No. 24-781

IN THE
Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,
Petitioner,
v.
MATTHEW J. PLATKIN, Attorney General of New Jersey, *Respondent.*

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief *Amicus Curiae* of America's Future, Free Speech Coal., Free Speech Def. and Ed. Fund, Gun Owners of Am., Gun Owners Fdn., Gun Owners of Cal., Citizens United, Citizens United Fdn., Public Advocate of the U.S., Public Advocate Fdn., Leadership Institute, Eagle Forum, Eagle Forum Fdn., Clare Boothe Luce Ctr. for Cons. Women, U.S. Const. Rights Legal Def. Fund, One Nation Under God Fdn., The Senior Citizens League, DownsizeDC.org, Downsize DC Fdn., Conservative Legal Def. and Ed. Fund, and Eberle Associates in Support of Petitioner

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August 28, 2025

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MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

America's Future, Free Speech Coalition, Free Speech Defense and Education Fund, Gun Owners of America, Gun Owners Foundation, Gun Owners of California, Citizens United, Citizens United Foundation, Public Advocate of the United States, Public Advocate Foundation, Leadership Institute, Eagle Forum, Eagle Forum Foundation, Clare Boothe Luce Center for Conservative Women, U.S. Constitutional Rights Legal Defense Fund, One Nation Under God Foundation, The Senior Citizens League, Downsize DC.org, Inc., Downsize DC Foundation, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. Eberle Associates is a for-profit organization assisting nonprofit organizations in direct marketing. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Several of these *amici* have filed *amicus* briefs in other related cases, including:

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[1] It is hereby certified that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

- *AFPF v. Harris*, Nos. 15-55446 & 15-55911, Ninth Circuit, Brief *Amicus Curiae* of Free Speech Def. and Ed. Fund, *et al.* in Support of Petition for Rehearing *En Banc* (Jan. 21, 2016);
- *Citizens United v. Schneiderman*, No. 16-3310, Second Circuit, Brief *Amicus Curiae* of Free Speech Def. and Ed. Fund, *et al.* in Support of Appellants and Reversal (Jan. 13, 2017);
- *AFPF v. Becerra*, Nos. 16-55727 & 16-55786, Ninth Circuit, Brief *Amicus Curiae* of Free Speech Def. and Ed. Fund, *et al.* in Support of Plaintiff-Appellee and Affirmance (Jan. 27, 2017);
- *Institute for Free Speech v. Becerra*, No. 17-17403, Ninth Circuit, Brief *Amicus Curiae* of Free Speech Def. and Ed. Fund, *et al.* in Support of Plaintiff-Appellant and Reversal (Mar. 16, 2018);
- *AFPF v. Becerra*, Nos. 16-55727 & 16-55786, Ninth Circuit, Brief *Amicus Curiae* of Citizens United, *et al.* in Support of Petition for Rehearing *En Banc* (Oct. 5, 2018);
- *AFPF v. Becerra*, Nos. 19-251 & 19-255, U.S. Supreme Court, Brief *Amicus Curiae* of Free Speech Coalition, *et al.* in Support of Petitioners (Petition) (Sept. 25, 2019);
- *AFPF v. Becerra*, Nos. 19-251 & 19-255, U.S. Supreme Court, Brief *Amicus Curiae* of Free Speech Coalition, *et al.* in Support of Petitioners (Merits) (Mar. 1, 2021);
- *AFPF v. Becerra*, Nos. 19-251 & 19-255, U.S. Supreme Court, Brief *Amicus Curiae* of Citizens

United, *et al.* in Support of Petitioners (Merits) (Mar. 1, 2021); and

- *Eknes-Tucker v. Ivey*, No. 2:22-cv-184, M.D. Ala., Brief *Amicus Curiae* of Free Speech Coalition, *et al.* in Support of Motion to Quash Filed by Eagle Forum of Alabama (Sept. 20, 2022).

STATEMENT OF THE CASE

First Choice Women's Resource Centers ("First Choice") is a faith-based, nonprofit women's health clinic that neither performs nor refers for abortions. Brief for Petitioners ("Pet. Br.") at 8. On November 15, 2023, New Jersey Attorney General Matthew Platkin issued a subpoena to Petitioner First Choice, demanding a return of the information sought by December 15, 2023. *First Choice Women's Res. Ctrs., Inc. v. Platkin*, 2024 U.S. Dist. LEXIS 6993 at *2 (D.N.J. 2024) ("*First Choice I*"). The Attorney General sought "the full names, phone numbers, addresses, and present or last known place of employment of every one of First Choice's donors who gave through any means other than one specific website...." Pet. Br. at 9. This included, *inter alia*, "years of sensitive internal information — including donor information about nearly 5,000 contributions." Petition for Certiorari at 2. In issuing the subpoena, "[t]he 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." *Id.* at 8.

On December 13, 2023, two days before the return date, and before any enforcement action in state court,

First Choice challenged the subpoena in the U.S. District Court for the District of New Jersey. First Choice alleged violations of First Amendment speech and associational rights based on the chilling effect of disclosure on its donors. Pet. Br. at 12-13. The district court dismissed the complaint as unripe because enforcement had yet to be compelled by a state court. *Id*. at 13-14.

The New Jersey state trial court, in an unreported decision, granted the Attorney General's request and ordered First Choice to "respond fully" to the subpoena. *Id*. at 11. It declined, however, to reach First Choice's constitutional arguments as "premature." *Id.* The Third Circuit then dismissed as moot First Choice's pending appeal of the district court's order, since both parties now agreed the case was ripe for adjudication, and remanded the case to the district court for adjudication. *First Choice Women's Res. Ctrs. Inc. v. AG N.J.*, 2024 U.S. App. LEXIS 18127 (3rd Cir. 2024) ("*First Choice II*").

The district court again found First Choice's request for injunctive relief unripe, this time ruling that the case would be ripe only if state courts required First Choice to respond to the subpoena "under threat of contempt." *First Choice Women's Res. Ctrs., Inc. v. Platkin*, 2024 U.S. Dist. LEXIS 205361 at *40 (D. N.J. 2024) ("*First Choice III*")

On appeal, the Third Circuit affirmed in a short opinion. *See First Choice Women's Res. Ctrs., Inc. v. AG of N.J.*, 2024 U.S. App. LEXIS 31558 (3rd Cir. 2024) ("*First Choice IV*"). The circuit court agreed that

the case remained unripe because First Choice could "continue to assert its constitutional claims in state court as that litigation unfolds." *Id.* at *3. The court stated that it "believe[d] that the state court will adequately adjudicate First Choice's constitutional claims." *Id.* Judge Bibas dissented, believing that the constitutional issue raised by First Choice was resolved by *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) ("*AFPF*").[2]

Concerned that a state court adjudication of its constitutional claims would have preclusive effect on further federal review under the doctrine of *res judicata*, Petitioner then sought certiorari in this Court, and the attorney general agreed to stay enforcement until the conclusion of these proceedings.

STATEMENT

Many of these *amici* will soon enter the tenth year of their struggle to defend the associational right of nonprofit organizations to protect the anonymity of their donors from threats principally from state attorneys general, and this *amicus* brief is the tenth in a series of *amicus* briefs to that end. This threat began when then-California Attorney General Kamala Harris attempted to compel all nonprofit organizations soliciting contributions in California to turn over to her their IRS Form 990 Schedules B containing the

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[2] *See First Choice IV* at 1 ("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*....").

names of their largest donors. With this Court's decision in *AFPF*, these *amici* had thought the issue had been resolved by that 6-to-3 opinion written by Chief Justice Roberts. However, some state attorneys general did not appear to get the memo. In fact, even prior to *AFPF*, nonprofits had thought the issue had been decided long before that, in *NAACP v. Alabama ex rel. Patterson*, 367 U.S. 449 (1958), when some may observe that the proverbial shoe was on the other ideological foot.

Neither the district court judge nor the majority of the panel expressed any concern about the inherently invasive subpoena. Only dissenting Judge Bibas, in the most recent decision of the Third Circuit, correctly understood that *AFPF* controlled and would have resolved it summarily in favor of First Choice.

Thus, once again, the matter of donor anonymity is before the Court, this time with a pro-life gloss. These *amici* urge the Court to protect all nonprofit organizations whether engaged in advocacy or civil rights litigation, regardless of whether the issue is civil rights organizing (as in *NAACP*), libertarian economics (as in *AFPF*), abortion (as in *First Choice*), or any other controversial issue, such as gun rights.

SUMMARY OF ARGUMENT

The federal courts below employed a peculiar variant of the doctrine of ripeness in a manner neither envisioned nor approved by this Court to avoid deciding a case properly brought before it. Petitioner, a nonprofit organization, sought the federal court's

protection from a state official's abuse of its First Amendment associational and privacy rights. The federal courts below abdicated their role, leaving it to the state court to analyze the federal constitutional claims. This violated the rule set out by Chief Justice John Marshall: "[w]ith whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us." The constitutional right asserted by First Choice was not novel or doubtful; it was one of the foundational protections that of our Constitution — the right of anonymity. This right grows more precious every time that law enforcement is weaponized to chill the actions of the People, or mobs act violently against their political opponents.

Indeed, our constitutional republic has long allowed Americans who have strong feelings about public policy issues to become active participants in social causes in the manner they wish. Some choose to take leadership roles where they voluntarily disclose their identity, while others would rather quietly, even secretly, provide support to associations whose interests and goals match their own. Such choices have been long protected by the constitutional doctrine of anonymity which has been an attribute of each of the rights protected by the First Amendment. This case involves a real threat by the New Jersey Attorney General to use his subpoena power to coerce the disclosure of the identity of donors to a cause to which he is hostile. It is natural that this effort would instill fear in the minds of those who would like to support First Choice, but want to avoid state retaliation.

This Court's protection of the associational and anonymity rights of nonprofit organizations has been repeatedly established in cases such as *NAACP v. Alabama ex rel. Paterson* and *Americans for Prosperity Foundation v. Bonta*. The lower courts should have protected these rights rather than use ripeness as an excuse to evade their duty by deferring to state courts.

ARGUMENT

I. THE COURTS BELOW HAVE TRANSFORMED PRUDENTIAL RIPENESS INTO A JURISDICTIONAL BAR TO PETITIONER'S ACCESS TO FEDERAL COURTS TO ADDRESS A STATE'S VIOLATION OF ASSOCIATIONAL RIGHTS.

A. The Courts Below Invoked Ripeness to Avoid Addressing the Merits of a Pro-Life Organization's Claim Seeking Protection from a Pro-Abortion Attorney General.

This case presents this Court with yet another example of lawfare being conducted by state officials against those Americans with a different view on an important issue of public policy. It will decide whether federal courts will feel justified as they stand idly by and watch state attacks on disfavored nonprofits. Without any justification other than the obviously pretextual speculation that a pro-abortion donor could have been misled in contributing to the pro-life nonprofit First Choice (Pet. Br. at 8), the Attorney General of New Jersey, an avowed opponent of the pro-life cause, issued an administrative subpoena for, *inter*

alia, First Choice's donor records. The issuance of this subpoena obviously chills First Choice's associational rights protected by this Court's *Americans for Prosperity Foundation* and *NAACP v. Alabama ex rel. Patterson* decisions.

First Choice brought an action under 42 U.S.C. § 1983 seeking to obtain the protection of a federal district court from the violation of its First Amendment associational rights. The district court declined to consider the case based on a lack of ripeness, because the matter was viewed to be at an initial stage, as no court had ordered compliance with the subpoena. Although some courts sometimes wait until a subpoena is enforced, these *amici* take the position that the very issuance of the Attorney General's subpoena for constitutionally protected donor records made the matter ripe because of the hardship suffered by First Choice. Moreover, the facts have developed far enough that a court does not have to speculate as to the consequences of its ruling, as required under *Abbott Labs v. Gardner*, 387 U.S. 136, 149 (1967), and the test of "fitness of the issues for judicial resolution" is easily met. Issuance of the subpoena for donor records created both an actual injury to First Choice's associational rights as well as a threat of further imminent injury.[3]

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[3] Unlike the issue of standing where a plaintiff seeks to compel the government to take action, in the case of ripeness, the plaintiff is attempting to prevent the government from taking certain enforcement actions against it — here an unconstitutional enforcement action.

Yet, even after a state trial court reflexively ordered First Choice to respond fully to the subpoena, the federal courts below continued to view the matter as unripe — even though the parties had agreed it was ripe, as confirmed in *First Choice II* at *1. The courts below then shifted to a new position that the § 1983 claim would not be ripe until the state courts ruled definitively on the merits of First Choice's challenge. The Catch-22 presented by this case is that, if and when the state court decided the federal constitutional issues, such a ruling likely would be binding on the federal court under principles of *res judicata.* Thus, the peculiar elevated view of ripeness by the courts below would have the effect of depriving First Choice of access to federal courts to hear its constitutional challenge. This judicial abdication violates the very reason for § 1983, which was adopted to provide a federal forum for the consideration of federal constitutional claims, due to the concern that a state court would be more inclined institutionally to favor a state government defendant. *See* Pet. Br. at 4, 17-18, 20-23.

There should be no jurisdictional theory of ripeness which requires or even allows a federal court to abstain from preventing a further clear violation of federal constitutional rights until a state court orders enforcement of an administrative subpoena. There certainly is no authority from this Court which requires a lower federal court to stand down while awaiting a state court ruling on a federal constitutional claim based on ripeness. Federal courts do not have discretion to be passive observers as

federal constitutional rights are trampled upon by state officials.

B. The Courts Below Conflated Prudential Ripeness and Matters of Jurisdiction.

It was not until the last section of the Petitioner's Merits Brief that it turned to address squarely what these *amici* view to be the central issue in the case — the misapplication of this Court's ripeness doctrine. As discussed *infra*, ripeness was the sole basis on which the district and circuit courts refused to entertain First Choice's challenge to the Attorney General's subpoena, even though the subpoena's mere existence chilled associational rights and discouraged contributions to First Choice.

Ripeness must not be a doctrine that can be invoked by a federal court to give a legal-sounding cover to its unwillingness to decide a case for reasons that the court would prefer not be stated. Such reasons could be that the court favors the state actor or disfavors the plaintiff seeking relief, or the court has no sympathy for the nature of the right being asserted by the plaintiff. However, without addressing whatever motivations may be at work in any particular case, it is critical that lower courts not be allowed to selectively invoke prudential ripeness as a complete jurisdictional bar to a federal court's duty to address important constitutional issues, even if they would prefer to pass them off to a state court.

The district court's January 12, 2024 decision flatly stated that "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." *First Choice I* at *4 (emphasis added). Here, the district court intermixed justiciability with jurisdiction. Although at some points the district court correctly described ripeness as a prudential consideration, its decision erroneously treated ripeness as a fixed jurisdictional limitation emanating from the "cases" and "controversies" requirement in Article III. That is not the position of this Court as understood by these *amici*.

When the doctrine of ripeness is ripped from its administrative law origins in *Abbott Labs v. Gardner* and used to evade the court's responsibility to consider constitutional challenges, it has been perverted. In *Abbott Labs*, this Court made clear that the doctrine's "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to **protect the agencies from judicial interference** until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." *Id*. at 148-49 (emphasis added). No such administrative policies are present here. The issue here is a free-standing claim brought under 42 U.S.C. § 1983 that a state has violated the First Amendment rights of the Petitioner.

The district court cited two off-the-mark Third Circuit cases from 1992 and 2020[4] for the proposition that all ripeness considerations impose a jurisdictional bar on federal court action. In *Lexmark International v. Static Control Components*, 572 U.S. 118 (2014), this Court did not address ripeness directly, but addressed standing under the Lanham Act. The Court established a new test to assess standing, narrowing the requirements to only those actually required by Article III. This Court's analysis appeared to distinguish a type of constitutional ripeness which is required by Article III, such as that a claim not be speculative, from a questionable claim of prudential ripeness invoked below, which was erroneously attributed to Article III. In that case, the lower federal courts preferred to wait until the matter became more "ripe" as the plaintiff suffered even greater harm, a type of ripeness in no way grounded in Article III.

This limitation on prudential ripeness was reinforced by this Court three months later in *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014). There, this Court found Petitioners had alleged "a sufficient Article III injury" even though Respondents had argued that Petitioners' claim was barred by "prudential ripeness." *Id*. at 167, citing *Lexmark*.

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[4] *See Battou v. Secretary U.S. Dep't of State*, 811 F. App'x 728, 732 (3rd Cir. 2020) (which fails to even cite *Abbott, Lexmark or Susan B. Anthony*); and *Armstrong World Industries, Inc. ex rel. Wolfson v. Adams*, 961 F.2d 405, 410-11 (3d Cir. 1992) (decided well before *Lexmark* and *Susan B. Anthony*). *First Choice I* at *4.

The Third Circuit's July 9, 2024 decision did little more than remand the case to the district court because both parties had agreed that First Choice's claims were ripe. *First Choice II* at *1. The record does not readily reveal how this agreement of the parties was undone by the courts, but further state court litigation ensued before the district court's November 12, 2024 decision. *See First Choice III* at *3-8. There, the district court quoted from its prior decision in *First Choice I* at *10, stating the case 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." *First Choice III* at *3. The court appeared to consider all ripeness considerations to be jurisdictional, stating: "Federal courts ensure that they are properly enforcing the **case-or-controversy limitation** through 'several justiciability doctrines that cluster about Article III ... including ... "**ripeness.**"'" *Id*. at *20 (emphasis added).

The district court explained its view: "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." *Id*. at *21 (emphasis added). However, if a claim is truly **hypothetical**, it is no longer a matter of prudential ripeness, but it is jurisdictional ripeness; there is no Article III case or controversy. Federal courts do not issue advisory opinions.[5] The

[5] *See* G. Washington, Executive Letter to U.S. Supreme Court (1793), reprinted in C. Massey & B. Denning, American Constitutional Law: Powers and Liberties at 74-75 (6th ed. 2019).

claim here is not hypothetical. If a claim is truly **speculative**, that again is jurisdictional. The claim here is not speculative. And, although the courts below assumed that the claim was not ripe because it was "contingent on some other yet-to-happen event," that event arguably had already occurred when the Attorney General issued a subpoena making a demand for records that is, at least to these *amici*, patently unconstitutional, and certainly occurred when the state court ordered compliance. The behavior of donors to First Choice was already being chilled by the Attorney General's subpoena. And it became worse when First Choice was ordered by a state court to comply fully. The position of the courts below confuses concepts and crushes the distinction between prudential ripeness and jurisdictional considerations. In that way, the lower courts justified shirking their duty to decide a case properly brought to them.

When the case came back to the Third Circuit, it continued to conflate prudential ripeness with jurisdictional concerns, stating: "Claims must also be ripe, both to be encompassed within Article III and as a matter of prudence," citing *Susan B. Anthony List*, and asserting little more than its conclusion that "we do not think First Choice's claims are ripe," failing to distinguish between ripeness and jurisdiction. Completely missing the point, the Third Circuit justified its avoidance by stating: "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." *First Choice IV* at *2-3. Here, the Third Circuit clearly admitted its abuse of the doctrine of ripeness —

because once the state court adjudicated First Choice's constitutional claims, they likely would be *res judicata* in federal court.

C. Federal Courts Have a Duty to Resolve Cases and Controversies Brought to Them.

This Court's *Abbott Labs* decision is nearing six decades old, and *Lexmark* and *Susan B. Anthony* are now over a decade old. Yet the lower courts still invoke "ripeness" both in cases not involving administrative action and in sweeping terms as if all ripeness considerations are also jurisdictional. There is no doctrine which requires federal courts to stand down to await state court determinations of federal constitutional claims in such cases. This Court should further instruct the lower courts not to use prudential ripeness to circumvent their responsibility to decide cases and controversies, no matter how "delicate" and "messy" it may be. As Chief Justice Marshall so persuasively stated:

> [i]t is most true that this Court ... must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, **we must decide it, if it be brought before us**. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. **Questions may occur which we**

> **would gladly avoid; but we cannot avoid them**. All we can do is, to exercise our best judgment, and conscientiously to perform our duty. [*Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (emphasis added).]

Over 100 years ago, this Court reiterated that solemn responsibility: "When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction...." *Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40 (1909). It matters not whether a federal court believes that "a different case" could be brought in the future which would be a better vehicle to resolve an issue — for it is the freedom of an individual that is being decided in the case before it.

Here, only Judge Bibas, dissenting, got it right. Although he did not write a separate opinion, the court's opinion stated Judge Bibas would find "First Choice's constitutional claims ripe because he believes that this case is indistinguishable from" *AFPF*. *First Choice IV* at *1, n.1. Thus, Judge Bibas quite properly did not find any impediment in the doctrine of ripeness that would prevent a federal court from exercising its duty to protect First Choice from the state's assault on its associational rights.

II. FROM THE ISSUANCE OF THE ATTORNEY GENERAL'S SUBPOENA ONWARD, THE ASSOCIATIONAL RIGHTS OF FIRST CHOICE HAVE BEEN HARMED.

Although Respondent's brief on the merits has not yet been filed, the Attorney General's brief in opposition to the petition for certiorari provides an indication of how he may seek to downplay the potential harm to Petitioner and its donors from his subpoena. Additionally, a review of how the California Attorney General defended in the *AFPF* case may give some indication of what the New Jersey Attorney General may argue.

A. New Jersey's Hyper-Technical Refutation of Petitioner's Evidence of Chilling Effect Should Be Rejected.

In opposing this Court's grant of certiorari, the Attorney General asserted that the declarations provided by Petitioner addressing the chilling effect of the subpoena were submitted by individuals who did not donate via the specific channels which are the subject of the subpoena. *See* Brief in Opposition ("Br. Opp.") at 24. New Jersey asserts that the federal court would need "to decide whether Petitioner actually established objectively reasonable chill based on declarants whose identities are categorically not at risk of disclosure in this subpoena." *Id*. New Jersey's claim appears hyper-technical and misguided, as once First Choice demonstrated that any of its donors would feel chilled in their associational rights, the harm the subpoena has done to Petitioner is demonstrated

regardless of the specific method used by donors to make contributions.

B. Once Captured by the Attorney General, There Is an Irreducible Risk of Disclosure to the Public.

An unfortunate downside of today's high-tech world is that protected information is often disclosed inadvertently. Then-California Attorney General Kamala Harris, who was responsible for administering that state's charitable solicitation registration system, demanded that registered charities provide her office with confidential donor information that was reported privately to the IRS on Schedule B of tax-exempt organizations' annual informational tax return, IRS Form 990. In litigating *AFPF*, the California Attorney General initially took the position that only public disclosure could harm the nonprofit, and the records in her possession were held confidential. However, it was discovered that "nearly 2,000 confidential Schedule Bs ... had been inadvertently posted to the Attorney General's website, including dozens that were found the day before trial." *AFPF* at 604.

There are malicious actors who hack computer systems and could publicly disclose data from those systems. The Center for Strategic and International Studies maintains a list of "significant cyber incidents" which includes cyber attacks on government agencies.[6] In 2023 alone, the U.S. government had "11 major

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[6] https://www.csis.org/programs/strategic-technologies-program/significant-cyber-incidents.

information security incidents."[7] One of those was actually not a hack, but a contractor for the IRS "inadvertently exposed personal information" (reminiscent of California's disclosure) of nonprofit organizations that they submit to the IRS on Form 990-T, which is not subject to public disclosure. *Id.*

Just this month, it was reported that the lower federal courts' Case Management/Electronic Case Files system was compromised, potentially exposing "identities of confidential informants involved in criminal cases at multiple federal district courts."[8] The only way to ensure that the donor information is not obtained in one way or another from the Attorney General's office is to prevent him from acquiring it in the first place.

C. Forced Disclosure of Information to the Attorney General Only Is Chilling.

Also in *AFPF*, the California Attorney General took the position that the only legitimate interest AFPF had was in preventing the public from accessing that document. *AFPF* at 615-16. That notion was rejected by this Court: "Our cases have said that disclosure requirements can chill association '[e]ven if there [is] no disclosure to the general public.'" *Id.* at 616. Indeed, here, where the New Jersey Attorney General

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[7] S. Sharma, "11 Times the US Government Got Hacked in 2023," CSO (June 13, 2024).

[8] J. Sakellariadis & J. Gerstein, "Federal Court Filing System Hit in Sweeping Hack," *Politico* (Aug. 6, 2025).

has taken an openly hostile position toward pro-life organizations,[9] it may be that a donor's greater fear is that this hostile state Attorney General would have a record of their support.

III. AMERICA'S STATUS AS A CONSTITUTIONALLY LIMITED REPUBLIC IS JEOPARDIZED BY STATE POLITICIANS EMPOWERED TO COMPEL DONOR DISCLOSURE BY THEIR IDEOLOGICAL OPPONENTS.

A. The First Amendment's Protections Were Designed to Preserve America as a Constitutional Republic.

These *amici* believe that the disclosures demanded by Respondent jeopardize the rights of Americans to operate collectively in civil society through nonprofit organizations such as First Choice. The New Jersey Attorney General would prefer this Court to operate based on some form of judicial presumption that governmental law enforcement powers are never abused, that attorneys general engage in nothing but evenhanded administration of the law, that politicians elected or appointed to high office cease to act as politicians, and that state office holders would never use their positions to advance their own political agendas, reward their friends, or punish their enemies. Yet, adopting such an assumption would require this Court to disregard both history and current reality.

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[9] *See* Pet. Br. at 3.

The First Amendment protects five enumerated rights which history had taught the Framers that governments were prone to violate:

> Congress shall make no law respecting an establishment of **religion**, or prohibiting the free exercise thereof; or abridging the freedom of **speech**, or of the **press**; or the right of the people peaceably to **assemble**, and to **petition** the Government for a redress of grievances. [U.S. Constitution, Amendment I (emphasis added).]

All five enumerated First Amendment rights protect the ability of Americans to participate in their own governance, without fear of reprisal. Although not all five have been asserted by Petitioner here, these *amici* believe that this case implicates each of the enumerated First Amendment rights to varying degrees. First, Petitioner's pro-life activities are religious in nature, and disclosure of its donors chills contributions and jeopardizes the free exercise of their religion.[10] Second, speech and press rights are obviously implicated, as the Attorney General "suspects" an utterly improbable scenario, that pro-abortion donors are contributing to First Choice without knowing its pro-life mission based on how

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[10] The "free exercise" clause is also violated when the state intrudes into the realm of "religion," which Madison defined as "the duty we owe to our Creator and the manner of discharging it [that] can be directed only by reason and conviction, not force and violence." J. Madison, *Memorial and Remonstrance Against Religious Assessments* (1785).

First Choice has presented itself. Third, the very acts of recruiting members and supporters and coordinating their public policy activities are acts of assembly. Lastly, if not First Choice, other nonprofits often conduct programs to petition government, either through direct contact with office holders or through grassroots lobbying.

The Framers enumerated these five First Amendment rights to protect Americans in the exercise of certain rights that the signers of the Declaration of Independence declared to be unalienable because they were bestowed upon man by the Creator. The Attorney General of New Jersey limits and chills the exercise of these rights and participation in the political process by compelling dissident voices to identify their key funding sources, allowing targeting of those voices. This constitutes a frontal assault on the precious right of anonymity which is ancillary to most First Amendment freedoms, making this a case of great import.

B. Voluntary Associations Are Essential to the Protection of Constitutional Liberties.

During his travels in the early days of our Republic, Alexis de Tocqueville studied the role served by voluntary associations. One student of de Tocqueville summarized his observations in this way:

> Alexis de Tocqueville's notion of political and civic association is a recurrent theme in his work *Democracy in America.* There he argues

> that associations are a necessary correlational feature of democratization that should be promoted.... This is because they correct the natural defects of democracy in that they ... **protect against the systemic risk of tyranny of the majority** [and] **channel the energy of democracy**. [G. Foster, "Tocquevillian Associations and Democracy: A Critique," *Aporia,* vol. 25, no. 1-2015 at 21 (emphasis added).]

Those benefits to the nation of voluntary associations were doubtless true in the 1830s and certainly remain true nearly two centuries later. Today, Americans join associations for all manner of purposes. And, while many voluntary associations are informal, unorganized, and transient, those voluntary associations that have enduring existence and meaningful funding now generally operate as nonprofit organizations — which either will be protected, or left at risk to the tender mercies of state attorneys general, by this Court's decision. It is critical to the financial health of nonprofits that their donors not be put at risk of public disclosure. And, additionally, donors believe, quite reasonably, that making a contribution could land them on a "hit list" maintained by those with real political power such as attorneys general, and thus it is likely that many of them will choose to withdraw from the public arena and take their money with them if they have not done so already. In turn, without meaningful dissent on public policy issues, those in power will have free rein to pursue their own agendas without being subjected to pressures from organized

groups of citizens, and thus increasingly without the consent of the governed.

C. Americans Believe that Some State Attorneys General Are Hyper-Litigious Partisan Activists.

Although Respondent wants this Court to believe that state attorneys general do not allow politics to affect their actions, there is little reason for the public or donors to adopt that view. Mainstream media outlets, websites, and even the New Jersey Attorney General's Office lead with the following headlines: "New Jersey Joins 22 States in Suing to Stop Trump Administration from Withholding Essential Federal Funding," *NJ Dept. of Law & Public Safety* (Jan. 28, 2025); A. Bendix, "20 attorneys general sue Trump administration to restore health agencies," *NBC News* (Mar. 5, 2025); D. Bose & L. Whitehurst, "23 state attorneys general sue Trump administration over decision to rescind billions in health funding," *PBS* (Apr. 1, 2025); D. Lilli, "Sixteen Democratic State Attorney Generals Sue Trump Administration to Stop $1.1 billion Dept. of Education Cuts for Students' Post-COVID Issues," *Law Commentary* (Apr. 23, 2025); K. Kruesi, "20 Democratic attorneys general sue Trump administration over conditions placed on federal funds," *AP* (May 13, 2025). In states with Democratic attorneys general like New Jersey, the message is that these law enforcement officers are both partisan and highly litigious.

Historians have never verified the quotation attributed to Thomas Jefferson, that "[w]hen

government fears the people, there is liberty. When the people fear the government, there is tyranny." There is nonetheless a great deal of history accurately reflected in that saying. These *amici* view this case as a vitally important opportunity for this Court — as a guardian of the constitutional rights of the people — to constrain the arbitrary power of state governments, and to protect the constitutional rights of the people and the foundational principle of anonymous speech and association.

IV. FORCED DISCLOSURE VIOLATES THE TIME-HONORED RULE OF ANONYMITY WHICH PROTECTS THE SOVEREIGNTY OF THE PEOPLE.

As discussed in Section III, *supra*, all five First Amendment freedoms are implicated by New Jersey's demand that First Choice disclose the identity of its donors. The anonymity principle which developed primarily with respect to the press freedom is now also embodied in the Right of Assembly/Association.

A. The Founders Understood the Historical Battle to Protect Anonymity that New Jersey Has Disregarded.

In *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), Justice Thomas, concurring in the judgment, found the anonymity principle reflected in "the historical evidence ... that Founding-era Americans opposed attempts to require that anonymous authors reveal their identities on the ground that forced disclosure violated the 'freedom of

the press.'" *Id*. at 361 (Thomas, J., concurring). The anonymity principle had been developed in England well before America's founding, principally in the context of the press freedom.

A strict licensing ordinance was issued in 1637 by the Star Chamber, the terms of which "provided an elaborate scheme of licensing designed to prevent the appearance of unlicensed books," including the requirement that "**all books were to bear the names of the printer and the author**." Sources of Our Liberties at 242 (Perry, ed., Amer. Bar. Found.: N.Y.U. Press 1972) (emphasis added).

In 1643, the poet John Milton challenged this English system of licensing, "attack[ing] government censorship in a well-reasoned treatise entitled *Areopagitica: A Speech of Mr. John Milton for the Liberty of Unlicensed Printing, to the Parliament of England*[11] ..., which he did not bother to register," as required by the existing licensing laws. W. Davis, Eastern & Western History, Thought & Culture 1600-1815 at 25-26 (Univ. Press of America: 1993). Milton's eloquent support of the freedom of the press remains unsurpassed:

> [T]hough all the windes of doctrin were let loose to play upon the earth, so Truth be in the field, we do injuriously by licencing and prohibiting to misdoubt her strength. Let her and Falshood grapple; who ever knew Truth

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[11] *See* J. Milton, Areopagitica (Liberty Fund: 1999).

> put to the wors, in a free and open encounter. Her confuting is the best and surest suppressing.... What a collusion is this, whenas we are exhorted by the wise man to use diligence, *to seek for wisdom as for hidd'n treasures* early and late, that another order shall enjoyn us to know nothing but by statute. [Areopagitica at 45-46.]

Fifty years after Milton published his Areopagitica treatise, the English Parliament allowed a successor licensing act to expire, freeing the press. *See* Sources of our Liberties at 243. Seventy-five years after that, Sir William Blackstone could write with confidence that "[t]he liberty of the press is indeed essential to the nature of a free state." IV W. Blackstone, Commentaries on the Laws of England ("Blackstone's Commentaries") at 151 (U. of Chicago Press facsimile edition: 1769). Blackstone explained that the liberty of the press "consists" of two governing principles. First, the civil government may "lay[] no *previous* restraints upon publications" (emphasis original); and second, "[e]very freeman has an undoubted right to lay what sentiments he pleases before the public." *Id*. Otherwise, Blackstone concluded:

> To subject the press to the restrictive power of a licenser, as was formerly done ... is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. [*Id*. at 152.]

Blackstone asserted that the liberty of the press was established in England in 1694. Blackstone's Commentaries at 152, n.2. Prior to that time, no person could lawfully publish anything without having first secured a license to do so from the crown. As Blackstone explained it:

> The art of printing, soon after it's [sic] introduction, was looked upon ... as merely a matter of state, and subject to the coercion of the crown. It was therefore regulated ... by the king's proclamations, prohibitions, charters of privilege and of licence, and finally by the decrees of the court of starchamber which limited the number of printers, and of presses which each should employ, and prohibited new publications unless previously approved by proper licensers. [*Id.*]

Disregarding the historical principle of anonymity, the court of appeals below concluded that, despite being forced by the Attorney General to reveal the identity of its donors, permanently destroying their anonymity, First Choice "do[es] not yet show enough of an injury" to merit federal court review. *First Choice IV* at *3.

B. The American Principle of Anonymity Is Predicated on the Sovereignty of the People.

The American principle of anonymity was built upon the hard-earned rights of Englishmen, but developed on a foundation quite different from the

system that existed in England. Where sovereignty is vested in a monarch, the government can be expected to assert the power and right to know everything that happens in the society which could undermine the government.

Of particular interest to monarchs is the identity of those subjects who would dare to criticize their government. In *Talley v. California*, 362 U.S. 60 (1960), Justice Black recounted the manner in which the English system suppressed dissent by forcing dissenters to reveal their identities:

> The obnoxious **press licensing law** of England, which was also enforced on the Colonies was due in part to the knowledge that exposure of the names of printers, writers and distributors would lessen the circulation of literature **critical of the government**. The old **seditious libel cases** in England show the lengths to which government had to go to find out who was responsible for books that were obnoxious to the rulers.... Before the Revolutionary War colonial patriots frequently had to **conceal their authorship** or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts. [*Id.* at 64-65 (emphasis added).]

Freed from the English monarch, sovereignty in the United States has always been vested in the People. The right to govern is not divinely conferred; rather, "Governments are instituted among Men,

deriving their just Powers from the Consent of the Governed." (Declaration of Independence.) Government officials serve — they do not rule. Government officials do not embody the government — they only are loaned the reins of government for a season.

In a constitutional republic, anonymity protects the people's full participation in the people's business, because the people are the principals, and the government officials are their agents and representatives. Anonymity has a rich heritage from the founding era onward, as revealed by a short excerpt of that history, as told by Justice Stevens:

> That [anonymity] tradition is most famously embodied in the Federalist Papers, authored by James Madison, Alexander Hamilton, and John Jay, but signed "Publius." Publius' opponents, the Anti-Federalists, also tended to publish under pseudonyms. [*McIntyre* at 343 n.6.]

The American principle of anonymity, restricting what government officials can force us to reveal about our activities to them or to others, is constitutionally grounded in First Amendment freedoms of press and association. Its application ranges from pamphlets to television ads, from grassroots lobbying to memberships in voluntary societies, from public policy litigation to direct mail and online communications, including solicitation of contributions.

As with the Attorney General of New Jersey, government officials have always desired to know the identity of their critics and opponents. In *Talley v. California*, the Court declared unconstitutional a Los Angeles City ordinance requiring those who disseminate hand-bills to state, on their face, the identity of those who printed, wrote, compiled, manufactured, and distributed them. Justice Black explained the Court's concern:

> There can be no doubt that such an **identification requirement** would tend to restrict freedom to distribute information and thereby freedom of expression....
>
> **Anonymous** pamphlets, leaflets, brochures and even books have played an important role in the progress of mankind. Persecuted groups and sects from time to time throughout history have been able to criticize oppressive practices and laws either **anonymously** or not at all.... Even the Federalist Papers ... were published under **fictitious names**. It is plain that **anonymity** has sometimes been assumed for the most constructive purposes. [*Id.* at 64-65 (emphasis added).]

Thirty-five years later, in *McIntyre*, the Court struck down an Ohio election statute which prohibited distribution of political campaign literature not containing the name and address of the person or campaign official issuing the literature. Justice Stevens explained:

> [T]he interest in having anonymous works enter the marketplace of ideas unquestionably outweighs any public interest in requiring disclosure as a condition of entry. Accordingly, an **author's decision to remain anonymous**, like other decisions concerning omissions or additions to the content of a publication, is ... protected by the First Amendment. [*Id*. at 342 (emphasis added).]

The *McIntyre* rule protects the sovereignty of the individual against forced disclosure of his identity, even if the purpose of the disclosure requirement is to make the market participant accountable to one other than a government official. Just as these venerable precedents protect the speaker's anonymity, they should be applied to protect the anonymity of those persons who fund the speaker, here First Choice.

C. The Freedom to Assemble and Associate to Advocate Anonymously.

Justice Harlan's opinion in *NAACP v. Alabama ex rel. Patterson* provides an eloquent explanation of how principles of anonymity are also grounded in freedom of association, and how they apply irrespective of the particular tactic chosen by government to restrict dissent. In addressing an effort by the attorney general of Alabama to force disclosure of the membership list of the NAACP of Alabama, Justice Harlan wrote that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.... Of course, it is immaterial whether the beliefs sought

to be advanced by association pertain to political, economic, religious or cultural matters...." *Id*. at 460. He continued, "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective ... restraint on freedom of association...." *Id*. at 462.

Justice Harlan likewise recognized that "abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action." *Id*. at 461. An "unconstitutional intimidation of the free exercise of the right to advocate" can manifest itself with "a congressional committee investigating lobbying and of an Act regulating lobbying.... The governmental action challenged may appear to be totally unrelated to protected liberties [such as] [s]tatutes imposing taxes." *Id*. at 461. He drew upon a powerful and painful historical lesson when he found "[c]ompelled disclosure of membership in an organization engaged in advocacy of particular beliefs [to be] of the same order" as a "'requirement that adherents of particular religious faiths or political parties wear identifying arm-bands.'" *Id*. at 462. By the power of this illustration, Justice Harlan teaches us that principles of anonymity are not second-order concerns that can be disregarded or suppressed, but instead are standards indispensable to both the protection of individual liberty and the preservation of our republic.

CONCLUSION

In *Watkins v. U.S.*, 354 U.S.178, 197 (1957), this Court recognized that: "[t]he mere summoning of a witness and compelling him to testify ... is a measure of governmental interference." Such acts can chill the exercise of speech, association, and other First Amendment protections, especially when the investigation lacks a clear governmental purpose. The same is true here when a hostile state Attorney General subpoenaed donor records from a nonprofit organization based on a pretext, where the very service of the subpoena created the chilling effect. This subpoena required federal court review, as Petitioner presented a ripe claim even in the absence of any type of state court enforcement or final resolution of claims. The decision of the Third Circuit should be reversed.

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