NO. _____

IN THE

Supreme Court of the United States

IN RE: FIRST CHOICE WOMEN'S RESOURCE CENTERS INC.,

Petitioner.

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

PETITION FOR A WRIT OF MANDAMUS

JAMES A. CAMPBELL
J. CALEB DALTON
GABRIELLA M. MCINTYRE
MERCER S. MARTIN
ALLISON H. POPE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176

KEVIN H. THERIOT
JULIA C. PAYNE
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260

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

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

QUESTION PRESENTED

State attorneys general have broad powers to issue pre-litigation investigatory demands for the production of documents. Where those demands violate the federal constitution, recipients have brought section 1983 actions to challenge them. The Third, Sixth, Ninth, and Eleventh Circuits hold that federal jurisdiction exists for those challenges if the plaintiff alleges chilling of First Amendment rights or other cognizable harm. But the Fifth Circuit, in a decision that pre-dates *Knick* v. *Scott Township*, 139 S. Ct. 2162 (2019), holds that such a suit is not ripe unless a state court first enforces the demand.

Here, the district court followed the Fifth Circuit's rule and dismissed Petitioner's challenge to the New Jersey Attorney General's demand sua sponte. The district court acknowledged that under this rule a federal challenge would "seldom if ever be ripe" since "res judicata principles will likely bar" any federal challenge after the state-court adjudication. App.13a n.7. This "preclusion trap" poses the same unlawful "Catch-22" that *Knick* rejected as contrary to "the settled rule" that section 1983 does not require "exhaustion of state remedies." 139 S. Ct. at 2167 (cleaned up). But when Petitioner sought emergency relief in the Third Circuit, a motions panel denied it in an unreasoned order. App.21–22a. And now Petitioner faces a state-court enforcement hearing on March 27 that will likely preclude its federal claims.

The question presented is:

Whether a section 1983 suit to enjoin an unlawful investigatory demand by a state official is ripe only after a state court has enforced the demand.

PARTIES TO THE PROCEEDING

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

The Respondent is the United States District Court for the District of New Jersey.

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

CORPORATE DISCLOSURE STATEMENT

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

LIST OF RELATED PROCEEDINGS

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

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

Superior Court of New Jersey, Chancery Division, Essex County, No. ESX-C-22-24, *Platkin et al.* v. *First Choice Women's Resource Centers Inc.*, order entered February 1, 2024.

TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

DECISIONS BELOW

The memorandum opinion of the United States District Court for the District of New Jersey dismissing this action sua sponte for lack of jurisdiction and denying a TRO and preliminary injunction is reported at 2024 WL 150096 and is reprinted at App.1a. The district court's order denying a motion for injunction pending appeal is unreported and reprinted at App.15a. The order of the United States Court of Appeals for the Third Circuit denying an injunction pending appeal is unreported and is reprinted at App.21a. The order to show cause of the New Jersey Superior Court, Chancery Division, Essex County, is unreported and reprinted at App.16a.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1651. In the alternative, the jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). The judgment of the district court was entered on January 12, 2024, and an order of the court of appeals was entered on February 15, 2024.

INTRODUCTION

This petition raises an important and recurring question regarding federal jurisdiction over section 1983 suits to enjoin unlawful state investigatory demands: whether such a challenge is ripe only *after* a state court has enforced the demand. The courts of appeals are divided 4-1 on this question, and the district court here clearly erred in following the minority position to dismiss this case sua sponte. The Court should grant mandamus to prevent irreparable harm from that ruling and to preserve its own jurisdiction to decide this important question.

While overreaching state investigatory demands have affected a broad variety of different industries, this one concerns faith-based pro-life pregnancy centers. Matthew Platkin, New Jersey's Attorney General, worked with Planned Parenthood to develop a novel theory that pregnancy centers, which provide free services, violate New Jersey's Consumer Fraud Act because they "do NOT provide abortion care." Consumer Alert, https://perma.cc/QHM7-Q6BH (emphasis in original); App.85–90a. Based on that theory, and without any complaint or evidence of false statements, he served subpoenas on pro-life pregnancy centers in New Jersey, including Petitioner First Choice Women's Resource Centers, Inc. The Attorney General demanded that First Choice turn over years of sensitive internal information: First Choice's donors, their gifts, and communications with them; every solicitation and advertisement by First Choice on any web, social, print, or broadcast media; the identities and personal information of First Choice's staff, volunteers, directors, and board members; and its associations with other faith-based, pro-life, nonprofits.

Faced with this far-reaching infringement on its speech, religious, and associational freedoms, First Choice filed this constitutional challenge in federal court and sought a TRO to preserve the status quo pending a ruling on a preliminary injunction. The Attorney General opposed the TRO but did not contest jurisdiction, which the Third Circuit had already recognized in *Smith & Wesson Brands, Inc.* v. *Attorney General of New Jersey*, 27 F.4th 886 (3d Cir. 2022) (Hardiman, J.). Instead, he offered to let federal proceedings on the preliminary injunction go forward if First Choice agreed to waive state-law defenses in any state enforcement action. D.C.Dkt.17 at 2–3.

But a ruling on the preliminary injunction didn't happen. Instead, the district court dismissed the case sua sponte for lack of jurisdiction. It did so based on *Google, Inc.* v. *Hood*, 822 F.3d 212, 225 (5th Cir. 2016), which held that an attorney general's investigative demand cannot be challenged in federal court unless first enforced in state court.

That is plainly wrong. As the district court acknowledged, that would mean 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. App.13a n.7. Such a "Catch-22" conflicts with this Court's decision in *Knick* v. *Scott Township*, which rejected the same "preclusion trap" as contrary to "the settled rule … that exhaustion of state remedies is not a prerequisite" to a section 1983 action. 139 S. Ct. 2162, 2167 (2019) (cleaned up). And it conflicts with four other circuits that have expressly held that state-court enforcement is not a prerequisite to federal

redress,[1] rejecting the Fifth Circuit's view as not "persuasive." *Twitter, Inc.*, 56 F.4th at 1178 n.3.

After the dismissal, the Attorney General changed course, disavowing his prior recognition of jurisdiction, and commenced summary enforcement proceedings in state court, App.171, where a show-cause hearing is now set for **March 27, 2024**. First Choice sought an emergency injunction pending appeal from the Third Circuit, but the court denied it in an unreasoned order. App.21a (Krause, Freeman & Scirica, J.J.). That unexplained disposition was in plain conflict with the Third Circuit's recognition of jurisdiction in *Smith & Wesson*. Yet with the imminent threat of the state-court proceedings, First Choice had no time for en banc review, which could take up to 39 days to grant and would, at most, result in a new hearing of the issue. Third Circuit I.O.P. 9.5.

Only this Court can stop the ongoing violation of First Choice's rights. The Attorney General's broad, unlawful Subpoena and the state-court enforcement proceeding are themselves a chill on First Choice's speech, religion, and associational freedoms. And in an environment in which pregnancy centers "have been subjected to bomb threats, protests, stalking, and physical violence," *Americans for Prosperity Found.* v. *Bonta*, 141 S. Ct. 2373, 2388 (2021), the Attorney General's sweeping demands threaten not just the freedoms but the safety and support of First Choice's donors, volunteers, and associates.

---

[1] *Twitter, Inc.* v. *Paxton*, 56 F.4th 1170, 1178 n.3 (9th Cir. 2022); *Smith & Wesson*, 27 F.4th at 890–93; *Online Merchants Guild* v. *Cameron*, 995 F.3d 540, 550–52 (6th Cir. 2021); *Major League Baseball* v. *Crist*, 331 F.3d 1177, 1180–81 (11th Cir. 2003).

Indeed, the Attorney General's subpoena sweeps far broader than the donor-information demand this Court struck down in *Americans for Prosperity*. *Id.* at 2385–89. Yet the state court's imminent ruling is highly likely to preclude First Choice's federal claims, moot most if not all of this controversy, and foreclose its right to federal redress. If the state-court proceeding goes forward, First Choice can obtain federal review only if it can resist producing documents through multiple stages of New Jersey state-court proceedings (itself a chill on constitutional rights), then obtain discretionary review from this Court.

This Court should grant mandamus to put First Choice where it would have been but for the plainly erroneous dismissal. It should direct the district court to take jurisdiction and rule on First Choice's motion for TRO and preliminary injunction in a manner that will preserve this Court's appellate review. See *In re Hohorst*, 150 U.S. 653, 664 (1893). First Choice's right to federal adjudication of its federal claims is clear and indisputable, since the district court's rejection of that jurisdiction—grounded in the Fifth Circuit's minority and pre-*Knick* view—is incompatible with this Court's precedents and those of four circuits. And with a direct appeal that may soon be moot, First Choice has no other timely avenue of direct review to protect that right. Unless this Court intervenes now, First Choice's First Amendment speech, religion, and associational rights will continue to be chilled in the face of an imminent state-court adjudication. And that state-court ruling will foreclose any opportunity for First Choice to seek federal district-court review of its constitutional claims and strip this Court's power to decide the important jurisdictional question presented.

This Court has previously granted mandamus to correct a district court's refusal to exercise jurisdiction where imminent state-court proceedings threatened to foreclose federal review entirely. *McClellan* v. *Carland*, 217 U.S. 268 (1910). It should do so here as well.[2]

Alternatively, the Court could resolve the circuit split on this question of jurisdiction by construing this petition as one for certiorari before judgment and granting review to resolve this question that has divided the courts of appeals. Establishing federal jurisdiction over these increasingly common investigatory demands against disfavored groups is critical to protect constitutional rights. That matters regardless of the group's views and advocacy, as state attorneys general of both parties invoke "long-dormant regulatory powers … to address circumstances that have not changed" and make speakers "think twice before speaking." *Smith & Wesson*, 27 F.4th at 896 (Matey, J., concurring). Thus, to preserve its own jurisdiction to decide this question on which First Choice is likely to prevail—as well as to prevent irreparable harm in the interim—the Court should temporarily enjoin the Attorney General from taking any further steps to enforce the speech-chilling Subpoena pending its review. See *Arrow Transp. Co.* v. *Southern Railway Co.*, 83 S. Ct. 1, 3 (1962) (Black, J., in chambers).

---

[2] Concurrently with this petition, First Choice is filing an emergency application for interim relief to prevent the Attorney General from enforcing the Subpoena and preserve this Court's jurisdiction while it considers this petition.

STATEMENT OF THE CASE

I. Following *Dobbs*, Politicians Target Pregnancy Centers.

Since this Court's decision in *Dobbs* v. *Jackson Women's Health Organization*, 597 U.S. 215 (2022), pro-life pregnancy centers have faced increased hostility from all quarters. Between the May 2, 2022 publication of a leaked draft of the *Dobbs* opinion and the end of 2022, there were more than 150 criminal acts—including arson, graffiti, assault, threats of assassination and violence, and at least one shooting—directed at entities and persons viewed as pro-life.[3] Some targets were Catholic churches, Christian schools, and government buildings and officials, but the largest portion of these acts of vandalism and intimidation were directed at pregnancy centers.[4] Harassment and intimidation has also come from state legislatures and law enforcement that have taken various steps—often unlawfully—to hinder the pro-life mission of these organizations.[5]

---

[3] Jesse J. Norris, *"If Abortions Aren't Safe, Neither Are You:" A Mixed-Method Study of Jane's Revenge and Other Post-Dobbs Militancy*, 33 J. FOR DERADICALIZATION 108, 120 (2022); Religious Freedom Institute, *Religious Pro-Life Americans Under Attack: A Threat Assessment of Post*-Dobbs *America* (Sept. 2022), https://perma.cc/8X6Y-DF3K.

[4] Norris, *supra*, at 119.

[5] *E.g.*, *Bella Health & Wellness* v. *Weiser*, 2023 WL 6996860 (D. Colo. Oct. 21, 2023) (enjoining as violative of Free Exercise Colorado's first-in-the-nation statute punishing abortion pill reversal); *Nat'l Inst. of Fam. & Life Advocs.* v. *Raoul*, 2023 WL 5367336, at *1 (N.D. Ill. Aug. 4, 2023) (enjoining a "stupid and very likely unconstitutional" amendment to apply Illinois

New Jersey's Attorney General Matthew Platkin exemplifies this conduct. Calling *Dobbs* an "extreme right-wing decision"[6] and a "devastating setback" that "will harm millions,"[7] he joined an open letter with a coalition of attorneys general condemning pregnancy centers and pledging enforcement of consumer-protection laws against them.[8] Even though First Choice is a non-profit, the Attorney General invoked the New Jersey Consumer Fraud Act (NJCFA)—a state consumer protection law that generally regulates commercial sales and advertising—in an unprecedented attempt to regulate an organization that does not charge for its services.

As a public-records request later revealed, the Attorney General invited Planned Parenthood—the country's largest abortion provider—to help him *draft* that enforcement theory against his ideological opponents. App.85–90a. With Planned Parenthood's assistance behind the scenes, the Attorney General issued a consumer alert warning that pregnancy centers may "try to convince pregnant people not to have abortions." Consumer Alert, *supra*. And he warned of pregnancy centers providing "free services

---

Consumer Fraud and Deceptive Business Practices Act to pregnancy centers); *People* v. *Heartbeat Int'l, Inc.*, No. 23CV044940 (Cal. Sup. Ct.) (consumer protection enforcement action against pregnancy center).

[6] Press Release, New Jersey Office of the Attorney General (July 20, 2022), https://perma.cc/3UG8-8DXG.

[7] Press Release, New Jersey Office of the Attorney General (July 11, 2022), https://perma.cc/SV2Z-SD9R.

[8] Open Letter from Attorneys General Regarding CPC Misinformation and Harm (Oct. 23, 2023), perma.cc/3SDW-9EW2.

(including pregnancy tests, ultrasounds, and adoption information) or supplies (including diapers and baby clothes) to individuals seeking abortion or reproductive health care services." *Ibid.* The consumer alert directs women seeking care to go instead to Planned Parenthood, which *does* charge for its services. *Id.* at 2.

II. The Attorney General Starts His Subpoena Campaign.

The Attorney General operationalized his new consumer protection theory against pregnancy centers through subpoenas under the NJCFA. Those subpoenas are administrative demands—sometimes called "Civil Investigative Demands" or "CIDs" in other jurisdictions—that require the recipient to provide specified information that the attorney general maintains is relevant to a consumer protection investigation. Often, as in New Jersey, they are accompanied by the threat of stiff penalties—one who "fails to obey any subpoena issued by the Attorney General" invites a summary enforcement proceeding by the Attorney General where he may request a wide range of sanctions "until the person … obeys the subpoena." N.J. Stat. Ann. 56:8-6. These sorts of investigative demands have become increasingly common tools used by state officials to squelch speech with which they disagree, and then to disclaim jurisdiction when challenged. See, *e.g.*, *Second Amend. Found.* v. *Ferguson*, No. C23-1554 MJP, 2024 WL 97349, at *4 (W.D. Wash. Jan. 9, 2024) (appeal filed Feb. 8, 2024); *Obria Group, Inc.* v. *Ferguson*, No. 3:23-cv-06093-TMC (W.D. Wash.) (hearing set Feb. 29, 2024).

New Jersey has been particularly aggressive in using these demands to stifle speech. In previous litigation, the Attorney General invoked the NJCFA to serve an investigatory subpoena on a gun manufacturer, which filed a federal challenge under the First and Second Amendments. As Judge Matey wrote in that case, the wielding of state power to silence speech "is a well-traveled road in the Garden State, where long-dormant regulatory powers suddenly spring forth to address circumstances that have not changed" while the state ignores "concerns about the protections of the First … Amendment rights of New Jersey residents." *Smith & Wesson*, 27 F.4th at 896 (Matey, J., concurring). There, the Attorney General responded to the federal challenge by filing a competing enforcement action in state court. *Platkin* v. *Smith & Wesson Sales Co., Inc.*, 474 N.J. Super. 476, 481 (App. Div. 2023). Smith & Wesson moved the state court to defer under the "first filed" rule, but it declined to do so. *Id.* at 489. In a summary proceeding, the state court reached judgment first, rejected the plaintiff's federal constitutional defenses, and enforced the subpoena. *Id.* at 498. The Appellate Division affirmed the enforcement of the subpoena and declined to address Smith & Wesson's federal constitutional objections. *Id.* at 494.

Smith & Wesson had more success in the federal proceedings, but too late. The district court abstained under *Younger* v. *Harris*, 91 S. Ct. 746 (1971), and the Third Circuit reversed. *Smith & Wesson*, 27 F.4th at 892–93. 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. *Id.* at 896–97 (Matey, J., concurring). But by that time, the state court had

enforced the subpoena and the New Jersey Appellate Division affirmed. So on remand, the district court held that the state-court 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 appealed that ruling to the Third Circuit, where it 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).

III. The Attorney General Targets First Choice, and First Choice Files This Lawsuit.

It was in this context that the Attorney General served investigatory subpoenas on First Choice and at least one other New Jersey pregnancy center. First Choice has been serving pregnant women in difficult circumstances for nearly four decades, helping them evaluate their alternatives, providing them with resources, and empowering them to make informed decisions concerning their pregnancies. App.27–29a. It provides a wide variety of services under the direction of a medical director—a licensed physician—including pregnancy testing; pregnancy options counseling; sexually transmitted disease and sexually transmitted infection testing and referral; limited obstetric ultrasounds; parenting education; and material support, such as baby clothes and furnishings, diapers, maternity clothes, and food. App.27–28a. First Choice is open about the fact that it does not provide or refer for abortions; it plainly

states that information on client intake forms and *every page* of its two client-oriented websites.[9]

On November 15, 2023, the Attorney General served First Choice with the Subpoena at issue here. App.62a. He demanded that First Choice produce within 30 days a copy of *every* solicitation and advertisement made on *any* website, social media, print media, broadcast media, e-commerce platforms, sponsored content, digital advertising, video advertising, and more; substantiating documents for statements regarding the abortion drug mifepristone reaching back for more than a decade; donor information; client information policies; affiliations with other pro-life organizations; and the identities and professional licensures of employees, officers, directors, board members, and volunteers. App.73–84a. "The disclosure requirement 'creates an unnecessary risk of chilling' in violation of the First Amendment." *Americans for Prosperity*, 141 S. Ct. at 2388 (quoting *Secretary of State of Md.* v. *Joseph H. Munson Co.*, 467 U.S. 947, 968 (1984)).

Before the 30 days had elapsed, First Choice filed this suit challenging the Subpoena under the First and Fourth Amendments and moved for a TRO and preliminary injunction. In response, the Attorney General never contested jurisdiction and indeed offered to let the federal preliminary injunction adjudication proceed before any state enforcement action. D.C.Dkt.17 at 2–3.

---

[9] First Choice Woman Center, https://firstchoicewomancenter.com/; First Choice Women's Resource Centers, https://1stchoice.org.

The Attorney General also disclosed the basis for his investigation—most significantly, that First Choice allegedly "omit[s]" its "'pro-life' mission" and desire to "protect the unborn" from its websites directed to clients. D.C.Dkt.24 at 7–8. But every one of those webpages clearly states either that "First Choice Women's Resource Centers is an abortion clinic alternative that does not perform or refer for termination services" or that "[w]e do not perform or refer women for elective abortions." See *supra* note 9. The Attorney General said he had "significant concerns" with First Choice's decision to maintain one website focused on supporters and others tailored toward potential clients—a common practice employed by many nonprofits, including organizations like Planned Parenthood—but the Attorney General did not identify any false statement First Choice had ever made. D.C.Dkt.24. at 9.

IV. The District Court Dismisses the Complaint Sua Sponte for Lack of Jurisdiction.

After First Choice had fully briefed its TRO motion, the district court dismissed the case sua sponte for lack of jurisdiction. The district court imposed an exhaustion requirement for First Amendment claims under section 1983, holding that First Choice's federal claims would not ripen until a state court enforced the Subpoena. App.11–13a.

The district court acknowledged that its ripeness holding would create a preclusion trap likely depriving First Choice of any federal forum, since "res judicata principles will likely bar a plaintiff from filing a claim in federal court" after the state-court adjudication. App.13a n.7.

V. The Attorney General Files in State Court and the Third Circuit Denies Relief.

First Choice immediately appealed to the Third Circuit and moved the district court for an injunction pending appeal, which it denied. App.15a. Meanwhile, the Attorney General commenced a summary enforcement action in state court, App.16a, where a show-cause hearing is now set for March 27, 2024.

To prevent the loss of a federal forum, First Choice moved the Third Circuit based on the same jurisdictional arguments presented here to enjoin Attorney General Platkin from enforcing his subpoena pending appeal. On February 15, the Third Circuit denied that motion in an unreasoned order. App.21a (Krause, Freeman & Scirica, J.J.). With no time left for full appeal or en banc review before the state-court show-cause hearing, see Third Circuit I.O.P. 9.5, First Choice now seeks emergency relief from this Court.

REASONS FOR GRANTING THE PETITION

The All Writs Act empowers the Court to "issue all writs necessary or appropriate in aid of [its] respective jurisdiction[] and agreeable to the usages and principles of law." 28 U.S.C. 1651(a). To remedy the harm it faces here and preserve this Court's appellate jurisdiction, First Choice seeks a writ of mandamus directing the district court to exercise its jurisdiction and issue a timely ruling on First Choice's motion for a TRO and preliminary injunction.

This Court will grant a writ of mandamus upon a party's showing that "(1) no other adequate means exist to attain the relief he desires, (2) the party's right to issuance of the writ is clear and indisputable,

and (3) the writ is appropriate under the circumstances." *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (cleaned up)."The general power of the court to issue a writ of mandamus to an inferior court to take jurisdiction of a cause when it refuses to do so is settled by a long train of decisions." *In re Atl. City R. Co.*, 164 U.S. 633, 635 (1897) (collecting cases). The writ is likewise appropriate here—not "to control the [district court's] judgment … but only to compel it to entertain jurisdiction of the cause, and then to hear and decide according to the law and the allegations and proofs." *Ex parte Newman*, 81 U.S. 152, 160 (1871).

First Choice meets these elements. It has a clear and indisputable right to federal adjudication of its section 1983 claims. It has no other means to obtain the relief it seeks. And a writ would be appropriate under this Court's precedents. Alternatively, this Court should construe this petition as one for a writ of certiorari before judgment and enter a temporary injunction against the Attorney General to preserve the Court's jurisdiction and prevent irreparable harm to First Choice in the interim. Either way, the Court should grant relief to spare First Choice from the district court's egregious error.

I. The Court Should Grant Mandamus.

A. First Choice Has a Clear and Indisputable Right to Relief.

This Court has long held that "[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied." *New Orleans Pub. Serv., Inc.* v. *Council of New Orleans*, 491 U.S. 350, 359 (1989) (quoting *Willcox* v. *Consolidated Gas*

Co., 212 U.S. 19, 40 (1909)). Congress conferred that choice here when it gave federal courts jurisdiction over claims challenging the constitutionality of state official action taken under color of state law. 42 U.S.C. 1983. That statutory jurisdiction is mandatory—federal courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given," *Cohens* v. *Virginia*, 6 Wheat. 264, 404 (1821), and the law assigns them a "virtually unflagging" obligation "to hear and decide cases within [their] jurisdiction," *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 167 n.17 (2014).

First Choice's first choice was federal court. It invoked jurisdiction under section 1983 based on present and threatened injury to its constitutional speech, religion, association, and privacy rights, including the chilling of its First Amendment rights to speak freely and associate freely with donors and volunteers without disclosing their identities. App.45a, 48–49a, 51–53a, 55a, 57–59a. Yet by imposing an exhaustion requirement on First Amendment claims challenging state enforcement actions, the district court failed to exercise the jurisdiction Congress conferred.

This Court has granted mandamus in similar circumstances where a district court erroneously declined jurisdiction in favor of state-court proceedings. In *McClellan*, the plaintiff properly invoked diversity jurisdiction, but the district court stayed the action to allow parallel state probate proceedings to address the issue. 217 U.S. at 276. This Court held that the grant of federal jurisdiction "to entertain suits between citizens of different states to determine interests in estates … existed from the beginning of the Federal government" and "could not be impaired

by subsequent state legislation creating courts of probate." *Id.* at 281. And because the parallel state court proceedings "might render a judgment which would be res judicata, and thus prevent further proceedings in the Federal court," this Court granted mandamus. *Id.* at 282.

This case is indistinguishable. First Choice, too, has a clear and indisputable right to a federal forum. The district court's dismissal is irreconcilable with this Court's decision in *Knick* and with the right to a federal adjudication of constitutional violations by state officials guaranteed by section 1983. The Court should grant a writ to ensure First Choice has a federal forum to litigate its federal claims.

1. The District Court Indisputably Had Jurisdiction.

The district court's dismissal for lack of jurisdiction was clearly erroneous. The lower court held that First Choice's federal claims would not be ripe unless and until the state enforced the subpoena. App.11–12a. But First Choice established ripeness under Article III. A constitutional challenge to an attorney general's investigative demand is ripe "even prior to … enforcement" if the plaintiff alleges "objectively reasonable chilling of its speech or another legally cognizable harm." *Twitter*, 56 F.4th at 1178 n.3. Here, the Attorney General's "immediate" plans to enforce the Subpoena against First Choice, D.C.Dkt.24 at 14—plans on which he has now followed through, App.16a—plainly establish ripeness. *S.B.A. List*, 573 U.S. at 164.

"The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes

irreparable injury," *Elrod* v. *Burns*, 427 U.S. 347, 373 (1976) (plurality opinion), and First Choice has proffered sworn statements detailing how the Subpoena has inflicted that harm to its speech, religion, and associational rights here. App.43–44a. Indeed, the Subpoena threatens First Choice's speech and associational rights, risking disclosure of the identities of its donors and volunteers. App.44a. Baseless investigations like the Attorney General's give an ordinary person reason to pause before speaking controversial views, and in turn, they discourage people and entities from engaging in protected associations. That is especially true because the Attorney General has sought "compelled disclosure" of sensitive internal information about donors, employees, and volunteers. *Americans for Prosperity Found.*, 141 S. Ct. at 2382.

It is no answer to say that First Choice has not yet been compelled by a state court to disclose donor and other information that the Constitution protects. "When it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the Constitution." *Id.* at 2384 (cleaned up). "[T]he protections of the First Amendment are triggered not only by *actual* restrictions. … The *risk* of a chilling effect … is enough, because First Amendment freedoms need breathing space to survive." *Id.* at 2389 (cleaned up, emphases added). This case is plainly ripe.

And the Attorney General's Subpoena is not a mere piece of paper that First Choice was free to disregard. New Jersey law provides that, if First Choice "fails to obey any subpoena issued by the Attorney General, the Attorney General may apply to

the Superior Court" for a panoply of sanctions. N.J. Stat. Ann. 56:8-6. Those sanctions include contempt, injunctive relief prohibiting First Choice's operations, "[v]acating, annulling, or suspending [its] corporate charter," or any other relief necessary "until the person … obeys the subpoena." *Id.* The threat of First Choice having to produce sensitive, internal documents concerning its operations, donors, associates, and volunteers was harm enough to its First Amendment rights, and the "combination" of threatened administrative action with these crippling, existential sanctions more than "suffices to create an Article III injury." See *S.B.A. List*, 573 U.S. at 166.

New Jersey law empowers courts to impose these sanctions for non-compliance. So the possibility that a state trial court *might* hold them premature does not diminish the threat. Cf. *Smith & Wesson*, 27 F.4th at 893 (citing *Grewal* v. *22Mods4ALL, Inc.*, No. ESX-C-244-19, slip op. at *17 (N.J. Super. Ct. Ch. Div. May 24, 2021)). And the Attorney General's post-litigation commitment to forgo those sanctions is cold comfort against the threat that led First Choice to file. D.C.Dkt.17 at 2. The Attorney General cannot invoke the threat of these legal consequences to obtain what he wants, then disavow it to avoid a federal challenge. The Attorney General's Subpoena causes First Choice and those it associates with to "think[] twice before speaking." *Smith & Wesson*, 27 F.4th at 896–97 (Matey, J., concurring). This present harm conclusively establishes ripeness, just as it did in *Americans for Prosperity*.

2. The District Court's Sua Sponte Dismissal Was Clear Error.

Despite these authorities, the district court held that a challenge to a "non-self-executing state-administrative subpoena" was not ripe under the Fifth Circuit's pre-*Knick* decision in *Google* because the relevant state statutes required the Attorney General to "file an enforcement action in state court seeking a judgment of contempt against the recipient." App.6a (citing N.J. Stat. Ann. 56:8-6, 45:17A- 33(g)). 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." App.10a (citing *Google*, 822 F.3d at 226). Ignoring the chilling of First Choice's rights, the district court found "no current consequence for resisting the subpoena" and said that "the same challenges" could be "raised in state court." App.10a. It dismissed the action for lack of jurisdiction until "the state court enforces the Subpoena," but recognized that res judicata principles made it likely that First Choice would *never* get to raise its claims in federal court. App.13a n.7. This ruling was clearly wrong.

For one, the district court's exhaustion rule conflicts directly with this Court's section 1983 jurisprudence, which rejects any exhaustion requirement. Requiring litigants to go first to state court is contrary to "the settled rule … that exhaustion of state remedies is not a prerequisite" to a section 1983 action. *Knick*, 139 S. Ct. at 2167 (cleaned up). Congress guaranteed "a federal forum for claims of unconstitutional treatment at the hands of state officials," *Heck* v. *Humphrey*, 512 U.S. 477, 480 (1994), and that promise "rings hollow" if those so

injured must submit their claims to a state court, *Knick*, 139 S. Ct. at 2167, 2179.

Plus, the district court's decision creates the same Catch-22 that this Court repudiated in *Knick*. In adopting *Google*'s rule, the district court acknowledged that because First Choice's federal claims can be "raised in state court" as defenses, App.8a, "res judicata principles will likely bar a plaintiff from filing a claim in federal court" after the state-court adjudication, and federal challenges will "seldom," if ever, be ripe. App.13a n.7. And that is just what the Attorney General is arguing and what the district court found in *Smith & Wesson*—that the state court's enforcement of the subpoena precludes any federal challenge. Appellee Br., *Smith & Wesson*, No. 23-1223, ECF 30 at 19 (3d Cir., June 23, 2023).

That imposition of a state exhaustion requirement for section 1983 claims is contrary to *Knick*, where this Court overruled prior precedent under the Takings Clause that had required property owners to litigate "just compensation" in state court before they could file a federal action. 139 S. Ct. at 2167. 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." *Ibid.* Just as in this case, that "preclusion trap" violated the guarantee of a federal forum for violations of the plaintiff's constitutional rights that are ripe for federal suit at the time the harm occurs. *Id.* at 2168.

The district court's exhaustion rule also conflicts with the *Rooker-Feldman* doctrine. The district court held that a recipient of an investigatory subpoena cannot bring suit in federal court unless they have

lost in state court and the subpoena has been held enforceable. App.11–12a. But the *Rooker-Feldman* doctrine says there is no federal jurisdiction over such an action. *Exxon Mobil Corp.* v. *Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005). Because "authority to review a state court's judgment" is vested solely in the Supreme Court, *id.* at 292, federal district courts lack jurisdiction over suits by "state-court losers" who "invit[e] district court review and rejection" of state court judgments, *id.* at 281. Ironically, then, the very procedure the district court held necessary to create federal jurisdiction would destroy it.

The district court's exhaustion rule draws a mistaken analogy to this Court's decisions on federal administrative subpoenas. App.7a n.4. Under the Administrative Procedure Act (APA), Congress sometimes requires a party to exhaust administrative remedies before filing suit in federal court. 5 U.S.C. 704 (exhaustion mandated only where required by statute or by an agency rule that provides agency action is "inoperative" during the appeal); *Darby* v. *Cisneros*, 509 U.S. 137 (1993) (same). Thus, courts often reject litigants' attempt to skip the administrative process and file in federal court at the outset. *Reisman* v. *Caplin*, 375 U.S. 440, 443, 449–50 (1964). But the APA ensures subsequent review in federal court, while the district court's exhaustion requirement almost certainly forecloses it. There is no unified scheme connecting state administrative proceedings to challenges in federal court, and there is no exhaustion rule that demands starting in the state administrative system before going to federal court. *Heck*, 512 U.S. at 480. In short, Congress imposed an exhaustion requirement for some APA claims but expressly declined to do so for section 1983. The

district court's analogy to administrative subpoenas is inapposite.

3. The Third, Sixth, Ninth, and Eleventh Circuits Reject the Fifth Circuit's Pre-*Knick* Exhaustion Rule.

The district court's dismissal also conflicts with the decisions of four courts of appeals—including the Third Circuit. In *Smith & Wesson*, the Third Circuit held that federal courts had jurisdiction over a challenge to an indistinguishable investigatory subpoena of a gun manufacturer by the New Jersey Attorney General. 27 F.4th at 890. As Judge Hardiman explained for the court, "[f]ederal law authorizes just such a civil action," and a recipient of a subpoena may therefore decline to "produc[e] the documents on the date specified" and instead "petition[ ] a federal court to adjudicate its rights and obligations." *Id.* at 892–93. Nor did the law of abstention provide any basis to refrain from federal adjudication. *Id.* at 895–96.

The district court distinguished *Smith & Wesson* on the ground that it involved abstention, not subject matter jurisdiction. App.13–14a. But that is no distinction at all, since rejecting a district court's abstention necessarily affirms the "jurisdiction they possess" and which the court expressly recognized. *Smith & Wesson*, 27 F.4th at 890 & n.1. That jurisdiction is necessary because, as Judge Matey observed in his concurring opinion, these demands can cause exactly the type of chilling injury First Choice faces here—"fearing the arrival of subpoenas," groups might "think[ ] twice before speaking." *Id.* at 896–97 (Matey, J., concurring). In fact, "[o]ne might suspect that is the whole point" of serving them. *Id.*

That is equally true here of the Attorney General's attempt to use his powers under consumer protection law to wring expansive disclosure out of ideological opponents.

The Eleventh Circuit reached the same conclusion in affirming an injunction against a challenge to an investigatory demand under the Fourth Amendment. In *Major League Baseball*, the Florida attorney general had served broad, antitrust CIDs on Major League Baseball concerning its plans to eliminate Florida-based teams. 331 F.3d at 1179. The Eleventh Circuit recognized that MLB had a ripe federal challenge to the CIDs even before they were enforced. To be sure, MLB could "comply with the terms of the CIDs," but the demands were burdensome, and MLB believed it had a "federal right" to be exempt from both investigation and prosecution. *Id.* at 1181. Though MLB "could have filed suit in state court" to invalidate the CIDs, it likely "would have found it impossible to convince a Florida trial court," based on past precedent that the matter was beyond the scope of the court's jurisdiction. *Id.* That left "only one option"—"an action in federal court" to enjoin the demands. *Id.* at 1180-81.

That federal action led to an injunction against enforcing the CIDs, which the Eleventh Circuit affirmed. *Id.* at 1179. Here too, the summary state-court proceedings in *Smith & Wesson* and the refusal of New Jersey's appellate courts even to review the federal issues in that case provides ample warrant for First Choice to avail itself of federal court. 474 N.J. Super. at 496, 498.

The Sixth Circuit has also upheld jurisdiction to bring a constitutional challenge to an investigatory

demand before it was enforced. In *Online Merchants Guild*, a trade organization brought a constitutional challenge to the Kentucky attorney general's investigation of sellers of COVID mitigation supplies under state laws against price-gouging. 995 F.3d at 546. Though the Sixth Circuit ultimately rejected the challenge, it affirmed the organization's standing to bring it based on one of its members' receipt of a subpoena and CID. *Id.* at 549. The court held that "evidence of past enforcement actions," the statutory availability of private actions to enforce the law, and the service of a CID predicated on the attorney general's position that there was "reason to believe a … violation had or was likely to occur" all supported standing. *Id.* at 550–51. All these factors are equally present here with respect to the Attorney General's enforcement of the NJCFA.

But most important, rather than disavowing his demands, the attorney general in *Online Merchants* had "vigorously litigated enforcement of the … subpoena and CID in state court." *Id.* at 551. Plus, he had "engaged in significant posturing regarding his price-gouging investigations in public comments." *Ibid.* He had "denounced the egregious actions of third-party sellers suspected of price gouging," and said they "will not be tolerated in Kentucky." *Ibid.* (cleaned up). His "public comments and appearances" thus undermined his attempt "to minimize the subpoenas and CIDs as preliminary, investigatory actions unlikely to lead to enforcement." *Id.* at 552. So too here.

The Ninth Circuit has also held that a constitutional challenge to an attorney general's investigative demand is ripe "even prior to the CID's enforcement" if the plaintiff alleges "objectively reasonable chilling of its speech or another legally

cognizable harm." *Twitter*, 56 F.4th at 1178 n.3. In that case, a social media company alleged that its speech was chilled by CIDs served by the Texas attorney general after he had criticized Twitter's decision to remove President Trump from the platform. *Id.* And while the Ninth Circuit ultimately held that Twitter failed to adequately allege any such chilling, it expressly rejected the Fifth Circuit's view that a CID could not cause harm until it was enforced. *Id.* (citing *Google,* 822 F.3d at 225). That interpretation was not "persuasive" because it misconstrued caselaw regarding federal administrative subpoenas and ignored "the First Amendment, under which a chilling effect on speech can itself be the harm." *Id.* at 1178–79. That chilling effect as to speech, religion, and associational rights is exactly why First Choice brought this federal action here.

Only the Fifth Circuit has required state-court enforcement of investigatory demands as a precondition to a federal challenge. *Google*, 822 F.3d at 226. But that pre-*Knick* ruling is flawed for all the reasons set forth above. Mandamus is warranted because the district court's adoption of the Fifth Circuit's rule is "in conflict with the rule … established" by this Court in *Knick*. See *Ex parte Schollenberger*, 96 U.S. 369, 378 (1877); *McClellan*, 217 U.S. at 281–82. The Court should grant the writ and return the case to the district court to timely decide First Choice's motion for TRO and preliminary injunction in a manner that preserves this Court's appellate jurisdiction.

B. First Choice Has No Other Remedy.

The threat of imminent enforcement proceedings in state court works an ongoing harm to First Choice's

constitutional rights of speech, religion, and association. Again, "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod*, 427 U.S. at 373 (plurality opinion). First Choice is presently forced to "think twice" before it speaks, requests donations, recruits volunteers, and talks to like-minded partner organizations. *Smith* & *Wesson*, 27 F.4th at 896 (Matey, J., concurring). The threatened disclosure of First Choice's sensitive internal information on its operations, donors, associates, and volunteers is calculated—and will continue—to chill its faith-based pro-life speech and interfere with its protected associations with donors, supporters, and volunteers, App.43–44a, "even if there is no disclosure to the general public." *Americans for Prosperity*, 141 S. Ct. at 2388 (cleaned up). And beyond this chilling, the Attorney General's parallel litigation in state court is itself a form of irreparable harm. *Carlough* v. *Amchem Products, Inc.*, 10 F.3d 189, 196 (3d Cir. 1993); *General Protecht Grp., Inc.* v. *Leviton Mfg. Co.*, 651 F.3d 1355, 1363 (Fed. Cir. 2011); *Woodlawn Cemetery* v. *Loc. 365, Cemetery Workers & Greens Attendants Union*, 930 F.2d 154, 156 (2d Cir. 1991).

Mandamus is warranted because First Choice has no other legal remedy to redress these harms from the state-court proceeding. Moving in state court to stay that proceeding under the first-filed rule would be no help because the New Jersey Appellate Division has already held that that rule does not apply under these circumstances. *Smith & Wesson*, 474 N.J. Super. at 489.

Neither does First Choice have any effective recourse remaining in the Third Circuit. That court denied equitable relief pending appeal based on the

same jurisdictional arguments presented here and has not even issued a briefing schedule. So the imminent show-cause hearing in the state-court proceedings will be res judicata before the appeal is decided. Nor can First Choice obtain meaningful en banc review of the Third Circuit's denial of an injunction, since the Third Circuit's internal operating procedures would draw that process out beyond the date of the state court show-cause hearing. Third Circuit I.O.P. 9.5. Having denied an injunction pending appeal, the Third Circuit can provide relief only if it ultimately reverses—an outcome that is months or years away.

Nothing other than mandamus will provide First Choice adequate relief. As soon as the state court adjudicates the Attorney General's summary proceeding, First Choice will lose its right to an adjudication of its federal constitutional claims in federal district court. No surprise: that is what the district court contemplated with its order, App.13a n.7, what the Attorney General is now arguing in the *Smith & Wesson* appeal, see Appellee Br., *Smith & Wesson*, No. 23-1223, ECF 30 at 19 (3d Cir., June 23, 2023), and what this Court's jurisprudence on parallel litigation suggests, see *Exxon Mobil Corp.*, 544 U.S. at 293 (citing 28 U.S.C. 1738).

First Choice's potential to litigate its federal claims as defenses in state court is no substitute. Where it exists, the right to litigate in federal court " cannot be properly denied." *New Orleans Pub. Serv., Inc.*, 491 U.S. at 359. Constitutional claims "are entitled to be adjudicated in the federal courts," *McNeese* v. *Board of Educ. For Cmty. Unit Sch. Dist. 187, Cahokia, Ill.*, 373 U.S. 668, 674 (1963) (citations

omitted), which are "the primary and powerful reliances for vindicating every right given by the Constitution." *Zwickler* v. *Koota*, 389 U.S. 241, 247 (1967). The reason Congress enacted section 1983 was because of "the state courts' failure to secure federal rights." *Mitchum* v. *Foster*, 407 U.S. 225, 241 (1972).

Plus, if this case goes like *Smith & Wesson*, First Choice may not even be able to raise its federal defenses in *state* court. There, the Appellate Division side-stepped the constitutional objections to the subpoena, yet it still affirmed the trial court's order enforcing it. 474 N.J. Super. at 494. Worse, even though Smith & Wesson *couldn't* litigate its federal objections when appealing the summary state enforcement proceeding, the Attorney General still maintains that the state-court proceeding bars those federal objections as res judicata. Appellee Br., *Smith & Wesson*, No. 23-1223, ECF 30 at 19 (3d Cir., June 23, 2023). So there is no guarantee that First Choice will be able to litigate its federal claims in *any* court.

State-court adjudication also threatens to moot First Choice's claims and place them beyond any review by *this* Court. Once the state proceeding has reached judgment, any further review will be in the state system. First Choice would be able to reach this Court only after an appeal to the Appellate Division, discretionary review to the New Jersey Supreme Court, and then discretionary review to this Court. And any federal relief at that stage would be effectual only if First Choice were able to resist producing documents throughout on pain of crippling penalties, including the closure of its doors. N.J. Stat. Ann. 56:8-6. And if First Choice "complie[s] with the subpoena" and the Attorney General "has obtained the testimony or documents it is seeking, there is no longer a

live controversy between the parties." *Office of Thrift Supervision Dep't of Treasury* v. *Dobbs*, 931 F.2d 956, 957–58 (D.C. Cir. 1991).

That was what happened in *Exxon Mobil Corp.* v. *Healey*, where a challenge to CIDs served by New York and Massachusetts attorneys general in 2015 was moot when it finally reached the Second Circuit seven years later and the investigation had concluded. 28 F.4th 383, 393 (2d Cir. 2022). "Put simply, the Court cannot enjoin what no longer exists." *Id.* That makes it much more unlikely that a small nonprofit like First Choice, with far fewer resources to survive an investigation, will be able to stave off enforcement for the time required to keep the case alive for this Court's review.

This Court has previously granted mandamus to save a litigant from the loss of its right to redress in the federal courts. As in *McClellan*, First Choice faces imminent loss of its federal forum because the district court erroneously deferred to a state-court proceeding that "might render a judgment which would be res judicata." 217 U.S. at 281–82. And as in *In re Hohorst*, 150 U.S. at 664 (1893), mandamus is warranted since First Choice's direct appeal will likely be of no use in protecting from that harm. First Choice has no other avenue of relief; this Court should grant the writ.

C. A Writ of Mandamus Is Appropriate.

Finally, the equitable relief First Choice seeks is appropriate. As the many cases cited above show, mandamus is appropriate to require a lower court to exercise jurisdiction it has wrongfully declined when no other remedy can redress the petitioner's harm. *In re Hohorst*, 150 U.S. at 664; *Ex parte Schollenberger*,

96 U.S. at 378; *McClellan*, 217 U.S. at 281–82. And it is especially appropriate here where that jurisdiction is necessary to prevent the chilling of First Amendment speech, religion, and associational rights from the threat of unlawful government action. *Americans for Prosperity*, 141 S. Ct. at 2388; *Elrod*, 427 U.S. at 373 (plurality opinion).

This case does not present any of the circumstances where this Court has deferred to parallel state-court litigation. First Choice filed before any state-court litigation began, so abstention does not apply. *Smith & Wesson*, 27 F.4th at 895–96. And it does not involve litigation between private parties, where the Anti-Injunction Act generally prohibits interference with parallel state proceedings. See, *e.g.*, *In re Baldwin-United Corp. (Single Premium Deferred Annuities Ins. Litig.)*, 770 F.2d 328, 335 (2d Cir. 1985); 28 U.S.C. 2283. Instead, this case involves claims against state officials under section 1983, which Congress specifically exempted from that prohibition precisely to avoid the risk that state courts might not adequately protect federal rights. See *Mitchum*, 407 U.S. at 241. Given the outcome in *Smith & Wesson*, that risk is acute here.

Nor has the Attorney General cited any countervailing harm from the federal courts exercising jurisdiction over this case. In the district court, he was prepared to defer to the federal court's ruling on a preliminary injunction before his state-court enforcement adjudication, having offered terms on which he would do so. D.C.Dkt.17 at 2–3. He suffers no irreparable harm in having to wait for documents from an organization that has been lawfully operating in New Jersey for 40 years. The Attorney General complains that further review would encourage

recipients of state subpoenas to sue in federal court to stop them. *Id.* But state officials' conduct under color of state law *is* subject to federal jurisdiction. 42 U.S.C. 1983. And protecting that accountability—not dissolving it—is very much in the public interest. The Court should grant a writ directing the lower court to assume jurisdiction over this case and timely decide First Choice's motion for TRO and preliminary injunction in a manner that preserves the Court's jurisdiction.

II. Alternatively, the Court Should Grant Certiorari Before Judgment.

In the alternative, this Court should grant certiorari before judgment and temporarily enjoin the Attorney General from enforcing the Subpoena to prevent irreparable harm and preserve this Court's jurisdiction. The Court has previously granted such interim relief—to preserve "issues for review in a manner conducive to careful study and consideration"—where a "case would [otherwise] be moot" on an important question. *Republican State Cent. Comm. of Ariz.* v. *Ripon Soc'y Inc.*, 409 U.S. 1222, 1225 (1972) (Rehnquist, J., in chambers). This case presents an important question of jurisdiction on which the circuits are sharply split, and First Choice is highly likely to prevail. So the Court may issue an injunction "to maintain the status quo pending final action in this Court on the question of the District Court's jurisdiction." *Arrow Transp. Co.*, 83 S. Ct. at 3 (Black, J., in chambers). Doing so will also protect First Choice from irreparable harm, where ongoing state-court proceedings would otherwise "deprive [the plaintiffs] of rights protected by the First Amendment during the period of appellate review." *National*

Socialist Party of Am. v. *Village of Skokie*, 432 U.S. 43, 44 (1977).

The decision below squarely presents the question of federal jurisdiction, making this case an ideal vehicle to resolve the well-developed split. Without review by this Court, the district court's decision may embolden the Attorney General to continue conducting unconstitutional investigations without fear of federal intervention. That is what has already happened in Fifth Circuit jurisdictions under *Google*, where demand recipients have been forced to file First Amendment challenges in state court. *E.g.*, *Annunciation House Inc.* v. *Paxton*, 2024DCV0616 (Tex. Dist. Ct., El Paso County Feb. 8, 2024) (First Amendment challenge by Catholic organization to Texas attorney general's investigatory demand for information regarding its housing of migrants). And other state attorneys general continue to resist—with some success—federal jurisdiction over their speech-chilling subpoenas in a variety of different contexts. See, *e.g.*, *Twitter*, 56 F.4th at 1178; *Second Amend. Found.*, 2024 WL 97349, at *4; *Obria Group, Inc.*, No. 3:23-cv-06093-TMC (W.D. Wash.) (hearing set Feb. 29, 2024).

The lower courts need this Court's guidance on this important question. As the circuit caselaw shows, these demands have the potential to chill speech and association among liberal, conservative, progressive, and libertarian groups alike, and to do so on both sides of hot-button issues in a wide variety of industries. A pro-life attorney general can chill Planned Parenthood and its supporters with a subpoena just as easily as First Choice has been harassed here.

There is no need for this Court to wait for further percolation of the issue in the lower courts. A full, reasoned decision by the Third Circuit is unlikely to occur in this case if it becomes moot as a result of state-court proceedings. And even if it did, it would not impact the split. The Third Circuit has already addressed this question in *Smith & Wesson*, and any decision it might render here could not resolve the conflict with the Fifth Circuit.

Unless the Court takes up this issue in a procedural posture like this, this important question might forever elude this Court's review. By the time appellate review occurs, state-court enforcement proceedings are likely to be res judicata. Nor is any other case likely to soon present an opportunity for the Fifth Circuit to revisit its position. While *Google* remains in place, litigants are unlikely to file challenges to investigatory demands in the Fifth Circuit. Indeed, it is easy to see why Twitter brought its challenge to the Texas attorney general's CIDs in federal court in California, not Texas, *Twitter*, 56 F.4th at 1172, and why others must file in state court, *Annunciation House Inc.*, 2024DCV0616.

Should this Court deem it appropriate to grant review of this question now, it may construe this petition as one for writ of certiorari before judgment, grant it, and temporarily enjoin the Attorney General from taking further steps to enforce the Subpoena pending this Court's review.

CONCLUSION

For the foregoing reasons, the Court should issue a writ of mandamus directing the district court to reinstate this suit, exercise jurisdiction, and timely decide First Choice's TRO and preliminary injunction motions in a manner that preserves appellate review. Alternatively, the Court should construe this petition as one for a writ of certiorari before judgment and temporarily enjoin the Attorney General from taking further steps to enforce the Subpoena pending this Court's review.

Respectfully submitted,

JAMES A. CAMPBELL
J. CALEB DALTON
GABRIELLA M. MCINTYRE
MERCER S. MARTIN
ALLISON H. POPE
ALLIANCE DEFENDING FREEDOM
44180 Riverside Pkwy
Lansdowne, VA 20176

KEVIN H. THERIOT
JULIA C. PAYNE
ALLIANCE DEFENDING FREEDOM
15100 N. 90th Street
Scottsdale, AZ 85260

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

FEBRUARY 26, 2024

APPENDIX

APPENDIX 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

---

[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)).

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.)

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).

---

[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.)

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. Cuna,* 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 US. Dep't of State*, 811 F. App'x 729, 732 (3d Cir. 2020) (citing *Armstrong World Indus., Inc. ex rel Wolj on 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.

---

[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)).

2018) (citation omitted). This principle derives from the notion that courts should not be deciding issues that rest "upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Turnbull,* 134 F. App'x at 500 (quoting *Texas v. United States,* 523 U.S. 296,300 (1998)).

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

---

[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).

> 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 CEA 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.

---

[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

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.

United States v. Powell, 379 U.S. 48, 58, 85 S.Ct. 248, 13 L.Ed.2d 112 (1964)).

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

[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

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

---

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.")

that appeal may or should be. *See Smith & Wesson Brands, Inc. v. Grewal*, No. 20-19047, 2022 WL 17959579, at *5 (D.N.J., Dec. 27, 2022). Second, and importantly, the Court's finding today avoids the *Smith & Wesson* tangle because the trouble in *Smith & Wesson* resulted from the lower court abstaining from hearing a plaintiffs 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.*

---

[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.

LLC v. Del. River Basin Comm'n, 894 F.3d 509, 522 (3d Cir. 2018) (citation omitted) ("The function of the ripeness doctrine is to determine whether a party has brought an action prematurely, and counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine."). Accordingly, the Court's decision here does not run afoul of *Smith & Wesson*.

IV. CONCLUSION

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

/s/ Michael A. Shipp
Michael A. Shipp
United States District Judge

Case Name: FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC. v. PLATKIN

Case Number: 3:23-cv-23076-MAS-TJB

Filer:

WARNING: CASE CLOSED on 01/12/2024

Document Number: 33 (No document attached)

Docket Text:

TEXT ORDER: This matter comes before the Court upon Plaintiff's emergent motion for a preliminary injunction pending appeal. (ECF No. [31].) In its recent Memorandum Opinion (ECF No. [28]), this Court explained why it lacks subject-matter jurisdiction over this matter. Crucially, "[w]ithout jurisdiction [a] court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quoting *Ex parte McCardle*, 74 U.S. 506, 514 (1868)). Therefore, for the same reasons outlined in the Court's recent Memorandum Opinion (ECF No. [28]), Plaintiff's emergent motion for a preliminary injunction pending appeal (ECF No. [31]) is DENIED. So Ordered by Judge Michael A. Shipp on 1/22/2024. (jdb)

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

By: Chanel Van Dyke (165022015)
Deputy Attorney General, Assistant Chief
Consumer Fraud and Prosecution Section
(973) 648-7819
Chanel.VanDyke@law.njoag.gov

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

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

Plaintiffs,

v.

Civil Action

ORDER TO SHOW CAUSE

SUMMARY ACTION

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Defendant.

THIS MATTER being brought before the Court by Chanel Van Dyke, Deputy Attorney General, for plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey, and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs (collectively, "Plaintiffs"), seeking relief by way of summary action pursuant to R. 4:67-l(a), based upon facts set forth in the Verified Complaint, Brief and supporting Certifications filed herewith; and the Court having determined that this matter may be commenced by Order to Show Cause as summary proceeding pursuant to N.J.S.A. § 45:17A-33(e), § 56:8-8, and R. 1:9-6, and for good cause shown:

It is on this 31st **day of** January, **2024 ORDERED** that defendant First Choice Women's Resource Centers, Inc. ("First Choice" or "Defendant") appear and show cause before the Superior Court of New Jersey, Essex County, Chancery Division, General Equity Part, at 495 MLK Jr. Blvd., Courtroom 3B, Newark, NJ 07102 at 1:30 o'clock in the PM or as soon thereafter as counsel can be heard, on the 13th day of March, 2024, why judgment should not be entered:

a. Directing the Defendant to respond fully to the Subpoena within third (30) days;

b. Enjoining the destruction of any documents specifically requested in the Subpoena; and

c. Directing that this matter be heard in a summary manner pursuant to the provisions of N.J.S.A. § 45:17A-33(e), § 56:8-8, R. 4:67-1(a), and R. 1:9-6.

And it is further ORDERED that:

1. A copy of this Order to Show Cause, Verified Complaint, Brief, and supporting Certifications submitted in support of this application be served upon the Defendant personally (or by other means within 10 days of the date hereof, in accordance with R. 4:4-3 and R. 4:4-3, this being original process.

2. Plaintiffs must file with the Court the proof of service of the pleadings on the Defendant no later than three (3) days before the return date.

3. Defendant shall file and serve a written Answer, an Affidavit, or Brief where necessary or a motion returnable on the return date to this Order to Show Cause and the relief requested in the Verified Complaint and proof of service 8 days before the return date.

4. Plaintiffs must file and serve any written reply to Defendant's Order to show Cause opposition 3 days before the return date.

5. If the Defendant does not file and serve opposition to this Order to Show Cause, the application will be decided on the papers on the return date and relief may be granted by default, provided that Plaintiffs file a proof of service and a proposed form of Order at least three (3) days prior to the return date.

6. If Plaintiffs have not already done so, a proposed form of Order addressing the relief sought

on the return date must be submitted to the Court no later than three (3) days before the return date.

7. Defendant takes notice that Plaintiffs have filed a lawsuit against them in the Superior Court of New Jersey. The Verified Complaint attached to this Order to Show Cause states the basis of the lawsuit. If you dispute the Verified Complaint, you, or your attorney, must file a written Answer to the Verified Complaint and proof of service within thirty-five (35) days from the date of service of this Order to Show Cause; not counting the day you received it.

These documents must be filed with the Clerk of the Superior Court in the county listed above. A directory of these offices is available with the Civil Division Management Office in the county listed above and online at: http://www.judiciary.state.nj.us/prose/10l53_deptyclerklawref.pdf. Include a $_____ filing fee payable to the "Treasurer State of New Jersey." You must also send a copy of your Answer to the Plaintiffs' attorney whose name and address appear above. A telephone call will not protect your rights; you must file and serve your Answer (with the fee) or judgment may be entered against you by default. Please note: Opposition to the Order to Show Cause is not an Answer, and you must file both. Please note further: if you do not file and serve an Answer within 35 days of this Order, the Court may enter a default against you for the relief Plaintiffs demand.

8. If you cannot afford an attorney, you may call the Legal Services office in the county in which you live or the Legal Services of New Jersey Statewide

Hotline at 1-888-LSNJ- LAW (1-888-576-5529). If you do not have an attorney and are both eligible for free legal assistance you may obtain a referral to an attorney by calling one of the Lawyer Referral Services. A directory with contact information for local Legal Services Offices and Lawyer Referral Services is available in the Civil Division Management Office in the county listed above and online at http://judiciary.state.nj.us/prose/10153_deptyclerklawref.pdf.

9. The Court will entertain argument, but not testimony, on the return date of the Order to Show Cause, unless the Court and parties are advised to the contrary no later than 3 days before the return date.

/s/ Lisa M. Adubato

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

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CCO-057-E

No. 24-1111

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC,

Appellant

v.

ATTORNEY GENERAL NEW JERSEY, Matthew Platkin, in his official capacity as Attorney General for the State of New Jersey

(D.N.J. No. 3-23-cv-23076)

Present: KRAUSE, FREEMAN, and SCIRICA
Circuit Judges

1. Emergency Motion filed by Appellant First Choice Women's Resource Center for Injunction Pending Appeal Rule 27.7 Expedited Consideration Requested
2. Response filed by Appellee Attorney General New Jersey
3. Addendum to Response filed by Appellee Attorney General New Jersey
4. Reply filed by Appellant First Choice Women's Resource Center
5. 28(j) Letter filed by Appellant First Choice Women's Resource Center
6. 28(j) Letter filed by Appellee Attorney General New Jersey

Respectfully,
Clerk/lmr

ORDER

The above-referenced Emergency Motion is DENIED without prejudice to reconsideration by the merits panel and/or the filing of a request for an expedited briefing schedule.

By the Court,

s/Cheryl Ann Krause
Circuit Judge

Dated: February 15, 2024

Lmr/cc: All Counsel of Record

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

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

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

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

Defendant.

Document Filed Electronically

INTRODUCTION

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

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

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

4. Defendant is the Attorney General of New Jersey, who is nationally prominent among elected officials for his fervent advocacy for abortion, and prolific in his pronouncements of hostility toward and

suspicion of pregnancy resource centers like those operated by First Choice.

5. AG Platkin has issued a subpoena (the "Subpoena") demanding production of a broad range of documents under the pretense of conducting a civil investigation into possible violations of "the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -227, specifically N.J.S.A. 56:8-3 and 56:8-4, the Charitable Registration and Investigation Act, N.J.S.A. 45:17 A-18 to -40, specifically N.J.S.A. 45:17A-33(c), and the Attorney General's investigative authority regarding Professions and Occupations, N.J.S.A. 45:1-18" relating to the Ministry's handling of patient data and statements about the lawful practice of Abortion Pill Reversal.

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

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

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

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

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

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

JURISDICTION AND VENUE

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

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

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

reasonable attorneys' fees and costs under 42 U.S.C. § 1988.

15. Venue lies in this district pursuant to 28 U.S.C. § 1391 because all events giving rise to the claims detailed herein occurred within the District of New Jersey and Defendant resides and operates in the District of New Jersey.

FACTUAL BACKGROUND

First Choice

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

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

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

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

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

(STI) testing and referral; limited obstetric ultrasounds; parenting education; and the administration of material support, such as baby clothes and furnishing, diapers, maternity clothes, and food.

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

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

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

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

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

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

patients to whom it administers APR to track its effectiveness.

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

First Choice's Religious Beliefs

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

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

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

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

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

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

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

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

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

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

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

---

[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-

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

---

protection-of-individuals-seeking-abortion-and-security-of-abortion-providers/.

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

"abundantly clear that the rights of women will not be protected" in its jurisprudence on abortion.[4]

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

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

---

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

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

[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-

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

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

---

training-and-education-to-expand-pool-of-abortion-providers-in-new-jersey/.

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

a host of states, including Idaho,[11] Indiana,[12] and Texas.[13]

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

48. Defendant has spoken alongside the CEO of Planned Parenthood of Metropolitan New Jersey at a roundtable hosted by Vice President Kamala Harris with "advocates who are fighting on the frontlines to protect reproductive rights."[14]

---

[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.

[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/.

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

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

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

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

---

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

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

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

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

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

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

---

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

[19] *Id.*

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

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

---

https://www.washingtonpost.com/dc-md-va/2021/04/16/data-breach-planned-parenthood-dc/.

[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/.

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.

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]

---

[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.

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]

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

---

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

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

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.

---

[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)*
Mercer Martin (Ariz. Bar No. 03138)*
ALLIANCE DEFENDING FREEDOM
440 First Street NW, Suite 600
Washington, DC 20001
Telephone: (202) 393-8690
Facsimile: (202)347-3622
lwilson@ADFLegal.org
tgarrison@ADFLegal.org
gmcintyre@ADFLegal.org
mmartin@ADFLegal.org

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

**Motion for pro hac vice admission filed concurrently*

VERIFICATION OF COMPLAINT

I, Aimee Huber, a citizen of the United States and a resident of Warren, New Jersey, declare under penalty of perjury under 28 U.S.C. § 1746 that I have read the foregoing Verified Complaint and the factual allegations therein, and the facts as alleged are true and correct.

Executed this 13th day of December, 2023, at Morristown, New Jersey.

/s/ Aimee Huber
Aimee Huber

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

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

ADMINISTRATIVE ACTION

SUBPOENA DUCES TECUM

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

You are hereby commanded to produce to the New Jersey Division of Consumer Affairs, Office of Consumer Protection ("Division") through Chanel Van Dyke, Deputy Attorney General, at 124 Halsey Street, 5th Floor, Newark, New Jersey 07101, on or

before **December 15, 2023**, at 10:00 a.m., the following:

See Attached Schedule.

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

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

s/ Chanel Van Dyke
Chanel VanDyke
Deputy Attorney General

Dated: 11/15/23

****Certificate of Compliance Omitted from this Appendix****

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 Document responds.

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

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

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

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

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

b. Each author or maker of the Document;

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

d. The date thereof;

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

f. The present location of the Document;

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

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

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

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

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

b. Reason for the destruction or discard; and

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

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

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

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

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

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

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

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

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

8. "Communication(s)" means any conversation, discussion, letter, email, text message, Social Media

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

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

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

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

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

13. "Donor Solicitation Page" refers to the website in which First Choice engages in Solicitation and

requests for donations, specifically located at the First Choice Donor Website and at https://www.myegiving.com/App/Giving/firstchoicewrc.

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

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

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

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

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

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

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

or time period in which You used the Person for their services generally or as a volunteer.

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

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

26. "Pamphlet[s]" shall be defined as any Document or collection of Documents which are given to Clients or Donors and which provide information on subject matters related to Your Charitable Purpose or Your Services.

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

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

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

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

31. "Service(s)" shall be defined as the resources, practices, procedures, and actions that You provide or

offer to provide to Clients in furtherance of Your Charitable Purpose, including but not limited to: Telehealth Nurse Consultation, Pregnancy Testing, Limited Obstetric Ultrasound, Intravaginal Ultrasound, Abdominal Ultrasound, Abortion Info Consultation, STD/STI testing, Consultation about option to carry to term or have an abortion, Counseling, After-abortion care, Referrals for Abortion Pill Reversal, OB-GYN Referrals, Referrals for Adoption or other financial resources.

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

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

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

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

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

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

DOCUMENT REQUESTS

1. True, accurate, and complete copies of each and every Solicitation and Advertisement Concerning Services or goods offered in furtherance of Your Charitable Purpose, Including Solicitations and

Advertisements appearing in or on any of the following:

a. First Choice Website;

b. First Choice Website 2;

c. First Choice Donor Website;

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

e. Print media, including newspapers and magazines;

f. Amazon or any other e-commerce platform;

g. Sponsored content;

h. Digital Advertising;

i. Video Advertising;

j. Native Advertising;

k. Other websites;

l. Pinterest;

m. Radio;

n. Podcasts; and

o. Pamphlets.

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

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

4. All videos shown to Clients and/or Donors in the course of providing Your Services or soliciting donations, Including but not limited to those videos Concerning abortion procedures and their purported effects.

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

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

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

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

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

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

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

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

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

h. With respect to dilation and evacuation after viability, "[t]he 'Intact D&E' pulls the fetus out legs first, then crushes the skull in order to remove the fetus in one piece";

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

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

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

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

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

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

o. "A D&E is typically performed between 9-

20 weeks although late-term abortions can also be performed via D&E";

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

First Choice Website 2:

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

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

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

d. "Other risks of both medical and surgical abortion include: hemorrhage (life-threatening heavy bleeding), infection, damage to organs (tearing or puncture by abortion instruments during surgical abortion), pre-term birth in later pregnancies, life-threatening anesthesia complications (surgical abortion)";

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

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

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

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

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

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

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

9. To the extent not already produced, all Documents, Including any tests, studies, publications, analyses, evaluations, or Communications received or made by You or on Your behalf, Concerning Abortion Pill Reversal, the risks of abortion, and contraceptives.

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

11. All Documents Concerning any complaints or identifying any concerns from Clients or Donors about Your Services,

Advertisements, Solicitations, Pamphlets, videos, or Your Claims, Including Your processes and procedures for handling complaints or concerns from Clients and Donors.

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

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

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

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

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

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

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

ultrasound images.

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

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

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

22. All Documents Concerning Heartbeat International, Inc. and/or the Abortion Pill Reversal Network, Including the "Abortion Pill Reversal Hotline" referenced in Your G0mmunications 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 fictious or alternate name(s);

j. All organizations charts; and

k. If a partnership, all partnership Documents.

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

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

27. Documents sufficient to identify any licenses and registrations obtained or held by or on

behalf of First Choice, and issued by any municipal, county, State, or federal authority.

28. All Documents Concerning Your record retention Policies.

*** *Guidelines for the Production of Electronically Stored Information Omitted from this Appendix****

From: Kaitlyn Wojtowicz

To: Sundeep Iyer

Cc: Daniela Nogueira

Subject: Re: [EXTERNAL] NJ AG crisis pregnancy center alert draft

Date: Wednesday, October 26, 2022 10:13:41 AM

Attachments: PP comments 2022 1017 DRAFT Crisis Pregnancy Center Consumer Alert - JC edits.docx

Hi Sundeep,

Yes, thank you. I'm attaching some very minor edits and comments we had, but in general we think it is great and appreciate this effort!

Best,

Kaitlyn

--

Kaitlyn Wojtowicz

Pronouns: She/Her (Why do I list this here?)

Vice President of Public Affairs

Planned Parenthood Action Fund of New Jersey

908-577-1778

From: Sundeep Iyer <Sundeep.Iyer@njoag.gov>

Date: Wednesday, October 26, 2022 at 10:08 AM

To: Kaitlyn Wojtowicz <kaitlyn.wojtowicz@ppgnnj.org>

Cc: Daniela Nogueira <Daniela.Nogueira@njoag.gov>

Subject: RE: [EXTERNAL] NJ AG crisis pregnancy center alert draft

Kaitlyn,

Hope you're doing well. Just wanted to follow up and see whether you've had a chance to take a look at this document. Looking forward to your feedback—and no worries if you're not able to get to it. (I know you all are incredibly busy!) Thanks so much—and looking forward to seeing you tomorrow.

Best wishes,

Sundeep

From: Kaitlyn Wojtowicz <kaitlyn.wojtowicz@ppgnnj.org>

Sent: Tuesday, October 18, 2022 9:09 AM

To: Sundeep Iyer <Sundeep.Iyer@njoag.gov>

Cc: Daniela Nogueira <Daniela.Nogueira@njoag.gov>

Subject: Re: [EXTERNAL] NJ AG crisis pregnancy center alert draft

Thank you Sundeep, we will keep this close and appreciate your offer for us to provide any feedback.

Best,

Kaitlyn

--

Kaitlyn Wojtowicz

Pronouns: She/Her (Why do I list this here?)

Vice President of Public Affairs

Planned Parenthood Action Fund of New Jersey

908-577-1778

From: Sundeep Iyer <Sundeep.Iyer@njoag.gov>

Date: Monday, October 17, 2022 at 3:15 PM

To: Kaitlyn Wojtowicz <kaitlyn.wojtowicz@ppgnnj.org>

Cc: Daniela Nogueira <Daniela.Nogueira@njoag.gov>

Subject: [EXTERNAL] NJ AG crisis pregnancy center alert draft

Kaitlyn,

Hope you're doing well! I'm passing along here a draft of a consumer alert our Division of Consumer Affairs put together on crisis pregnancy centers. (We'd be grateful if you could keep this under wraps until we release it.) We wanted to flag this for you for your awareness. We're hoping to get this document out this month, so if you have any feedback, questions, or concerns, please let us know this week, if possible. Thanks so much. Happy to discuss if you'd like.

Best wishes,

Sundeep

****Confidentiality Notices Omitted from this Appendix****

From: Sundeep Iyer

To: Roxanne Sutocky; Kaitlyn Wojtowicz

Cc: Daniela Nogueira

Subject: RE: Data privacy alert for providers (pc/adc)

Date: Tuesday, December 6, 2022 3:21:38 PM

Roxanne and Kaitlyn,

Thanks so much for your helpful feedback on the documents we have sent you over the past few months. Your feedback was extremely helpful, and you'll see almost all of it reflected in the documents we are releasing. We just wanted to let you both know that we are planning to issue three documents tomorrow—the crisis pregnancy center alert, a data privacy alert for providers, and a letter to the professional medical boards outlining their obligations under the laws enacted by the legislature after Dobbs. We'll follow up tomorrow with the press release and the documents when they're released. In the meantime, we would be grateful if you could keep this news close hold until we issue the release tomorrow.

Thanks again for your partnership—we really appreciate your support. Best wishes,

Sundeep

From: Sundeep Iyer

Sent: Wednesday, October 26, 2022 1:57 PM

To: Roxanne Sutocky <rsutocky@thewomenscenters.com>; Kaitlyn Wojtowicz

<kaitlyn.wojtowicz@ppgnnj.org>

Cc: Daniela Nogueira <Daniela.Nogueira@njoag.gov>

Subject: Data privacy alert for providers (pc/adc)

Roxanne and Kaitlyn,

Hope you both are doing well. Working together with the AG's Strike Force, our Division of Consumer Affairs has put together the attached data privacy alert for providers. The document outlines some best practices we've identified for protecting patient and provider data. We are looking forward to getting this out to providers, since we think it's one of the first documents of its kind put together by a State AG's office.

We are hoping to release this publicly soon, but we wanted to flag this document for you both first to see whether you have comments, questions, or concerns in light of your expertise. (We would also appreciate if you would keep this close hold until we are ready to release it.) One note: We suspect that many of these measures are already being implemented by Cherry Hill and by Planned Parenthood clinics—so the guidance is likely going to be the most helpful for smaller clinics or individual providers. To that end, if you think there are one or two smaller providers we should share this with to get feedback, please let us know.

We would be grateful for any feedback either of you might have by Tuesday next week, if at all possible. We know you're both extremely busy, so we also

completely understand if you can't get to this on that timeline--but just wanted to be sure we flagged this in case you have a chance to comment.

Thanks so much. Talk soon.

Best wishes,

Sundeep