APPEAL NO. 24-1111

United States Court of Appeals for the Third Circuit

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Plaintiff-Appellant,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of the State of New Jersey,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of New Jersey
Case No.: 3:23-cv-23076

EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL
RULE 27.7 EXPEDITED CONSIDERATION REQUESTED

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CORPORATE DISCLOSURE STATEMENT

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.

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INTRODUCTION

This appeal concerns a First, Fourth, and Fourteenth Amendment challenge by First Choice Women's Resource Centers, Inc., a network of Christian, pro-life pregnancy centers, to an administrative subpoena issued by Matthew Platkin, New Jersey's Attorney General. This Court has recognized its jurisdiction over such challenges in the *Smith & Wesson* litigation, *see Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, 27 F.4th 886, 890 (3d Cir. 2022), the current iteration of which is now fully submitted for decision. *See Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, No. 23-1223 (3d Cir., argued Nov. 15, 2023). Yet when First Choice raised constitutional challenges to AG Platkin's Subpoena and sought a TRO against its imminent enforcement, the district court dismissed the case sua sponte for lack of jurisdiction. Because that dismissal conflicts with the precedents of this Court and the U.S. Supreme Court, this Court should enjoin enforcement of the Subpoena to prevent irreparable harm to First Choice and to preserve its jurisdiction over this appeal.

First Choice is likely to prevail. The district court said it lacked jurisdiction under the Fifth Circuit's decision in *Google, Inc. v. Hood*, 822 F.3d 212 (5th Cir. 2016), which held that challenges to state administrative subpoenas are ripe only if a state court first determines the subpoena is enforceable. *See* Order-10. But that holding conflicts with this Court's recognition that federal jurisdiction existed in *Smith &*

Wesson. And the *Google* decision also ignores that a state administrative subpoena that infringes on First Amendment freedoms is immediately ripe for a federal challenge, as the Ninth Circuit held in *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1179 (9th Cir. 2022).

Even more troubling, the district court acknowledged that its rationale creates a Catch-22 scenario that would likely bar any federal challenges to state administrative subpoenas. Add.011 n.7. As the district court explained, the same state enforcement adjudication that would render a federal challenge ripe would also be res judicata as to the federal issues, precluding them from ever being head in federal court. *Id.* In fact, this preclusion trap is what AG Platkin is already asking this Court to impose in the current *Smith & Wesson* appeal. But the Supreme Court rejected an indistinguishable argument under the Takings Clause as contrary to section 1983 in *Knick v. Township of Scott, Pennsylvania*, 139 S. Ct. 2162 (2019). This Court should reject it here for the same reasons.

Time is of the essence. First Choice is subject to imminent enforcement of a Subpoena that endangers its First Amendment speech, religion, and association rights. The Subpoena calls for upwards of ten years of sensitive internal documents about First Choice's donors, employees, and operations. But it is not based on any false statement by First Choice—instead, it is aimed at investigating bland aspects of First Choice's websites that are just as true of similar organizations, like

Planned Parenthood, that do not share First Choice's Christian, pro-life message. Of course, AG Platkin did not investigate any pro-abortion organizations—instead, he asked Planned Parenthood to *help him draft a Consumer Alert against pregnancy centers like First Choice*. And now, undeterred in his crusade, he says he has an "immediate" need to file a parallel state-court enforcement proceeding against First Choice "to obtain a document-production order." ECF 24 at 14.

Thus, absent an injunction, AG Platkin's imminent enforcement actions could entirely deprive First Choice of a federal forum to vindicate its constitutional rights. In contrast, AG Platkin suffers no harm from the prospect of delay in his review of First Choice's documents—particularly documents that have no evident connection to any arguable violation of New Jersey law. This Court should issue an emergency injunction prohibiting AG Platkin from enforcing the Subpoena while this appeal is pending.

BACKGROUND

A. AG Platkin's Hostility to Pregnancy Centers.

First Choice is a Christian nonprofit that provides health services to women experiencing unplanned pregnancies, as well as pregnancy and parenting support at a network of centers around New Jersey. Add.014. First Choice never charges clients for any service, and it is open on its website and everywhere else that it does not provide abortions. Add.017.

For forty years, it did all of this peacefully. But in 2023, First Choice's Christian, pro-life views earned it the ire of AG Platkin.

AG Platkin's actions are part of a wave of increasing hostility to pregnancy centers. Several state attorneys general have publicly opposed these pro-life organizations in a joint open letter.[1] Colorado passed a ban on the Abortion Pill Reversal procedure offered by pregnancy centers, which a federal court enjoined as unlawful religious discrimination. *Bella Health & Wellness v. Weiser*, 2023 WL 6996860 (D. Colo. Oct. 21, 2023). Illinois similarly passed a "stupid and very likely unconstitutional" amendment to its consumer protection act against pregnancy centers, which a federal court enjoined as unlawful viewpoint discrimination. *Nat'l Inst. of Fam. & Life Advocs. v. Raoul*, 2023 WL 5367336, at *1 (N.D. Ill. Aug. 4, 2023). And several other states joined in with laws, lawsuits, and investigations similarly targeting these organizations and their pro-life views.[2]

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[1] Press Release, N.J. 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-ofattorneys-general-issue-joint-statement-reaffirming-commitment-to-protectingaccess-to-abortion-care/.

[2] *See, e.g.*, VT. STAT. ANN. tit. 3, § 129a(29) (treating abortion pill reversal as "Unprofessional Conduct" for healthcare providers); *Obria Grp., Inc. v. Ferguson*, No. 3:23-cv-06093 (W.D. Wash.) (lawsuit challenging investigation of pregnancy centers by Washington attorney general); *Cal. v. Heartbeat Int'l, Inc.*, No. 23CV044940 (Cal. Sup. Ct.) (consumer

AG Platkin's work in New Jersey has been no exception. Besides joining his fellow attorneys general in their open letter, AG Platkin began an enforcement campaign against pregnancy centers. He decided that the New Jersey Consumer Fraud Act ("NJCFA") (which governs "*sales*" of "*merchandise*") applies to pregnancy centers (which give *services* for *free*). Add.028. As Judge Matey observed in the federal challenge to the AG subpoena in *Smith & Wesson*, this "is a well-traveled road in the Garden State, where long-dormant regulatory powers suddenly spring forth to address circumstances that have not changed." *Smith & Wesson*, 27 F.4th at 896 (Matey, J., concurring). And AG Platkin left no doubt where he stood in invoking this expanded interpretation of the NJCFA: when he issued this "Consumer Alert" against pregnancy centers, he got Planned Parenthood to help him draft it. Add.025. By asking a provider of pro-abortion pregnancy services to help him pursue non-profits with pro-life views, he could not have made his hostility to First Choice's views clearer.

B. AG Platkin's Administrative Subpoenas.

After issuing this Consumer Alert, AG Platkin served an investigatory Subpoena on First Choice under the NJCFA and two other statutes. Add.049. Covering a period of more than a decade, AG Platkin's

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protection lawsuit by California attorney general against pregnancy centers); Mem. from Mass. Dep't of Pub. Health, to Mass. licensed physicians, physician assistants, nurses, pharmacists, pharmacies, hospitals, and clinics (Jan. 3, 2024) (threatening discipline of medical professionals who offer abortion pill reversal).

Subpoena demanded detailed information about First Choice's clients, donors, and associated entities; identities of personnel, officers, and board members; and various nonpublic aspects of their operations. Add.062. Disclosing that sensitive internal information would harm First Choice's relationships with its employees, volunteers, and donors. Add.031. Even just responding to the Subpoena would be a massive undertaking that would divert First Choice's limited resources from its mission for a month or more. Add.030. And the authority invoked by the Subpoena threatened grave consequences for failure to respond—contempt, shutting down First Choice's operations, and even dissolving its corporate charter. Add.049 (citing N.J.S.A. 56:8-4; N.J.S.A. 45:17A-33(c)).

Such harassing administrative subpoenas are nothing new to the state and federal courts in New Jersey, as seen in litigation over a similar subpoena for documents from Smith & Wesson under the NJCFA. *See Platkin v. Smith & Wesson Sales Co., Inc.*, 474 N.J. Super. 476, 481 (App. Div. 2023). That litigation began when Smith & Wesson brought a federal challenge to the Attorney General's subpoena, *id.* at 482–83, to which the Attorney General responded with a competing enforcement action in state court. The state court, in a summary proceeding, reached judgment first and required enforcement, with affirmance on appeal. *Id.* at 498.

Meanwhile, Smith & Wesson moved in federal court to suspend enforcement of the subpoena pending resolution of its constitutional

claims. But the district court abstained under *Younger v. Harris,* 91 S. Ct. 746 (1971). *Id.* This Court reversed, finding that the *Younger* abstention doctrine provided no basis to decline jurisdiction. *See Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, 27 F.4th 886, 890 (3d Cir. 2022). Judge Matey concurred, noting that "[o]ne might suspect" that the chilling of speech and other protected conduct by an unsupported subpoena was "the whole point" of serving it. 27 F.4th at 896–97 (Matey, J., concurring). And he welcomed an opportunity for Smith & Wesson to litigate its constitutional defenses on the merits. *See id.*

Yet that litigation on the merits did not occur on remand. Instead, the district court accepted AG Platkin's arguments that the state-court enforcement action—even as a summary proceeding—was res judicata as to Smith & Wesson's federal claims. *Smith & Wesson Brands, Inc. v. Grewal*, 2022 WL 17959579, at *5 (D.N.J. Dec. 27, 2022). Smith & Wesson filed an appeal to this Court, which is now fully briefed and argued. *See Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, No. 23-1223 (3d Cir., argued Nov. 15, 2023).

C. AG Platkin's Unjustified Investigation.

First Choice filed this section 1983 action to challenge the Subpoena under the First, Fourth, and Fourteenth Amendments and moved for a preliminary injunction and temporary restraining order. The district court held three interim hearings and then set a briefing schedule on First Choice's TRO motion.

AG Platkin's response to that motion showed how thin the basis for his investigation was. He stunningly admitted his investigation was not prompted by any complaint or allegation of wrongdoing against First Choice, but rather because *other* state attorneys general had taken action against *other* organizations that "*may be* misleading donors and potential clients . . . into believing they provide . . . abortion and contraception." ECF 24 at 6 (emphases added). He said that First Choice's client websites "omit[ed]" its "'pro-life' mission" and desire to "protect the unborn." *Id.* at 7–8. But *every single page* clearly states either that "First Choice Women's Resource Centers is an abortion clinic alternative that does not perform or refer for termination services" (https://1stchoice.org/) or that "[w]e do not perform or refer women for elective abortions" (https://firstchoicewomancenter.com/). And AG Platkin also tried to suggest there were "significant concerns" with the fact that First Choice maintains certain websites oriented to supporters and others tailored toward potential clients. ECF 24 at 6–10. But again, Planned Parenthood does the same thing. ECF 25 at 13.

After First Choice's TRO motion was fully submitted, the district court issued an order dismissing the case sua sponte for lack of jurisdiction. According to the district court, First Choice's federal claims would not ripen unless a state court first held the Subpoena enforceable. Add.011. The district court acknowledged that this holding would likely deprive First Choice of any federal forum to challenge a Subpoena at any

time: a federal challenge would "seldom if ever be ripe," since "res judicata principles will likely bar a plaintiff from filing a claim in federal court" after the state-court adjudication. Add.011 n.7. First Choice appealed immediately and moved the district court for an injunction pending appeal. Yesterday, the district court denied that motion, and First Choice now moves this Court for an injunction pending appeal.

ARGUMENT

Obtaining an injunction pending appeal requires a showing that the applicant is likely to succeed on the merits, that it faces irreparable harm without an injunction, and that the balance of harms and public interest are in its favor. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Or if irreparable harm to the movant so "decidedly outweighs any potential harm" to the opposing party, the Court need only find "serious questions going to the merits" to grant an injunction. *In re Revel AC, Inc.*, 802 F.3d 558, 570 (3d Cir. 2015) (quotation omitted). First Choice meets both standards.

I. First Choice Will Likely Succeed on Its Appeal.

First Choice is likely to prevail on appeal. Meeting this factor only requires "a reasonable probability of eventual success in the litigation," which means "significantly better than negligible," not "more likely than not." *Reilly v. City of Harrisburg*, 858 F.3d 173, 176, 179 (3d Cir. 2017) (quotation omitted). Here, the district court's dismissal for lack of jurisdiction was wrong under controlling precedent.

A. First Choice Has Standing and Its Claims Are Ripe.

First Choice is likely to prevail on its challenge to the district court's dismissal for lack of standing and ripeness. AG Platkin did not even dispute that First Choice's has imminent, concrete Article III injuries from the Subpoena. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 340 (2016). In fact, he made clear he has "immediate" plans to enforce it. ECF 24 at 14. First Choice's injuries from that Subpoena exist on three separate dimensions: (1) constitutional injury; (2) threatened administrative and criminal enforcement; and (3) organizational harm.

1. First Choice's Constitutional Harms.

First Choice has already experienced constitutional injury from the Subpoena. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). First Choice's verified complaint proffered an unrebutted showing of injury to multiple First Amendment freedoms. *See* Add.030–.031.

First, the Subpoena's unlawful investigation of First Choice's protected pro-life speech has "a chilling effect on free expression," *Hohe v. Casey*, 868 F.2d 69, 73 (3d Cir. 1989), which alone establishes Article III standing. *Thomas v. Indep. Twp.*, 463 F.3d 285, 296 (3d Cir. 2006).

Second, the Subpoena's discrimination against First Choice's Christian beliefs about abortion is an injury to First Choice's free exercise of its religion—indeed, even intangible surveillance based on religion is

an Article III injury. *Hassan v. City of New York*, 804 F.3d 277, 284, 289–90 (3d Cir. 2015), *as amended* (Feb. 2, 2016); *see also In re Horizon Healthcare Servs. Inc. Data Breach Litig.*, 846 F.3d 625, 637 (3d Cir. 2017).

Third, the Subpoena's call for "compelled disclosure" of ten years' worth of sensitive internal information about First Choice's donors, employees, and volunteers threatens its protected associations. *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021); *Citizens for Resp. & Ethics in Washington v. Fed. Election Comm'n*, 971 F.3d 340, 347 (D.C. Cir. 2020).

Those injuries currently exist and are irreparable. Add.030–.031. Judge Matey observed that the subpoena in *Smith & Wesson* could cause exactly this type of "chilling" injury—that "fearing the arrival of subpoenas," publishers and others might "think[] twice" before speaking about a product, which "[o]ne might suspect . . . is the whole point" of the subpoena. 27 F.4th at 896–97 (Matey, J., concurring). This Court recognized federal jurisdiction to vindicate those injuries in *Smith & Wesson*. Its power to do so is no less applicable here.

2. First Choice's Enforcement Harms.

The Supreme Court has held that the "combination" of threatened administrative action followed by criminal judicial proceedings "suffices to create an Article III injury." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 166 (2014). Here too, AG Platkin's threat to enforce his

administrative subpoena, coupled with the prospect of immediate judicial sanctions with existential stakes, is more than adequate to establish standing. Parties have standing to challenge judicial subpoenas because they are court orders enforceable by the contempt power. FED. R. CIV. P. 45(d)(3), (g). The Subpoena here, though administrative, is no different: the New Jersey statute that authorizes it purports to impose sanctions from disobeying the Subpoena itself, even before an order enforcing it. N.J.S.A. § 56:8-6. Those sanctions are extreme: they include "contempt," prohibiting the organization's operations, and even "[v]acating, annulling, or suspending [its] corporate charter" and authorization to do business. *Id.* AG Platkin's non-binding commitment to forgo those sanctions—offered in a bid for clearance to file in state court—does not negate that threat or First Choice's right to federal redress. ECF 24 at 2.

3. First Choice's Organizational Harms.

Further, because of the threat of judicial enforcement, First Choice has a practical injury from the Subpoena, which is particularly relevant to its Fourth Amendment claims. The extensive documentation called for by the Subpoena will "divert significant time and resources" from First Choice's mission to help vulnerable women into meeting basic administrative needs of compliance. *See Susan B. Anthony List*, 573 U.S. at 165. As First Choice detailed in its verified complaint, it would take several staff members at least a month to produce all requested documents, which would severely impede the ministry's ability to

perform its core functions, to say nothing of the financial costs, including attorneys' fees. Add.030. Staff members who normally devote their time to serving women in need, informing women about their options, and communicating with essential supporters would have to cease their mission-driven activities to comply with AG Platkin's oppressive demands. *Id.* That too is an imminent and concrete harm.

* * * *

These injuries each establish Article III standing. No other action is needed to make them ripe for redress. To the contrary, AG Platkin has made abundantly clear that he plans "immediate" enforcement of the Subpoena in state court. ECF 24 at 14. That specific stated intent to enforce against the plaintiff would be more than enough to confer standing to bring a pre-enforcement challenge to a state statute. *Susan B. Anthony List*, 573 U.S. at 164. So it is certainly sufficient to support a challenge to the enforcement itself: AG Platkin's unlawful use of his powers to discriminate against First Choice's religious pro-life views.

B. The District Court's Catch-22 Order Is Wrong.

Despite these concrete, present injuries, the district court held that First Choice lacks standing and its claims are not ripe. It held that a challenge to a "non-self-executing state-administrative subpoena" was not ripe because the relevant state statutes required AG Platkin to "file an enforcement action in state court seeking a judgment of contempt against the recipient." Add.005–.006 (citing N.J.S.A. §§ 56:8-6, 45:17A-

33(g)). Applying the Fifth Circuit's decision in *Google*, the district court said it was "skeptical that a state administrative subpoena can be ripe for federal adjudication where a similar federal administrative subpoena would not be." Add.008 (citing *Google*, 822 F.3d at 226). And so finding "no *current* consequence for resisting the subpoena" and that "the same challenges" could be "raised in state court," the district court dismissed the action for lack of jurisdiction until "the state court enforces the Subpoena." Add.008–.009.

This holding strays from controlling precedent in three different ways: (1) it conflicts with *Smith & Wesson*; (2) it ignores present, constitutional injury; and (3) it places subpoena recipients in a Catch-22 scenario.

1. The Order Conflicts with *Smith & Wesson*.

At the outset, the district court's order cannot be squared with this Court's holding in *Smith & Wesson*. There, this Court held that the district court had wrongly abstained, which necessarily means that federal jurisdiction existed: that the district court must "exercise jurisdiction [it] possess[ed]." *Smith & Wesson*, 27 F.4th at 890 n.1. Plus, the district court had jurisdiction even though the New Jersey courts had not yet found the subpoena enforceable—the state courts "still had to adjudicate Smith & Wesson's constitutional arguments; and . . . had to give the company an opportunity to produce the required documents before holding it in contempt." 27 F.4th at 894. Here, the district court

purported to distinguish *Smith & Wesson* on the ground that it involved abstention, not ripeness. Add.010–.011. But that is no distinction at all, since a rejection of abstention necessarily embraces jurisdiction. First Choice is thus likely to succeed on its appeal of a holding that is directly foreclosed by controlling precedent.

2. The Order Ignores Present Constitutional Harm.

The district court also erred by ignoring well-settled authority establishing that First Choice's constitutional injury occurred when it was served with the speech-chilling Subpoena, not on the date of some future potential enforcement order. *Elrod*, 427 U.S. at 373; *Hohe*, 868 F.2d at 73. Contrary to the district court's reasoning, these harms are very much a "*current* consequence for resisting the subpoena." Add.008. As Judge Matey observed in *Smith & Wesson*, selective and unsupported subpoenas inflict an immediate chilling injury on the recipient's protected expression, which may be the "whole point" of serving them. *See Smith & Wesson*, 27 F.4th at 896–97 (Matey, J., concurring).

The district court's application of the Fifth Circuit's *Google* decision thus ignores the well-established standing that flows from these immediate constitutional injuries. In fact, it was because of such injuries that the Ninth Circuit split from the Fifth Circuit's decision, finding it not "persuasive." *Twitter*, 56 F.4th at 1179 n.3. As the Ninth Circuit explained, the Fifth Circuit failed to "recognize that Google could have suffered injury in the form of objectively reasonable chilling of its speech

or another legally cognizable harm," even if the demand for that information had not yet been enforced. *Id.* This too shows the flaws in the district court's reasoning.

Further, while this Court need not address the issue now, the Fifth Circuit also erred in analogizing challenges to *state* administrative subpoenas to *federal* administrative subpoena challenges. For one, as the Ninth Circuit observed, much of that federal caselaw "isn't about ripeness," and thus is not relevant here. *Twitter*, 56 F.4th at 1178–79 (discussing *Reisman v. Caplin*, 375 U.S. 440 (1964)). And for another, those cases turn mainly on the need for coordinated operation of a uniform federal administrative scheme, *see Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334 (10th Cir. 1984), which has no bearing on Congress's specific grant of federal jurisdiction in section 1983 for constitutional challenges of state action. The Supreme Court has held that if state law imposes a threat of administrative proceedings followed by more severe, criminal sanctions, it "suffices to create an Article III injury." *Susan B. Anthony List*, 573 U.S. at 166. The result should be no different where, as here, the state administrative proceeding is a subpoena backed by the threat of existential sanctions.[3]

[3] In addition, in applying *Google*, the district court ignored an important distinction in how the relevant state subpoenas were enforced. In *Google*, the Mississippi subpoena was not enforceable by contempt unless the attorney general first obtained an order to compel production, 822 F.3d at 225 (citing MISS. CODE ANN. § 75-24-17), but here, New Jersey law

3. The Order Creates a Catch-22.

Finally, the district court imposed an untenable dilemma on First Choice by holding that its federal challenge would not be ripe until a state court held the Subpoena enforceable. The district court held that First Choice's federal claims can be "raised in state court" as defenses, Add.008–.009, which means "res judicata principles will likely bar a plaintiff from filing a claim in federal court" after the state-court adjudication. Add.011 n.7. As a result, federal challenges will "seldom," if ever, be ripe—rather, they will be dead on arrival. *Id.*

The district court thus held that the same adjudication that ripens a federal lawsuit over a subpoena also dooms it. It is also what AG Platkin is arguing before this Court in *Smith & Wesson*. *See* Appellee Br., *Smith & Wesson*, No. 23-1223, ECF 30 at 19 (3d Cir., June 23, 2023). If even a summary state-court proceeding that held the constitutional issues were not ripe is res judicata as to a federal challenge, there is no hope that First Choice's federal claims would ever see a federal forum. And plainly, an order that would place state executive action beyond the reach of the federal courts cannot stand.

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makes disobedience of the subpoena itself punishable: upon a failure to "obey any subpoena issued by the Attorney General," he "may apply to the Superior Court and obtain an order . . . [a]djudging such person in contempt of court" and imposing other, much more severe sanctions. *See, e.g.*, N.J.S.A. § 56:8-6. Thus, the immediate threat of these sanctions under New Jersey law makes a challenge ripe when the subpoena is served.

Plus, preclusion is not the only challenge that the subsequent federal challenge envisioned by the district court would have to face. It would also run headlong into the *Rooker-Feldman* doctrine's prohibition of "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). The federal case would thus be over before it started.

The Supreme Court has refused to construe federal jurisdiction under section 1983 in such a manner. In the context of the Takings Clause, it overruled its prior precedent that had required state-court litigation of "just compensation" before filing a federal action. *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2167 (2019). As the Court explained, this rule placed the plaintiff "in a Catch-22," where "[h]e cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court." *Id.* at 2167. That "preclusion trap" went against section 1983 itself, which "guarantees a federal forum for claims of unconstitutional treatment at the hands of state officials," and does not require exhaustion of state remedies. *Id.* (quotation omitted). Rather, the violation of the plaintiff's constitutional rights is ripe when it occurs, and he may "therefore may bring his claim in federal court under § 1983 at that time." *Id.* at 2168.

The same is true here. That New Jersey has specified its courts as the only forum to *enforce* these subpoenas does not mean they are the only courts that can entertain *challenges* to them. To hold otherwise would relegate certain constitutional claims to being heard only in state court. But states cannot divest the federal courts of their section 1983 jurisdiction. Just as in *Knick*, First Choice is entitled to a federal forum for its constitutional claims, and this Court should grant an injunction to ensure it.

II. Absent an Injunction, First Choice Is Irreparably Harmed.

Unless this Court grants an injunction, First Choice will experience irreparable harm from AG Platkin's imminent attempts to enforce the Subpoena in state court. Most significantly, First Choice will be forced into state-court proceedings that are likely to foreclose completely its right to a federal adjudication of its federal claims. As this Court has recognized, "[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied." *Grode v. Mut. Fire, Marine & Inland Ins. Co.*, 8 F.3d 953, 958 (3d Cir. 1993). Thus, First Choice will suffer irreparable harm from an order that would force it into state-court litigation before deciding its "constitutional challenge(s) in federal court." *Duka v. U.S. S.E.C.*, 2015 WL 5547463, at *1 (S.D.N.Y. Sept. 17, 2015). Likewise, the prospect that this appeal will become moot without an injunction poses irreparable harm to First Choice. *McDaniel v. Sanchez*, 448 U.S. 1318, 1322 (1980) (Powell, J., in chambers).

In addition, this Court has affirmed the propriety of an injunction to prevent irreparable harm from "similar 'duplicative' litigation" in state court. *Carlough v. Amchem Products, Inc.*, 10 F.3d 189, 196 (3d Cir. 1993). Being "forced to litigate the same issues on multiple fronts at the same time" constitutes such harm, *Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.*, 651 F.3d 1355, 1363 (Fed. Cir. 2011), especially given the "wastefulness of duplicative proceedings." *Woodlawn Cemetery v. Loc. 365, Cemetery Workers & Greens Attendants Union*, 930 F.2d 154, 156 (2d Cir. 1991). And the likelihood of this harm is even more clear here from the web of conflicting judgments that AG Platkin's parallel subpoena enforcement action has caused and is causing in *Smith & Wesson*. The Court should grant an injunction pending appeal to spare First Choice a similar fate.

III. Delaying Document Production Does Not Harm AG Platkin.

In contrast to these many harms to First Choice, AG Platkin suffers no irreparable harm in having to wait for documents from an organization that has been peacefully operating in New Jersey for 40 years. He has shown no need, imminent or otherwise, for sensitive, internal documents from an organization that he does not allege has made any false statements, much less actionable false statements tethered to his lawful investigatory powers. He thus fails to show any non-speculative harm from putting his fishing expedition on hold. The balance of harms tips sharply in favor of First Choice, such that even

"serious questions going to the merits" suffice to grant an injunction. *In re Revel*, 802 F.3d at 570.

IV. An Injunction Pending Appeal Is in the Public Interest.

An injunction is also in the public interest. For one, "[t]here is a strong public interest in upholding the requirements of the First Amendment." *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 109 (3d Cir. 2022). And beyond the constitutional harm to First Choice, there is public interest in this Court determining its jurisdiction over such matters, an opportunity that will be lost if AG Platkin pursues state-court litigation and obtains a judgment of enforcement. Given the risk of mootness, the Court should grant an injunction "to maintain the status quo of the parties pending the outcome of the appeal" and ensure "that a controversy will still exist once the appeal is heard." Moore's Federal Practice – Civil § 62.06 (2017).

Finally, while AG Platkin has not yet filed a state-court enforcement action, if he does, this Court would have authority to enjoin such a proceeding—or AG Platkin's prosecution of it—based on its interest in "preserv[ing] its jurisdiction" over this appeal. *In re Baldwin–United Corp.*, 770 F.2d 328, 335–36 (2d Cir.1985). The All-Writs Act authorizes this Court to "issue all writs necessary or appropriate in aid of [its] respective jurisdictions," 28 U.S.C. § 1651(a), which applies to injunctions of state-court proceedings "where necessary in aid of its jurisdiction." 28 U.S.C. § 2283. The Supreme Court has invoked that

authority to reverse orders denying a stay of state-court proceedings that would "deprive [the plaintiffs] of rights protected by the First Amendment during the period of appellate review which, in the normal course, may take a year or more to complete." *Nat'l Socialist Party of Am. v. Village of Skokie*, 432 U.S. 43, 44 (1977). This Court may do the same here to preserve both its jurisdiction and First Choice's right to federal review and redress for its injuries.

CONCLUSION

The Court should enjoin AG Platkin from enforcing the Subpoena pending this appeal.

Dated: January 23, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This motion complies with FRAP 27 because it contains 5,194 words, excluding parts exempted by Fed. R. App. P. 27(a)(2)(B) and 32(f).

This motion complies with Fed. R. App. P. 32(a)5) and 32(a)(6) because it has been prepared in Word 365 using a proportionally spaced typeface, 14-point Century Schoolbook.

/s/Lincoln Davis Wilson

Counsel for Plaintiff-Appellant First Choice Women's Resource Centers, Inc.

January 23, 2024

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2024, I electronically filed this Emergency Motion For Injunction Pending Appeal with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the CM/ECF system, which will accomplish service on counsel for all parties through the Court's electronic filing system.

/s/Lincoln Davis Wilson

Counsel for Plaintiff-Appellant First Choice Women's Resource Centers, Inc.

January 23, 2024

APPEAL NO. 24-1111

United States Court of Appeals for the Third Circuit

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Plaintiff-Appellant,

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of the State of New Jersey,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of New Jersey
Case No.: 3:23-cv-23076

ADDENDUM TO PLAINTIFF-APPELLANT'S EMERGENCY MOTION FOR INJUNCTION PENDING APPEAL RULE 27.7 EXPEDITED CONSIDERATION REQUESTED

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ADDENDUM TABLE OF CONTENTS

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] (*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.)

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

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 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]

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.

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[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" (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)).

Ann. § 56:8-4 (within the CFA) and N.J. 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-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.

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[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).

[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)).

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 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 Plaintiff's 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

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[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.")

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 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*.

[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 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.

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 such claims on a non-emergent basis.

MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

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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

[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/.

"devastating setback for women's rights in America" and threatens to "harm millions throughout the country[.]"[2]

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]

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[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/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.

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 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

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

[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/.

accused its lawsuit of "unleash[ing] significant confusion and misinformation about the medical safety and legal status of both mifepristone and abortion itself."[9]

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.

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[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 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.

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

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[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).

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

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[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.

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.

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[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/.

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

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[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.

[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.

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]

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.

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

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.

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)*
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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.

Aimee Huber

Aimee Huber

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 Van Dyke
Deputy Attorney General

Dated: 11/15/23

CERTIFICATION OF COMPLIANCE

I _____, certify as follows:

1. I am employed by First Choice Women's Resource Centers, Inc. in the position of _____;

2. First Choice Women's Resource Centers, Inc.'s productions and responses to the Subpoena of the Attorney General of the State of New Jersey, dated November 15, 2023 ("Subpoena"), were prepared and assembled under my personal supervision;

3. I made or caused to be made a diligent, complete, and comprehensive search for all Documents and information requested by the Subpoena, in full accordance with the Instructions and Definitions set forth in the Subpoena;

4. First Choice Women's Resource Centers, Inc.'s production and responses to the Subpoena are complete and correct to the best of my knowledge and belief;

5. No Documents or information responsive to the Subpoena have been withheld from First Choice Women's Resource Centers, Inc.'s production and response, other than responsive Documents or information withheld on the basis of a legal privilege or doctrine;

6. All responsive Documents or information withheld on the basis of a legal privilege or doctrine have been identified on a privilege log composed and produced in accordance with the Instructions in the Subpoena;

7. The Documents contained in First Choice Women's Resource Centers, Inc.'s productions and responses to the Subpoena are authentic, genuine, and what they purport to be;

8. Attached is a schedule representing a true and accurate record of all Persons who prepared and assembled any productions and responses to the Subpoena, all Persons under whose personal supervision the preparation and assembly of productions and responses to the Subpoena occurred, and all Persons able competently to 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; and

9. Attached is a true and accurate statement of those requests under the Subpoena as to which no responsive Documents were located in the course of the aforementioned search.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: _____

_____
Name (signature)

_____
Name (print)

_____
Title or Position

SCHEDULE

INSTRUCTIONS AND DEFINITIONS

A. 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 Documents 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.

B. DEFINITIONS

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. 56:8-1(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. 56:8-1(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, LinkedIn, Snapchat, TikTok, Twitter, and YouTube.

33. "Solicitation[s]" shall be defined in accordance with N.J.S.A. 45:17A-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 Instagram;

   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 is the success rate of abortion pill reversal? Initial studies of APR 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 organizational 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.