in the Subpoena. (*See* Sept. 20 Hearing Tr. 8, 11.)

[4] Plaintiff understood the Superior Court's previous ruling as deciding not to rule on Plaintiff's constitutional claims, and asked for a stay presumedly so that this Court could. (*See* Sept. 20 Hearing Tr. 11-12.)

quash the Subpoena. (*Id.* at 19.) In so finding, Judge Adubato noted that the parties still disputed the scope of the Subpoena, and that she made no finding as to whether Plaintiff appropriately complied with the Subpoena at the time of the hearing. (*Id.* at 20.)

This Court is now left with the question of whether it can grant Plaintiff the relief it seeks, i.e., a TRO or PI enjoining or modifying the Subpoena, in light of the above state court developments.[5]

C. The *Smith & Wesson* Litigation

In assessing this question, this Court is not entirely without guidance. Instead, in a prior factually-adjacent litigation, a procedural labyrinth sprouted from six different decisions made by four different courts across the federal and state systems with respect to a similar investigatory subpoena served by the State on the gun manufacturer Smith & Wesson (the "*Smith & Wesson* Litigation"). (*See Smith & Wesson Brands, Inc.*, No. 20-19047, Hon. Jodi Lee Alper, J.S.C. State Court Order & Op., ECF No. 41-13 ("*Smith & Wesson (I)*")); *Smith & Wesson Brands, Inc. v. Grewal*, No. 20-19047, 2021 WL 3287072 (D.N.J. Aug. 2, 2021); ("*Smith & Wesson (II)*"); *Smith & Wesson Brands, Inc. v. Att'y Gen. of N.J.*, 27 F.4th 886 (3d Cir. 2022) ("*Smith & Wesson (III)*"); *Smith & Wesson*, No. 20-19047, 2022 WL 17959579 (D.N.J. Dec. 27, 2022) ("*Smith & Wesson*

---

[5] On November 7, 2024, the Appellate Division "temporarily remanded" First Choice's appeal to the Superior Court so that the Superior Court could "consider enforcement" which would require First Choice to "comply with a subpoena." (The State's Nov. 7, 2024 Correspondence, ECF No. 65.) This Memorandum Opinion is conscious of this development.

(IV)"); *Platkin v. Smith & Wesson Sales Co., Inc.*, 289 A.3d 481 (N.J. Super. Ct. App. Div. 2023) ("*Smith & Wesson (V)*"); *Smith & Wesson Brands, Inc. v. Att'y Gen. of N.J.*, 105 F.4th 67 (3d Cir. 2024) ("*Smith & Wesson (VI)*"). An abbreviated recitation of the decisions in the *Smith & Wesson* Litigation is essential for contextualizing the Court's findings, as the decisions that comprise the *Smith & Wesson* Litigation offer a traceable framework for the narrow and novel questions in this case.

1. Smith & Wesson (I): Subpoena Enforcement Proceedings in Superior Court

The basic facts underlying the *Smith & Wesson* Litigation were first set out in written form by the Superior Court in subpoena enforcement proceedings brought before it by the State. (*See generally Smith & Wesson (I)*.) Similar to this matter, the *Smith & Wesson* Litigation began in earnest when the State served an investigatory subpoena on Smith & Wesson pursuant to the CFA. (*Id.* at 1.) Like here, instead of producing the required documents, Smith & Wesson filed a lawsuit in federal court asserting its constitutional objections to the State's subpoena prior to enforcement proceedings beginning. (*Id.* at 7.) Thus, as soon as the enforcement proceedings began in *Smith & Wesson (I)*, parallel proceedings ensued.

While parallel proceedings were ongoing,[6] the

[6] The *Smith & Wesson* Litigation posture differed subtly from the proceedings before this Court only in that in the *Smith & Wesson* Litigation, the Superior Court was the first court to address constitutional arguments. (*See generally Smith & Wesson (I)*.) Here, this Court, in the Previous Opinion, was the

State sought an order to show cause to enforce its subpoena against Smith & Wesson in the Superior Court, like the State did here. (*Id.* at 1.) Similarly, as here, Smith & Wesson moved to quash the subpoena as unconstitutional, citing several different theories of constitutional violation. (*Id.* at 3-4.)[7]

When rendering its decision, the Superior Court expressed disapproval of Smith & Wesson's race to federal court finding that: (1) the "expected action" in subpoena enforcement proceedings is for a subpoena-recipient to wait until enforcement proceedings are initiated in state court and file "a cross-motion . . . to dismiss, quash, or stay the subpoena;" and (2) the subpoena enforcement proceedings before it "involve[] state interest[s] that overcome considerations of comity" and deference to federal court proceedings, even if filed first. (*See id.* at 7-8.) Moreover, the Superior Court, at least partially, reached the substance of Smith & Wesson's constitutional claims, making an effort to set forth Smith & Wesson's constitutional arguments with specificity and engaging in a brief discussion about *NAACP v. Alabama*, 357 U.S. 449 (1958), and Second Amendment concerns before rejecting the concerns. (*Id.* at 3-4 (setting forth Smith & Wesson's constitutional contentions); *id.* at 8-9 (containing one paragraph of substantive constitutional discussion by

---

first court to write an Opinion responsive to Plaintiff's TRO request before enforcement proceedings had even begun.

[7] These constitutional violations are similar to those at issue here. (*See generally* Compl. ECF No. 1; *Smith & Wesson (I).*) Notably, however, Smith & Wesson did not allege that its right to freedom of association was violated. (*See generally Smith & Wesson (I).*)

the Court regarding *NAACP*); *id.* at 12-13 (containing two paragraphs about Smith & Wesson's contention that the State had an improper motive in serving the investigatory subpoena upon it, namely, that the State sought "to undermine the constitutional right to bear arms").)[8] Ultimately, despite Smith & Wesson's constitutional protestations, the Superior Court found the subpoena before it was "valid on its face." (*Id.* at 13.) Accordingly, like here, the State's request for an order to show cause to enforce the subpoena was granted, and Smith & Wesson's motion to dismiss, stay, or quash the subpoena was "denied in its entirety." (*Id.*)

---

[8] In totality, for purposes of considering Plaintiff's instant motion, the only pertinent difference between *Smith & Wesson (I)* and the Superior Court's May 28, 2024 Bench Decision is that *Smith & Wesson (I)* dealt in some express way with Plaintiff's constitutional claims, whereas here, the Superior Court did not adjudicate Plaintiff's constitutional claims based on facial deficiencies and state ripeness considerations. (*See*, *e.g.*, May 28, 2024 Bench Decision 16 ("This [c]ourt finds that the [State] has not, at this very preliminary juncture of this matter, violated any statutory or constitutional tenets which would lead to a quashing of the subpoena."); *id.* at 22 ("My determination, as pointed out by the [State] here, is that there are no ripe constitutional arguments."); *id.* at 23 ("I did consider all of, you know, those types of arguments when looking at what were made—constitutional arguments that were made and I—as I said, I ruled that they're not ripe yet."); *id.* at 29 ("You're asking me to get into the idea of the association and how that's going to, on its face, be a constitutional violation of your client's rights, and I've already decided that it isn't, based on the reasons that I've given."); *Smith & Wesson (I)* at 3-4, 12-13 (discussing substantively the failings of Smith & Wesson's constitutional arguments, albeit briefly).)

2. Smith & Wesson (II): This Court Abstains Under Younger

About a month after the Superior Court's enforcement decision, this Court entered the fray with an opinion on a TRO and PI application that Smith & Wesson filed relating to the constitutionality of the same subpoena considered by the Superior Court. *Smith & Wesson (II)* at *1. After setting forth largely the same facts outlined by the Superior Court in *Smith & Wesson (I)*, this Court noted that Smith & Wesson sought in federal court, as Plaintiff seems to do here, that "[t]his Court stay enforcement of the . . . administrative subpoena until the threshold questions of its constitutionality [were] resolved by this Court." *Id.* at *2; (*see also* Sept. 20, 2024 Hearing Tr. 11-12 (insinuating that the progression of federal court proceedings might justify a stay of any formal enforcement so that this Court can again consider Plaintiff's constitutional claims, but this time on the merits).)

After considering the parties' contentions, this Court opted to abstain under *Younger v. Harris*, 401 U.S. 37 (1971). *Id.* at *3-4. Specifically, this Court found *Younger* abstention appropriate after considering the Supreme Court's decision in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013), and concluded that the State's enforcement of the administrative subpoena constituted a "civil proceeding[] involving certain orders uniquely in furtherance of the state court's ability to perform their judicial functions ("*Sprint* Category Three")." *Id.*

at *3-4 (quoting *Sprint*, 571 U.S. at 78).[9]

3. Smith & Wesson (III): The Third Circuit's Rejection of Younger Abstention

In *Smith & Wesson (III)*, the Third Circuit summarily rejected this Court's abstention finding. *Smith & Wesson (III)* at 888. In rendering its decision, the Third Circuit disposed of the notion that subpoena enforcement proceedings constitute a valid basis for *Younger* abstention under any of the three exceptional categories enumerated by the Supreme Court in *Sprint*. *Id.* at 891-93 (making findings as to the applicability of *Sprint* Categories Two and Three as to state subpoena-enforcement proceedings like those before this Court). In doing so, the Third Circuit noted the importance of access to federal courts where a federal court has a jurisdictional basis to hear a claim, writing that federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given." *Id.* at 888 (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)) (alteration in original).

The Third Circuit, in making its findings, identified that after this Court abstained, Smith &

---

[9] In *Sprint*, the Supreme Court made clear that *Younger* abstention is a narrow doctrine, and abstention is only appropriate in "three exceptional categories": (1) criminal prosecutions; (2) certain civil enforcement proceedings ("*Sprint* Category Two"); and (3) "civil proceedings involving certain orders uniquely in furtherance of the state courts' ability to perform their judicial function." *Sprint*, 571 U.S. at 78 (quoting *New Orleans Pub. Serv., Inc. v. Council of New Orleans*, 491 U.S. 350, 368 (1989)).

Wesson "eventually produced the subpoenaed documents under a protective order" that demanded the State "return the documents if the subpoena is later held unlawful." *Id.* at 890. In so deciding, the Third Circuit found that in this post-protective-order factual posture, much was still unknown about the subpoena enforcement process playing out against Smith & Wesson. *See id.* at 894. For example, in discussing what qualifies as a state order under *Sprint* Category Three, the Third Circuit wrote that:

> [W]hen Smith & Wesson went to federal court there was much more for the state court to do than merely implement a predetermined outcome. New Jersey courts still had to adjudicate Smith & Wesson's constitutional arguments; and even if those arguments were resolved against Smith & Wesson, the state courts still had to give the company an opportunity to produce the required documents before holding it in contempt.

Id. Of particular note in this language is that the Third Circuit contemplates contempt, a moment of tangible injury, as the end of a process wherein "there [is] much more for the state court to do," including "adjudicate [the subpoena-recipient's] constitutional arguments." *Id.* What *Smith & Wesson (III)* affirmatively established, however, is that while that process plays out in state court, abstention is not an appropriate action for this Court to take.

4. Smith & Wesson (IV): This Court's Application of Res Judicata

By the time the Third Circuit rendered its decision in *Smith & Wesson (III)* and remanded the

matter to this Court, the state court enforcement proceedings had progressed separately. *See Smith & Wesson (IV)* at *3. Specifically, the Superior Court had heard argument on a motion to stay enforcement of the subpoena pending a decision by the Appellate Division as to the correctness of the state court's previous decision to enforce the subpoena against Smith & Wesson. *Id.* It was in this context that *Smith & Wesson (III)* was decided by the Third Circuit and this Court looked anew at Smith & Wesson's TRO and PI request. *See generally Smith & Wesson IV*.

This time, however, this Court found that Plaintiff's claims were barred on res judicata grounds because the Superior Court's initial enforcement decision constituted: (1) a final decision on the merits; (2) between identical parties; and (3) despite some disagreement, the claims in the federal action grew out of the state action. *Id.* at *4-5, *9. This Court's res judicata findings concluded the concurrent state and federal litigations, pending a final assessment of this Court's res judicata findings on appeal.

5. Smith & Wesson (V): The New Jersey Appellate Division's Findings

The jurisdictional seesaw continued when the New Jersey Appellate Division rendered a decision on Smith & Wesson's appeal of the Superior Court's enforcement decision, while federally, the parties awaited a Third Circuit decision on the applicability of res judicata. *See generally Smith & Wesson (V)*. In affirming *Smith & Wesson (I)*, the Appellate Division credited the lower court with addressing "defendant's constitutional arguments." *Id.* at 486 (referring necessarily to the lower court's brief discussion of

NAACP and Second Amendment discussion because those were the only federal-constitution-related discussions in *Smith & Wesson (I)*).

Of note, when considering the Superior Court's *NAACP* discussion, the Appellate Division found that "[e]ven if [it] were persuaded that *NAACP*" operated outside the context of the freedom of association, which the Appellate Division was not persuaded it did, it "would find [Smith & Wesson's] constitutional claims not ripe for" adjudication. *Id.* at 493. In so finding, it decided that under New Jersey state law, a claim is only ripe if there "is an actual controversy, meaning the facts present 'concrete contested issues conclusively affecting' the parties' adverse interests." *Id.* (quoting *Matter of N.J. Firemen's Ass'n Oblig. v. Doe*, 166 A.3d 1125, 1134-35 (N.J. 2017) (finding that the New Jersey courts are forbidden from "declar[ing the] rights or status of parties upon a state of facts which are future, contingent, and uncertain") (alteration in original). In this context, the Appellate Division found that the lower court did not err in failing to consider Smith & Wesson's constitutional claims where there were "few actual facts," Smith & Wesson "preserved its claims,[10] and the parties, in

[10] This preservation language is what Judge Adubato expressly relied on in finding Plaintiff's constitutional claims not ripe for review in this litigation. (May 28, 2024 Bench Decision 14-15 (crediting language from the New Jersey Appellate Division where it found that a subpoena recipient subject to subpoena enforcement proceedings would suffer "no hardship" where a court declined "to address [the subpoena recipient's] constitutional arguments" because the subpoena recipient "preserved its claims[] and the parties, in conjunction with the trial court . . . can take steps to protect any proprietary materials

conjunction with the trial court, can take steps to protect any proprietary materials identified during discovery." *Id.* at 494 (noting further that the Appellate Division ended its analysis because to not do so would risk "premature adjudication" and entanglement in "abstract disagreements").

6. Smith & Wesson (VI): Res Judicata Affirmed

Finally, the oscillation from federal to state courts came to a close earlier this year when the Third Circuit made its findings in *Smith & Wesson (VI)*. While walking a fine line around the ripeness issue that lurked when considering whether *Smith & Wesson (I)* was determined on the merits, the Third Circuit ultimately did find that the Superior Court's holdings in *Smith & Wesson (I)* were final, on the merits, between the same parties, and grew from the same transaction or occurrence. *See generally Smith & Wesson (VI)*. Notably, the Third Circuit agreed that in summary state proceedings, like the subpoena enforcement proceedings here, the Superior Court's findings *can* constitute a final decision on the merits with preclusive effect. *Id.* at 79-80. As such, if the Superior Court makes substantive constitutional findings on a motion to quash in enforcement proceedings, so long as the movant had a full and fair opportunity to litigate its claims in state court, the Superior Court judgment may be preclusive in federal court.[11] *Id.*

---

identified during discovery" (quoting *Smith & Wesson (V)* at 486)).)

[11] As a final note, the Third Circuit limited its ruling to *the subpoena* at issue. *Smith & Wesson (VI)* at 84 ("We note that the

II. LEGAL STANDARD

"Preliminary injunctive relief is an extraordinary remedy and should be granted only in limited circumstances."[12] *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 708 (3d Cir. 2004) (internal quotation marks and citation omitted). This remedy should be granted only if plaintiffs establish that: (1) "they are likely to succeed on the merits of their claims"; (2) "they are likely to suffer irreparable harm without relief"; (3) "the balance of harms favors them"; and (4) "relief is in the public interest." *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 131 (3d Cir. 2017) (citation omitted). "A plaintiff's failure to establish any element in its favor renders a preliminary injunction inappropriate." *NutraSweet Co. v. Vit-Mars Enters., Inc.*, 176 F.3d 151, 153 (3d Cir. 1999) (citation omitted). With respect to the first factor, "on an application for injunctive relief, the movant need only make a showing of reasonable probability, not the certainty, of success on the merits." *Atl. City Coin & Slot Serv. Co. v. IGT*, 14 F. Supp. 2d 644, 657 (D.N.J. 1998) (internal quotation marks and citations omitted). In the end, however, "[t]he burden is on the moving party 'to convince the district court that all

---

operation of claim preclusion is quite modest in this case . . . [t]he preclusive effect of the state court judgment only concerns the subpoena at issue— not any nascent and further investigative step or future enforcement action."). The same is true of the Court's current Memorandum Opinion: Plaintiff only seeks an injunction of the State's investigation through the Subpoena, as the Subpoena is all that exists of the State's investigation at this early juncture.

[12] TROs and PIs require the same elements be met. *Koons v. Reynolds*, 649 F. Supp. 3d 14, 22 (D.N.J. 2023).

four factors favor preliminary relief.'" *Peter v. Att'y Gen. of N.J.*, No. 23-3337, 2023 WL 4627866, at *1 (D.N.J. July 19, 2023) (quoting *AT&T v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 (3d Cir. 1994)).

III. DISCUSSION

For the reasons set forth below, the Court finds that Plaintiff has again failed to show that its claims are ripe for review given the nature of the New Jersey subpoena enforcement proceedings, the Superior Court's findings, and this Court's previous findings. The Court also finds that to the extent Plaintiff can narrowly state a ripe constitutional injury, the harm alleged does not constitute irreparable harm justifying a TRO or PI. Simply put, all roads lead to a denial of Plaintiff's TRO and PI, and for the reasons set forth below, that is this Court's decision.

A. Plaintiff's Claims Are Not Ripe for a Federal Court's Review

Plaintiff's constitutional claims are not ripe for review by this Court. The Court begins where it left off in the Previous Opinion.

Article III of the Constitution limits the federal judiciary's authority to exercise its "judicial Power" to "Cases" and "Controversies" over which the federal judiciary is empowered to decide. *Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 538 (3d Cir. 2017) (quoting U.S. CONST. art. III, § 2). "This case-or-controversy limitation, in turn, is crucial in 'ensuring that the Federal Judiciary respects the proper—and properly limited—role of the courts in a democratic society.'" *Id.* at 539 (quoting *DaimlerChrysler Corp. v.*

Cuno, 547 U.S. 332, 341 (2006)). The existence of a case or controversy, therefore, is a necessary "prerequisite to all federal actions[.]" *Phila. Fed'n of Tchrs. v. Bureau of Workers' Comp.*, 150 F.3d 319, 322 (3d Cir. 1998) (quoting *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462 (3d Cir. 1994)).

Federal courts ensure that they are properly enforcing the case-or-controversy limitation through "several justiciability doctrines that cluster about Article III . . . including 'standing, ripeness, mootness, the political-question doctrine, and the prohibition on advisory opinions.'" *Plains*, 866 F.3d at 539 (quoting *Toll Bros., Inc. v. Twp. of Readington*, 555 F.3d 131, 137 (3d Cir. 2009)).[13] "[R]ipeness concerns whether

---

[13] "Federal Courts are courts of limited jurisdiction and have an obligation to establish subject matter jurisdiction, even if they must decide the issue sua sponte." *Cepulevicius v. Arbella Mut. Ins.*, No. 21-20332, 2022 WL 17131579, at *1 (emphasis omitted) (D.N.J. Nov. 22, 2022) (citing *Liberty Mut. Ins. Co. v. Ward Trucking Corp.*, 48 F.3d 742, 750 (3d Cir. 1995)); *see also Council Tree Commc'ns, Inc. v. F.C.C.*, 503 F.3d 284, 292 (3d Cir. 2007) (finding that federal courts have an unflagging responsibility to reach the correct judgment of law, especially when considering subject-matter jurisdiction "which call[s] into question the very legitimacy of a court's adjudicatory authority" (citation omitted)); *Gov't Emps. Ret. Sys. of Gov't of U.S. V.I. v. Turnbull*, 134 F. App'x 498, 500 (3d Cir. 2005) ("Considerations of ripeness are sufficiently important that [federal courts] are required to raise the issue sua sponte, even when the parties do not question [the court's] jurisdiction." (emphasis omitted) (citing *Felmeister v. Off. of Att'y Ethics*, 856 F.2d 529, 535 (3d Cir. 1988)); *Suburban Trails, Inc. v. N.J. Transit Corp.*, 800 F.2d 361, 365 (3d Cir. 1986) ("[R]ipeness of issues for adjudication is a matter [the court] must raise and examine independently of the parties' wishes.").

the legal issue at the time presented in a court is sufficiently concrete for decision." *United States ex rel. Ricketts v. Lightcap*, 567 F.2d 1226, 1232 (3d Cir. 1977). "Courts will not decide abstract legal issues posed by two parties; the issue in controversy must have a *practical* impact on the litigants." *Id.* (emphasis added) (citing *Abbott Laby's v. Gardner*, 387 U.S. 136, 148-54 (1967)). In its most basic form, an unripe claim is evident if upon inspection it is necessarily hypothetical, speculative, or contingent on some other yet-to-happen event. *Trump v. New York*, 592 U.S. 125, 131 (2020) (defining "ripe" as, in part, an issue that is "not dependent on 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).

Where a federal court finds that a claim is not ripe, the court lacks subject-matter jurisdiction to adjudicate the unripe claim. *Renne v. Geary*, 501 U.S. 312, 316 (1991) ("Concerns of justiciability go to the power of the federal courts to entertain disputes, and to the wisdom of their doing so."). Importantly, federal courts are to "presume" they "lack jurisdiction 'unless "the contrary appears affirmatively from the record."'" *Id.* (quoting *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 546 (1986)). Ultimately, "[i]t is the responsibility of the complainant [to clearly] allege facts demonstrating that [it] is a proper party to invoke judicial resolution of the dispute and the exercise of the court's remedial powers." *Id.* (quoting *Bender*, 475 U.S. at 546 n.8).

For the reasons set forth in detail below, Plaintiff, the complainant, has again failed to demonstrate facts to suggest it is a proper party to invoke this

Court's remedial powers. In explaining how, this Court sets forth: (1) how the State's contentions against this Court imposing a TRO are inapplicable here; (2) why, procedurally, constitutional ripeness remains firmly before the Court as a concern despite the parties' agreement to the contrary; (3) how New Jersey subpoena enforcement proceedings, by their nature, render Plaintiff's claims unripe until contempt is threatened; (4) why the September 20, 2024 Superior Court Hearing affirmatively established that Plaintiff's claims are not ripe for this Court's review; and (5) why no matter how Plaintiff attempts to contort its claims to sound in ripeness, Plaintiff cannot demonstrate ripeness because the Subpoena, the sole act of investigation by the State, has not ripened.

1. The Failure of the State's Primary Contentions

As an initial matter, the State brings two primary contentions in opposing Plaintiff's motion: one sounding in full faith and credit to state proceedings, i.e., res judicata, and the other sounding in prudential ripeness, i.e., *Younger* abstention. (*See generally* Def.'s Opp'n Br.) The Court briefly addresses each before turning to constitutional ripeness.

a. Res Judicata

First, res judicata does not appear to be applicable here because it is not clear whether the Superior Court made a final decision on the merits as to Plaintiff's constitutional claims. "Under federal law, '[t]he . . . judicial proceedings of any court of any . . . State . . . shall have the same full faith and credit in every court within the United States . . . as they have

by law or usage in the courts of such State[.]'" *Davis v. U.S. Steel Supply, Div. of U.S. Steel Corp.*, 688 F.2d 166, 170 (3d Cir. 1982) (first, second, third, and fourth alterations in original) (quoting 28 U.S.C. § 1738). As such, Section 1738 "requires federal courts to give res judicata effect to a state judgment to the extent the state would give its own prior judgment such effect." *Id.*

Here, the State contends that the Superior Court's denial of Plaintiff's motion to quash constituted an adjudication of its constitutional claims with preclusive effect. (*See* Def.'s Moving Br. 19-21.) As such, the Court applies the law of New Jersey in considering res judicata as that is the state where the alleged judgment occurred. 28 U.S.C. § 1738.

Under New Jersey law, for res judicata to apply:

> (1) the judgment in the prior action must be valid, final, and on the merits; (2) the parties in the later action must be identical to or in privity with those in the prior action; and (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.

Delacruz v. Alfieri, 145 A.3d 695, 707 (N.J. Super. Ct. L. Div. 2015) (citing *Watkins v. Resorts Int'l Hotel & Casino*, 591 A.2d 592, 599 (N.J. 1991)). Ultimately, because res judicata is an affirmative defense, the party asserting it, here the State, bears the burden of showing that it applies. *Davis*, 688 F.2d at 170.

The State fails to show that res judicata applies here where under New Jersey Law, judgments on

jurisdictional grounds are not "valid and final." *Velasquez v. Franz*, 589 A.2d 143, 147 (N.J. 1991). In New Jersey courts, like in this Court, "[s]ubject-matter jurisdiction involves 'a threshold determination as to whether the [c]ourt is legally authorized to decide the question presented.'" *In re Registrant J.R.*, 310 A.3d 11, 15 (N.J. Super. Ct. App. Div. 2024) (quoting *N.J. Citizen Action v. Riviera Motel Corp.*, 686 A.2d 1265, 1270 (N.J. Super. Ct. App. Div. 1997)); *see also State v. Osborn*, 160 A.2d 42, 45 (N.J. 1960) ("Jurisdiction over the subject matter is the power of a court to hear and determine cases of the class to which the proceeding in question belongs."). Ripeness is one such justiciability doctrine which, under New Jersey state law, absolves a court of jurisdiction. *In re Registrant J.R.*, 310 A.3d at 15 ("Standing, ripeness[,] and mootness . . . are justiciability doctrines, and they refer [] to whether a matter is appropriate for judicial review."). Crucially, a dismissal for lack of jurisdiction does not constitute a valid final judgment for res judicata purposes. *Velasquez*, 589 A.2d at 147.

Here, Judge Adubato found that Plaintiff's constitutional claims were not ripe. (May 28, 2024 Bench Decision 22 ("My determination, as pointed out by the [State] here, is that there are no ripe constitutional arguments."); *id.* at 32 ("In large part, the constitutional arguments, number one, as I already indicated, are premature[.]").) Importantly, unlike in the *Smith & Wesson* Litigation, this was the *only* clear reason Judge Adubato gave for denying Plaintiff's motion to quash and allowing enforcement proceedings to move forward. *See generally Smith & Wesson (VI)* (finding it critical in finding that res

judicata could attach to the Superior Court's decision in *Smith & Wesson (I)* that the Appellate Division in *Smith & Wesson (V)* discussed the substance of Smith & Wesson's constitutional claims, as opposed to basing its decision solely on ripeness grounds); (May 28, 2024 Bench Decision.) As such, the State fails to show that there was a final decision on the merits where Judge Adubato's sole articulated reason for denying Plaintiff's motion to quash and to allow enforcement proceedings was that Plaintiff's constitutional claims were not ripe.

b. *Younger* Abstention

Second, the Court recognizes that the State's primary contention in opposing Plaintiff's motion is that abstention, a prudential ripeness doctrine, is appropriate here. (Def.'s Opp'n Br. 11-18.) Specifically, the State contends that under *Smith & Wesson (III)*, this litigation has progressed to a point where Plaintiff is in actual violation of a state court order, and thus, the threat of contempt is imminent. (*See id.* at 13, 15-16.) The State, however, reads too much into *Smith & Wesson (III)*. Contempt needs to be certain, or a violation of a court order needs to be certain, to access abstention under either *Sprint* Category Two or *Sprint* Category Three. *See Smith & Wesson (III)* at 894. Not only is there no indication in the record that Plaintiff faces an immediate contempt threat, but the Superior Court has expressly stated that Plaintiff's motion to enforce the Initial Compliance Order is "in abeyance." (Sept. 20, 2024 Hearing Tr. 19.) As such, abstention is not available on the facts before the Court under *Smith & Wesson (III)*, as will become clear below.

2. The Continued Constitutional Ripeness Concern

Having disposed of the State's contentions, the Court turns to Plaintiff's claims. Before it can do so, however, it has to satisfy itself that it can consider Plaintiff's TRO and the claims that underlie it. *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 583 (1999) (holding that "Article III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of a case. 'For a court to pronounce upon [the merits] when it has no jurisdiction to do so . . . is . . . for a court to act ultra vires.'" (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101-02 (1998)). Here, while the parties seemingly agree that Plaintiff's constitutional claims are ripe for a federal court's review, as evidenced by the Third Circuit's Certified Order, the parties' agreement cannot establish subject-matter jurisdiction and, importantly, this Court finds that the parties have come to the incorrect jurisdictional conclusion. (Certified Order 2 (finding that "it is now undisputed" between the parties that Plaintiff's "claims are ripe")); *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[S]ubject-matter jurisdiction, because it involves a court's power to hear a case, can never be forfeited or waived." (quoting *United States v. Cotton*, 535 U.S. 625, 630 (2002)). To be sure, by the language of the Previous Opinion, the threshold to ripeness has not been crossed, and the Previous Opinion remains in full force.

First, the State concluded after the May 28, 2024 Bench Decision was issued that Plaintiff's constitutional claims were now ripe for a federal court's review. (Def.'s Opp'n Br. 10-11.) (*Id.*) This

conclusion was premature. This Court in the Previous Opinion found that when the Subpoena was enforced in its "then current form," Plaintiff's claims would ripen. (Previous Op. 8 ("Plaintiff's claims related to the Subpoena's enforceability in this matter would ripen only after the contingent future event that forms the basis of its alleged injury occurs, i.e., if and when the state court enforces the Subpoena in its current form.").) Critically, this Court in finding the Subpoena must be enforced in its "then current form," importantly and necessarily, found that the Subpoena must be enforced in an unconstitutional form before this Court can consider the Subpoena's constitutionality. (*Id.* ("New Jersey state law's allowance for a state court to modify or quash a subpoena if an enforcement proceeding is brought and 'compliance would be unreasonable or oppressive' supports a finding that a constitutionally-sufficient injury can only occur here if the state court tasked with enforcing the subpoena refuses to quash or modify *the constitutionally-infirm* subpoena." (citing N.J. STAT. ANN. § 1:9-2) (emphasis added)).)

To date, Plaintiff has not been compelled to disclose the alleged constitutionally-protected information it covets because its claims as to those documents are "preserved." (May 28, 2024 Bench Decision 14-15.) As such, it remains an open question as to whether Plaintiff will be ordered to disclose materials that it believes are constitutionally protected, as discussed more fully below. (*See* May 28, 2024 Bench Decision 11-12 (contemplating that both parties should have "an opportunity to confer and to address possible narrowing or adjustments of the [S]ubpoena" that might obviate the need for a ruling

on the constitutional claims) (emphasis added)); Sept. 20, 2024 Hearing Tr. 19 (holding the Initial Compliance Order "in abeyance" such that First Choice is under no legal obligation to disclose allegedly constitutionally protected materials).) In this way, under the Previous Opinion, Plaintiff's claims are not ripe because the Superior Court did not enforce a "constitutionally-infirm" subpoena against Plaintiff. (Previous Op. 8.) As such, the State's presumption that Plaintiff's claims are now ripe is not in lockstep with the Previous Opinion and the express findings of the Superior Court. Accordingly, it is rejected.

Second, after the State moved to dismiss Plaintiff's appeal of this Court's ripeness findings as moot, the Third Circuit did so. (Certified Order 2 ("We therefore dismiss the appeal as moot and remand this action to the District Court for further proceedings.").) Plaintiff, on remand, concluded that the Third Circuit's Certified Order was something more than just a remand based on a mooted appeal; Plaintiff concluded that the Third Circuit necessarily found that Plaintiff's claims are constitutionally ripe for review, decisively establishing subject-matter jurisdiction moving forward. (Pl.'s Moving Br. 10 (characterizing the Certified Order as the Third Circuit affirmatively ruling that Plaintiff's claims are ripe); Sept. 20, 2024 Hearing Tr. 12 (representing to the Superior Court that the Third Circuit "agreed" that Plaintiff's claims were ripe for adjudication by a federal court).) This is also objectively not so.

To be clear, the Third Circuit's Certified Order neither expressed "agreement" nor included any language indicating an affirmative finding on

ripeness. (*See* Certified Order.) Instead, the Third Circuit wrote the following with respect to: (1) Plaintiff's motion for Injunction Pending Appeal or, Alternatively, for Summary Vacatur and Remand; and (2) the State's motion to "Dismiss Appeal as Moot":

> The foregoing motions are denied as presented. In this appeal, [Plaintiff] seeks review of [the Previous Order] dismissing its complaint for lack of subject matter jurisdiction. Because the District Court concluded that [Plaintiff's] claims were not ripe, it did not reach the merits of the claims or the request for injunctive relief. Based on subsequent developments in state court, it is now undisputed that [Plaintiff's] claims are ripe. We therefore dismiss this appeal as moot and remand this action to the District Court for further proceedings. We leave it to the District Court to address any requests for injunctive relief in the first instance.

(*Id.*)

Importantly, the only legally viable conclusions that can be drawn from the Third Circuit's Certified Order are that: (1) both Plaintiff's and Defendant's motions before the Third Circuit were denied (*id.* ("The foregoing motions are denied as presented.")); (2) the Third Circuit found that ripeness, the issue on appeal before it, was "undisputed" by the parties, a fact that notably cannot establish ripeness itself because parties cannot agree to subject-matter jurisdiction (*id.* ("[I]t is now undisputed that [Plaintiff's] claims are ripe.")); *In re Resorts Int'l, Inc.*,

372 F.3d 154, 161 (3d Cir. 2004) ("[P]arties can[not] write their own jurisdictional ticket. Subject matter jurisdiction 'cannot be conferred by consent' of the parties." (quoting *Coffin v. Malvern Fed. Sav. Bank*, 90 F.3d 851, 854 (3d Cir. 1996)))[14]; (3) based on the parties' ripeness representations, Plaintiff's appeal was dismissed as moot (Certified Order (denying the State's motion to dismiss the appeal as moot but ultimately dismissing the appeal as moot suggesting that the Third Circuit did not reach the substance of the motions and mooted the appeal as a procedural matter)); and (4) the case should be sent back to this Court for further consideration because no issue for appeal remains (*id.* ("We leave it to the District Court to address any requests for injunctive relief in the first instance.").)

Notably, the Third Circuit's Certified Order did *not* find that: (1) Plaintiff's claims are in fact ripe for consideration; (2) this Court's Previous Opinion is in any way vacated, reversed, or inaccurate; or (3) the Third Circuit has any opinion on the previous ripeness determinations of this Court. (*See generally id.*) Plaintiff also provides no basis for its belief that the Third Circuit satiated itself, or for that matter, had reason to consider constitutional ripeness before remanding this matter. (Pl.'s Oct. 18 Correspondence 2, ECF No. 62 (maintaining, without support, that

---

[14] Moreover, commonsensically, the language "undisputed" cannot be construed to implicate the Third Circuit in the "dispute" or suggest its stance on the issue. The Third Circuit is not in a dispute with the parties or itself. Any suggestion that this language may have constituted an affirmative finding by the Third Circuit that Plaintiff's claims are, in fact, ripe, is untenable.

"the Third Circuit held [its claims] ripe when it remanded First Choice's appeal as moot").) Instead, it appears that the Third Circuit simply identified that the parties agreed that Plaintiff's appeal was moot and dismissed the matter as such. The Court, therefore, squarely rejects Plaintiff's declaration that the Third Circuit found this matter ripe.

As a final note on this point, there is also no reason to believe that the Article III ripeness issue was ever squarely before this Court or the Third Circuit in this case, other than in the Previous Opinion, or in the *Smith & Wesson* Litigation. As this litigation and the *Smith & Wesson* Litigation illuminate, the Article III ripeness[15] concern hides in the cross-section between parallel proceedings and other prudential concerns like comity, abstention, and full faith and credit. In this amorphous, seldom clearly defined landscape, if the Article III concern is not introduced, it can easily be left unconsidered. That is what the Court believes happened here.

---

[15] There is a critical distinction between prudential ripeness concerns, which do not absolve this Court of jurisdiction, and constitutional ripeness concerns, which do. *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 807-08 (2003) ("The ripeness doctrine is 'drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction.'" (quoting *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993))); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (finding that it may not be appropriate for federal courts to find claims nonjusticiable on prudential grounds alone rather than on constitutional grounds because "a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging" (internal quotation marks and citations omitted)).

3. Ripeness in the Context of New Jersey Subpoena Enforcement Proceedings

Based on the above confusion, this Court finds it prudent to engage in a more elaborative discussion of New Jersey subpoena enforcement proceedings to fully illuminate what it perceives as the moment of ripeness for Plaintiff's claims.[16] In short, New Jersey state enforcement proceedings progress through five stages: (1) subpoena issuance; (2) party response, after which enforcement proceedings typically begin; (3) motion practice; (4) appeal; and (5) forced compliance.[17] The Court takes each in turn.

First, under the CFA, the State's broad investigatory powers include the power to subpoena documents. N.J. STAT. ANN. § 56:8-3(c). This power permits the State to conduct investigations[18] based

---

[16] For square consideration, this is the ultimate question in this litigation: Can Plaintiff, which is subject to a state non-self-executing administrative investigatory subpoena, which the state legislature specifically authorized state courts to enforce under threat of contempt if enforceable, maintain a suit in federal court on constitutional grounds before the state court has enforced the subpoena against it under threat of contempt or before the state court has otherwise committed to any position on whether the subpoena should be quashed or modified such that it need only simply decline to abide by the subpoena under no threat of legal consequence?

[17] The Court will focus its state enforcement proceeding analysis on the CFA, for conceptual ease.

[18] For purposes of this Memorandum Opinion, the Court considers the State's investigation of First Choice as synonymous with the Subpoena because the Subpoena is the only manifestation of the State's investigation to date. As such, any cognizable irreparable harm alleged to have been caused by the investigation more generally would necessarily only occur

"merely on suspicion that the law is being violated, or even just because [the State] wants assurance that it is not." *In re Addonizio*, 248 A.2d 531, 539 (N.J. 1968). Thus, subpoena issuance is a low bar and of no practical consequence in and of itself where the subpoena is non-self-executing, as here, because the Subpoena itself does not yet carry the power of law; a recipient can simply decline to respond at step two with no legal consequence. N.J. STAT. ANN. § 56:8-6; *U.S. ex rel. Ricketts*, 567 F.2d at 1232 ("Courts will not decide abstract legal issues posed by two parties; the issue in controversy must have a *practical* impact on the litigants." (emphasis added)). Instead, where a subpoena recipient does not respond to the subpoena, to compel compliance, the onus is on the State to seek the state court's involvement.[19]

Second, the party responds to the subpoena. This traditionally goes one of three ways: (1) a party responds to the subpoena without court involvement; (2) a party fails to obey the subpoena, prompting the State to file a lawsuit seeking the Superior Court to issue an order compelling compliance and at which time the subpoena recipient can move to quash the

---

through the Subpoena at this early stage. All of Plaintiff's claims, therefore, relate to the Subpoena for purposes of this Memorandum Opinion. (*See*, *e.g.*, Compl. ¶¶ 89-104 (detailing Plaintiff's selective enforcement claim and alleging that the State, in issuing the Subpoena, engaged in unconstitutional viewpoint discrimination and that it was being "investigated" for engaging in constitutionally protected speech).)

[19] The Court notes that the last time it considered Plaintiff's claims, it was asked to intervene at this stage of enforcement proceedings, i.e., prior to the state court's involvement, but after issuance of the Subpoena. (*See* Previous Op. 2.)

subpoena, (*Smith & Wesson (I)* at 7-8 (describing this outcome as the "expected action" and expressing disapproval for Smith & Wesson's decision to run to federal court prior to enforcement proceedings being initiated)); or (3) the subpoena recipient can go directly to the state court seeking relief from the subpoena, *Slumped Kitchen, LLC v. Div. of Consumer Affs.*, No. 21-2096, 2023 WL 4113367, at *2-*3 (N.J. Super. Ct. App. Div. June 22, 2023) (detailing an instance where the subpoena recipient was the first to file an action in state court, after which the State cross-moved to enforce the subpoena).

Here, this tradition was, of course, broken when Plaintiff filed in this Court for review of the Subpoena and avoided the state court altogether. Putting aside this extraordinary and novel maneuver, this litigation ultimately worked itself into the second, more traditional bucket: Plaintiff failed to obey the Subpoena, citing constitutional concerns, and the State initiated enforcement proceedings. (*See generally Smith & Wesson (I)*.) Once again at stage two, however, Plaintiff has not yet suffered any cognizable injury;[20] rather, Plaintiff only risks a

---

[20] As the Court noted in the Previous Opinion,"[t]he constitutional component of ripeness overlaps with the "injury in fact" analysis for Article III standing." *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010) (citations omitted); *see also* 13B CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 3532.1 (3d Ed. 2023) ("'[T]o say a plaintiff's claim is constitutionally unripe is to say the plaintiff's claimed injury, if any, is not "actual or imminent," but instead "conjectural or hypothetical."'" Logically, it makes no difference that a claim not ripe today *might* in the future ripen into an injury that establishes standing." (alteration in original) (emphasis added) (quoting *Nat'l Org. for Marriage, Inc. v. Walsh*,

potential injury *if* the Superior Court does not quash the Subpoena *and* the Superior Court threatens Plaintiff with contempt. *Smith & Wesson (III)* at 894 (noting that even subsequent to stage two, "there [is] much more for the state court to do than merely implement a predetermined outcome. New Jersey courts still [have] to adjudicate [a subpoena recipient's] constitutional arguments; and even if those arguments [are] resolved against [the recipient], the state courts still [have] to give the company an opportunity to produce the required documents" before the recipient feels the practical consequence of noncompliance: contempt).

Third, where applicable, the proceeding advances to motion practice. At this stage, the State typically has initiated a summary proceeding and presented its complaint to the Superior Court. N.J. STAT. ANN. § 56:8-8; N.J. Ct. R. 4:67-1(a); N.J. Ct. R. 1:9-6; (*see also* Def.'s Superior Court Order to Show Cause Mem. 19.) If the Superior Court is satisfied with the sufficiency of the State's application, it orders the subpoena

---

714 F.3d 682, 688-89 & nn.6-7 (2d Cir. 2013)); *Presbytery of N.J. of Orthodox Presbyterian Church*, 40 F.3d at 1462, 1470 n.14 (3d Cir. 1994) (acknowledging that standing and ripeness are related and often "confused or conflated," and finding that a plaintiff had Article III standing for the same reasons his claims were ripe). In a posture like the one before the Court, it is appropriate to view ripeness as akin to an "injury-in-fact" in a standing analysis, i.e., where the Court finds there is no ripeness it also finds there is no constitutionally-sufficient injury for it to adjudicate Plaintiff's claims. This is because Plaintiff's claims, as presented, are not *ripe* because they are hypothetical, which also means they are not *actual or imminent* because at least one condition precedent stands between the claims and an actual constitutional injury.

recipient to show cause why final judgment should not be rendered for the relief sought in the State's application. N.J. Ct. R. 4:67-2. Where applicable, as here, the subpoena recipient can then move to quash the subpoena, on, for example, constitutional grounds. (*See generally* Pl.'s Superior Court Mot. to Quash *29, ECF No. 44-6.) Again, at this preliminary stage, a plaintiff is not legally obligated to produce what it believes to be constitutionally protected documents. As such, there is no constitutional injury, actual or imminent, after a subpoena-recipient has moved to quash a subpoena in Superior Court. Several contingencies remain.

Still at the third stage is also, of course, the Superior Court's decision on the parties' motions. In the case before the Court, it was Judge Adubato's decision, at this third stage posture, that led the State to believe Plaintiff's claims were now ripe for a federal court's review. (Pl.'s Moving Br. 9-10; *see also* May 28, 2024 Bench Decision 16-17.) This belief, as described above, however, was misguided; while Judge Adubato denied Plaintiff's motion to quash, the Superior Court's enforcement of the Subpoena was not an enforcement of the Subpoena in an unconstitutional form because the Superior Court "preserved" Plaintiff's constitutional claims and encouraged the parties to discuss whether they could narrow the Subpoena to avoid Plaintiff's constitutional concerns. (*See* May 28, 2024 Bench Decision 11, 14-15.) All told then, again, at the third stage of subpoena enforcement proceedings Plaintiff was under no legal obligation to comply with the Subpoena. As such, Plaintiff, after the motions were decided, still did not risk actual or imminent constitutional injury based on

the Superior Court's findings. Plaintiff still could simply decline to disclose the materials it believed were constitutionally protected without legal or practical consequence as proceedings continued.

That brings the Court to the fourth stage of the subpoena enforcement process: appeal. This is the current posture of the state enforcement proceedings. Plaintiff appealed Judge Adubato's decision denying its motion to quash, and the matter is pending review by the Appellate Division. (*See generally* Sept. 20, 2024 Hearing Tr.) Plaintiff's constitutional challenges remain very much alive in state court, and neither the Superior Court nor the Appellate Division has practically required First Choice to comply with the Subpoena with respect to allegedly constitutionally protected materials or otherwise summarily rejected Plaintiff's constitutional challenges. (*See generally id.*) As such, even at this fourth stage, Plaintiff's constitutional injury remains strictly hypothetical and not actual or imminent. In fact, the pending appeal has proven to be somewhat of an insulation for Plaintiff, because the pending appeal is precisely why Judge Adubato decided to hold the Compliance Order in abeyance. (*See id.* at 19.)

That leaves the Court at the fifth and final stage of New Jersey subpoena enforcement proceedings: enforcement through sanction-threatened compliance

("Enforcement"[21]).[22] Once appeals have been filed in the proceedings, if not earlier, the Superior Court may require the subpoena recipient to respond to the subpoena under threat of contempt. *See*, *e.g.*, N.J. STAT. ANN. § 56:8-6. It is then, and only then, that this Court can cognize that Plaintiff's constitutional injury would become imminent and sufficiently non-speculative for this Court's review of the constitutionally challenged subpoena.

The Third Circuit's discussion in *Smith & Wesson (III)* regarding the uncertainty of state subpoena enforcement proceedings in the non-self-executing administrative investigatory subpoena context appears to support this Court's findings that, prior to Enforcement, much is uncertain and therefore any alleged injury contemplating compliance is speculative in nature. *Smith & Wesson (III)* at 893. Specifically, the Third Circuit recognized that "*[i]f* an entity violates a subpoena issued by the [State] in a consumer fraud investigation, it *may* be subject to contempt, as well as a complete prohibition on 'the sale or advertisement of any merchandise' and suspension of its corporate character" and that

---

[21] The Court's definition of Enforcement as set forth herein is its intended meaning of the term under the Previous Opinion. As such, the Court stands by the Previous Opinion, and this Memorandum Opinion is merely intended to supplement and illuminate the Court's findings therein.

[22] The Court notes that it is possible for the Superior Court to threaten contempt at any point during the proceedings and not each stage in the New Jersey subpoena enforcement proceedings necessarily occurs. Each case is different, but this Court finds that constitutional injury can only occur here if there is an actual or imminent threat of forced compliance by the state court, which, to date, there has not been.

"[t]hese statutory '[p]enalties are, by their very nature, retributive: a sanction for wrongful conduct.'" *Id.* (emphasis added) (citations omitted). The Third Circuit, however, found that given the non-self-executing nature of a CFA subpoena, "a court will impose [the penalties] *only after the subpoenaed party violates a court order*." *Id.* (emphasis added). Here, like in the *Smith & Wesson* Litigation, albeit under slightly different factual circumstances, there has been no state court finding of a violation of a court order. *Id.* (finding that Smith & Wesson never violated a court order where it complied fully with the Subpoena at stage five above); (Sept. 20, 2024 Hearing 19 (declining to find Plaintiff in violation of the Initial Compliance Order although it had not fully complied with the Subpoena as required by the Initial Compliance Order).) Instead, the Superior Court held its Initial Compliance Order requiring Plaintiff to disclose constitutionally protected documents "in abeyance," meaning Plaintiff is at no imminent risk of facing Enforcement for simply refusing to provide the State with documents it believes are constitutionally protected. (*See* Sept. 20, 2024 Hearing 19.)

The certainty discussion in *Smith & Wesson (III)*, while in the context of *Younger* abstention, is also particularly illuminating as to the hypothetical nature of Plaintiff's alleged injuries under the Subpoena here. *Smith & Wesson (III)* at 894. In rejecting the State's contention that subpoena enforcement proceedings fell within *Younger* Category Three, i.e., an action that "involves orders in the furtherance of state court judicial function," the Third Circuit found, as set forth earlier:

[W]hen Smith & Wesson went to federal court

> there was much more for the state court to do than merely implement a predetermined outcome. New Jersey courts still had to adjudicate Smith & Wesson's constitutional arguments; and even if those arguments were resolved against Smith & Wesson, the state courts still had to give the company an opportunity to produce the required documents before holding it in contempt.

Id. at 893-94. (citation omitted). The Third Circuit, in so finding, lays bare the lack of concrete injury Plaintiff faces as a result of the remaining contingencies and hypothetical outcomes that remain in state court. While the Third Circuit in *Smith & Wesson (III)* did not consider ripeness, its reasoning certainly helps identify why federal judicial review may be inappropriate altogether prior to Enforcement.

In total, unless and until the New Jersey subpoena enforcement process reaches Enforcement as described above, Plaintiff's constitutional claims are not ripe where it faces no practical consequence for simply refusing to provide documents it deems protected. As such, this Court need only look to the Superior Court proceedings to assess whether there has been an Enforcement as defined above in order to appropriately consider whether Plaintiff's claims stemming from the Subpoena are, in fact, ripe. For the reasons outlined in the next section, the Court finds that Enforcement has not occurred.

4. The Superior Court's Findings Establish There Has Been No Enforcement of the Subpoena

Upon consideration of both the Superior Court's May 28, 2024 Bench Decision and the September 20, 2024 Hearing, the Court concludes that no Enforcement occurred in Superior Court, and as such, Plaintiff's claims are not ripe. To begin, Judge Adubato's May 28, 2024 Bench Decision appears to have been predicated on a belief that the constitutional issues First Choice presented may never ripen. (*See* May 28, 2024 Bench Decision 11-12 (observing that First Choice's motion to quash "really lies in the scope of the [S]ubpoena and its claims that the demands of the State go well beyond the investigative powers conferred by the statutes . . . and, therefore, [the Subpoena is] unenforceable" but then noting that "both parties agree that th[e Superior Court] should not delve into a review of the specifics of the [S]ubpoena in detail prior to the parties having an *opportunity to confer and to address possible narrowing or adjustments of the [S]ubpoena*" that might obviate the need for a ruling on the constitutional claims) (emphasis added)).) This is presumedly why Judge Adubato followed the Appellate Division in *Smith & Wesson (V)* in finding that Plaintiff's constitutional claims were not ripe, and instead, were "preserved." (*Id.* at 12, 22-23, 32 (recognizing in part that "built into" the Superior Court's order that First Choice must comply with the Subpoena is the "fact that there is . . . [a] belief that the parties will confer going forward, and it's possible that the [constitutional] concerns of the defense could be addressed in an agreement between the parties"

that would not require disclosure of allegedly constitutionally-protected documents)); *see also Smith & Wesson (V)* at 494. As such, while Judge Adubato ordered compliance with the Subpoena in the Initial Compliance Order, it is not apparent from the record that Judge Adubato intended for the constitutionally-protected documents to be disclosed *prior* to the parties narrowing the scope of the Subpoena or issuance of a further court order. Instead, Judge Adubato appears to have expected the parties to rectify the constitutional concerns before Enforcement. (*See generally* May 28, 2024 Bench Decision; Sept. 20, 2024 Hearing Tr. 19 (lamenting after the parties were unable to restrict the scope of the Subpoena that the Superior Court will "know better than to leave it to the parties to try to come to some decision" in the future).)

The Superior Court's September 20, 2024 findings reaffirm, if not outright verify, that it did not intend to mandate Plaintiff to disclose constitutionally-protected documents. First, at the September 20, 2024 Hearing, the Superior Court expressly declined its "right" to "enforce" the Subpoena. (Sept. 20, 2024 Hearing Tr. 8 (characterizing the State's motion to enforce litigant's rights as seeking an Enforcement, which implies there was no Enforcement of the Subpoena in May and that the parties and the Superior Court understand forced compliance as the moment of enforcement, consistent with this Court's findings above); *id.* at 16 ("What I will say is that while I do believe I have jurisdiction to hear the enforcement, in light of everything, I am going to decline to exercise that right today."); *id.* at 19 (answering in response to the State's contention that

the Superior Court has jurisdiction "to entertain [its] motion to enforce the [Initial Compliance Order]" that the Superior Court is "not going to enforce it"); *id.* at 20 (expressly declining to grant the State's motion to enforce litigant's rights pending appeal to the Appellate Division[23]).) Second, the Superior Court characterizes its May 28, 2024 Bench Decision as "permitt[ing] the enforcement" of the Subpoena. (*Id.* at 7.) This language is consistent with the third stage of subpoena enforcement proceedings, which as described above, is a stage at which constitutional claims related to the Subpoena are not yet ripe but where state enforcement proceedings are *initiated* and ongoing. This is not Enforcement as set forth above.

What is more, the parties' own interpretations of the Superior Court's findings seem to support this Court's interpretation of the same. Most notably, the State, as recently as October 11, 2024, presented its view of the current subpoena enforcement proceedings to the Appellate Division in seeking a limited remand. (Mot. Limited Remand 1, ECF No. 60-1.) The State wrote that it perceived the Initial Compliance Order requiring Plaintiff to provide documents as being "in limbo." (*Id.* at 5.) It continued that the Order "has not been stayed, yet the *trial court has declined to enforce it*" and argued that

[23] A motion to enforce litigant's rights, if granted, would certainly render Plaintiff's constitutional claims ripe because, at that time, Plaintiff would be subject to penalties for failing to comply with the Initial Compliance Order. *See* N.J. Ct. R. Appendix XI-M (detailing the legal consequences if the motion to enforce litigant's rights is granted and the subpoena recipient fails to comply with an information subpoena).

"enforcement of the [Initial Enforcement] Order is critical to the State's ongoing investigation." (*Id.* at 5-6 ("Without a limited remand, the State lacks recourse to enforce the [Initial Compliance Order] and ensure compliance with the Subpoena").) Moreover, Plaintiff does not dispute that it has not yet fully complied with the Subpoena, suggesting that there has been no Enforcement of the Subpoena against it, and contingencies remain before Plaintiff faces a cognizable constitutional injury. (Pl.'s Moving Br. 9 ("The [Superior Court] noted that [Plaintiff] 'has preserved its [federal constitutional] claims' to raise at some other stage." (quoting May 28, 2024 Bench Decision 14)); *see* Pl.'s Reply Br. 3, 5, ECF No. 45; Pl.'s Oct. 18, 2024 Correspondence 1-2 (conceding that Plaintiff, for example, has not produced the donor lists it believes are constitutionally protected); Pl.'s Moving Br. 32 (arguing that "*[i]f* this Court fails to protect donor and other information before the constitutionality of the underlying subpoena has been adjudicated, [Plaintiff] *could* face contempt citations for failing to produce constitutionally protected information" but inherently recognizing that it does not face any such threat at this time) (emphasis added); Pl.'s Oct. 18, 2024 Correspondence 2 (recognizing that "the [Superior Court's] order that the [Subpoena] is immediately *enforceable* represents an emergent threat," and thus necessarily agreeing that the Subpoena has not been *enforced* in its unconstitutional form, and there is still only a threat that it might be) (emphasis added).)

At this time, the record does not support a finding that the Subpoena has been Enforced, and Plaintiff can simply refuse to comply with the Subpoena

without consequence. To this end, the Court finds that Plaintiff's claims relating to the Subpoena are not ripe, and therefore, this Court lacks subject-matter jurisdiction to adjudicate Plaintiff's constitutional claims related to the Subpoena's enforceability.

B. Plaintiff's Alleged Injuries Sounding in Ripeness

Having found that it does not have subject-matter jurisdiction to adjudicate Plaintiff's claims related to the enforceability of the Subpoena, constitutional or otherwise, the Court briefly turns to Plaintiff's Complaint to see if it alleges any other ongoing injury outside the Subpoena enforcement context that might warrant injunctive relief. To be clear, Plaintiff's request for a TRO and/or PI seeks to enjoin "enforcement of [the State's] Subpoena in its entirety or, in the alternative, modify[] that Subpoena to eliminate those provisions that infringe on the constitutional protections of [Plaintiff]." (Compl. 33, ECF No. 1.) Facially, and as previously noted, this request is solely directed at the Subpoena, which is the only manifestation of the State's investigation. As Plaintiff's claims all relate to the Subpoena, this Court does not have the power to give Plaintiff the relief it seeks.

With that said, the Court would like to address Plaintiff's contentions, while not necessarily plead, that sound in the Subpoena *itself* actively causing harm by virtue of being issued and served, even if it has yet to be Enforced. (Pl.'s Oct. 18, 2024 Correspondence 2 ("[E]very day the Subpoena remains in force, First Choice experiences irreparable harm from the chilling of its First Amendment

rights."); *see* Pl.'s Moving Br. 20).) Said differently, a narrow path to a PI or TRO may be available to Plaintiff if it can support a finding that it is suffering a practical ongoing harm, not a speculative future disclosure harm, as a result of the Subpoena's service and the Superior Court's refusal to quash it, i.e., a chilling of Plaintiff's First Amendment rights where it has had to take practical steps responsive to the Subpoena's issuance. *U.S. ex rel. Ricketts*, 567 F.2d at 1232 ("Ripeness concerns whether the legal issue at the time presented in a court is sufficiently concrete for decision. Courts will not decide abstract legal issues posed by two parties; the issue in controversy must have a *practical* impact on the litigants.") (emphasis added). The Court addresses this narrowly construed and isolated contention under the preliminary injunction standard elucidated at the beginning of this Memorandum Opinion. *Issa*, 847 F.3d at 131 (citation omitted) (finding that the extraordinary remedy of preliminary injunctive relief should only be granted if a party can show: (1) it is "likely to succeed on the merits of their claims"; (2) it is "likely to suffer irreparable harm without relief"; (3) "the balance of harms favors [it]"; and (4) "relief is in the public interest" (citation omitted)).

Plaintiff appears to contend that it is suffering active ongoing harm as a result of the Subpoena's issuance as opposed to the investigation more generally where: (1) it is unable to get insurance until the state investigation is resolved; (2) Plaintiff had to edit certain YouTube videos to protect Plaintiff's clients' identities; and (3) the cost of electronic discovery inherent in having to answer the Subpoena is high. (*See generally* Huber Decl., ECF No. 41-5.)

With respect to the insurance injury, Plaintiff alleges it had to acquire a new insurance policy after its previous underwriter refused to offer a new policy as a result of the State's investigation. (*Id.* at 2-3.) "As a result, First Choice had to seek similar coverage from a different provider," and "First Choice's insurance premiums increased from $1,100 to over $6,000 per year, and First Choice's deductible increased from $500 per claim to $50,000 per claim." (*Id.* at 3.) Plaintiff's alleged damages to this end are strictly monetary. As such, Plaintiff's insurance injury does not constitute irreparable harm sufficient for preliminary injunctive relief. *Acierno v. New Castle Cnty.*, 40 F.3d 645, 653 (3d Cir. 1994) ("[I]n order to warrant a preliminary injunction, the injury created by a failure to issue the requested injunction must be of a peculiar nature, so that compensation in money cannot atone for it." (internal citations and quotation marks omitted)). The same goes for the cost of electronic discovery, which itself is also strictly economic in nature. (Huber Decl. 6-8 (setting forth the burdensome cost of discovery in order to comply with the Subpoena).) That leaves Plaintiff's contention regarding the "impact on First Choice's Speech" caused by the Subpoena as the lone contention remaining that can be considered for a PI or TRO. (*Id.* at 3; *see also id.* at 4-5 (discussing generally an impact on First Choice's donors were their names to have to be disclosed, which goes to the enforceability of the Subpoena and is not ripe for review for the reasons outlined in this Memorandum Opinion).)

Plaintiff's final contention submits that the Subpoena's issuance impacted Plaintiff's speech where it had to alter YouTube videos to protect clients

from harassment as a result of its issuance. (*Id.* at 3.) The Court is unpersuaded to this end that the alleged injury, the alteration of YouTube videos to protect clients after the Subpoena's service, constitutes irreparable harm.

While it is true that a loss of First Amendment rights, even briefly, can constitute irreparable injury, should: (1) the Subpoena ultimately be deemed unenforceable; (2) the State's investigation amount to nothing; or (3) the parties agree to acceptable responsive parameters, Plaintiff can alter the video back to its original form. Therefore, the harm is, by definition, reparable. Importantly, notwithstanding the above oft-cited rule, "the assertion of First Amendment rights does not automatically require a finding of irreparable injury." *Hohe v. Casey*, 868 F.2d 69, 72-73 (3d Cir. 1989) ("Constitutional harm is not necessarily synonymous with the irreparable harm necessary for issuance of a preliminary injunction"); *but see id.* at 72 (providing the "well-established" rule that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury" (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976))). It is "purposeful unconstitutional [government] suppression of speech [which] constitutes irreparable harm for preliminary injunction purposes." *Id.* (quoting *Goldie's Bookstore v. Superior Ct.*, 739 F.2d 466, 472 (9th Cir. 1984)). To that end, "it is the 'direct penalization, as opposed to incidental inhibition, of First Amendment rights [which] constitutes irreparable injury.'" *Id.* (internal citation omitted)

From the Court's perspective, the alteration of YouTube videos to protect clients from "harassment"

that First Choice alleges it is experiencing is an incidental inhibition of speech; here, it was an impact on speech discretionarily made after the issuance of a lawfully issued subpoena under the powers granted to the State that did not target First Choice's YouTube videos. *Sun Chem. Corp. v. Fike Corp.*, 235 A.3d 145, 150 (N.J. 2020) (finding that the New Jersey state legislature, in passing the CFA "intended to confer on the [State] the broadest kind of power to act in the interest of the consumer public" (quoting *Kugler v. Romain*, 279 A.2d 640, 648 (N.J. 1971)). Moreover, Plaintiff appears to generally refer to the Subpoena as harassment and speculates that because the State issued the Subpoena against it, it must also be imminently seeking to issue subpoenas upon Plaintiff's clients such that their identities must be protected. (*See* Huber Decl. 3; Pl.'s Oct. 18, 2024 Correspondence 2.) In this way, Plaintiff's sole remaining contention sounding in ripeness itself devolves into speculation of harassment and the contemplated next steps of the investigation should the Subpoena be Enforced.

As such, no matter how this Court construes Plaintiff's claims, it lacks subject-matter jurisdiction over them. Accordingly, the Court denies Plaintiff's TRO and PI, and dismisses Plaintiff's Complaint without prejudice.

C. Federalism Considerations

To fully elucidate its findings, the Court pauses on a final concern which the State raises in its opposition brief: federalism. (Def.'s Opp'n Br. 3, 38, 39.) To contextualize, "the issue of ripeness inevitably becomes intermingled with considerations of

federalism and the precept of avoiding unnecessary decision of constitutional and other issues." *Suburban Trails*, 800 F.2d at 366 (quoting *Pub. Serv. Comm'n v. Wycoff Co.*, 344 U.S. 237, 247-48 (1952) and *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 138 (1974)). That intermingling, as typified above, is the jurisprudential thicket this Court wanders into in this Memorandum Opinion. As such, federalism bears some discussion here so as to fully illuminate this Court's opinion that a focus on Article III and its dictates is the only tenable approach to take on the unique facts of this case. In its discussion, this Court will briefly address: (1) why the "access to federal courts" principle cannot jump from the prudential to constitutional ripeness context; and (2) how it would be a subversion of the federalist structure of our government should this Court be called to task before the state court has fulfilled the role it was delegated by the state legislature.

First, the Court recognizes that its Memorandum Opinion, in light of the so-called "preclusion trap," might be read to totally prohibit Plaintiff from accessing federal courts to challenge a state investigation initiated through a non-self-executing state administrative investigatory subpoena.[24] Based

---

[24] The Court finds it important to note, that conceptually, Plaintiff is not *entirely* prohibited from bringing its claims in federal court, though its path is narrow given this Court's ripeness finding. Under this Court's Memorandum Opinion, *Smith & Wesson (III)*, and *Smith & Wesson (VI)*, the current state of the law on these matters is this: (1) a challenge in federal court to a non-self-executing state administrative investigatory subpoena is not ripe under Article III unless and until a plaintiff is at risk of being held in contempt or faces another practical consequence as a result of noncompliance; (2) at that point,

on this Court's Article III findings, this principle, however, is not apposite here.

It is true, and the Third Circuit reaffirmed in *Smith & Wesson (III)*, that "federal courts [have a] virtually unflagging obligation to exercise their jurisdiction." *Smith & Wesson (III)* at 890 (internal quotation marks and citations omitted); *Sprint*, 571 U.S. at 77 ("Federal courts, it was early and famously said, have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given'" (quoting *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821)). This principle is particularly acute, if not exclusively applicable, however, in the context of abstention and other prudential doctrines. This Court cannot exercise jurisdiction it does not have under Article III. As such, this Court does not intend to diminish or, in fact, digress from this principle in any way—it finds that it does not have jurisdiction, and thus, *cannot* exercise its jurisdiction.

---

before contempt is imposed but after compliance is required under threat of contempt, a plaintiff may bring its claims in federal court, prior to a federal court being able to abstain under *Smith & Wesson (III)*, so long as the claims are brought in federal court before contempt is found; but (3) res judicata will attach to the state court's decision to enforce the subpoena so long as it expressly considers the constitutional claims before requiring compliance. *Smith & Wesson (III)* at 894; *see generally Smith & Wesson (VI)*. As such, there is a cognizable moment of federal court review, albeit a small one: if the state court does not reach the substance of a subpoena-recipient's constitutional claims in state enforcement proceedings, and, like here, only finds that they are not ripe, and then the subpoena recipient is threatened with imminent contempt if it fails to comply, but contempt has not yet been found, a subpoena-recipient may bring claims in this Court and this Court would be obliged to hear them.

Second, to the extent that Plaintiff seeks to frustrate action by a state agency and subvert the New Jersey state legislature's intent to have a state court first consider whether a subpoena is enforceable before it takes on the power of law, such is not tolerable to our Nation's federalism. *See Moore v. Harper*, 600 U.S. 1, 22 (2023) (crediting Alexander Hamilton's proclamation that "courts of justice have the duty . . . to declare all acts contrary to the manifest tenor of the Constitution void" (internal quotation marks omitted) (quoting THE FEDERALIST NO. 78, at 466 (Alexander Hamilton) (C. Rossiter ed., 1961))). Here, the Court agrees with Defendant that it should not sit in judgment on a matter the state legislature has set aside for initial consideration by a state tribunal. This is especially true where that state tribunal has the same power to adjudicate the constitutional claims before it,[25] and all constitutional

[25] In Federalist Paper No. 82, Alexander Hamilton explored the power state courts held and how those powers interplayed with those granted to federal courts under the pending United States Constitution. THE FEDERALIST NO. 82, at 593-97 (Alexander Hamilton) (Jacob E. Cooke ed., 1977); *Moore v. Harper*, 600 U.S. 1, 22 (2023) (recognizing the Federalist Papers as "[w]ritings in defense of the proposed Constitution" and looking to them as a reference for how the Framers understood the state and federal relationship when writing the Constitution). Hamilton began his discussion by identifying that under the Constitution, "the states will retain all *pre-existing* authorities, which may not be exclusively delegated to the federal head." *Id.* at 593. While this general constitutional principle is largely set forth in the context of the legislative branch, Hamilton identified that this general federalist structure of the Constitution extended to the judiciary, and the state and federal courts jointly within it. *Id.* at 593-94 ("I shall lay it down as a rule that the state courts will *retain* the jurisdiction they have now, unless it appears to be taken away in one of the enumerated modes.") This recognized federalist

paths, state or federal, lead to the Supreme Court.

VI. CONCLUSION

For the reasons set forth herein, Plaintiff's motion for a TRO and PI is denied. This Court does not have subject-matter jurisdiction to hear any claims Plaintiff brings related to the enforceability of the Subpoena because Plaintiff has yet to suffer any actual or imminent harm related to it. As it appears all claims in Plaintiff's Complaint are related to the Subpoena, Plaintiff's Complaint is again dismissed without prejudice. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) ("[W]hen a federal court concludes that it lacks subject-matter jurisdiction, the court must dismiss the compliant in its entirety."). Plaintiff

---

interrelationship is what we now know as "concurrent jurisdiction," alternatively referred to as "parallel proceedings." *Id.* at 595 ("When . . . we consider the state governments and the national governments as they truly are, in the light of kindred systems and as part of ONE WHOLE, the inference seems to be conclusive that the state courts would have a concurrent jurisdiction in all cases arising under the laws of the union, where it was not expressly prohibited." (emphasis in original)); *Gulf Offshore Co. v. Mobil Oil Corp.*, 453 U.S. 473, 478 (1981) (acknowledging that the Constitution recognizes "concurrent sovereignty" of the American government, and that the relationship between state and federal courts shares this concurrent structure by way of concurrent jurisdiction (citing THE FEDERALIST NO. 82)). Crucially, inherent in this idea of concurrent jurisdiction is that state and federal courts have an equal power to adjudicate any claim not exclusively reserved for federal court adjudication. *Yellow Freight Sys., Inc. v. Donnelly*, 494 U.S. 820, 823 (1990) ("Under our 'system of dual sovereignty, we have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." (quoting *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990)).

may refile its Complaint if and when its claims ripen in the manner set forth above. An accompanying order will follow.

MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street, 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for Plaintiffs

By: Chanel Van Dyke (165022015)
Deputy Attorney General
(973) 648-7819
Chanel.VanDyke@law.njoag.gov

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
ESSEX COUNTY
DOCKET NO. ESX-C-22-24

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Defendant.	Civil Action **ORDER TO ENFORCE LITIGANT'S RIGHTS**

WHEREAS THIS MATTER was brought before the Court on the application of plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey, and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs") by way of a Motion to Enforce Litigant's Rights, pursuant to R. 1:10-3, by Chanel Van Dyke, Deputy Attorney General, Consumer Fraud Prosecution Section, seeking to enforce the provisions of the Order entered by this Court on June 18, 2024 ("June 18, 2024 Court Order");

WHEREAS the June 18, 2024 Court Order directed defendant First Choice Women's Resource Centers, Inc. ("Defendant") to comply with the subpoena duces tecum served by Plaintiffs on Defendant;

~~WHEREAS Defendant has failed to comply with the June 18, 2024 Court Order by not producing all responsive documents and failing to negotiate in good faith;~~

WHEREAS the Court having considered the papers submitted and argument, if any, in support herein; and for good cause shown;

IT IS on this 2nd day of December, 2024:

1. ORDERED that Defendant's Motion for a Protective Order is denied ^ as premature.

DENIED

~~**2. IT IS FURTHER ORDERED** that Defendant has violated the June 18, 2024 Order by failing to produce all non-privileged documents responsive to the Subpoena.~~

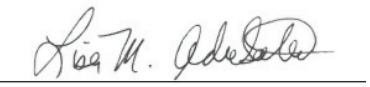
~~**3. IT IS FURTHER ORDERED** that Plaintiffs' proposed confidentiality order in Exhibit P to the Van Dyke Certification be entered.~~

~~**4. IT IS FURTHER ORDERED** that Defendant's objections to the Subpoena are overruled.~~

~~**5. IT IS FURTHER ORDERED** that Defendant shall fully comply with the Subpoena by immediately producing all non-privileged documents responsive to each Request in the Subpoena.~~

~~**6. IT IS FURTHER ORDERED** that Defendant shall pay attorney's fees in the amount of _____ and monetary sanctions in the amount of _____.~~

7. IT IS FURTHER ORDERED that a copy of this Order shall be served upon all counsel of record within seven (7) days of the date of this Order.



HON. LISA M. ADUBATO, J.S.C.

In accordance with the required statement of R. 1:6-2(a), this motion was:

(X) Opposed

( ) Unopposed

Statement of reasons attached

Platkin v First Choice Women's Resource Ctr – C-22-24

Statement of Reasons Pursuant to R. 1:6-2(f):

The procedural history of this matter is complex, partially due to the simultaneous filing of cases in both state and federal court. This Statement of

Reasons addresses only the procedural history necessary for context of the current Order.

By Order dated June 6, 2024, this court denied the Motion to Quash filed by defendant First Choice Women's Resource Centers, Inc. ("First Choice"), finding that the service of the subpoena by plaintiffs, Attorney General Matthew J. Platkin and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs, was proper for the reasons placed on the record on May 28, 2024. (Oral argument on the motion took place on May 20, 2024). Following this court's denial of a motion to stay pending appeal by Order dated May 28, 2024, the Order denying the Motion to Quash was appealed by First Choice. Proposed Orders were submitted by the parties under the five-day rule, and on June 18, 2024, this court entered the Order memorializing the decision to grant plaintiff's Order to Show Cause ordering that "Defendant shall respond fully to the Subpoena within thirty (30) days of the filing date of this Order."

On or about July 26, 2024, approximately eight days after the required response date, plaintiffs filed the Motion to Enforce Litigant's Rights alleging defendant had failed to comply with the June 18, 2024 Order and seeking an Order, inter alia, requiring defendant to fully comply with the Subpoena and seeking an award of attorney's fees or monetary sanctions. The court scheduled oral argument for September 20, 2024; however, on the record that day the court denied the motion based on a lack of jurisdiction as a result of the appeal filed by defendant.

By Order dated November 7, 2024, the Appellate

Division temporarily remanded the matter for this court "to consider enforcement of a discovery compliance order requiring defendant to comply with a subpoena. The remand shall be completed by December 2, 2024." This court heard oral argument on plaintiffs' Motion to Enforce Litigant's Rights on November 19, 2024. For the reasons set forth below, plaintiffs' motion is **DENIED**.

As part of the decision placed on the record on May 28, 2024, this court made it clear to the parties that they would be required to meet and confer regarding the scope of the Subpoena and a proposed protective order. Further, the court specifically did not rule on the constitutionality of the requests made in the subpoena; rather, the court found that the service of the subpoena itself was not unconstitutional based on the statutory investigatory powers granted to plaintiffs by the Legislature, specifically by the Consumer Fraud Act ("CFA"), the Charitable Registration and Investigation Act ("CRIA"), or the Professions and Occupations law ("P&O law").

Following a review of the email communications between the parties prior to the filing of this motion, and through the comments of counsel at oral argument, it became apparent to the court that the parties have not in fact engaged in good faith negotiations over either the scope of the document demands in the subpoena or the protective order. Without such conferences between the parties, any finding that defendant has not complied with the June 18, 2024 Order would itself be premature.

Further, while it is not necessary for the court at

this juncture to undertake a detailed review as to which party was more at fault for this failure, it does appear that plaintiffs' interpretation of the court's June 18, 2024 Order is the primary reason for the lack of communication. In its motion papers and continuing at oral argument, plaintiffs continued to take the position that this court has already determined that plaintiffs' specific demands as to the information sought in the subpoena was constitutional. However, that position is contradicted by the court's decision placed on the record on May 28, 2024, including that the court found First Choice's federal constitutional claims, to be "premature," "preserved," and "not ripe" for decision. This court clearly did not make any determination of the proper scope of the actual demands of the State, or on the issuance of a protective order on confidentiality, and it found that First Choice's "arguments which center on that scope" were "premature."

Indeed, this court agrees with defendant's position that the "Attorney General's reading of 'fully respond' as 'completely comply' contradicts both the Rules and this Court's ruling, which deferred any determination as to scope." (Defendant's Brief in Opposition to Plaintiffs' Motion to Enforce Litigant's Rights at 2; hereafter "Defendant's Opp Brief") And as further argued by defendant in opposition to plaintiffs' motion:

> The Court was clear in directing the parties to confer as to the Subpoena's scope and a protective order. In the oral ruling incorporated into its written order …the Court observed that the parties had "agree[d] that this Court should not delve into a review

> of the specifics of the subpoena in detail prior to [the parties] having an opportunity to confer and to address possible narrowing or adjustments of the subpoena."

Defendant's Opp Brief at 8.

Here, defendant produced 420 pages of documents on the due date and 183 more pages in the days following. It acknowledges a continuing obligation to respond and to confer with plaintiffs on the outstanding demands. Defendant provided responses to all the subpoena demands, with a number of those responses taking the form of objections without any responsive documents. That type of response is in keeping with the court rules (see, e.g. Rule 4:18-1(b)(4)). Importantly, it is also in keeping with the intention of this court when it denied the motion to quash in the first instance. As indicated during oral argument on November 19th, there are multiple possible responses to the information demanded in the subpoena, and one of those is an objection to the scope of the information sought. That is precisely why the court required the parties to meet to discuss and possibly narrow the scope of such demands deemed objectionable by defendant. If the parties were unable to reach a consensus on all or some of the demands, then at that point a motion to enforce would be appropriate and would at that time focus on the scope of the demands and the propriety of the objections thereto. Plaintiffs' motion is simply premature at this juncture of the case.

As was discussed on the record on November 19th, the court is aware of the decision of Judge Shipp in the federal court action discussing the ripeness of

defendant's claims based on the decisions of this court. While not binding on this court, that decision reiterates the reasons set forth herein that there has not been a determination made as to the constitutionality of First Choice's specific objections. As previously set forth, it remains premature for this court to make those determinations based on the procedural posture of this matter. Further, based on the reasoning of this court set forth herein denying plaintiffs' motion in aid of litigants' rights, it is not necessary to consider the Third Circuit's granting of First Choice's request for an expedited appeal, or for an expedited decision on First Choice's motion for an injunction pending that appeal.

For the foregoing reasons, plaintiffs' Motion to Enforce Litigant's Rights is **DENIED**.

ORDER ON MOTION

	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO.: A-003615-23T4
MATTHEW J. PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY ET AL V. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.	MOTION NO.: M-000772-24 BEFORE: PART F JUDGE(S): THOMAS W. SUMNERS JR. STANLEY BERGMAN
MOTION FILED: 10/11/2024 ANSWER(S) FILED: 10/25/2024	BY: MATTHEW J. PLATKIN BY: FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.

SUBMITTED TO COURT: October 28, 2024

ORDER

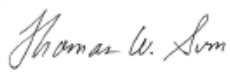
THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS 7th day of November, 2024, HEREBY ORDERED AS FOLLOWS:

MOTION BY RESPONDENT

MOTION FOR TEMPORARY REMAND GRANTED

SUPPLEMENTAL: The matter is temporarily remanded to the trial court to consider enforcement of a discovery compliance order requiring defendant to comply with a subpoena. The remand shall be completed by December 2, 2024. Counsel is under a continuing obligation to advise this court of the results of the remand. This court retains jurisdiction.

FOR THE COURT:



THOMAS W. SUMNERS JR., C.J.A.D.

ESX-C-22-24 ESSEX
ORDER – REGULAR MOTION SLW

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, NJ 07101
Attorney for Plaintiffs

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Defendant.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION- ESSEX COUNTY Docket No. C-000022-24 **CIVIL ACTION** **ORDER**

THIS MATTER being brought before the Court by plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey, and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"), seeking relief by way of summary action pursuant to R. 4:67-l(a), based upon facts set forth the Verified Complaint, Briefs and supporting Certifications and Exhibits thereto filed by Plaintiffs in this matter in connection with this application and in opposition to the Motion to Quash

filed by defendant First Choice Women's Resource Centers, Inc.'s ("Defendant") Motion to Quash, and the Court having determined that this matter may be commenced by Order to Show Cause as a summary proceeding pursuant to N.J.S.A. § 45:17A-33(e), § 56:8-8, and R. 1:9-6, and the Court having reviewed the submissions of the parties and having heard oral argument on May 20, 2024 on Plaintiffs' Order to Show Cause and Defendant's Motion to Quash, and the Court having issued a decision and reasons therefore on the record on May 28, 2024, and for good cause shown:

IT IS on this 18th day of June, 2024

ORDERED that Plaintiffs' Order to Show Cause is granted for the reasons set forth on the record on May 28, 2024, and it is further

ORDERED that Defendant shall respond fully to the Subpoena within thirty (30) days of the filing date of this Order and it is further

ORDERED that Defendant is enjoined from the destruction of any documents specifically requested in the Subpoena.

A copy of this Order shall be served on all parties within 7 days of this Order.

s/ Lisa M. Adubato
Hon. LISA M. ADUBATO

Reasons placed on record 5/20/24. The Court has considered the submissions of the parties with respect to form of Order; the Court finds that the form of the within Order is reflective of the Court's ruling.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Plaintiff, v. MATTHEW J. PLATKIN, in his official capacity as Attorney General for the State of New Jersey, Defendant.	Civil Action No. 23-23076 (MAS) (TJB) **MEMORANDUM OPINION**

SHIPP, District Judge

This matter comes before the Court upon Plaintiff First Choice Women's Resource Centers, Inc.'s ("Plaintiff") motion for a temporary restraining order ("TRO") and preliminary injunction. (ECF No. 12.) Defendant Matthew J. Platkin, in his official capacity as Attorney General for the State of New Jersey ("Defendant" or "State"), opposed (ECF No. 24), and Plaintiff replied (ECF No. 25). After consideration of the parties' submissions, the Court decides Plaintiff's motion without oral argument pursuant to Local Civil Rule 78.1. For the reasons outlined below, this Court dismisses the motion sua sponte as it finds that it lacks subject-matter jurisdiction over Plaintiff's claims.

I. BACKGROUND[1]

The Court recites only the facts necessary to contextualize the Court's jurisdictional findings. On November 15, 2023, Defendant issued an administrative subpoena (the "Subpoena") to Plaintiff. (Compl. ¶ 67, ECF No. 1.) The Subpoena indicates that it was issued pursuant to the State's power under the New Jersey Consumer Fraud Act (the "CFA"), the Charitable Registration and Investigation Act (the "CRIA"), and the Attorney General's investigative authority regarding Professions and Occupations. (*Id.* ¶ 68; *see also* Subpoena 1, ECF No. 5-9.) The Subpoena seeks the production of a substantial amount of information over at least a ten-year period. (*See* Compl. ¶ 69.) The Subpoena listed a December 15, 2023 return date. (Subpoena 1.)

On December 13, 2023, Plaintiff filed a Complaint in this Court alleging that the Subpoena is overbroad and asserting several different constitutional challenges both against the Subpoena and the New Jersey statutes that authorize the State to issue it.[2]

---

[1] As the Court sua sponte raises the issue of subject matter jurisdiction upon consideration of the allegations as presented on the face of the Complaint, the Court assumes that the Complaint's well-pleaded factual allegations are true. *Cepulevicius v. Arbella Mut. Ins.*, No. 21-20332, 2022 WL 17131579, at *1 (D.N.J. Nov. 22, 2022) (citing *Davis v. Wells Fargo*, 824 F.3d 333, 346 (3d Cir. 2016)).

[2] Plaintiff asserts the following claims: (1) First Amendment: Retaliatory Discrimination; (2) First and Fourteenth Amendments: Selective Enforcement/Viewpoint Discrimination; (3) First Amendment: Free Exercise; (4) First Amendment: Free Association; (5) First Amendment: Privilege; (6) Fourth Amendment: Unreasonable Search and Seizure; (7) First Amendment: Overbreadth; (8) First and Fourteenth

(*See* Compl. ¶¶ 80-177.) Shortly thereafter, Plaintiff filed the instant motion for a TRO seeking to stop the State's enforcement of the Subpoena. (*See generally* TRO, ECF No. 12.) As Plaintiff filed this lawsuit before the Subpoena return date passed, Plaintiff has not yet produced any documents. In addition, the State has not sought to enforce the Subpoena against Plaintiff in state court while the instant TRO is pending. (*See* Compl. ¶¶ 71-79; Stay Order, ECF No. 14.)

On these facts, the Court finds it appropriate to assess sua sponte whether Plaintiff's Complaint, predicated on a state-agency's subpoena issued under the authority of state law and which the State has not yet sought to enforce against Plaintiff, is ripe for adjudication. *See Nat'l Fire & Marine Ins. Co. v. Genesis Healthcare, Inc.*, No. 22-3377, 2023 WL 8711823, at *2 (3d Cir. Dec. 18, 2023) (finding that only where a controversy is ripe does a federal court have subject-matter jurisdiction over a plaintiff's claims).

II. LEGAL STANDARD

Article III of the Constitution limits the federal judiciary's authority to exercise its "judicial Power" to "Cases" and "Controversies" over which the federal judiciary is empowered to decide. *Plains All Am. Pipeline L.P. v. Cook*, 866 F.3d 534, 538 (3d Cir. 2017) (quoting U.S. CONST. art. III, § 2). "This case-or-controversy limitation, in turn, is crucial in 'ensuring that the Federal Judiciary respects the proper–and

---

Amendment: Vagueness; and (9) First Amendment: Unbridled Discretion. (Compl. ¶¶ 80-177.)

properly limited–role of the courts in a democratic society.'" *Id.* at 539 (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006)). The existence of a case or controversy, therefore, is a necessary "prerequisite to all federal actions." *Phila. Fed'n of Tchrs. v. Bureau of Workers' Comp.*, 150 F.3d 319,322 (3d Cir. 1998) (quoting *Presbytery of N.J of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462 (3d Cir. 1994)).

Federal courts ensure that they are properly enforcing the case-or-controversy limitation through "several justiciability doctrines that cluster about Article III . . . including 'standing, ripeness, mootness, the political-question doctrine, and the prohibition on advisory opinions.'" *Plains*, 866 F.3d at 539 (quoting *Tolls Bros., Inc. v. Township of Readington*, 555 F.3d 131, 137 (3d Cir. 2009)). Where a justiciability doctrine, like ripeness, is implicated, "[f]ederal courts lack [subject-matter] jurisdiction to hear" parties' claims, and the claims must be dismissed. *See Battou v. Sec'y U.S. Dep't of State*, 811 F. App'x 729, 732 (3d Cir. 2020) (citing *Armstrong World Indus., Inc. ex rel Wolfson v. Adams*, 961 F.2d 405, 410-11 (3d Cir. 1992)).[3]

---

[3] "Federal Courts are courts of limited jurisdiction and have an obligation to establish subject matter jurisdiction, even if they must decide the issue sua sponte." *Cepulevicius*, 2022 WL 17131579, at *1 (emphasis omitted) (citing *Liberty Mut. Ins. Co. v. Ward Trucking Co.*, 48 F.3d 742, 750 (3d Cir. 1995)); *see also Council Tree Commc'n, Inc. v. F.C.C.*, 503 F.3d 284, 292 (3d Cir. 2007) (finding that federal courts have an unflagging responsibility to reach the correct judgment of law, especially when considering subject-matter jurisdiction "which call[s] into question the very legitimacy of a court's adjudicatory authority"

III. DISCUSSION

Upon this Court's sua sponte review of Plaintiff's allegations, Plaintiff's Complaint must be dismissed because this Court lacks subject-matter jurisdiction over Plaintiff's claims. Specifically, Plaintiff's claims are not ripe, and therefore, the current emergent controversy is not justiciable by a federal court.

"The function of the ripeness doctrine is to determine whether a party has brought an action prematurely, and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine." *Wayne Land & Min. Grp. LLC v. Del. River Basin Comm'n*, 894 F.3d 509, 522 (3d Cir. 2018) (citation omitted). This principle derives from the notion that courts should not be deciding issues that rest "upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Turnbull*, 134 F. App'x at 500 (quoting *Texas v. United States*, 523 U.S. 296, 300 (1998)).

Here, the Court finds that a dispute regarding the enforceability of the State's non-self-executing state-administrative subpoena is not ripe for adjudication by a federal court. Critically, the Subpoena expressly derives its authority from two state-statutory sources: N.J. Stat. Ann.§ 56:8-4 (within the CFA) and N.J.

(citation omitted)); *Gov't Emps. Ret. Sys. of Gov't of U.S. V.I. v. Turnbull*, 134 F. App'x 498, 500 (3d Cir. 2005) ("Considerations of ripeness are sufficiently important that [federal courts] are required to raise the issue sua sponte, even when the parties do not question [the court's] jurisdiction" (emphasis omitted) (citing *Felmeister v. Off. of Att'y Ethics*, 856 F.2d 529, 535 (3d Cir. 1988)).

Stat. Ann.§ 45:17A-33(c) (within the CRIA). Notably, these state statutes require that if the State wants to enforce a subpoena against a non-compliant subpoena recipient, it must file an enforcement action in state court seeking a judgment of contempt against the recipient. N.J. Stat. Ann. § 56:8-6; N.J. Stat. Ann. § 45:17A-33(g). In this way, the Subpoenas are not "self-executing" because they require court intervention.

This distinction is significant because the Fifth Circuit in *Google, Inc. v. Hood* persuasively found that challenges to a non-self-executing state-administrative subpoena that has yet to be enforced against a plaintiff are not ripe for resolution in federal court. *See* 822 F .3d 212, 216 (5th Cir. 2016). In *Google*, the Mississippi Attorney General issued a "broad administrative subpoena, which Google challenged in federal court" in part arguing that the administrative subpoena would be "incredibly burdensome" in violation of its First and Fourth Amendment rights. *Id.* at 216, 220. The state statute that authorized the Attorney General to issue the administrative subpoena did not give the Attorney General the power to enforce the subpoena. *Id.* at 225. Rather, the statute provided that "if the recipient refuses to comply, the Attorney General 'may, after notice, apply' to certain state courts 'and, after hearing thereon, request an order' granting injunctive or other relief . . . enforceable through contempt.'" *Id.* (quoting MISS. CODE ANN. § 75-24-17). The district court "granted a preliminary injunction prohibiting [the Attorney General] from (1) enforcing the administrative subpoena or (2) bringing any civil or criminal action against Google." *Id.* at 216.

Upon consideration of the lower court's decision, the Fifth Circuit vacated the preliminary injunction and remanded the matter finding that neither "the issuance of [a] non-self-executing administrative subpoena nor the possibility of some future enforcement action created an imminent threat of irreparable injury ripe for adjudication." *Id.* at 228. The Fifth Circuit reasoned:

> [W]e see no reason why a state's non-self-executing subpoena should be ripe for review when a federal equivalent would not be.[4] If anything, comity should make us less willing to intervene when there is no current consequence for resisting the subpoena and the same challenges raised in the federal suit could be litigated in state court.

Id. at 226 (citing *O'Keefe v. Chisholm*, 769 F.3d 936, 939-42 (7th Cir. 2014)); *see also CBA Pharma, Inc. v. Perry*, No. 22-5358, 2023 WL 129240, at *3-4 (6th Cir. Jan. 9, 2023) (citing *Google* to support a finding that pre-enforcement consideration of a subpoena's validity is not ripe); *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679,695 (S.D.N.Y. 2018) (following *Google* and agreeing that "a state's non-self-executing subpoena is not legally distinguishable . . . from the federal equivalent" and therefore a pre-enforcement challenge to a state non-

[4] To this end, the Court cited Supreme Court and Tenth Circuit case law that held that a federal court could not adjudicate pre-enforcement challenges to federally-based non-self-executing subpoenas or summonses. *Google*, 822 F.3d at 225; *see also Reisman v. Caplin*, 375 U.S. 440, 443-46 (1964); *Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334-35 (10th Cir. 1984).

self-executing subpoena is not ripe for adjudication). Integral to this reasoning was that in Mississippi, the state court had the statutory authority to modify or quash the subpoena that the Attorney General sought to enforce against Google, and Google could therefore raise any objections to the state's administrative subpoena in state court if enforcement proceedings were initiated.[5] *Id.* at 225, 225 n.10.

Significantly, this case is factually identical to *Google*. Here, like in *Google*, the State issued a broad administrative subpoena to Plaintiff, who then filed the instant matter in federal court arguing in part that the Subpoena would be burdensome in violation of the First and Fourth Amendments. (Compl. ¶¶ 127-77; Pl.'s TRO Moving Br. 15-28, ECF No. 5-1.) Both of the state statutes that the State identified as empowering it to issue the Subpoena, like the Mississippi state statute in *Google*, provide that the State may enforce the Subpoena by applying to the state court and obtaining an order adjudging the subpoena-recipient in contempt of court. N.J. Stat. Ann. § 56:8-6 ("If any person shall fail or refuse to file any statement or report, or obey any subpoena issued

---

[5] Specifically, the Fifth Circuit persuasively found that:

> Mississippi law expressly provides for the quashing of court-issued subpoenas . . . And we will of course not presume that Mississippi courts would be insensitive to the First Amendment values that can be implicated by investigatory subpoenas, . . ., or to the general principle that "[c]ourts will not enforce an administrative subpoena . . . issued for an improper purpose, such as harassment," *Burlington N. R.R. Co. v. Off[.] of Inspector Gen[.]l*, 983 F.2d 631, 638 (5th Cir. 1993) (citing *United States v. Powell*, 379 U.S. 48, 58, 85 S.Ct. 248, 13 L.Ed.2d 112 (1964)).

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.§ 45:17A-33 ("If a person . . . fails to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order . . . [a]djudging that person in contempt of court."). Finally, similar to Mississippi law in *Google*, New Jersey state law expressly authorizes state courts to quash or modify a subpoena if "compliance would be unreasonable or oppressive." N.J. STAT. ANN. § 1:9-2. As such, the Fifth Circuit's reasoning in *Google* as to the federal court's role in considering a non-self-executing administrative subpoena before it has been enforced is directly applicable to the facts of this case.

This Court finds the Fifth Circuit's reasoning in *Google* persuasive. This Court, like the Fifth Circuit, is skeptical that a state administrative subpoena can be ripe for federal court adjudication where a similar federal administrative subpoena would not be. *Google*, 822 F .3d at 226. Moreover, the ripeness doctrine in this Circuit lends some inferential support to the Fifth Circuit's finding that principles of "comity should make [federal courts] less willing to intervene when there is no *current* consequence for resisting the subpoena and the same challenges raised in the federal suit could be litigated in state court." *Id.* (emphasis added); *see also Turnbull*, 134 F. App'x at 500 (finding a claim is not ripe when it is predicated "upon contingent *future* events that may not occur as anticipated, or indeed may not occur at all" like a state court finding that a subpoena is enforceable and requiring a plaintiff to comply or face contempt

(emphasis added) (quoting *Texas*, 523 U.S. at 300)); *see also Maisonet v. N.J. Dep't of Human Servs., Div. of Family Dev.*, 657 A.2d 1209, 1213 (N.J. 1995) (confirming that state courts can "enforce federal rights or claims" (citing *Felder v. Casey*, 487 U.S. 131, 138 (1988))). Finally, New Jersey state law's allowance for a state court to modify or quash a subpoena if an enforcement proceeding is brought and "compliance would be unreasonable or oppressive" supports a finding that a constitutionally-sufficient injury can only occur here if the state court tasked with enforcing the subpoena refuses to quash or modify the constitutionally-infirm subpoena. N.J. STAT. ANN. § 1:9-2 ("The court on motion made promptly may quash or modify the subpoena or notice if compliance would be unreasonable or oppressive . . .).

By this reasoning, and to be clear, Plaintiff's claims related to the Subpoena's enforceability in this matter would ripen only after the contingent future event that forms the basis of its alleged injury occurs, i.e., if and when the state court enforces the Subpoena in its current form. This is because, were the Court to consider Plaintiff's claims prior to the state court enforcing the Subpoena as written, the Court could only speculate as to whether the state court would, in fact, find the Subpoena enforceable. *See*, *e.g.*, *Texas*, 523 U.S. at 300 ("A claim is not ripe for adjudication if it rests upon "'contingent future events that may not occur as anticipated, or indeed may not occur at all.'") Significantly, through this lens, the concept of ripeness overlaps with another justiciability doctrine of equal concern: standing. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (citation omitted)

(finding that in order to establish Article III standing, a plaintiff must show that it suffered an "injury in fact" which is "concrete and particularized" as well as "actual or imminent, *not 'conjectural' or 'hypothetical*.'" (emphasis added)).[6] Because this Court cannot yet know whether the state court tasked by the New Jersey state legislature with overseeing subpoena enforcement proceedings like this will, in fact, enforce the Subpoena in its current form, this matter is not ripe for resolution because no actual or imminent injury has occurred. This Court, consequently, lacks subject-matter jurisdiction over

---

[6] The Court finds it necessary to pause on this overlap because it is very much at play in this matter. Specifically, "[t]he constitutional component of ripeness overlaps with the "injury in fact" analysis for Article III standing." *Wolfson v. Brammer*, 616 F.3d 1045, 1058 (9th Cir. 2010) (citations omitted); *see also* 13B CHARLES ALAN WRIGHT & ARTHUR R. MILLER FEDERAL PRACTICE AND PROCEDURE § 3532.1 (3d Ed. 2023) ("'[T]o say a plaintiff's claim is constitutionally unripe is to say the plaintiff's claimed injury, if any, is not "actual or imminent," but instead "conjectural or hypothetical."'" Logically, it makes no difference that a claim not ripe today *might* in the future ripen into an injury that establishes standing." (emphasis added) (quoting *Nat'l Org. for Marriage, Inc. v. Walsh*, 714 F.3d 682, 688-89 & nn.6, 7 (2d Cir. 2013)); *Presbytery of N.J. of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1462, 1470 n.14 (3d Cir. 1994) (acknowledging that standing and ripeness are related and often "confused or conflated," and finding that a plaintiff had Article III standing for the same reasons his claims were ripe). As such, in finding that Plaintiff's claims are not ripe, the Court is also functionally finding that Plaintiff has not shown Article III standing because its injuries are not actual or imminent. *Google*, 822 F.3d at 227 (acknowledging this overlap implicitly when finding that neither "the issuance of [a] non-self-executing administrative subpoena nor the possibility of some future enforcement action created an imminent threat of irreparable injury ripe for adjudication.")

Plaintiffs claims.

As a final note, the Court acknowledges Plaintiff's briefing on the factual similarities between this case and the Third Circuit's recent decision in *Smith & Wesson, Inc. v. Attorney General of N.J.*, 27 F.4th 886 (3d Cir. 2022). (*See* Pl.'s Reply Br. 5-6, ECF No. 25.) The Court also recognizes Plaintiff's concerns with the procedural tangle that ensued from simultaneous federal and state proceedings in that matter. (*Id.*) First, the procedural tangling that Plaintiff expresses concern for in the *Smith & Wesson* lineage of cases is on appeal to the Third Circuit and this Court makes no suggestion or findings as to what the outcome of that appeal may or should be. *See Smith & Wesson Brands, Inc. v. Grewal*, No. 20-19047, 2022 WL 17959579, at *5 (D.N.J. Dec. 27, 2022). Second, and importantly, the Court's finding today avoids the *Smith & Wesson* tangle because the trouble in *Smith & Wesson* resulted from the lower court abstaining from hearing a plaintiff's claims in federal court.[7] *See*

[7] The Court recognizes that its Memorandum Opinion today functionally finds that a non-self-executing state administrative subpoena that derives its authority from a state statute identifying a state court as the subpoena's sole enforcement mechanism may seldom if ever be ripe for adjudication in federal court. This is because, as the law currently stands in this District, if a plaintiff's claims in federal court are not ripe until after a state court has ruled on the enforceability of a subpoena, res judicata principles will likely bar a plaintiff from filing a claim in federal court pertaining to the state-court enforced subpoena. *See Smith & Wesson*, 2022 WL 17959579, at *5 (providing an example of this exact scenario occurring within the *Smith & Wesson* lineage of cases). Nevertheless, as the law stands, this Court is satisfied that it reaches the right jurisprudential outcome in this case with respect to the justiciability of Plaintiff's current claims. Principles of

Smith & Wesson, 27 F.4th at 889-91. Here, in finding that Plaintiff's claims are not ripe for adjudication, this Court is not abstaining from this matter any more than any federal court abstains as it awaits a plaintiff's claim to ripen. *Wayne Land & Min. Grp. LLC v. Del. River Basin Comm'n*, 894 F.3d 509, 522 (3d Cir. 2018) (citation omitted) ("The function of the ripeness doctrine is to determine whether a party has brought an action prematurely, and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine."). Accordingly, the Court's decision here does not run afoul of *Smith & Wesson*.

IV. CONCLUSION

For the reasons outlined above, Plaintiff's motion for a temporary restraining order and preliminary injunction is denied, and Plaintiff's Complaint is dismissed without prejudice. Plaintiff may refile its Complaint in this Court only if it can establish its claims are ripe and that it has Article III standing in a manner consistent with this Memorandum Opinion. If Plaintiff believes certain of its claims are unrelated to the enforceability of the Subpoena, which claims the Court finds are not ripe for adjudication for the reasons provided in this Memorandum Opinion, Plaintiff may file an Amended Complaint alleging

---

federalism and comity make it hard for this Court to ignore the fact that the New Jersey state legislature specifically empowered the Superior Court of New Jersey to rule on the enforceability of a state administrative subpoena predicated on the State's power under certain state statutes: here, the CFA and CRIA.

such claims on a non-emergent basis.

MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

James K. Webber (NJ Attorney ID 020112000)
WEBBER MCGILL LLC
100 E. Hanover Avenue
Suite 401
Cedar Knol1s, New Jersey 07927

Lincoln Davis Wilson (NJ Attorney ID 020112008)
ALLIANCE DEFENDING FREEDOM
440 First Street NW,
Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
lwilson@ADFLegal.org

Attorneys for Defendant First Choice Women's Resource Centers, Inc.

MATTHEW J. PLATKIN
ATTORNEY GENERAL
OF NEW JERSEY
Chanel Van Dyke (NJ Attorney ID 165022015)
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819
Chanel.VanDyke@law.njoag.gov

Attorneys for Plaintiffs, Matthew J. Platkin, Attorney General of the State of New Jersey, and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs,

Plaintiffs,

v.

SUPERIOR COURT
OF NEW JERSEY
ESSEX COUNTY:
CHANCERY
DIVISION

DOCKET NO. ESX-C-22-24

STIPULATION AND ORDER

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Defendant.

WHEREAS, on June 18, 2024, this Court entered an order that First Choice respond fully to the Attorney General's Subpoena, and First Choice subsequently timely appealed that order to the Appellate Division, docketed and pending as *Matthew J. Platkin, Attorney General of the State of New Jersey et al. v. First Choice Women's Resource Centers, Inc.*, No. A-003615-23T4 (N.J. App. Div.);

WHEREAS, on November 12, 2024, the United States District Court for the District of New Jersey in *First Choice Women's Resource Centers, Inc. v. Platkin*, No. 23-cv-23076 (D.N.J.), dismissed the action before it for lack of jurisdiction, and First Choice timely appealed that decision;

WHEREAS, on December 2, 2024, this Court entered an order denying a) the Attorney General's motion to enforce litigant's rights. and b) First Choice's motion for a protective order;

WHEREAS, on December 12, 2024, the Third Circuit Court of Appeals affirmed the District Court's decision to dismiss the federal case for lack of jurisdiction;

WHEREAS, First Choice intends to file a petition for a writ of certiorari with the Supreme Court of the United States seeking review of the Third Circuit's ruling; and

WHEREAS, the parties mutually desire the just and efficient resolution of this litigation;

NOW THEREFORE, it is hereby **STIPULATED AND AGREED** by and between the parties as follows:

1. The parties agree to the following briefing schedule for First Choice's forthcoming petition for certiorari: First Choice will file its petition for a writ of certiorari by January 21, 2025; the Attorney General will file his brief in opposition by February 25, 2025; and First Choice will file its reply brief by March 11, 2025.

2. The parties agree to stay subpoena-enforcement proceedings pending the disposition of the certiorari petition and that no further motions to enforce any aspect of the subpoena (nor any other motions to compel the production of documents or information, to obtain a protective order, or to obtain sanctions for subpoena noncompliance) shall be filed during the duration of the stay. Should certiorari be denied, this stay shall terminate automatically. Should certiorari be granted, the stay shall terminate upon issuance of the mandate from the U.S. Supreme Court.

3. Notwithstanding this stay, the parties agree a) to continue litigating First Choice's pending-appeal in the Appellate Division and b) to continue to meet and confer in good faith regarding the scope of the subpoena and First Choice's objections to the subpoena during the pendency of the stay. The parties may seek this Court's guidance and/or clarification in conjunction with such efforts, but neither party shall file any further motion to a) enforce the subpoena, b)

compel the production of documents or information, c) obtain a protective order, or d) obtain sanctions until the termination of the stay.

Respectfully submitted this 21st day of December, 2024.

/s/ James K. Webber
James K. Webber (NJ Attorney ID 020112000)
WEBBER MCGILL LLC
100 E. Hanover Avenue
Suite 401
Cedar Knol1s, New Jersey 07927

Lincoln Davis Wilson (NJ Attorney ID 020112008)
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
lwilson@ADFLegal.org

Attorneys for Defendant First Choice Women's Resource Centers, Inc.

/s/ Chanel Van Dyke
Chanel Van Dyke (NJ Attorney ID 165022015)
NEW JERSEY DIVISION OF LAW
124 Halsey Street - 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
(973) 648-7819
Chanel.VanDyke@law.njoag.gov

IT IS SO ORDERED.

/s/ Lisa M. Adubato
HON. LISA M. ADUBATO, J.S.C.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Division of Law
124 Halsey Street – 5th Floor
P.O. Box 45029
Newark, New Jersey 07101
Attorney for New Jersey Division of Consumer Affairs

By: Chanel Van Dyke
Deputy Attorney General
Consumer Fraud Prosecution Section
Chanel.VanDyke@law.njoag.gov

ADMINISTRATIVE ACTION

SUBPOENA DUCES TECUM

THE STATE OF NEW JERSEY to:	**First Choice Women's Resource Centers, Inc. c/o Aimee Huber, Registered Agent 82 Speedwell Avenue Morristown, New Jersey 07960**

You are hereby commanded to produce to the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division") through Chanel Van Dyke, Deputy Attorney General, at 124 Halsey Street, 5th Floor, Newark, New Jersey 07101, on or before **December 15, 2023**, at 10:00 a.m., the following:

See Attached Schedule.

In lieu of your appearance, you may provide the documents and information identified in the attached Schedule on or before the return date at the address listed above by Certified Mail, Return Receipt Requested, addressed to the attention of Chanel Van Dyke, Deputy Attorney General, Consumer Fraud Prosecution Section, 124 Halsey Street, 5th Floor, Newark, New Jersey 07101. You may, at your option and expense, provide certified, true copies in lieu of the original documents identified in the attached Schedule by completing and returning the Certification attached hereto. In addition, you may supply the documents via email to Chanel.VanDyke@law.njoag.gov.

Failure to comply with this Subpoena may render you liable for contempt of Court and such other penalties as are provided by law. This Subpoena is issued pursuant to the authority of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227, specifically N.J.S.A. 56:8-3 and 56:8-4, the Charitable Registration and Investigation Act, N.J.S.A. 45:17A-18 to -40, specifically N.J.S.A. 45:17A-33(c), and the Attorney General's investigative authority regarding Professions and Occupations, N.J.S.A. 45:1-18. You have an obligation to retain, and continue to maintain the requested Documents. Failure to comply with this Subpoena may render you liable for contempt of court and such other penalties as are provided by law.

s/ *Chanel Van Dyke*
Chanel VanDyke
Deputy Attorney General

Dated: 11/15/23

Certification of Compliance Omitted

SCHEDULE

INSTRUCTIONS AND DEFINITIONS

D. INSTRUCTIONS

1. This Request is directed to First Choice Women's Resource Centers, Inc., as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, attorneys, corporations, subsidiaries, affiliates, successors, assigns or any other individual or entity acting or purporting to act on its behalf.

2. Unless otherwise specifically indicated, the period of time encompassed by this Request shall be from January 1, 2021 to the date of your response to this Subpoena.

3. Unless otherwise specifically indicated, capitalized terms are defined as set forth in the Definitions below.

4. You are reminded of Your obligations under law to preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss, and of the consequences of, and penalties available for, spoliation of evidence. No agreement, written or otherwise, purporting to modify, limit, or otherwise vary the terms of this Subpoena and/or Your preservation obligations under the law, shall be construed in any way to narrow, qualify, eliminate or otherwise diminish Your aforementioned preservation obligations, nor shall You act in reliance upon any such agreement or

otherwise, in any manner inconsistent with Your preservation obligations under the law.

5. If there are no Documents responsive to any particular Subpoena request, You shall so certify in writing in the Certification of Compliance attached hereto, identifying the paragraph number(s) of the Subpoena request concerned.

6. If a Subpoena Request requires the production of Documents the form and/or content of which has changed over the relevant period, identify the period of time during which each such Document was used and/or otherwise in effect.

7. Unless otherwise specifically stated, each and every Document produced shall be Bates-stamped or Bates-labeled or otherwise consecutively numbered and the Person making such production shall identify the corresponding Subpoena Request Number[s] to which each Document or group of Document responds.

8. Electronically Stored Information should be produced in the format specified in Exhibit A.

9. Regardless of whether a production is in electronic or paper format, each Document shall be produced in the same form, sequence, organization or other order or layout in which it was maintained before production, Including production of any Document or other material indicating filing or other organization. Such production shall Include any file folder, file jacket, cover, or similar organization material, Including any folder bearing any title or legend that contains no Document. Likewise, all Documents physically attached to each other in Your

files shall remain so attached in any production; or, if such production is electronic, shall be accompanied by notation or information sufficient to indicate clearly such physical attachment.

10. If one or more Documents or any portions thereof requested herein are withheld under a claim of privilege or otherwise, identify each Document or portion thereof as to which the objection is made, together with the following information:

a. The Bates-stamp or Bates-label of the Document or portion thereof as to which the objection is made;

b. Each author or maker of the Document;

c. Each addressee or recipient of the Document or Person to whom its contents were disclosed or explained;

d. The date thereof;

e. The title or description of the general nature of the subject matter of the Document and the number of pages;

f. The present location of the Document;

g. Each Person who has possession, custody or control of the Document;

h. The legal ground for withholding or redacting the Document; and

i. If the legal ground is attorney-client privilege, You shall indicate the name of the attorney(s) whose legal advice is sought or provided in the Document.

11. In the event that any Document that would

have been responsive to these Subpoena Requests has been destroyed or discarded, provide the: (i) type of Document; (ii) general subject matter; (iii) date of the Document; and (iv) author[s] and recipient[s], and also include:

a. Date of the Document's destruction or discard;

b. Reason for the destruction or discard; and

c. Person[s] authorizing and/or carrying out such destruction or discard.

12. A copy of the Certification of Compliance provided herewith shall be completed and executed by all natural persons supervising or participating in compliance with this Subpoena, and You shall submit such Certification(s) of Compliance with Your response to this Subpoena.

13. In a schedule attached to the Certification of Compliance provided herewith, You shall Identify the natural person(s) who prepared or assembled any productions or responses to this Subpoena. You shall further Identify the natural person(s) under whose personal supervision the preparation and assembly of productions and responses to this Subpoena occurred. You shall further Identify all other natural person(s) able to competently testify: (a) that such productions and responses are complete and correct to the best of such person's knowledge and belief; and (b) that any Documents produced are authentic, genuine, and what they purport to be.

E. <u>DEFINITIONS</u>

1. "Abortion Pill Reversal" refers to a drug

protocol purportedly used to stop the process of medicated abortion and continue a pregnancy-specifically, the administration of progesterone after a pregnant person has taken mifepristone, misoprostol, or methotrexate.

2. "Advertisement" shall be defined in accordance with N.J.S.A. 56:8-l(a) and/or N.J.A.C. 13:45A-9.1 and shall Include Endorsements and any attempt to induce any Person to use Your Services. This definition applies to other forms of the word "Advertisement," Including "Advertised" and "Advertising."

3. "Any" includes "all" and vice versa.

4. "Charitable Purpose" shall be defined in accordance with N.J.S.A. 45:17A-20.

5. "Claim(s)" means all statements, implications, messages, or suggestions made in any Advertisement, Solicitation, Pamphlet, commercial, Endorsement, or other Communication.

6. "Client[s]" refers to Persons who use or have used Your Services, or Persons to whom You Advertise Your Services.

7. "Client Solicitation Page" refers to the website in which First Choice engages in Solicitation and requests for donations, specifically located at the First Choice Website and at https://myegiving.com/App/Form/24dff450-d338-49d3-b2f9-7ac52352d9f4.

8. "Communication(s)" means any conversation, discussion, letter, email, text message, Social Media message or post, memorandum, meeting, note, picture, post, blog, or any other transmittal of

information or message, whether transmitted in writing, orally, electronically, or by any other means, and shall Include any Document that abstracts, digests, transcribes, records, or reflects any of the foregoing. Except where otherwise stated, a request for "Communications" means a request for all such Communications.

9. "Concerning" means relating to, pertaining to, referring to, describing, evidencing or constituting.

10. "Contribution[s]" shall be defined in accordance with N.J.S.A. 45:17A-20.

11. "Document" Includes all writings, word processing documents, records saved as a .pdf, spreadsheets, charts, presentations, graphics/ drawings, images, emails and any attachments, instant messages, text messages, phone records, websites, audio files, and any other Electronically Stored Information. Documents Include drafts, originals and non-identical duplicates. If a printout of an electronic record is a non-identical copy of the electronic version (for example, because the printout has a signature, handwritten notation, other mark, or attachment not included in the computer document), both the electronic version in which the Document was created and the non- identical original Document must be produced.

12. "Donor[s]" refers to Persons who make or have made Contributions to First Choice, or who You Solicit to make Contributions to First Choice.

13. "Donor Solicitation Page" refers to the website in which First Choice engages in Solicitation and requests for donations, specifically located at the First

Choice Donor Website and at https://www.myegiving.com/App/Giving/firstchoicewrc.

14. "Electronically Stored Information" or "ESI" means any Document, Communication, or information stored or maintained in electronic format.

15. "Employee" means any Person presently or formerly employed for hire including, but not limited to, independent contractors, any Person who manages or oversees the work of another, and any Person whose earnings are based in whole or in part on salary or commission for work performed.

16. "Endorsement(s)" means any message (Including verbal statements, demonstrations, or depictions of the name, signature, likeness or other identifying personal characteristics of an individual of the name or seal of an organization) that Clients and/or Donors are likely to believe reflects the opinions, beliefs, findings, or experiences of a party other than the sponsoring advertiser, even if the views expressed by that party are identical to those of the sponsoring advertiser.

17. "First Choice" means First Choice Women's Resource Centers, Inc., as well as its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, attorneys, corporations, subsidiaries, affiliates, successors, assigns, or any other Person acting or purporting to act on its behalf.

18. "First Choice Donor Website" means the website located at https://1stchoicefriends.org and Includes the Donor Solicitation Page.

19. "First Choice Facebook" means the Facebook page located at https://www.facebook.com/FirstChoiceWRC/, as well as any other Facebook page owned or controlled by First Choice through which it engages in Solicitation or promotes its Services.

20. "First Choice Instagram" means the Instagram page located at https://www.instagram.com/firstchoicewrc/, as well as any other Instagram page owned or controlled by First Choice through which it engages in Solicitation or promotes its Services.

21. "First Choice Website" means the website located at https://1stchoice.org and includes the Client Solicitation Page.

22. "First Choice Website 2" means the website located at https://firstchoicewomancenter.com.

23. "Identify" with respect to Persons, means to give, to the extent known, the Person's (a) full name; (b) present or last known address; (c) phone number; and when referring to a natural person, additionally, his or her (d) present or last known place of employment; (e) title(s) or position(s) held within Your organization, if any; and (f) dates of employment or time period in which You used the Person for their services generally or as a volunteer.

24. "Include" and "Including" shall be construed as broadly as possible and shall mean "without limitation."

25. "New Jersey" shall refer to the State of New Jersey.

26. "Pamphlet[s]" shall be defined as any

Document or collection of Documents which are given to Clients or Donors and which provide information on subject matters related to Your Charitable Purpose or Your Services.

27. "Person[s]" shall be defined in accordance with N.J.S.A. 56:8-l(d).

28. "Personnel" refers to Employees, volunteers, and other Persons You use to provide Your Services or support Your infrastructure, management, and day-to-day operations.

29. "Policies" shall Include any procedures, practices, and/or established courses of action, whether written or oral.

30. "Professional Licensee[s]" refers to Personnel licensed by any of the New Jersey Division of Consumer Affairs' Professional and Occupational Boards and Committees, or by any other State's Professional and Occupational Board responsible for professional licensure and professional regulation. This definition applies to other forms of the word "Professional Licensee," Including "Professionally Licensed" and "Professional Licensure."

31. "Service(s)" shall be defined as the resources, practices, procedures, and actions that You provide or offer to provide to Clients in furtherance of Your Charitable Purpose, including but not limited to: Telehealth Nurse Consultation, Pregnancy Testing, Limited Obstetric Ultrasound, Intravaginal Ultrasound, Abdominal Ultrasound, Abortion Info Consultation, STD/STI testing, Consultation about option to carry to term or have an abortion, Counseling, After-abortion care, Referrals for

Abortion Pill Reversal, OB-GYN Referrals, Referrals for Adoption or other financial resources.

32. "Social Media" means any website and applications that enable users to create and store content or to participate in social networking, Including Facebook, Instagram, Linkedln, Snapchat, TikTok, Twitter, and YouTube.

33. "Solicitation[s]" shall be defined in accordance with N.J.S.A. 45:l 7A-20.

34. "You" and "Your" mean First Choice.

35. As used herein, the terms "all" and "each" shall be construed as all and each.

36. As used herein, the conjunctions "and" and "or" shall be interpreted conjunctively and shall not be interpreted disjunctively to exclude any information otherwise within the scope of this Subpoena.

37. As used herein, the plural shall Include the singular, and the singular shall Include the plural.

DOCUMENT REQUESTS

1. True, accurate, and complete copies of each and every Solicitation and Advertisement Concerning Services or goods offered in furtherance of Your Charitable Purpose, Including Solicitations and Advertisements appearing in or on any of the following:

   a. First Choice Website;

   b. First Choice Website 2;

   c. First Choice Donor Website;

d. Social Media, Including, but not limited to First Choice Facebook and First Choice lnstagram;

e. Print media, including newspapers and magazines;

f. Amazon or any other e-commerce platform;

g. Sponsored content;

h. Digital Advertising;

i. Video Advertising;

j. Native Advertising;

k. Other websites;

l. Pinterest;

m. Radio;

n. Podcasts; and

o. Pamphlets.

2. All Documents Concerning distribution or placement of the Advertisements and Solicitations produced in response to Request No. 1, Including any criteria or algorithms used to determine the target audience for Advertisements and Solicitations, and any research used to identify and/or target the Persons or demographics that the Advertisements and Solicitations are intended to reach.

3. All Documents physically or electronically provided to Clients and/or Donors, Including intake forms, questionnaires, and Pamphlets.

4. All videos shown to Clients and/or Donors in the course of providing Your Services or soliciting

donations, Including but not limited to those videos Concerning abortion procedures and their purported effects.

5. All Documents Concerning representations made by You to Clients about the confidentiality of Client information, Including privacy policies.

6. From December 1, 2013, to the date of Your response to this Subpoena, all Documents substantiating the following Claims made on the First Choice Website:

   a. "The only sure way to confirm a pregnancy is with an ultrasound";

   b. "Abortion Pill: Side Effects - Bleeding can last 9 to 16 days and possibly up to 30 days";

   c. "If the pregnancy is not viable, the abortion pill should not be taken";

   d. "A sexually transmitted infection should be ruled out prior to an abortion procedure to reduce your risk of complications and infection";

   e. "[The Abortion Pill] is even used beyond 10 weeks from [the Last Menstrual Period], despite an increasing failure rate";

   f. "One woman in 100 need a surgical scraping to stop the bleeding [from an Abortion Pill]";

   g. "D&E After Viability- [] This procedure typically takes 2-3 days and is associated with increased risk to the life and health of the mother";

   h. With respect to dilation and evacuation after

viability, "[t]he 'Intact D&E' pulls the fetus out legs first, then crushes the skull in order to remove the fetus in one piece";

i. "For [medication abortion], you may need as many as three appointments";

j. "Because of the risk of serious complications, the abortion pill is only available through a restricted program";

k. "In states that have been measuring the side-effects, reported complications from the abortion pill have increased in the past several years";

l. "Taking the abortion pill without seeing a doctor or having an ultrasound is never recommended";

m. "The effects [of taking the abortion pill] range from unpleasant[] to life-threatening (sepsis, rupturing of the uterus, [], and more)";

n. "An aspiration abortion procedure can be performed up to 13 weeks after a woman's LMP";

o. "A D&E is typically performed between 9-20 weeks although late-term abortions can also be performed via D&E";

p. "The cost of an abortion ... is determined after an ultrasound is performed";

q. "After the abortion, the sense of relief may be replaced by some of the following: depression, sadness, eating disorders, anxiety, feelings of low self-esteem, desire to avoid pregnant women and/or babies, recurring nightmares

or flashbacks to the abortion experience, various types of addictive behaviors";

r. "Many credible studies have been done and psychologists are now recognizing PAS (Post-Abortion Stress) as a type of post-traumatic stress disorder";

s. "During an abortion, the cervix is opened. If you have an infection, this can increase the risk of the STI spreading to other organs";

t. "Having an abortion procedure while infected with chlamydia or gonorrhea, two of the most common STIs, can lead to Pelvic Inflammatory Disease (PID)";

u. "The medical community does not broadly recommend a misoprostol-only abortion due to the increased side effects and pain";

v. "Side effects of a misoprostol-only abortion are: ... inability to urinate, heavy sweating, hot and dry skin and feeling very thirsty ... ";

w. "If I took the first dose, can I still decide to continue my pregnancy? Yes, if only the first dose of the abortion pill has been taken, it may be possible to stop the abortion and continue your pregnancy";

x. "The abortion pill reversal process involves a prescription for progesterone to counteract the mifepristone";

y. "Women typically need to start the protocol within 24 hours of taking mifepristone for the abortion pill reversal to be successful";

z. "According to Abortion Pill Rescue Network,

there have also been successful reversals when treatment was starting within 72 hours of taking the first abortion pill"; - - • -

aa. "Is it safe to stop or reverse the abortion pill? Yes. Bioidentical progesterone has been used to safely support healthy pregnancies since the 1950s, receiving FDA approval in 1998";

bb. "What sis the success rate of abortion pill reversal? Initial studies have shown it has a 64-68% success rate"; and

cc. "APR has been shown to increase the chances of allowing the pregnancy to continue."

7. From December 1, 2013, to the date of Your response to this Subpoena, all Documents substantiating the following Claims made on the First Choice Website 2:

a. "Knowing the gestational age, and viability of your pregnancy will determine if a medical abortion is even an option";

b. "An abortion pill or Surgical abortion would not even be needed if your pregnancy is not progressing";

c. "According to Planned Parenthood, the cost of a surgical abortion can be as high as $1500 for a first trimester abortion and even more after the first trimester";

d. "Other risks of both medical and surgical abortion include: hemorrhage (life-threatening heavy bleeding), infection, damage to organs (tearing or puncture by abortion instruments during surgical

abortion), pre-term birth in later pregnancies, life-threatening anesthesia complications (surgical abortion)";

e. "Some women experience a range of long-term adverse psychological and emotional effects [after abortion]";

f. "According to WebMD as many as 50% of all pregnancies end in a miscarriage";

g. "After undergoing a Medical Abortion a follow-up appointment is generally required to determine if the abortion process is complete. An abortion doctor or abortion staff member will want to confirm that everything was expelled from your uterus";

h. "When should I take a pregnancy test? Normally, you would want to wait for 1 week after you missed your period";

i. "A pre-abortion ultrasound is generally required before you take the abortion pill and it can require several visits to a medical abortion facility, an abortion center, or to an abortion provider's office"; and

j. With respect to false negatives on pregnancy tests, "being on birth control ... can[] be [a] reason[] for a false negative."

8. To the extent not already produced, all Documents Concerning any test, study, publication, analysis, or evaluation You considered in making the Claims referenced in Request Nos. 6 and 7 above, Including sub-parts.

9. To the extent not already produced, all

Documents, Including any tests, studies, publications, analyses, evaluations, or Communications received or made by You or on Your behalf, Concerning Abortion Pill Reversal, the risks of abortion, and contraceptives.

10. All Documents, Including Communications, Concerning the development of content for the First Choice Website, First Choice Website 2, and the First Choice Donor Website, Including the Client Solicitation Page and the Donor Solicitation Page.

11. All Documents Concerning any complaints or identifying any concerns from Clients or Donors about Your Services, Advertisements, Solicitations, Pamphlets, videos, or Your Claims, Including Your processes and procedures for handling complaints or concerns from Clients and Donors.

12. All Documents Concerning any settlements, judgments, mediations, arbitrations, cease and desist orders, consent orders, assurances of voluntary compliance, lawsuits, court proceedings, or administrative/other proceedings against You in any jurisdiction within the United States, Including proceedings Concerning Your Services, Advertisements, Solicitations, Pamphlets, videos, or Your Claims.

13. All Documents Concerning any compliance Policies or procedures You utilize with respect to offering or providing Your Services.

14. Documents sufficient to Identify Professional Licensees that render any Services on Your

behalf.

15. All Documents Concerning whether Professional Licensure is required to perform any of the Services You provide or offer to provide to Clients.

16. Documents sufficient to Identify Personnel that You use or have used to provide any kind of ultrasound service.

17. Documents sufficient to identify the ultrasound imaging technology utilized by You and the purposes for which it is used.

18. Documents sufficient to Identify to whom or where You refer Clients for Abortion Pill Reversal or other Services that require Professional Licensure, Including the interpretation and findings of ultrasound images.

19. All Documents, Policies, and Communications that You provide to Personnel to guide their interactions with Clients before, during, or after any of Your Services, Including volunteer handbooks, volunteer agreements, dress code policy, training materials, and scripts for phone calls, consultations, or use during ultrasounds.

20. All Documents, Policies, and Communications Concerning resources that You provide to Personnel to guide their interactions with Donors, Including resources that explain solicitation strategies and/or that instruct Personnel on how to describe Your Charitable Purpose.

21. All Documents Concerning and explaining the job description of "Client Advocate" and "'Client Consultant" at First Choice.

22. All Documents Concerning Heartbeat International, Inc. and/or the Abortion Pill Reversal Network, Including the "Abortion Pill Reversal Hotline" referenced in Your Communications with Clients.

23. All Documents Concerning Your affiliation with Care Net, Including Your Care Net Certificate of Compliance, Pregnancy Center Statistical Report, and training, marketing, and informational materials provided to You by Care Net.

24. Documents sufficient to Identify the organizational structure of First Choice, Including:

    a. Date and location of formation;

    b. Principle place(s) of business;

    c. All trade names;

    d. All name changes, as well as the date(s) thereof;

    e. Identity of owners, officers, directors (Including medical directors), partners, shareholders and/or board members, Including the dates each became associated with First Choice;

    f. Articles and/or Certificates of Incorporation, as well as any amendments thereto;

    g. By-Laws, as well as any amendments thereto;

    h. Annual Reports filed with the Secretary of State, as well as any amendments thereto;

    i. Certificates of fictitious or alternate name(s);

j. All organizations charts; and

k. If a partnership, all partnership Documents.

25. All Documents Concerning Your tax-exempt status with the Internal Revenue Service, and/or any other tax jurisdiction, Including but not limited to Letters of Determination, IRS Form 1023, exempt ruling letters, and/or notices of revocation.

26. Documents sufficient to Identify donations made to First Choice by any means other than through the Donor Solicitation Page.

27. Documents sufficient to identify any licenses and registrations obtained or held by or on behalf of First Choice, and issued by any municipal, county, State, or federal authority.

28. All Documents Concerning Your record retention Policies.

Guidelines for the Production of Electronically Stored Information Omitted

Lincoln Davis Wilson (N.J. Bar No. 02011-2008)
Timothy A. Garrison (Mo. Bar No. 51033)*
Gabriella McIntyre (D.C. Bar No. 1672424)*
Mercer Martin (Ariz. Bar No. 038138)*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
lwilson@ADFLegal.org
tgarrison@ADFLegal.org
gmcintyre@ADFLegal.org
mmartin@ADFLegal.org

Counsel for Plaintiff
**Motion for pro hac vice admission filed concurrently*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
TRENTON VICINAGE

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC. *Plaintiff,* v. **MATTHEW PLATKIN**, in his official capacity as Attorney General for the State of New Jersey, *Defendant.*	**VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF** **Civil Action File No. __** *Document Filed Electronically*

INTRODUCTION

1. This is an action by Plaintiff First Choice Women's Resource Centers, Inc. ("First Choice," or "the Ministry"), a nonprofit faith-based entity organized under the laws of New Jersey, with a principal place of business of 82 Speedwell Avenue, Second Floor, Morristown, New Jersey 07960, against Defendant Matthew Platkin ("AG Platkin"), in his official capacity as the Attorney General of the State of New Jersey, with a principal place of business of Richard J. Hughes Justice Complex, 8th Floor, West Wing, 25 Market Street, Trenton, New Jersey 08611.

2. This action seeks to enjoin enforcement of an unreasonable and improper subpoena that mandates disclosure of privileged and/or irrelevant materials to advance an investigation that does not appear to be based on a complaint or other reason to suspect unlawful activity, and which selectively and unlawfully targets First Choice.

3. First Choice is a faith-based pregnancy resource center that serves women and men in unplanned pregnancies by providing counseling, medical services, and practical support.

4. Defendant is the Attorney General of New Jersey, who is nationally prominent among elected officials for his fervent advocacy for abortion, and prolific in his pronouncements of hostility toward and suspicion of pregnancy resource centers like those operated by First Choice.

5. AG Platkin has issued a subpoena (the "Subpoena") demanding production of a broad range of documents under the pretense of conducting a civil

investigation into possible violations of "the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227, specifically N.J.S.A. 56:8-3 and 56:8-4, the Charitable Registration and Investigation Act, N.J.S.A. 45:17 A-18 to -40, specifically N.J.S.A. 45:17A-33(c), and the Attorney General's investigative authority regarding Professions and Occupations, N.J.S.A. 45:1-18" relating to the Ministry's handling of patient data and statements about the lawful practice of Abortion Pill Reversal.

6. AG Platkin has never cited any complaint or other substantive evidence of wrongdoing to justify his demands but has launched an exploratory probe into the lawful activities, constitutionally protected speech, religious observance, constitutionally protected associations, and nonpublic internal communications and records of a non-profit organization that holds a view with which he disagrees as a matter of public policy.

7. The information and documentation demanded by AG Platkin's Subpoena is so overbroad, it would sweep up massive amounts of information, confidential internal communications, and documents unrelated to his stated purpose for the investigation.

8. First Choice has been singled out as a target of AG Platkin's demands even though dozens of other organizations operating in New Jersey also advertise their provision of many similar services and similarly collect sensitive client information.

9. These demands violate First Choice's rights protected by the First, Fourth, and Fourteenth Amendments to the United States Constitution and should be enjoined.

10. Compliance with AG Platkin's demands would thwart First Choice's efforts to achieve its mission to serve women experiencing both planned and unplanned pregnancies in New Jersey.

11. To avoid further violation of First Choice's constitutional rights and to limit additional time and resources that the Ministry is forced to spend to comply with unconstitutional investigative demands, the Ministry requests that this Court enjoin enforcement of AG Platkin's subpoena so that it may freely speak its beliefs, exercise its faith, associate with like-minded individuals and organizations, and continue to provide services in a caring and compassionate environment to women and men facing difficult pregnancy circumstances.

JURISDICTION AND VENUE

12. This civil rights action raises federal questions under the United States Constitution, particularly the First, Fourth, and Fourteenth Amendments, and the Civil Rights Act of 1871, 42 U.S.C. § 1983.

13. This Court has subject matter jurisdiction over First Choice's federal claims under 28 U.S.C. §§ 1331 and 1343.

14. This court can issue the requested declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and FED. R. CIV. P. 57; the requested injunctive relief under 28 U.S.C. § 1343 and FED. R. CIV. P. 65; and reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

15. Venue lies in this district pursuant to 28 U.S.C. § 1391 because all events giving rise to the

claims detailed herein occurred within the District of New Jersey and Defendant resides and operates in the District of New Jersey.

FACTUAL BACKGROUND

First Choice

16. First Choice serves women and men in unplanned pregnancies by providing counseling, medical services, and practical support.

17. First Choice was incorporated as a religious nonprofit organization under the laws of New Jersey in 2007.

18. First Choice currently operates out of five separate locations in New Jersey: Jersey City, Montclair, Morristown, Newark, and New Brunswick.

19. First Choice aims to help pregnant women facing unplanned pregnancies evaluate their alternatives, empowering them to make informed decisions concerning the outcome of their pregnancies. Further, First Choice seeks to provide counsel to women and men experiencing unplanned or unwanted pregnancies to help them cope and take control of their lives.

20. To achieve these aims, First Choice provides a variety of wrap-around services under the direction of a Medical Director, who is a licensed physician, including, but not limited to: pregnancy testing; pregnancy options counseling; sexually transmitted disease (STD) and sexually transmitted infection (STI) testing and referral; limited obstetric ultrasounds; parenting education; and the administration

of material support, such as baby clothes and furnishing, diapers, maternity clothes, and food.

21. First Choice began providing services in 1985 and has since served over 36,000 women facing unplanned pregnancies.

22. First Choice provides all of its services entirely free of charge.

23. First Choice does not discriminate in providing services based on the race, creed, color, national origin, age, or marital status of its clients.

24. First Choice does not perform or refer for abortions, which it states on its websites and in its welcome forms to clients; but it does provide medically accurate information about abortion procedures and risks.

25. First Choice solicits feedback from all clients in the form of exit interviews and online reviews. Client reviews are overwhelmingly positive, each location receiving either a 4.8- or 4.9-star average rating from public reviews on Google.

26. Additionally, First Choice is a leading organization nationally in the administration of Abortion Pill Reversal ("APR"). Under the APR protocol, upon request from pregnant women who have taken mifepristone to begin the two-step chemical abortion pill regimen but who changed their minds before taking the second medication and wish to continue their pregnancies, First Choice prescribes progesterone to counter the effects of mifepristone. First Choice diligently attempts to follow up with all patients to whom it administers APR to track its effectiveness.

27. APR is not guaranteed to save a pregnancy, and First Choice makes that clear to women seeking APR.

First Choice's Religious Beliefs

28. First Choice is a Christian faith-based, nonprofit organization.

29. All of the Ministry's employees, board members, and volunteers must adhere to its statement of faith.

30. The Ministry believes and affirms that life begins at conception, at which time the full genetic blueprint for life is in place. Accordingly, First Choice believes that its expression of love and service to God requires that it work to protect and honor life in all stages of development. This belief also compels First Choice's statements regarding APR.

31. The Ministry is therefore committed to providing clients with accurate and complete information about both prenatal development and abortion.

32. To be true to its beliefs, teaching, missions, and values, First Choice abides by its Christian beliefs in how it operates, including in what it teaches and how it treats others.

Defendant's Promotion of Abortion and Hostility Towards Pro-Life Pregnancy Resource Centers.

33. First Choice has no reason to believe that it possesses information relevant to a violation of New Jersey law.

34. Defendant, however, has a well-documented zeal for abortion, strong antipathy toward organizations that protect pregnant women and unborn children from the harms of abortion, and a particular animus toward pregnancy resource centers like those operated by First Choice.

35. On February 3, 2022, Defendant was appointed by New Jersey Governor Phil Murphy, who is a vocal supporter of expansive abortion policy, and confirmed by the New Jersey Senate as the state's Attorney General on September 29, 2022.

36. During his short tenure in office, Defendant has made the liberalization of laws and regulations relating to abortion a central focus of his policy advocacy and political persona.

37. Defendant has referred to the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022), overturning *Roe v. Wade*, 410 U.S. 113 (1973), as an "extreme right-wing decision"[1] that is a "devastating setback for women's rights in America" and threatens to "harm millions throughout the country[.]"[2]

---

[1] Press Release, New Jersey Office of the Attorney General, Acting AG Platkin, U.S. Attorney Sellinger Establish State-Federal Partnership to Ensure Protection of Individuals Seeking Abortion and Security of Abortion Providers (July 20, 2022), https://www.njoag.gov/acting-ag-platkin-u-s-attorney-sellinger-establish-state-federal-partnership-to-ensure-protection-of-individuals-seeking-abortion-and-security-of-abortion-providers/.

[2] Press Release, New Jersey Office of the Attorney General, Acting AG Platkin Establishes "Reproductive Rights Strike Force" to Protect Access to Abortion Care for New Jerseyans and Residents of Other States (July 11, 2022), https://www.njoag.gov

38. Defendant responded to the *Dobbs* decision in a joint statement with a coalition of attorneys general, stating "[i]f you seek access to abortion . . . we're committed to using the full force of the law to support you. You have our word."[3] He further stated he would "continue to use all legal tools at our disposal to fight for your rights," despite the plain language of *Dobbs* establishing that there is no constitutional right to abortion.

39. Defendant has referred to pro-life groups as "extremists attempting to stop those from seeking reproductive healthcare that they need" and accused the United States Supreme Court of making it "abundantly clear that the rights of women will not be protected" in its jurisprudence on abortion.[4]

40. Just months into his tenure as *acting* Attorney General, Defendant established a "Reproductive Rights Strike Force" in his office.[5]

41. Defendant also instituted a state-federal partnership with the U.S. Attorney for the District of

---

/acting-ag-platkin-establishes-reproductive-rights-strike-force-to-protect-access-to-abortion-care-for-new-jerseyans-and-residents-of-other-states/.

[3] Press Release, New Jersey Office of the Attorney General, Despite U.S. Supreme Court decision, national coalition of 22 Attorneys General emphasizes that abortion remains safe and legal in states across the country (Jun. 27, 2022), https://www.njoag.gov/acting-attorney-general-platkin-national-coalition-of-attorneys-general-issue-joint-statement-reaffirming-commitment-to-protecting-access-to-abortion-care/.

[4] Attorney General Matt Platkin (@NewJerseyOAG), TWITTER (October 11, 2023, 1:49 PM), https://twitter.com/NewJerseyOAG/status/1712163603552342274.

[5] New Jersey Office of the Attorney General, *supra* note 2.

New Jersey to ensure access to abortion for New Jersey residents and non-residents.[6]

42. In the wake of *Dobbs*, Defendant issued guidance to all New Jersey's County Prosecutors "about charges they may bring against individuals who interfere with access to abortion rights."[7]

43. Also in response to *Dobbs*, Defendant—the state's chief *legal* official—instituted a $5 million grant program to fund abortion training and expand the pool of abortion providers in New Jersey.[8]

44. Defendant has referred to the plaintiff in the case *Alliance for Hippocratic Medicine v. FDA*, 78 F.4th 210 (5th Cir. 2023), who is challenging the FDA's approval of the abortion pill mifepristone, as a "shadowy organization" and accused its lawsuit of "unleash[ing] significant confusion and misinformation about the medical safety and legal status of both mifepristone and abortion itself."[9]

---

[6] New Jersey Office of the Attorney General, *supra* note 1.

[7] *Id.*

[8] Press Release, New Jersey Office of the Attorney General, AG Platkin Announces $5 Million in Grant Funding to Provide Training and Education to Expand Pool of Abortion Providers in New Jersey (December 2, 2022), https://www.njoag.gov/ag-platkin-announces-5-million-in-grant-funding-to-provide-training-and-education-to-expand-pool-of-abortion-providers-in-new-jersey/.

[9] Matthew J. Platkin, *AG: Mifepristone is available in New Jersey and we'll fight to keep it that way*, NJ.COM (April 30, 2023), https://www.nj.com/opinion/2023/04/ag-mifepristone-is-available-in-new-jersey-and-well-fight-to-keep-it-that-way-opinion.html; *see* David C. Reardon et al., *Deaths Associated with Abortion Compared to Childbirth—A Review of New and Old Data and the Medical and Legal Implications*, THE JOURNAL OF

45. Defendant has joined over 20 other states in supporting the federal government in the FDA litigation to "support[] mifepristone's legality[.]"[10]

46. Defendant has worked strategically with other state officials to attack pro-life laws enacted by a host of states, including Idaho,[11] Indiana,[12] and Texas.[13]

47. Defendant has been transparent in his support for organizations such as Planned Parenthood that perform abortions and share his expansive views on abortion policy.

48. Defendant has spoken alongside the CEO of Planned Parenthood of Metropolitan New Jersey at a roundtable hosted by Vice President Kamala Harris

---

CONTEMPORARY HEALTH LAW AND POLICY, 20 (2), 279 (2004), https://scholarship.law.edu/jchlp/vol20/iss2/4/?utm_source=scholarship.law.edu%2Fjchlp%2Fvol20%2Fiss2%2F4&utm_medium=PDF&utm_campaign=PDFCoverPages.

[10] Matthew J. Platkin, *AG: Mifepristone is available in New Jersey and we'll fight to keep it that way*, NJ.COM, April 30, 2023, https://www.nj.com/opinion/2023/04/ag-mifepristone-is-available-in-new-jersey-and-well-fight-to-keep-it-that-way-opinion.html (last visited Dec. 12, 2023).

[11] Attorney General Matt Platkin (@NewJerseyOAG), TWITTER (Aug. 2, 2023, 11:03 AM), https://twitter.com/NewJerseyOAG/status/1686754712048009217.

[12] Attorney General Matt Platkin (@NewJerseyOAG), TWITTER (Nov. 9, 2021, 4:18 PM), https://twitter.com/NewJerseyOAG/status/1458182141922222084.

[13] Attorney General Matt Platkin (@NewJerseyOAG), TWITTER (Oct. 27, 2021, 3:02 PM), https://twitter.com/NewJerseyOAG/status/1453437059771813889.

with "advocates who are fighting on the frontlines to protect reproductive rights."[14]

49. Defendant has participated in events hosted by the Planned Parenthood Action Fund of New Jersey.[15]

50. Planned Parenthood publicly praised Defendant's appointment of Sundeep Iyer as Director of the New Jersey Division on Civil Rights, highlighting its approval of Mr. Iyer's commitment to the abortion provider's concept of reproductive rights.[16]

51. On the main page of his office website, Defendant lists "Standing Up for Reproductive Rights" as one of the top five "spotlights" of his office.[17]

52. On a page entitled, "Standing Up for Reproductive Rights," Defendant boasts of his Reproductive Rights Strike Force and partnership

---

[14] Press Release, The White House, Readout of Vice President Kamala Harris's Meeting with New Jersey State Legislators on Reproductive Rights (July 18, 2022), https://www.whitehouse.gov/briefing-room/statements-releases/2022/07/18/readout-of-vice-president-kamala-harriss-meeting-with-new-jersey-state-legislators-on-reproductive-rights/.

[15] Attorney General Matt Platkin (@NewJerseyOAG), TWITTER (April 26, 2022, 12:35 PM), https://twitter.com/NewJerseyOAG/status/1518992190294351872.

[16] Press Release, New Jersey Office of the Governor, ICYMI: Attorney General Platkin Appoints Sundeep Iyer as Director of the New Jersey Division on Civil Rights, (Dec. 16, 2022), https://www.nj.gov/governor/news/news/562022/20221216c.shtml.

[17] NEW JERSEY OFFICE OF ATTORNEY GENERAL, njoag.gov (last visited Dec. 8, 2023).

with the U.S. Attorney's Office for the District of New Jersey.[18]

53. On the same page, under the heading, "Safeguarding patient privacy," Defendant lists steps he has taken "to protect consumers' private reproductive health data[.]"[19] In this same paragraph on patient privacy and data security, Defendant highlights his "warning" to the public about pregnancy resource centers like those operated by First Choice.

54. Defendant makes no reference to several large, recent, and well-publicized instances of the Planned Parenthood Federation of America exposing consumer data without consent, causing breaches of sensitive patient information such as abortion method used and the specific Planned Parenthood clinic where an appointment was booked.[20]

---

[18] *Standing Up for Reproductive Rights*, NEW JERSEY OFFICE OF ATTORNEY GENERAL, https://www.njoag.gov/spotlight/standing-up-for-reproductive-rights/ (last visited Dec. 8, 2023).

[19] *Id.*

[20] *See*, *e.g.*, Tatum Hunter, *You scheduled an abortion. Planned Parenthood's website could tell Facebook*, WASHINGTON POST (June 29, 2022), https://www.washingtonpost.com/technology/2022/06/29/planned-parenthood-privacy/; Gregory Yee & Christian Martinez, *Hack exposes personal information of 400,000 Planned Parenthood Los Angeles patients,* L.A. TIMES (Dec. 1, 2021), https://www.latimes.com/california/story/2021-12-01/data-breach-planned-parenthood-los-angeles-patients; and Brittany Renee Mayes, *D.C.'s Planned Parenthood reports data was breached last fall,* WASHINGTON POST (Apr. 16, 2021), https://www.washingtonpost.com/dc-md-va/2021/04/16/data-breach-planned-parenthood-dc/.

55. Citing no evidentiary support, Defendant issued a statewide "consumer alert" alleging that pregnancy care centers like First Choice "provide[] false or misleading information[.]"[21]

56. Through the alert, Defendant accuses pregnancy care centers of lying about the services they provide, providing inaccurate or misleading ultrasounds, and providing inaccurate information about reproductive health care services.

57. Defendant urges women to avoid pregnancy care centers and explicitly encourages them to seek out abortion facilities instead, such as Planned Parenthood and the National Abortion Federation.

58. Defendant enlisted the assistance of pro-abortion groups and abortion businesses such as the ACLU and Planned Parenthood, who are outspokenly opposed to pro-life pregnancy centers, to help his office draft the consumer alert.

59. Specifically, on October 17, 2022, Sundeep Iyer forwarded a draft of the consumer alert and requested comment from Kaitlyn Wojtowicz, Vice President of Public Affairs at Planned Parenthood Action Fund of New Jersey. Exhibit 1. Ms. Wojtowicz responded with comments and suggested edits to the alert. Exhibit 2.

---

[21] Press Release, New Jersey Office of the Attorney General, AG Platkin Announces Actions to Protect Reproductive Health Care Providers and Those Seeking Reproductive Care in New Jersey, (December 7, 2022), https://www.njoag.gov/ag-platkin-announces-actions-to-protect-reproductive-health-care-providers-and-those-seeking-reproductive-care-in-new-jersey/.

60. The same day, Mr. Iyer forwarded a draft of the consumer alert and requested comment from Amol Sinha, Executive Director of ACLU New Jersey. Exhibit 3. Jeanne LoCicero, Legal Director for the ACLU of New Jersey, responded with comments and questions for consideration. Exhibit 4.

61. Mr. Iyer also forwarded a draft and requested comment from Roxanne Sutocky, Director of Community Engagement for The Women's Centers,[22] a group of abortion providers with facilities in New Jersey, Connecticut, Georgia, and Pennsylvania.[23] Exhibit 5. Ms. Sutocky responded with comments on the alert, referencing similar alerts issued in Massachusetts, Minnesota, and California. Exhibits 6, 7.

62. In speaking about the alert, defendant has warned: "[i]f you're seeking reproductive care, beware of Crisis Pregnancy Centers!" And he has accused pro-life pregnancy centers of "pretend[ing] to be legitimate medical facilities."[24]

63. Defendant's consumer alert has been exploited by other New Jersey elected officials to disparage pregnancy resource centers like those operated by First Choice; one New Jersey congressman cited the consumer alert in a press

---

[22] *Roxanne Sutocky*, ACLU NEW JERSEY, https://www.aclu-nj.org/en/biographies/roxanne-sutocky (last visited Dec. 12, 2023).

[23] THE WOMEN'S CENTERS, https://www.thewomenscenters.com/ (last visited Dec. 12, 2023).

[24] Attorney General Matt Platkin (@NewJerseyOAG), TWITTER (December 7, 2022, 3:20 PM), https://twitter.com/NewJerseyOAG/status/1600585960265228288.

release calling pregnancy resource centers "Brainwashing Cult Clinics."[25]

Misstatements of Fact by Abortion Providers

64. Planned Parenthood makes erroneous public statements about chemical abortion that mislead women.

65. Planned Parenthood states, for example, that a woman may have an abortion "[u]sing only misoprostol" and claims that "it's safe, effective, and legal to use in states where abortion is legal. It works 85-95% of the time and can be used up to 11 weeks from the first day of your last period."[26] This statement has been proven false by several studies showing that chemical abortions attempted using only misoprostol have high failure rates and are dangerous.[27]

---

[25] Press Release, U.S. House of Representatives Office of Josh Gottheimer, Gottheimer Launches Campaign to Shutdown [sic] Deceptive Anti-Choice Clinics Posing as Women's Healthcare Providers in NJ; Brainwashing Cult Clinics Are Dangerous to Women's Health (Oct. 6, 2023), https://gottheimer.house.gov/posts/release-gottheimer-launches-campaign-to-shutdown-deceptive-anti-choice-clinics-posing-as-womens-healthcare-providers-in-nj.

[26] Planned Parenthood, *How do I have an abortion using only misoprostol?*, https://www.plannedparenthood.org/learn/abortion/the-abortion-pill/how-do-i-have-an-abortion-using-only-misoprostol (last visited December 12, 2023).

[27] *See*, *e.g.*, Vauzelle C, et al., *Birth defects after exposure to misoprostol in the first trimester of pregnancy: prospective follow-up study*, 36 Reprod. Toxicol. 98 (2012), doi: 10.1016/j.reprotox.2012.11.009 (2010 study comparing administration of standard mifepristone and misoprostol with administration of misoprostol alone documenting that using

66. Despite the well-publicized data breaches and false statements made by Planned Parenthood, upon knowledge and belief, Defendant has not issued a single subpoena related to consumer fraud or the "privacy policies" of Planned Parenthood, its New Jersey affiliates, any of the abortion clinics in New Jersey, or any individual or entity that refers for abortion or advocates for increased availability of abortion.

Defendant's Subpoena

67. On November 15, 2023, Defendant issued a Subpoena to First Choice. Exhibit 8.

68. The Subpoena states that it was issued pursuant to the authority of the New Jersey Consumer Fraud Act ("CFA"), the Charitable Registration and Investigation Act ("CRIA"), and the Attorney General's investigative authority regarding Professions and Occupations.

69. The Subpoena demands, among other things, during the stated period, the production of (emphasis added):

> a. A copy of *every* solicitation and advertisement, including those appearing on any First Choice website, social media, print media, including newspapers and magazines, Amazon or other e-commerce platform, sponsored content, digital advertising, video advertising, other websites, Pinterest, radio, podcasts, and pamphlets.

---

misoprostol only to induce abortion led to 23.8 percent failure rate requiring surgery).

b. *All* documents from December 1, 2013, substantiating a broad host of statements made on First Choice's websites, including statements that:

i. "Knowing the gestational age, and viability of your pregnancy will determine if a medical abortion is even an option";

ii. "The abortion pill reversal process involves a prescription for progesterone to counteract the mifepristone"; and

iii. "According to the Abortion Pill Rescue Network, there have also been successful reversals when treatment was starting within 72 hours of taking the first abortion pill."

c. "*All* Documents physically or electronically provided to Clients and/or Donors, Including intake forms, questionnaires, and Pamphlets."

d. "*All* Documents Concerning representations made by [First choice] to Clients about the confidentiality of Client information, Including privacy policies."

e. "*All* Documents Concerning any complaints or identifying any concerns from Clients or Donors about Your Services, Advertisements, Solicitations, Pamphlets, videos, or Your Claims, Including Your processes and procedures for handling complaints or concerns from Clients and Donors."

f. "Documents sufficient to Identify Personnel that You use or have used to provide any kind of ultrasound service."

g. "Documents sufficient to Identify to whom or where You refer Clients for Abortion Pill Reversal or other Services that require Professional Licensure, Including the interpretation and findings of ultrasound images."

h. *All* documents concerning Heartbeat International, the Abortion Pill Reversal Network, and Care Net.

i. Documents sufficient to identify the identity of First Choice's owners, officers, directors (including medical directors), partners, shareholders, and board members.

j. "Documents sufficient to Identify donations made to First Choice."

70. The Subpoena does not reflect the existence of a complaint, nor does it reflect any factual basis for suspecting a violation of the cited New Jersey laws.

Effect of the Subpoena on First Choice

71. Since the COVID-19 pandemic, First Choice has struggled to maintain its desired levels of full staffing. Accordingly, staff currently perform a range of functions to fulfill the Ministry's mission.

72. Complying with the Subpoena would bury First Choice in an inordinate amount of work. The Ministry estimates that it would take several staff members—including the Executive Director, the volunteer Medical Director, the finance department,

and all medical staff—at least an entire month to produce all requested documents.

73. Already short-staffed, diverting resources to document compilation would severely impede the Ministry's ability to perform its core functions. Staff members who normally devote their time to serving women in need and communicating with essential supporters would have to cease their mission-driven activities to comply with AG Platkin's oppressive demands.

74. Complying with the Subpoena would require such a large deployment of staff and resources that document production would become the driving focus of the Ministry, not its mission of serving women and men in need.

75. Complying with the Subpoena would also harm First Choice's working relationships.

76. Disclosure of documents that identify First Choice's donors, as required by the Subpoena, will likely result in a decrease in donations, as donors will be hesitant to associate with the Ministry out of fear of retaliation and public exposure. Donor anonymity is of paramount importance to First Choice, as its donors give for personal or faith-driven reasons. First Choice therefore does not publish a list of donors or donation amounts.

77. Disclosure of the identities of First Choice's employees will likely cause current employees to leave the already short-staffed Ministry and will deter prospective employees from applying out of the reasonable fear of retaliation and public disclosure.

78. Disclosure of the nature of First Choice's relationships with other organizations, as the Subpoena demands, will likely cause those associates to end their association with the Ministry out of fear of retaliation, public disclosure, and investigation into their own activities.

79. This risk of loss of donors, employees, and associates greatly jeopardizes the Ministry's ability to carry out its religious mission.

FIRST CAUSE OF ACTION

First Amendment: Retaliatory Discrimination

80. Plaintiff repeats and realleges each allegation in paragraphs 1–79 of this complaint.

81. The First Amendment prohibits government officials from subjecting an individual to retaliatory actions for speaking out.

82. A plaintiff is subject to unlawful retaliation if (1) he was engaged in a constitutionally protected activity, (2) the defendant's actions would chill a person of ordinary firmness from continuing to engage in the protected activity, and (3) there was a causal connection between the protected activity and the retaliatory action.

83. If a plaintiff proves these elements, the burden shifts to the government to show that it would have taken the same action even in the absence of the protected conduct.

84. First Choice has engaged in constitutionally protected speech advancing a pro-life message, including providing information about APR.

85. By subjecting First Choice to extensive and invasive investigations of that speech, Defendant has engaged in conduct that would chill a person of ordinary fitness from continuing to engage in protected speech.

86. Defendant's animus for First Choice's pro-life messaging and pro-life organizations was a substantial or motivating factor in his decision to issue the Subpoena.

87. Defendant cannot show that he would have investigated First Choice anyway, as he has refused to investigate similarly situated organizations that share his commitment to abortion.

88. Accordingly, Defendant is liable to First Choice for unlawful retaliation against First Choice for exercise of its First Amendment rights.

SECOND CAUSE OF ACTION

First and Fourteenth Amendments: Selective Enforcement/Viewpoint Discrimination

89. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

90. The First Amendment to the Constitution protects the First Choice's rights to speak and to be free from content and viewpoint discrimination.

91. The Fourteenth Amendment to the Constitution protects the First Choice's right to the Equal Protection of the laws.

92. Laws and regulations must not only be facially neutral but also enforced in a non-discriminatory and viewpoint-neutral manner.

93. Defendant may not exercise enforcement discretion based upon viewpoint, targeting for investigative demands only organizations expressing one particular point of view on a controversial topic. Such action threatens and chills First Amendment rights.

94. Upon information and belief, Defendant has not investigated any of dozens of similarly situated reproductive health-related clinics in New Jersey to examine the truthfulness of their marketing.

95. First Choice is similar to these other entities in that they serve similar clientele—i.e., women and men seeking reproductive health services—and offer many of the same services—e.g., pregnancy testing, STD/STI testing, and ultrasounds.

96. The most significant difference between First Choice and any of the dozens of abortion providers in New Jersey is that First Choice does not provide or refer for abortions, but this is not a legitimate basis upon which to base a decision to investigate First Choice's provision of *other* services.

97. The dissimilar treatment of such similarly situated entities evinces viewpoint discrimination.

98. Defendant's public statements also demonstrate that he is intentionally targeting First Choice with an unreasonable, intrusive, overbroad, and unduly burdensome Subpoena based on its speech and views on abortion.

99. Since his appointment as Attorney General, Defendant has repeatedly allied himself with and spoken favorably toward organizations that perform abortions or advocate for the elimination of

restrictions on abortion, while persistently and aggressively impugning the motives of pro-life entities like First Choice and accusing them of misleading their clients.

100. Defendant issued the Subpoena based on the viewpoint of First Choice's speech targeting (among other things) its protected speech about Abortion Pill Reversal.

101. Defendant's refusal to exercise his authority against similar entities who share his views on abortion while targeting First Choice violates the Ministry's First Amendment right to be free from viewpoint discrimination.

102. Viewpoint-based enforcement of New Jersey law on the basis of views on abortion would have a chilling effect on a reasonable person's willingness to engage in protected activities.

103. Investigating First Choice for engaging in constitutionally protected speech is not narrowly tailored to further any legitimate, rational, substantial, or compelling interest.

104. Accordingly, Defendant's Subpoena is unconstitutional selective enforcement and viewpoint discrimination that violates First Choice's constitutional rights.

THIRD CAUSE OF ACTION

First Amendment: Free Exercise

105. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

106. The Ministry's pro-life statement and beliefs, including its statements in support of APR,

are sincere and rooted in their Christian faith.

107. The Free Exercise Clause forbids government action that is not neutral toward religion unless it satisfies strict scrutiny.

108. Defendant's service of the Subpoena on First Choice is not neutral to religion for several reasons.

109. First, Defendant's discretion to decide where and when to serve subpoenas shows that his actions are not neutral to religion or generally applicable.

110. Second, Defendant treats comparable secular activity—the operation of abortion facilities such as Planned Parenthood—more favorably than First Choice's religious activity, having declined to serve subpoenas on them despite their well-known failures in data security and misleading statements on their websites. The existence of an individualized assessment and discretionary mechanism to grant exemptions is sufficient to render a policy not generally applicable.

111. Third, Defendant has shown direct hostility toward First Choice's Christian pro-life mission and its speech in support of that mission.

112. Defendant lacks a legitimate or compelling state interest to justify his action against the Ministry, since First Choice is explicitly exempt from the New Jersey Consumer Fraud Act and the laws he invokes do not or cannot apply to the Ministry's conduct.

113. Defendant's actions are not narrowly

tailored or rationally related to furthering a legitimate or compelling state interest because he has not served subpoenas on Planned Parenthood, despite its well-known data breaches and misleading public statements.

114. Accordingly, Defendant's subpoena fails to satisfy constitutional scrutiny and thus violates First Choice's First Amendment right to freely exercise its religion.

FOURTH CAUSE OF ACTION

First Amendment: Free Association

115. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

116. An investigation that unjustifiably targets individuals and entities with whom First Choice associates violates the Ministry's First Amendment freedom of association.

117. The First Amendment protects the right of people to associate with others in pursuit of many political, social, economic, educational, religious, and cultural ends.

118. The First Amendment also prohibits the government from discouraging people from associating with others to express messages.

119. First Choice is involved in an expressive association because people with like-minded beliefs, including those on staff and volunteers at its facilities, join together to serve and educate pregnant women and the fathers of their babies, and to express their beliefs about the value of unborn human life.

120. The Ministry's directors, donors, staff,

and volunteers, and many other people and organizations with whom First Choice associates advocate the view that unborn human life has value and deserves dignity and respect.

121. First Choice likewise engages in expressive association when its staff and volunteers partner with each other and with pregnant mothers and expectant fathers to discuss these values.

122. In offering services and education to those who seek them, First Choice expressively associates with pregnant women and the fathers of their babies to communicate desired messages to those individuals.

123. Defendant's Subpoena demands that First Choice reveal the identities of and communications with its donors, clients, staff, vendors, ministry associates, owners, officers, directors, partners, shareholders, and board members.

124. By investigating First Choice without a complaint or other factual basis, Defendant will cause individuals and entities who associate with the Ministry to understandably infer that it has engaged in wrongdoing, thereby discouraging those individuals and entities from associating with First Choice.

125. Defendant's investigation also may cause individuals and entities who associate with First Choice to reasonably fear that they themselves will face retaliation or public exposure and thus discourages those individuals and entities from associating with First Choice.

126. Accordingly, Defendant's Subpoena violates First Choice's right of free association guaranteed by the First Amendment to the United States Constitution, as incorporated and applied to the States through the Fourteenth Amendment.

FIFTH CAUSE OF ACTION

First Amendment: Privilege

127. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

128. The First Amendment freedom to speak and associate concerns the ability of persons and groups to retain privacy in their associations.

129. The First Amendment protects First Choice's freedom to engage in broad and uninhibited internal, nonpublic communications to advance its shared operational and political goals.

130. Compelled disclosure of associations adversely affects protected speech and association by inducing members to withdraw from the association and dissuading others from joining it for fear of exposure of their beliefs, speech, and associations.

131. First Amendment protections extend not only to organizations, but also to their staff, members, and others who affiliate with them.

132. Government actions that have a deterrent effect on the exercise of First Amendment rights are subject to rigorous scrutiny.

133. The chilling effect on First Amendment rights is not diminished simply because disclosure of private information is compelled by government process.

134. Defendant's subpoena demands, without limitation, disclosure of vast swathes of First Choice's sensitive and confidential information, communications, and policies such as—to name just a few examples—personal employee and volunteer information, documents related to First Choice's relationships with other pro-life groups, all complaints lodged against First Choice, and identities of First Choice's officers and directors.

135. These unreasonable demands harass First Choice and discourage individuals and entities from associating with the Ministry.

136. Defendant has no substantive evidence that First Choice has engaged in any violation of New Jersey law, much less any grounds suggesting that the disclosures of the private information he seeks justifies the deterrent effect on the Ministry's exercise of the constitutionally protected right of association.

137. Accordingly, Defendant's Subpoena violates First Choice's First Amendment privilege.

SIXTH CAUSE OF ACTION

Fourth Amendment: Unreasonable Search and Seizure

138. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

139. The demands for information unrelated to an investigation authorized by law violate the Ministry's Fourth Amendment protection against unreasonable government searches and seizures.

140. The Fourth Amendment to the United States Constitution—made applicable to the states

through the Fourteenth Amendment—protects First Choice from unreasonable searches and seizures and imposes on Defendant the obligation to state with particularity the place to be searched and the things to be seized.

141. Defendant's investigative demands must be reasonably related to legitimate investigative inquiries and based on more than mere speculation or animus toward First Choice's views, speech, and religion.

142. Upon information and belief, Defendant's Subpoena is not based on a complaint or any reason to suspect that First Choice has information relating to a violation of the New Jersey Consumer Fraud Act, N.J. STAT. ANN. 56:8-1 to -227, specifically N.J. STAT. ANN. 56:8-3 and 56:8-4, the Charitable Registration and Investigation Act, N.J. STAT. ANN. 45:17A-18-40, specifically N.J. STAT. ANN.45:17A-33(c), or the Professions and Occupations provision of N.J. STAT. ANN. 45:1-18. In fact, the Subpoena fails to allege what, if any, potential violation has occurred.

143. Many requests for documentation and materials in the Subpoena have no rational relation to a legitimate investigation, and Defendant has no substantial evidence of any colorable violation of the aforementioned statutes.

144. The New Jersey Consumer Fraud Act does not apply to First Choice because it explicitly exempts non-profit entities. N.J. STAT. ANN. 56:8-47 ("The provisions of this act shall not apply to any nonprofit public or private school, college or university; the State or any of its political subdivisions; or any bona fide nonprofit, religious,

ethnic, or community organization.").

145. AG Platkin has cited no practice declared unlawful that he may investigate under his Professions and Occupations authority.

146. The Subpoena also calls for production of documents over a ten-year period even though the relevant statute of limitations is a maximum of six years.

147. Defendant has made contemporaneous statements showing his disdain for organizations that seek to protect unborn human life in general and for pregnancy resource centers like those operated by First Choice in particular.

148. Defendant is engaged in an intrusive, oppressive, unnecessary, unjustified, and irrelevant investigation of First Choice's organizational structure; personal information of leadership, volunteers, and personnel; associations; internal policies; irrelevant lawful activities; tax-exempt status; and other lawful aspects of First Choice's operations and relationships.

149. Defendant's many unspecific demands for "any" and "all" information or materials, "without limitation," are not particular, as required by the Fourth Amendment.

150. The overbreadth of Defendant's investigation in time and scope is unreasonable.

151. Defendant's Subpoena harasses First Choice and causes the Ministry to spend limited time and resources responding to it for no apparent reason other than Defendant's disdain for First Choice's religious views and exercise.

152. Defendant has threatened contempt of court and "other penalties" against First Choice to coerce the Ministry into complying with his unconstitutional demands.

153. Thus, Defendant's Subpoena constitutes an unreasonable search and seizure under the Fourth Amendment.

SEVENTH CAUSE OF ACTION

First Amendment: Overbreadth

154. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

155. The overbreadth doctrine permits the facial invalidation of laws that inhibit the exercise of First Amendment rights if the impermissible applications of the law are substantial when judged in relation to the statute's plainly legitimate sweep and no reasonable limiting construction is available that would render the policy unconstitutional.

156. The CRIA's mandate that all statements made by charitable organizations "shall be truthful" is unconstitutionally overbroad and overbroad as applied, as is the authority it grants the enforcer to investigate statements that "although literally true, are presented in a manner that has the capacity to mislead the average consumer" (together, the "investigatory provisions").

157. First, these nebulous standards reach a substantial amount of constitutionally protected conduct that will deter people from engaging in constitutionally protected speech and inhibit the free exchange of ideas.

158. Second, the number of valid applications of the CRIA pales in comparison to the historic and likely frequency and the actual occurrence of impermissible applications against constitutionally protected conduct and speech AG Platkin disfavors, even outside the context of abortion.

159. Third, the activity or conduct sought to be regulated is the expression of First Choice's constitutional rights to speak and associate freely and to exercise its religion.

160. Fourth, the apparent interest in regulating false and deceptive speech in connection with charitable solicitations cannot possibly override the Ministry's constitutional liberties because (1) these purposes cannot be said to be compelling if they are only applied to pregnancy centers that do not support abortion, but not pregnancy centers that do support abortion; and (2) the statutes can be achieved with a more narrowly tailored provision requiring a bona fide complaint or substantial evidence of wrongdoing.

161. The statute's overbreadth has not only created a likelihood that its application will inhibit free expression; it has already had that actual effect.

162. Thus, the CRIA's investigation provisions are unconstitutionally overbroad and overbroad as applied to the Ministry.

EIGHTH CAUSE OF ACTION

First and Fourteenth Amendment: Vagueness

163. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

164. A statute will be invalidated for vagueness under the First Amendment if it endows officials with undue discretion to determine whether a given activity contravenes the law's mandates.

165. A statute will be invalidated for vagueness under the Due Process Clause of the Fourteenth Amendment if it fails to provide people of ordinary intelligence with a reasonable opportunity to understand what conduct is permitted or fails to give fair notice of what constitutes a violation.

166. Laws that interfere with free speech are subject to more exacting scrutiny and require greater definiteness than other contexts.

167. The CRIA's investigatory provisions fail to give persons of ordinary intelligence constitutionally fair notice of what constitutes a truthful statement and what has the capacity to mislead.

168. The statute impermissibly delegates basic policy matters to AG Platkin for resolution on an ad hoc and subjective basis and has resulted in arbitrary and discriminatory application against First Choice's constitutionally protected speech, association, and religious exercise.

169. The statute fails to give fair warning of what is prohibited and is so imprecise that discriminatory enforcement is not only a real possibility but also a reality.

170. Thus, the CRIA investigatory provisions are unconstitutionally vague and are vague as applied to the Ministry.

NINTH CAUSE OF ACTION

First Amendment: Unbridled Discretion

171. First Choice repeats and realleges each allegation in paragraphs 1–79 of this complaint.

172. A restriction on speech is constitutional only if the restriction is specific enough that it does not delegate unbridled discretion to the government officials entrusted to enforce the regulation.

173. The CRIA's investigatory provisions lack objective standards for enforcement, empowering AG Platkin to punish any action he deems is in the public interest.

174. The CRIA's investigatory provisions lack any objective standards for determining whether a true statement is presented in such a way that it will mislead an average consumer, or whether a restriction on speech is within the public interest.

175. The statute necessarily requires AG Platkin to appraise facts, exercise judgment, and form an opinion that raises a danger of censorship and invites decisions based on the content of the speech and the viewpoint of the speaker.

176. The statute allows AG Platkin to exercise arbitrary enforcement power to suppress pro-life points of view or any other point of view with which he disagrees.

177. With so few restraints on AG Platkin's authority, this statute unlawfully grants the AG extraordinary power and unconstitutional unbridled discretion to suppress disfavored messages and is thus facially unconstitutional and unconstitutional as

applied.

PRAYER FOR RELIEF

First Choice respectfully prays for judgment against Defendant and requests the following relief:

A. preliminary injunction enjoining enforcement of Defendant's Subpoena in its entirety or, in the alternative, modifying that Subpoena to eliminate those provisions that infringe on the constitutional protections of First Choice and their agents;

B. permanent injunction granting the same relief;

C. declaratory judgment that Defendant's subpoena violates First Choice's constitutional rights;

D. an award of First Choice's costs and expenses of this action, including reasonable attorneys' fees, in accordance with 42 U.S.C. § 1988; and

E. any other relief that the Court deems equitable and just in the circumstances.

Respectfully submitted this 13th day of December, 2023.

/s/ Lincoln Davis Wilson
Lincoln Davis Wilson (N.J. Bar No 02011-2008)
Timothy A. Garrison (Mo. Bar No. 51033)*
Gabriella McIntyre (D.C. Bar No. 1672424)*
Mercer Martin (Ariz. Bar No. 03138)*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600

Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
lwilson@ADFLegal.org
tgarrison@ADFLegal.org
gmcintyre@ADFLegal.org
mmartin@ADFLegal.org

Counsel for Plaintiff First Choice Women's Resource Centers, Inc.

**Motion for pro hac vice admission filed concurrently*

VERIFICATION OF COMPLAINT

I, Aimee Huber, a citizen of the United States and a resident of Warren, New Jersey, declare under penalty of perjury under 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 13th day of December, 2023, at Morristown, New Jersey.

/s/ Aimee Huber
Aimee Huber

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, GENERAL EQUITY
ESSEX COUNTY
DOCKET NO: ESX-C-000022-24
APP.DIV. NO. _____

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Defendant.	TRANSCRIPT OF DECISION

Place: Essex County Superior Court
495 Dr. Martin Luther King, Jr. Blvd.
Newark, NJ 07102
(Hearing heard via Zoom)

Date: May 28, 2024

BEFORE:

HONORABLE LISA M. ADUBATO, J.S.C.

TRANSCRIPT ORDERED BY:

JAMES K. WEBBER, ESQ. (Webber McGill, LLC)

Transcriber: Patricia LaMonica, AD/T 326
Agency: Vox Transcription Services
PO Box 2243
Cinnaminson, NJ 08087
856.543.4266
Digitally Recorded
Operator – Unknown

APPEARANCES:

DAVID LEIT, ESQ., AG
LAUREN E. VAN DRIESEN, ESQ., DAG
(New Jersey Office of Attorney General - Division of Law and Public Safety)
Attorneys for Plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey, and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs

JAMES K. WEBBER, ESQ. (Webber McGill, LLC)
Attorney for Defendant First Choice Women's Resource Centers, Inc.

I N D E X

MOTION		PAGE
THE COURT:	Decision	5

MOTION	PAGE
By Mr. Webber	17
By Mr. Leit	19
THE COURT: Decision	31

Colloquy

(Proceeding in session at 11:34:41 a.m.)

THE COURT: All right. Good morning.

We are on the record in the matter of Platkin v. First Choice Women's Resource Centers. This is Docket C-22-24.

I'm Judge Lisa Adubato. Today is Tuesday. It's the 28th of May. It's 11:34 a.m.

My court staff is also on this call. We are proceeding today by Zoom and we're recording on CourtSmart.

The purpose of today is for me to put my decision on the record in a matter that was argued before the Court on the 20th of May, following significant submissions by both plaintiff, the Attorney General, in support of an order to show cause to enforce the subpoena and opposition by the defendant, First Choice, to quash said subpoena.

I do note for the record that it does appear that counsel that argued the matters are on the call.

I do not intend to take argument today. At the end -- and I won't take appearances now -- at the end, if there are any clarification questions or comments, I'll take it then.

But there's a significant -- as with the oral argument, there's a significant number of parties appearing.

Decision

I will state again for the record that I did not receive any request from anyone to record this matter.

Thus the Zoom recording and the CourtSmart recording are the only recordings that are permitted and continuing to remain on this call is an acknowledgment and a consent that no one is recording.

Okay. With that, the procedural history of this matter was discussed at length in the May 20th oral argument and will not be repeated here in full.

As needed, I will refer to it, but at that hearing, as indicated, both parties were provided the opportunity to first fully brief and then argue their client's respective positions.

I have considered all of those arguments today and render a decision on the order to show cause of the plaintiff and the cross motion of the defendant.

Many of the arguments presented here have been previously addressed by the Appellate Division in a similar matter decided last year.

It was discussed quite a bit in the oral argument on the 20th, and that's the matter of Platkin v. Smith & Wesson Sales, 474 N.J. Super. 476 (App. Div. 2023), wherein Judge Alper's declining to quash the subpoena the State had filed against defendant Smith & Wesson under the Consumer Fraud Act in that case.

Here, while there are additional legal arguments in this case -- there, as here, defendants sought a stay of the matter before the Chancery Court pending the outcome of the first filed federal action.

As conceded by the defendant here, the reasoning of the Appellate Division to affirm the denial of the

stay is applicable and binding on this Court.

As found by the Smith & Wesson court, our application as to the first to file rule here would halt future civil investigations in their formative stages before issues of regulatory concern could be addressed on the merits.

Moreover, here the Third Circuit, in fact, denied the defendant's writ of mandamus, thus that issue has been rendered moot.

Thus, this Court must determine if there is any other basis to deny the order to show cause and quash the subpoena.

As a general matter, the legislature has vested the Attorney General and the Division with investigatory powers, including the power of subpoena under the Charitable Registration and Investigation Act, or CRIA, the Consumer Fraud Act, CFA, and the Professions and Occupation law, P&O.

The State, in its filing, has provided examples of how the AG routinely employs these powers to ensure that the public is not being misled and to promote public health, safety and welfare.

Investigations and subpoenas under these laws have allowed the State to investigate all manner of organizations, including auto manufacturers, consulting firms, litigation funders, service animal organizations, food banks, and medical providers among others.

The legislature, quote, intended to confer on the Attorney General the broadest kind of power to act in the interest, end quote, of consumers, donors, patients, and the public. That's the case of Kugler v. Romain, 58 N.J. 522, 537 (1971).

And then In Re Addonizio, 53 N.J. 107 (1968), as

the administrative agency charged with seeing that the statute is obeyed within the area committed to it, the Division is vested with the power to, quote, inquire to be assured of compliance and that's 53 N.J. at 126.

Plaintiff has further documented public and medical reporting of certain organizations commonly known as crisis pregnancy centers, or CPCs, who represent themselves as legitimate reproductive healthcare clinics providing care for pregnant people, but may in engage in deception, delay tactics, and information -- disinformation to dissuade people from accessing certain types of reproductive healthcare.

As a result, pursuant to its charge under the statutory authority under the CFA, CRIA, and P&O law, the State initiated a preliminary investigation to determine whether certain CPCs in New Jersey, including defendant First Choice, may be disseminating misleading or deceptive information.

Despite the assertion of defendant to the contrary, there has been no determination of any kind made as to whether, in fact, anything improper has occurred.

Rather the State has focused primarily on the websites presented by defendant to different targeted audiences where the websites include or omit certain information that may cause an inference as to the actual position of First Choice with respect to its function as a, quote, Christian pro-life pregnancy resource center, end-quote, with a mission to protect the unborn.

The State does not take issue with the defendant's right to profess those beliefs. Rather, it posits that the lack of inclusion of that language in its client-facing websites might lead potential clients to believe that

First Choice is, in fact, a pro-choice organization.

The State also presents concerns about First Choice's services and representations, specifically whether individuals who are performing diagnostic sonograms and purporting to determine gestational age, viability, and ectopic pregnancies have the requisite qualifications and licensure.

The AG also alleges that defendant's numerous statements purporting to convey medical information may be misleading or untrue.

For example, quote,

> "A pre-abortion ultrasound is generally required before you take the abortion pill."

Or that, quote,

> "There is an effective process for reversing the abortion pill."

Plaintiff seeks to determine the veracity of these claims that may lack credible scientific evidence and, in some instances, directly contradict the American Medical Association's advice on these issues.

Much of defendant's opposition centers on its claim of retaliation and bias on the State's part due to its disagreement with the views expressed by First Choice, which the defendant claims the AG opposes.

As a result, according to the defendant, the subpoena itself is an unconstitutional infringement by the State on defendant's free speech rights and association rights.

Further, defendant posits that none of the three statutes relied on by the State provide a legal or factual basis to support the subpoena.

As to the claims of bias, that issue was also addressed in Smith & Wesson.

There the court rejected as speculation defendant's arguments that the Attorney General's, quote,

> "Personal views are the same as those of anti-Second Amendment activists and that the Attorney General had a singular focus limited to reducing gun ownership."

The court there stating that, quote,

> "Public officials, including the Attorney General, frequently make statements of public concern."

That same reasoning shall be applied here.

As noted numerous times in the submissions of plaintiff and during oral argument and, again, as addressed in Smith & Wesson, the Attorney General has not impugned defendant nor suggested that it has concluded that the defendant should be charged with violations of any of the cited statutes.

And that was the reasoning employed in the Smith & Wesson case, 474 N.J. Super. at 485.

Defendant's opposition here really lies in the scope of the subpoena and its claims that the demands of the State go well beyond the investigative powers conferred by the statutes and that those demands are unreasonable and, therefore, unenforceable.

However, both parties agree that this Court should not delve into a review of the specifics of the subpoena in detail prior to the parties having an opportunity to confer and to address possible narrowing or adjustments of the subpoena.

I did consent to that approach, including, as has been suggested by plaintiff, the possibility of entering a protective order.

Therefore, a determination of the proper scope of the actual demands of the State has not been argued by the parties, nor analyzed by this Court.

Thus, the parts of defendant's arguments which center on that scope is premature.

Further, again as determined by the Appellate Division in Smith & Wesson, defendant's constitutional arguments are also premature.

I'm going to quote extensively from that case right now because I do think it is specifically on point with what I'm being asked to do here.

So beginning the quote here -- some of the internal quotations I do not cite.

> "Such claims are ripe for adjudication only when there is an actual controversy, meaning the facts present concrete contested issues conclusively affecting the parties' adverse interests."

That's the matter of Firemen's Association, 230 N.J. 258, 275 (2017).

> "There is a two-part test to determine ripeness of a controversy: "(1) the fitness of issues for judicial review; and (2) the hardship to the parties if judicial review is withheld at this time."

K. Hovnanian Cos. of North Central Jersey, Inc. v. N.J. Department of Environmental Protection, 379 N.J. Super. 1, 9-10 (App. Div. 2005).

And this is the part of the quote from the Appellate Division that I find to be particularly applicable here.

> "In determining whether an issue is

> fit for judicial review, we consider whether additional factual development is required. We find that to do so on this record would be improper, where there are few actual facts. Defendant has offered nothing in support of its motion but selected quotes from the Attorney General's public statements, outside the context of a fulsome discovery process. "While we need not reach the second element in the ripeness analysis, we note there is no hardship to the parties by declining to address defendant's constitutional arguments now. "Defendant has preserved its claims, and the parties, in conjunction with the trial court..."

If needed here,

> "...can take steps to protect any proprietary materials identified during discovery."

Or, frankly, any other issues that are required to be addressed.

> "Because ripeness allows courts to avoid premature adjudication which would entangle them in abstract disagreements, we end our analysis of defendant's sweeping constitutional claims here."

And citing, again, Firemen's Association, 230 17 N.J. at 275.

And that's -- that block quote, with my commentary, is from the Smith & Wesson, 474 N.J.

Super. at 496.

Defendant does not dispute that plaintiff has the power delegated to it by the legislature under the various acts to investigate entities such as defendant for potential violations of those acts and their regulations.

Motion

Those investigatory powers, labeled the power of inquisition by the Addonizio court, includes the power to, quote,

> "Investigate merely on suspicion that the law is being violated or even just because it wants assurance that it is not."

That's Addonizio, 53 N.J. 121. That was cited in Smith at page 497.

This Court finds that the Attorney General has not, at this very preliminary juncture of this matter, violated any statutory or constitutional tenets which would lead to a quashing of the subpoena at issue.

Therefore, the order to show cause shall be entered and the cross motion to quash shall be denied.

The verified compliant filed by plaintiff sought a response to the subpoena within 30 days and an enjoining of the destruction of any documents specifically requested in the subpoena.

With respect to the timing, if the parties agree to a different time, the Court will have no objection, of course, but for the reasons set forth herein, I am granting the relief sought by the plaintiff in full.

In light of this decision and in light of the complaint and the reach of it, there is nothing pending before the Court currently now at this juncture.

Should the parties be unable to arrive at an

agreement as to the scope of the subpoena or the use of a protective order, either party is free to bring the issue back before the Court through the appropriate application.

That is my decision today.

Does any counsel of record feel the need to weigh in at this point?

MR. WEBBER: Your Honor, James Webber, for First Choice.

THE COURT: Yes, counsel.

MR. WEBBER: Your Honor, First Choice will -- would like to apply to the Court for a stay of Your Honor's ruling.

There are, as the Court has noted, significant constitutional issues that we believe are still -- well, ought to be decided and with the -- you know, given the opportunity to apply for a stay, we believe that First Choice will appeal the Court's ruling and allow the Appellate Division to weigh in on some of these constitutional issues.

So the -- I can envision First Choice and the Attorney General's office negotiating at the same time during the stay regarding the scope, but the issue of enforceability is something that First Choice would like to take an appeal on.

And again, these -- the reasons for the stay -- it can be brief, Your Honor, but as First Choice argued at -- last week to the Court, there are significant constitutional issues and rights that will be impacted by the mere enforceability -- or the enforcement, I should say, of the subpoena.

Not the potential enforcement action that might come from the subpoena, but the actual enforcement of the subpoena itself.

And so First Choice would like the opportunity to appeal the ruling and ask for a stay because, obviously, if there's no stay and enforcement of the subpoena goes forward, the constitutional harms would be done.

So I'd ask the Court for an opportunity to make that motion and we would want to talk about a return date on that.

You know, we would be open to that now.

THE COURT: Okay. Assistant Leit, do you want to weigh in or I don't know who's going to be for the DAG?

MR. LEIT: Yeah, Your Honor, the State --

THE COURT: Just – I'm sorry, counsel, just give your appearance.

I didn't get it at the beginning.

MR. LEIT: Sure. Assistant Attorney General David Leit, on behalf of the plaintiff, Matthew Platkin and the Division of Consumer Affairs.

The State opposes a stay here.

Obviously, First Choice has the right to appeal, and they can do that if they want.

As Your Honor just ruled, there are no ripe constitutional issues at stake in this case.

The State has been waiting over six months for a response to the subpoena. We don't think further delay is warranted.

As Your Honor noted, there will inevitably be some delay anyway as the parties negotiate scope, protective order, time to produce.

I think, if my notes are correct, you were citing to be produced within 30 days, unless the parties agree otherwise, but it's going to be at least another 30 days, which will bring us at -- I think over seven months

since the subpoena was issued before we have any response from First Choice.

For those reasons, we would oppose the stay. We don't think there's any likelihood of success on the merits, given Your Honor's ruling and the lack of ripe constitutional issues.

As to any irreparable harm, as Your Honor noted, we are perfectly willing to negotiate the scope of the subpoena and the appropriate protective order.

If an Appellate decision reverses Your Honor's ruling in whole or in part, we can agree to return any documents that are produced forthwith, but we really think that the subpoena should at least begin the compliance process after all these months.

THE COURT: Thank you.

It's difficult for me to --

MR. WEBBER: Your Honor --

THE COURT: -- to in -- I don't know who that was?

Was that -- Counsel Webber, was that you jumping in?

MR. WEBBER: It was, Your Honor, but I don't – didn't mean to interrupt.

THE COURT: That's fine. Go ahead, I'll hear you.

MR. WEBBER: No -- I think given the opportunity to brief the Crowe v. De Gioia elements, the Court would see that the balancing of the Crowe tests would be in favor of First Choice.

There is irreparable harm, not just -- I'm not suggesting that the State would necessarily publish the materials it finds, but the State's mere inquiry and obtaining these -- this information is an infringement on First Choice's constitutional rights and the rights of their donors and employees.

That's the Americans for Prosperity case that we've cited to the Court.

The balancing of the relevant hardships, obviously, this -- as the Court has seen, would be a significant hardship on First Choice, the dedication of personnel, a monetary investment in compliance.

And as the Court is aware, stays that are aimed at maintaining the status quo do get a little more deference -- or the court has a little more opportunity to weigh certain factors more than others.

There have been no complaints about First Choice, or any other crisis pregnancy center.

The State has waited several months, so there's no sense of urgency, I think, to the investigation that the State has begun.

And again, the defendant would appreciate the opportunity to make this application in a more formal way to the Court if Your Honor is open to receiving that.

THE COURT: The issue that I have is that all of those arguments obviously were part of the position that was presented by the defendant in the application that I heard arguments on on the 20th.

My determination, as pointed out by the plaintiff here, is that there are no ripe constitutional arguments.

So conceptually that I would then go back -- I would basically be reconsidering my decision, which is not what you're asking me to do apparently, but you're asking me to give you an opportunity for a stay.

I think that -- I don't want to obviously interfere with your right on behalf of your client to appeal, but -- and I understand you have to make that motion here first.

I am inclined to deny, on the oral motion, the stay.

But I don't want to foreclose you having an opportunity to -- in your trying to bring an interlocutory appeal, also make part of -- you know, requesting the stay of the Appellate Division, which the Appellate Division, if you -- if you are correct, may very well look at this and say there are, you know, constitutional issues that have to be decided and -- I think, however, that they've weighed in very similarly already on this.

So I believe I'm following what the Appellate Division has directed that this Court do and while I understand that the exact arguments that were made in Smith & Wesson are not the entirety of the arguments that are being made here -- I mean, I don't -- what are you asking me for in terms of being able to get this motion and then imposing that obligation on the State to have to answer in a formal motion.

I'm inclined to deny that request for the reasons that I've already stated.

I did consider all of, you know, those types of arguments when looking at what were made -- constitutional arguments that were made and I -- as I said, I ruled that they're not ripe yet.

So I don't know what would change in the motion that would now have me saying well, yes, you're right, they are ripe, I should rule on them or let me stay it until -- so this is kind of where I'm struggling with your request, counsel.

Go ahead.

MR. WEBBER: Understood, Your Honor.

Well this is – I'm sorry.

So first, as I understood the Court's decision, this wouldn't be an interlocutory appeal. I think the

Court's decision –

THE COURT: Okay.

MR. WEBBER: -- is final.

THE COURT: Even better for you, right.

MR. WEBBER: It -- right.

So I think we have a right to appeal.

THE COURT: Um-hum.

MR. WEBBER: And the -- you know, the Crowe test is one that is flexible.

And, again, Your Honor is familiar with the admonition that the court may place more or less importance not on the issue of necessarily who's right or who is wrong in this instance, but on maintaining the status quo based on --

THE COURT: Well, you know, the status quo obviously -- I just ruled that the status quo has been -- should have been that you should have been providing the information and you weren't.

So I understand your waste of ad management argument.

I understand that public policy and public interest also plays a part here, but that weighs both -- you know, that cuts both ways.

Let me flip it back over to AG Leit and ask you what is the harm in providing a very brief opportunity for the defendant to file a formal motion for stay?

MR. LEIT: Your Honor, I think for the reasons that the Court has stated, the motion for a stay is going to be futile.

There are no constitutional issues. It's just the law of the case at this point.

And there is substantial harm to the State for a recalcitrant party continuing to evade its compliance obligations with the subpoena.

Mr. Webber said there's been no complaints against First Choice or any CPCs. That's not a correct statement.

We're not at liberty to discuss the internal investigations that we have undergoing, but I think that I can say that there have been complaints against CPCs more generally and we do think that this investigation should go forward to protect the public from what may well turn out to be continuing harm caused by the deception of First Choice.

So, therefore, we don't think that a stay is in the public interest.

First Choice has had many months now of delay here. There's been no delay on the part of the State.

We've only tried to make reasonable accommodations when they were pressing forward with defenses purportedly in good faith but, you know, the -- we're at the end of that road here.

Your Honor has made a very definitive ruling. It is time to start getting actual compliance with the subpoena.

THE COURT: Okay. This is what I --

MR. WEBBER: Your Honor --

THE COURT: Hang on, one second. What I want to do --

MR. WEBBER: Sure.

THE COURT: -- is take just five minutes.

I'm going to leave the bench and pause the record for a minute and then I'll be right back with my decision on the stay issue. Okay?

So just – we're going to pause the record.

You can still be heard and seen, so if you want to mute yourself, hide your camera, whatever you want to do but don't go away.

I'll be back in momentarily. Let's pause the record please.

MR. LEIT: Thank you, Your Honor.

MR. WEBBER: Thank you.

THE COURT: I'm going to mute.

(Court in recess at 12:01:20 p.m.)

(Court in session at 12:18:53 p.m.)

THE COURT: Okay. Now we are back on the record in Platkin v. First Choice, C-22-24. Okay.

I wanted to give some thought to the request by Counsel Webber for the request to make a formal motion and what I said earlier I think continues to be the case.

I'm not going to stay my order to allow the motion to be filed.

So certainly, you can make the motion and the time, though, will start running on the order.

The other option, which I think I offered before, is that I've heard, I think, a significant amount of what the argument would be and, as I said, I believe those arguments were also made in writing.

I will give you, if you wish, a brief opportunity to supplement your argument here now orally and make a determination on that basis and give you an order such that it can be established, which you have applied first to this Court before seeking a stay from the Appellate Division.

So what's your choice, Counsel Webber?

MR. WEBBER: Well, Your Honor, I think our application is for a stay today, if the Court is inclined.

The Crowe factors, I think, are met, especially given the circumstances.

The irreparable harm has been described to the Court with Supreme Court precedent, Your Honor.

Especially the Americans for Prosperity case, which we briefed, it's not an enforcement action that violates one's -- or implicates, at least, one's constitutional rights.

It's the very obtaining of the information, disclosure of the donors, impact an organization's first amendment rights, their associational rights.

THE COURT: Counsel, I'm going to interrupt you for a minute because, as I said in my decision, and both parties agreed, that, again, really focuses on the scope of the subpoena.

You have not even had a conversation with the State with respect to either protective orders or a narrowing of that scope and that's not going to change by me staying this and then giving you that opportunity. You have that opportunity.

As I've already said, I invited if there's an addition -- if that discussion is being performed in good faith and there's a wish to extend the amount of time that the defendant has to comply, I certainly will, you know, entertain that by way of a consent order.

I am not trying to -- as I've indicated already, there's no determination that's yet been made, number one, on the subpoena, of course, and the scope of it, as I've already talked about, so I'm not really sure what I'm weighing.

You're asking me to get into the idea of the association and how that's going to, on its face, be a constitutional violation of your client's rights and I've already decided that it isn't, based on the reasons that I've given.

So I'm a little confused about what you're asking me to weigh under the Crowe standards.

I think it's getting further than we went on what

was in front of me.

MR. WEBBER: Well, Your Honor, it -- listen, if the Court believes this is, you know, a repetitive or redundant argument, I'll leave it there.

If the Court is inclined to deny our request for a stay today, the Court will put that on the record and we have -- we've made our record --

Decision

THE COURT: Um-hum.

MR. WEBBER: -- and we can go forward and that -- you know, we understand the Court's ruling.

I would just -- just for the record, Your Honor, if I might --

THE COURT: Um-hum.

MR. WEBBER: -- I don't know if it advances the legal issues here but the characterization of First Choice being recalcitrant in response to the subpoena, I think just -- again, for the record, I would like to say that I think that was an unfair characterization by the State.

This is an organization that has exercised its rights both in federal court and state court and does so, I think, with candor to the tribunals in good faith and to be characterized by the State as recalcitrant I think was an unfair characterization.

So I mean --

THE COURT: I think a lot of that would have been the subject of further discussion, had I been determining the first filed and the reasoning, in large part, would potentially weigh in there.

That was not a part of the decision that I made today.

I appreciate you're making your record to counter what was said by the State, but I don't want to go

down the road of, you know, that whole first filed argument right now because as I already indicated that is -- it's nothing that was not already determined.

But I understand if there was another reason you wanted to put it on the record, then certainly I cut you off, but I'll allow you to continue if you feel the need.

MR. WEBBER: No, Your Honor.

No, I -- again, it's just if the Court is going to deny our motion today for the record, then we have the record and we'll proceed from there.

THE COURT: Okay. Anything further from our Assistant AG?

MR. LEIT: No, Your Honor.

THE COURT: Okay.

The Court is presented with an application for a stay pending appeal by defendant.

Applications for such a stay are governed by the familiar standard outlined in Crowe and have been addressed by the Court in a variety of cases, including here in New Jersey in Garden State Equality v. Dow, 216 N.J. 314, and New Jersey Election Law v. DiVincenzo, 445 N.J. Super. 187 (App. Div. 2016).

The Court here, considering those standards -- for reasons that were stated within my ruling today, as well as in the colloquy with respect to the oral application -- and frankly in the argument that was made both in the written submissions and in the arguments made on the 20th, in terms of the Crowe standards, I do find that the defendant has not, by clear and convincing evidence, established that the relief is needed to prevent irreparable harm.

In large part, the constitutional arguments, number one, as I already indicated, are premature, and number two, not as a way of weighing this in

recalcitrance, I think was the word -- not looking at that, I'm looking at the fact that there is, built into my order, the belief that the parties will confer going forward, and it's possible that the concerns of the defense could be addressed in an agreement between the parties.

So I don't find that the irreparable harm has been established.

The reasonable probability of succeeding on the merits, obviously, I think would have me reconsider my decision today and that's not what I'm doing.

I appreciate that the balancing of the hardships -- let me just finish with the balancing of the hardships. I don't believe that a greater harm will occur.

Colloquy

The hardship also weighs into the public, which will lead into my next comment in a minute, but here it's not just the defendant's possible harm.

The Court also has to look at the harm to the public, as being represented by the State, and I don't find that -- by clear and convincing evidence that the defense has established that a greater harm will occur to them if it -- if a stay is not granted than if it were.

And while I certainly understand the argument that because of this -- because this is an issue -- at least arguably, if not more than arguably, of significant public importance, that the Court must consider the public interest.

Well here, the public interest certainly is on both sides and to make a finding that it's clear and convincingly been established that the public interest supports a stay, I don't think is established.

The public interest, as I've already indicated,

arguably, at a minimum, it's in equipoise looking at both sides of the argument and so I don't find it's been clearly and convincingly established.

So I'm going to deny the motion for a stay.

As indicated by Counsel Webber, the order that I'm entering is indeed -- unless the State has a different position, based on the complaint that was filed, I do believe that this order -- well, before I say that, let me hear the State on whether this is an final order or an interlocutory order.

I believe, based on my ruling, I was looking at this as if the complaint has been addressed in its entirety.

MR. LEIT: No, I believe it's a final order, Your Honor.

THE COURT: Great. Okay. So no argument about that.

The only part of the -- I think of the proposed order -- it may still have -- I have to look at it, but it may have still something in there about a summary -- obviously that part is kind of moot because I've already decided it.

But is there any reason to believe the orders that I have -- not with respect to the stay, obviously, but with respect to the order to show cause would require an additional submission?

If not, I'll look to get that done. That would be more addressed to the State, I guess.

MR. LEIT: I'm sorry, can you repeat that again?

THE COURT: Yeah, I'm sorry, that was -- that was basically me talking to myself.

I don't have the order in front of me as I'm speaking, so -- the proposed order -- so I just was wondering if you thought there was any need to submit a new order or if what was submitted initially

-- that may be more appropriate to DAG Van Driesen, I'm not sure.

I don't remember because I --

MR. LEIT: Yeah, I don't have the order sitting in front of me, but I think that what we submitted should be sufficient.

But if we can take a look at that and let the Court know, that would be -- that would be the easiest thing, I think.

THE COURT: Yeah, just try to do that pretty quickly because I do want to get this entered today.

MR. LEIT: All right.

THE COURT: Counsel Webber, do you want submit an order with respect to the denial of the stay?

MR. WEBBER: Sure.

THE COURT: Okay. This way you can take care of that on your appeal.

Obviously, all counsel are well aware, 45 days for the filing of the notice and then whatever you're going to do with respect to the stay request.

If -- and while I appreciate that there is not at this point any formal matter before the Court based on my ruling, do not be fully dissuaded in conjunction with each other from reaching out if there's a question or something.

I'm trying to avoid having -- if both sides kind of have a similar concern -- never do I invite casual, you know, applications or requests to the Court, but I certainly would consider a conference of some sort if you believe it would help in any way because I think it would be disingenuous to just make this decision and then say anything further -- obviously, if you don't agree, then you have to file motions.

But if there's something – I'm trying -- what I'm

trying to get across is that if there's something I can be of assistance with when you're trying to discuss the scope, depending on what you ask, I'll decide if I need a formal motion at that point. Okay?

MR. LEIT: That makes sense, Your Honor.

THE COURT: All right.

MR. WEBBER: Very good.

THE COURT: Okay. Thank you all.

I appreciate your appearances, and I'll look to hear from the State and the defense both with respect to the orders that you're asking me to enter.

All right. Thank you. That's all. We're off the record.

MR. LEIT: Thank you, Your Honor.

THE COURT: Stay well.

MR. WEBBER: Thank you.

(Proceeding adjourned at 12:32:11 p.m.)

CERTIFICATION

I, PATRICIA A. LAMONICA, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 11:34:41 a.m. to 12:32:11 p.m., is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Patricia A. LaMonica	AD/T 326
Patricia A. LaMonica	AOC Number
VOX Transcription Services	06/08/24
Agency Name	Date

DEMETRIOS K. STRATIS, ESQ. (022391991)
RUTA, SOULIOS & STRATIS, LLP
10-04 River Road
Fair Lawn, New Jersey 07410
Tele: (201) 794-6200; Fax (201) 794-6300
Attorney ID: 022391991
Email: dstratis@stratislaw.com
Attorneys for Anonymous Donors

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY TRENTON VICINAGE

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., *Plaintiff*, v. **MATTHEW PLATKIN**, in his official capacity as Attorney General for the State of New Jersey, *Defendant.*	Civil Action File No.: 3:23-cv-23076 **DECLARATION OF COUNSEL FOR DONORS TO FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.**

I, Demetrios K. Stratis, pursuant to 28 U.S.C. section 1746, do hereby declare as follows:

1. I am an attorney at law in the State of New Jersey and am admitted to the bar of the District Court of New Jersey. As such, I am fully familiar with the facts herein.

2. I represent donors to First Choice Women's

Resource Centers, Inc who wish to remain anonymous. I have obtained an affidavit from these donors which states as follows:

a. Each of us has personal knowledge of the statements contained in this declaration that pertain to them.

b. We have all made one or more charitable contributions to First Choice Women's Resource Centers, Inc. ("First Choice").

c. We submit this Declaration because we have recently been informed by First Choice that the New Jersey Superior Court has ordered the enforcement of a Subpoena of the Attorney General in this matter that demands disclosure of the identities of donors to First Choice via platforms other than its "Donation Page," which would include our donations, and therefore our identities.

d. Though the Attorney General has demanded this information out of purported concern that we were misled by First Choice in giving our donations, given his record of hostility toward pro-life groups, we believe that we may be harmed by his knowledge of our identities as supporters of a pro-life ministry.

e. It is for this reason that we submit this declaration anonymously.

f. The amounts of our donations range from $10 to $50,000.

g. Each of our donations was made to support the operations of First Choice and was not

made with any hope or expectation of any benefit from First Choice to the donor in return.

h. None of us are employees, officers, or directors of First Choice, or related to any such person.

i. We made our donations through multiple different methods, and at least one of us made a charitable contribution to First Choice through each of the following methods:

   i. Credit card, debit card, Google Pay, or automated clearing house bank account transfer through First Choice's online donation website, https://www.myegiving.com/App/Giving/firstchoicewrc;

   ii. A First Choice fundraising event such as a banquet or golf tournament;

   iii. A personal or business check delivered to First Choice;

   iv. An ACH payment to First Choice; or

   v. A transfer of corporate stock or other asset to First Choice.

j. We have all always understood that First Choice is a pro-life organization and that it does not perform or refer for abortions, as it makes clear on each of its websites.

k. None of the undersigned has ever felt misled or deceived by any representative of First Choice, any website associated with First Choice, or any advertisement or solicitation from First Choice about the nature of First Choice's mission, operations, or any other

matter.

l. We are all aware that First Choice is accredited by the Evangelical Council for Financial Accountability, which requires member organizations to maintain high standards of financial integrity, transparency, and stewardship of charitable gifts.

m. We all understood and expected that our information concerning our financial donations to First Choice would remain confidential and not be disclosed to any person or entity except as necessary to facilitate First Choice's receipt and use of the donation to carry out its charitable mission.

n. The 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.

o. Each 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.

p. If our personal information is disclosed to the Attorney General, it will chill our desire in the future to affiliate with and support pro-life organizations, even privately, due to the risk that those protected relationships will be disclosed to openly hostile law enforcement officers.

q. We do not regard the Attorney General's purported investigation under the Charitable Registration and Investigation Act as protecting against possible deception by First Choice, but as an imminent threat to our protected associational rights.

r. Each of us strongly opposes the effort by the Attorney General to obtain information regarding his or her donation(s) to First Choice and would consider disclosure of his or her information a highly offensive invasion into a sensitive personal matter.

The undersigned declares under penalty of perjury that the foregoing is true and correct. Executed on July 17, 2024.

RUTA, SOULIOS AND STRATIS, LLP
Attorneys for Anonymous Donors

Dated: July 17, 2024

By: *s/ Demetrios K. Stratis*

DEMETRIOS K. STRATIS, ESQ.

Lincoln Davis Wilson (N.J. Bar No. 02011-2008)
Timothy A. Garrison (Mo. Bar No. 51033)*
Gabriella McIntyre (D.C. Bar No. 1672424)*
Mercer Martin (Ariz. Bar No. 038138)*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
lwilson@ADFLegal.org
tgarrison@ADFLegal.org
gmcintyre@ADFLegal.org
mmartin@ADFLegal.org

Counsel for Plaintiff
*Admitted pro hac vice

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY TRENTON VICINAGE

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.

Plaintiff,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General for the State of New Jersey,

Defendant.

Case No. 3:23-cv-23076 -MAS-TJB

DECLARATION OF AIMEE HUBER

I, E. Aimee Huber, hereby declare and state as follows:

1. I am employed as the executive director of First Choice Women's Resource Centers, Inc. I have been employed by First Choice since 1990 and have held the position of executive director since 2000. As executive director, I oversee the daily operations of First Choice's five locations, the ministry's fundraising efforts, and its marketing and media outreach, and I work closely with its board to strategize and maximize the ministry's charitable reach.

2. I have personal knowledge of the facts set forth below.

3. First Choice is a small faith-based nonprofit that exists to encourage and equip women and men to make informed pregnancy decisions. First Choice never charges clients for any service. Supported entirely by private donors who seek to further its faith-based, pro-life mission, First Choice operates five centers in New Jersey.

4. On November 15, 2023, I received a subpoena issued to First Choice from Attorney General Platkin seeking the production of a broad range of documents in First Choice's possession (the "Subpoena"). The Subpoena has impacted and will impact First Choice as follows.

Impact on Insurance Policies

5. First Choice's insurance policies with its insurance provider expired in their ordinary course on or about December 22, 2023. In the performance of its renewal investigation, our agent informed us that the

underwriter had agreed to cover us until he saw the Attorney General's Subpoena, at which time he determined he could not cover First Choice until the Attorney General's investigation was resolved. As a result, First Choice had to seek similar coverage from a different provider, but it was only available at much worse terms. Because of the Subpoena and related investigation, First Choice's insurance premiums increased from $1,100 to over $6,000 per year, and First Choice's deductible increased from $500 per claim to $50,000 per claim.

Impact on First Choice's Speech

6. First Choice has previously promoted on its YouTube channel the stories of clients who wished to share their experiences as clients. After learning it was under Attorney General Platkin's investigation, however, First Choice became concerned that some of the videos it posted included the names of First Choice staff, and that such videos could subject these individuals to harassment such as First Choice was experiencing. To limit the exposure of these staff members to such scrutiny, First Choice took these videos down from its public YouTube channel, leaving the public with only videos that do not identify staff, even though those videos are less impactful than those containing first-person testimony.

Impact on First Choice's Donors

7. Complying with the Subpoena would be likely to have a significant adverse impact on First Choice's faith-based, pro-life mission because it seeks confidential information that is likely to harm First Choice's relationships with donors and others. Confidentiality regarding information about donors,

clients, personnel, and affiliates is critical to First Choice. But the Subpoena requires that First Choice divulge that information, demanding the following: all documents First Choice provided to clients and donors; documents identifying donations; all communications First Choice made or received about Abortion Pill Reversal, the risks of abortion, and contraceptives; communications with personnel about interacting with clients and donors; and all documents about Heartbeat International, Inc., the Abortion Pill Reversal Network, and Care Net. *See* Subpoena, "Document Requests" ¶¶ 3, 9, 11, 19–20, 22–23.

8. Many donors desire for their donations and communications with First Choice to remain confidential, and First Choice avidly safeguards the confidentiality of donor information. Failure to protect their identities would cause them to cease donating to First Choice.

9. Since the publication of a leaked draft of the *Dobbs* opinion in 2022, pro-life organizations, especially pregnancy resource centers like First Choice, have been subjected to an increased level of criminal acts, intimidation, and harassment. *See* Pregnancy Center Attack Tracker, https://catholicvote.org/pregnancy-center-attack-tracker/. Based on this pattern of violence and intimidation, First Choice is concerned that if its donors' identities became public, they may be subjected to similar threats. Thus, First Choice safeguards donors' identities to protect them from potential violence and harassment.

10. In addition, many donors give to First Choice for deeply personal reasons, which they communicate

to me and First Choice staff in confidence. Many donors have themselves faced unplanned pregnancies without support and give to First Choice to help women in similar situations.

11. First Choice staff and volunteers often contribute to the ministry's mission for personal reasons, and some do not seek for their involvement in the ministry to be publicly broadcast.

12. First Choice respects the confidentiality of all organizations it affiliates with and accordingly does not publicly divulge its communications with those organizations or share private information about them.

13. The large majority of our donors, clients, personnel, and affiliates have a strong expectation that First Choice will keep their information and communications private. Therefore, I believe that divulging information about such individuals and affiliates as the Subpoena requires would be a betrayal of their confidences. Based on my experience as executive director, I believe it is likely that divulging such information would harm our current relationships with these individuals and affiliates. Other pregnancy resource centers, such as the Obria Group in Washington, which faced an investigation similar to Attorney General Platkin's, have already experienced these harms. I believe divulging such information would also weaken our ability to recruit new donors, personnel, and affiliates, as prospective partners would be hesitant to risk the revelation of their personal information through government investigation. And First Choice would likely fail to retain current donors, personnel, and affiliates once

this confidentiality has been breached.

Costs of Electronic Document Discovery

14. Complying with the demands of the Subpoena will require, among other things, searching First Choice's electronic devices for relevant documents. The Subpoena requests, to provide just a few examples, all of First Choice's advertisements, all documents supporting a host of claims on First Choice's websites, and all communications sent or received about the risks of Abortion Pill Reversal, the risks of abortion, and contraception. *See* Subpoena, "Document Requests" ¶¶ 1, 6–8, 9, 11. The documents responsive to those requests reside not on a dedicated server, but on individual devices and accounts at each of its five locations.

15. First Choice does not have dedicated information technology (IT) personnel on staff and contracts with outside companies for IT services. Thus, to evaluate the burden of responding to the Subpoena, First Choice requested an estimate of certain data review costs from an IT consultant. The consultant estimates that device imaging and virtualization alone, which are prerequisites to a search for relevant documents, would require 50–60 hours of work and would cost First Choice $7,000–$8,400. This estimate does not include the other necessary data discovery and documentation costs.

16. I have been informed that once the data is imaged and uploaded to a review platform, it would need to be filtered by search terms and then reviewed individually by attorneys for responsiveness, privilege, and redaction of information protected by HIPAA. Although it is not possible to know how many

responsive documents exist before the documents have been collected, imaged, and filtered by search terms, the volume is likely to consist of up to 20 Terabytes of data. Assuming review by contract attorneys at a modest rate of $250 per hour, even a minor collection of documents requiring two weeks of work by a single attorney is likely to cost $20,000. A greater volume of responsive documents requiring redaction will increase those costs dramatically.

Costs of Other Discovery

17. Searching for much of the documentation demanded by the Subpoena would require a significant effort by the organization's limited staff. For example, it is likely that many communications with clients, donors, and First Choice personnel may not be searchable on First Choice's computers, and First Choice personnel will thus be required to manually search for these documents. See Subpoena, "Documents Requests" ¶¶ 3, 9, 11, 19–20, 26.

18. Searching for these documents and information would require a dedicated effort by myself and First Choice's director of health services, center directors, bookkeeper, financial manager, medical director, and medical staff. In total, these efforts would require the support of 75 percent of First Choice's staff. I anticipate that many of these individuals would have to spend several hours a week for at least a month identifying the location of relevant documents and searching for documents to comply with the Subpoena. Some individuals may be required to dedicate multiple hours per day, and I would likely be required to expend additional hours managing and coordinating these efforts.

19. These significant Subpoena-compliance efforts would divert First Choice staff and volunteers from performing the ministry's charitable mission, and the number of services First Choice provides to the public would be reduced. Time spent complying with the Subpoena necessarily means less time serving women and men in need of support. First Choice's medical services, such as ultrasound exams, STI screenings, and Abortion Pill Reversal administration, would suffer the most. First Choice's ability to schedule clients, mentor them through our parenting education program, provide material assistance such as baby clothes and furnishings, train staff, draft grant proposals, and raise funds, among other activities, would also suffer.

Impact on First Choice's Faith-Based Expression

20. First Choice's mission and every service it provides are expressions of the ministry's faith-based beliefs. Central to the ministry's mission is the belief that every person is created in the image of God and is valuable at all times, from conception to death. To protect the lives of the unborn, First Choice offers services such as Abortion Pill Reversal, which is undertaken to increase the chances that an unborn child will survive after a woman takes the first pill in the chemical abortion protocol. This service is provided in response to women who seek this service and to support vulnerable women facing unplanned pregnancies, First Choice provides counseling and material support. First Choice seeks to serve women and the unborn as the Bible instructs in James 2:26, "As the body without the spirit is dead, so faith without deeds is dead."

21. Subpoena compliance would divert the ministry's resources from the charitable services compelled by its faith and would weaken the ministry by compromising its ability to coordinate with clients, donors, personnel, and affiliate organizations. All of these harms would be a substantial burden on First Choice's expression of its faith.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 19, 2024

Aimee Huber

Aimee Huber

Lincoln Davis Wilson (N.J. Bar No. 02011-2008)
Timothy A. Garrison (Mo. Bar No. 51033)*
Gabriella McIntyre (D.C. Bar No. 1672424)*
Mercer Martin (Ariz. Bar No. 038138)*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202) 347-3622
lwilson@ADFLegal.org
tgarrison@ADFLegal.org
gmcintyre@ADFLegal.org
mmartin@ADFLegal.org

Counsel for Plaintiff
*Admitted pro hac vice

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY TRENTON VICINAGE

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC. *Plaintiff*, v. **MATTHEW PLATKIN**, in his official capacity as Attorney General for the State of New Jersey, *Defendant.*	Case No. 3:23-cv-23076 -MAS-TJB **SUPPLEMENTAL DECLARATION OF AIMEE HUBER**

I, E. Aimee Huber, hereby declare and state as follows:

1. I am employed as the executive director of First Choice Women's Resource Centers, Inc.

2. I have been employed by First Choice since 1990 and have held the position of executive director since 2000.

3. As executive director, I oversee the daily operations of First Choice's five locations, the ministry's fundraising efforts, and its marketing and media outreach, and I work closely with its board to strategize and maximize the ministry's charitable reach.

4. I have personal knowledge of the facts set forth below.

5. Between June 1, 2022, and July 31, 2024, donors contributed a total of 10,116 individual cash donations to First Choice amounting to $3,447,297.13.

6. Of those individual cash donations, donors submitted 5,239 donations through the First Choice Donor Website,[1] and these donations amounted to $1,000,946.60.

7. Thus, approximately 52 percent of the total number of cash donations and 71 percent of total dollars donated to First Choice between June 1, 2022, and July 31, 2024, were submitted through channels other than the First Choice Donor Website.

---

[1] *See* First Choice Friends, Give Today!, https://www.mygiving.com/App/Giving/firstchoicewrc.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 1, 2024

Aimee Huber

Aimee Huber

From: Kaitlyn Wojtowicz
To: Sundeep Iyer
Cc: Daniela Nogueira
Subject: Re: [EXTERNAL] NJ AG crisis pregnancy center alert draft
Date: Wednesday, October 26, 2022 10:13:41 AM
Attachments: PP comments 2022 1017 DRAFT Crisis Pregnancy Center Consumer Alert - JC edits.docx

Hi Sundeep,

Yes, thank you. I'm attaching some very minor edits and comments we had, but in general we think it is great and appreciate this effort!

Best,

Kaitlyn
--

Kaitlyn Wojtowicz
Pronouns: She/Her (Why do I list this here?)
Vice President of Public Affairs
Planned Parenthood Action Fund of New Jersey
908-577-1778

From: Sundeep Iyer <Sundeep.Iyer@njoag.gov>
Date: Wednesday, October 26, 2022 at 10:08 AM
To: Kaitlyn Wojtowicz
<kaitlyn.wojtowicz@ppgnnj.org>
Cc: Daniela Nogueira
<Daniela.Nogueira@njoag.gov>
Subject: RE: [EXTERNAL] NJ AG crisis pregnancy center alert draft

Kaitlyn,

Hope you're doing well. Just wanted to follow up and see whether you've had a chance to take a look at this document. Looking forward to your feedback—and no worries if you're not able to get to it. (I know you all are incredibly busy!) Thanks so much—and looking forward to seeing you tomorrow.

Best wishes,
Sundeep

From: Kaitlyn Wojtowicz
<kaitlyn.wojtowicz@ppgnnj.org>
Sent: Tuesday, October 18, 2022 9:09 AM
To: Sundeep Iyer <Sundeep.Iyer@njoag.gov>
Cc: Daniela Nogueira
<Daniela.Nogueira@njoag.gov>
Subject: Re: [EXTERNAL] NJ AG crisis pregnancy center alert draft

Thank you Sundeep, we will keep this close and appreciate your offer for us to provide any feedback.

Best,

Kaitlyn
--
Kaitlyn Wojtowicz
Pronouns: She/Her (Why do I list this here?)
Vice President of Public Affairs
Planned Parenthood Action Fund of New Jersey
908-577-1778

Confidentiality Notice Omitted

From: Sundeep Iyer
To: Kaitlyn Wojtowicz
Cc: Daniela Nogueira
Subject: NJ AG crisis pregnancy center alert draft
Date: Monday, October 17, 2022 at 3:15:02 PM
Attachments: 2022 1017 DRAFT Crisis Pregnancy Center Consumer Alert.docx

Kaitlyn,

Hope you're doing well! I'm passing along here a draft of a consumer alert our Division of Consumer Affairs put together on crisis pregnancy centers. (We'd be grateful if you could keep this under wraps until we release it.) We wanted to flag this for you for your awareness. We're hoping to get this document out this month, so if you have any feedback, questions, or concerns, please let us know this week, if possible. Thanks so much. Happy to discuss if you'd like.

Best wishes,

Sundeep

From: Sundeep Iyer
To: Roxanne Sutocky; Kaitlyn Wojtowicz
Cc: Daniela Nogueira
Subject: RE: Data privacy alert for providers (pc/adc)
Date: Tuesday, December 6, 2022 3:21:38 PM

Roxanne and Kaitlyn,

Thanks so much for your helpful feedback on the documents we have sent you over the past few months. Your feedback was extremely helpful, and you'll see almost all of it reflected in the documents we are releasing. We just wanted to let you both know that we are planning to issue three documents tomorrow—the crisis pregnancy center alert, a data privacy alert for providers, and a letter to the professional medical boards outlining their obligations under the laws enacted by the legislature after *Dobbs*. We'll follow up tomorrow with the press release and the documents when they're released. In the meantime, we would be grateful if you could keep this news close hold until we issue the release tomorrow.

Thanks again for your partnership—we really appreciate your support.

Best wishes,
Sundeep

From: Sundeep Iyer
Sent: Wednesday, October 26, 2022 1:57 PM
To: Roxanne Sutocky <rsutocky@thewomenscenters.com>; Kaitlyn Wojtowicz <kaitlyn.wojtowicz@ppgnnj.org>
Cc: Daniela Nogueira <Daniela.Nogueira@njoag.gov>
Subject: Data privacy alert for providers (pc/adc)

Roxanne and Kaitlyn,

Hope you both are doing well. Working together with the AG's Strike Force, our Division of Consumer Affairs has put together the attached data privacy alert for providers. The document outlines some best practices we've identified for protecting patient and provider data. We are looking forward to getting this out to providers, since we think it's one of the first documents of its kind put together by a State AG's office.

We are hoping to release this publicly soon, but we wanted to flag this document for you both first to see whether you have comments, questions, or concerns in light of your expertise. (We would also appreciate if you would keep this close hold until we are ready to release it.) One note: We suspect that many of these measures are already being implemented by Cherry Hill and by Planned Parenthood clinics—so the guidance is likely going to be the most helpful for smaller clinics or individual providers. To that end, if you think there are one or two smaller providers we should share this with to get feedback, please let us know.

We would be grateful for any feedback either of you might have by Tuesday next week, if at all possible. We know you're both extremely busy, so we also completely understand if you can't get to this on that timeline--but just wanted to be sure we flagged this in case you have a chance to comment.

Thanks so much. Talk soon.

Best wishes,
Sundeep