No. 24-781

In the Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Petitioner,

v.

MATTHEW J. PLATKIN,
Attorney General of New Jersey,

Respondent.

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

BRIEF *AMICI CURIAE* OF CHRISTIAN LEGAL SOCIETY, GATEWAY PREGNANCY CENTER, AND OBRIA MEDICAL CLINICS PNW IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Amici agree with the Petitioners' statement of the Question Presented:

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

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INTERESTS OF *AMICI CURIAE*[1]

Christian Legal Society ("CLS") is a nonprofit, nondenominational association of Christian attorneys, law students, and law professors. CLS defends the sanctity of human life and the First Amendment rights of all Americans.

Gateway Pregnancy Center and **Obria Medical Clinics PNW** are organizations who have faced targeted state actors' investigative efforts that are considered non-self-executing. Gateway and Obria believe their constitutional rights either have been or may be infringed, and this narrow view of ripeness would very likely prevent them from vindicating their constitutional rights.

SUMMARY OF ARGUMENT

Amici respectfully request that this Court grant the petition for certiorari to resolve an important circuit split regarding whether ripeness should be applied, the result of which is to prevent federal courts from hearing important constitutional questions. The Third Circuit narrowly reads ripeness in this case to mean that no harm can exist when a state utilizes its non-self-executing investigatory tools to target nonprofit organizations that have disfavored viewpoints. This application will inevitably lead to permanent exclusion from federal court because of a preclusion trap. The standard for ripeness the Third

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[1] No party or party's counsel authored this brief, in whole or in part. No person except *amici* contributed to the costs of its preparation. Counsel for amici notified counsel for all parties on February 11, 2025, of their intention to file this brief.

Circuit used will allow bullying by state actors against small nonprofits while preventing the latter from timely raising their First Amendment rights. It will incentivize state actors to harass organizations they disfavor by dragging out their investigative activities and repeating their threats, rather than asking courts to enforce their subpoenas or demands, and will result in inconsistent outcomes.

Small nonprofits that are being targeted for holding disfavored views will be uniquely vulnerable, for they lack revenue from any commercial activity and are often unable to afford legal support adequate to withstand state attorneys general. Under the standard articulated by the Third Circuit here, such organizations may not look to federal courts to vindicate their First Amendment rights against state intimidation that chills their message, mission, and donor support.

Under the Third Circuit's narrow reading, a claim is not ripe as long as the state actors do not move to enforce the investigative tool in court and, once done, until the court issues an order compelling compliance. Implausibly, the panel below imagined a fantasy where "Plaintiff simply could decline to comply with the Subpoena with no legal consequence." Pet. App. 7a. Then, even after the state moved to enforce, there still was not "enough of an injury" shown when the state court had not yet ordered compliance. *See* Pet. App. 4a. By the time the state court does force compliance, however, the constitutional claims would 1) be waived if the party did not raise them in state court, and 2) be barred by res judicata if the party does raise them, as occurred in the *Smith & Wesson* cases.

See Smith & Wesson Brands, Inc. v. *Attorney Gen. of New Jersey*, 105 F.4th 67, 70 (3rd Cir. 2024).

This Court can prevent federal courts from being thus stripped of jurisdiction over important constitutional questions. Otherwise, it will lead to completely disparate outcomes based entirely on a state AG office's tactics rather than on a meaningful consideration of whether constitutional rights have been violated.

ARGUMENT

I. The Third Circuit Erred in Holding That This Case was not Ripe.

This case started with the New Jersey AG's office seeking to target pregnancy centers through investigative burdens, claiming broad authority under the New Jersey Consumer Fraud Act, N.J. Stat. Ann. § 56:8-3. The AG issued burdensome subpoenas based on political considerations, not consumer complaints. Pet. 8. The evidence of targeting is strong. Pet. 6-7. The subpoena included requests for names of donors, staff, and messaging. Pet. 8, 10. The same AG and Washington's AG have inflicted the same tactic on amici Gateway and Obria, respectively.

First Choice filed in federal court to raise its First Amendment claims and request injunctive relief prior to the subpoena's compliance date. Pet. at 10. The district court dismissed the action, holding that the claims were unripe because the subpoena was non-self-executing and that the claim would not be ripe until the court enforced the subpoena. Pet. App. 80a. The AG then started an enforcement action in state

court; the latter held the subpoena was enforceable, though it declined to decide the constitutional objections raised. Pet. App. 156a-157a. First Choice provided some documents but did not disclose its donor information. The AG then requested sanctions against First Choice, but the state court determined to wait for the state court appeal. Pet. App. 62a. When First Choice went back to federal court after both parties agreed the federal suit was ripe, the district court again found it unripe because the state court had not demanded compliance "under threat of contempt." Pet. App. 26a.

The district court described New Jersey's subpoena enforcement proceedings a five-stage process: "(1) subpoena issuance; (2) party response, after which enforcement proceedings typically begin; (3) motion practice; (4) appeal; and (5) forced compliance." Pet. App. 36a. The court concluded First Choice's injuries—ignoring any possible additional evidence of harm—simply could not rise to the level of "actual or imminent constitutional injury" before the fifth stage when its arguments have been fully considered and the state court is requiring compliance under threat of contempt. Pet. App. at 42a. The court remarkably concluded that Petitioner suffered no "cognizable injury" at any earlier stage. Pet. App. at 38a. By holding to such a narrow "moment of ripeness," Pet. App. at 36a, the district court concluded that all injuries up to that point were hypothetical.

The Third Circuit affirmed, holding that there is not enough injury until there is a court order directly on point. Pet. App. at 4a. This conclusion inevitably

leads to a preclusion trap. *See, e.g., Smith & Wesson,* 105 F.4th at 83. Yet the Third Circuit continues to hold that a hearing of constitutional claims in state court is adequate. Pet. App. 5a; *Smith & Wesson*, 105 F.4th at 84.

A. This narrow view of ripeness is unworkable and unjust for multiple reasons.

First, the claim that the targeted investigation produces no harm is a legal fiction, not reality, falsely assuming neutral power dynamics and equal legal sophistication at every stage. Yet the AG has the gravitas of being the state's legal enforcement office. As such, it is familiar with all its rules, regulations and enforcement tools, including intimidating threats. Its actions and threats in real life hardly have no "practical impact," Pet. App. 37a; neither may a little nonprofit "simply decline," *id.*, to respond to threats from the state's highest prosecutor.

Second, the lower courts' unrealistic measure of injury and ripeness creates different classes of cases based, not on a different experience of harm by an investigative target, but based on the tactic chosen by the state officers. For example, if a state agent enforces a statute against a party, that party may challenge the statute on its face or as applied. *See Frederick Douglass Found., Inc. v. District of Columbia*, 82 F.4th 1122, 1138, 1142 (D.C. Cir. 2023):

> The government may not enforce the laws in a manner that picks winners and losers in public debates. It would undermine the First Amendment's

> protections for free speech if the government could enact a content-neutral law and then discriminate against disfavored viewpoints under the cover of prosecutorial discretion.

Pre-enforcement review by federal courts is common when constitutional harm is involved, *see, e.g., Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 163 (2014); *Presbytery of New Jersey of Orthodox Presbyterian Church v. Florio*, 40 F.3d 1454, 1469 (3rd Cir. 1994); *Nat'l Inst. for Family & Life Advocates v. James,* 2024 WL 3904870, at *5-6 (W.D.N.Y. Aug. 22, 2024) ("*NIFLA*"), and this should be no different just because it involves a state investigative process. Protection is possible if an AG has commenced a civil enforcement action based on claimed "misleading and/or false statements, *NIFLA*, 2024 WL 3904870, at *1; or if a legislature or regulatory agency passes a law or regulation targeted at certain speech. *See, e.g., Bates v. City of Little Rock*, 361 U.S. 516, 524 (1960); *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 297 (1961). Yet there is no opportunity to seek protection in federal court if the government uses its investigative powers to target and silence particular speakers. This distinction is not right, and it creates perverse incentives for government actors to misuse investigative processes.

For example, in *NIFLA*, a state AG's office similarly targeted crisis pregnancy centers, but it directly enforced a statute instead of first using investigative tools. Unlike below, the district court In *NIFLA* found the issue ripe and addressed the merits

of the case. 2024 WL 3904870, at *5-6 (granting preliminary injunction to pregnancy centers against an enforcement action by the AG because of irreparable harm caused by likely constitutional violations). The court found ripeness because the court recognized that the plaintiffs were "now 'chilled' from making future statements out of fear of civil enforcement by the Attorney General," *Id.* at *5, and because the AG had shown willingness to take enforcement action. *Id.* at *6. The Court emphasized the importance of its role to protect against such government action, stating that the "very purpose of the First Amendment is to foreclose public authority from assuming a guardianship of the public mind through regulating the press, speech, and religion." *Id.* at *10.

This Court has confirmed that government regulation may not constitutionally be used selectively to target. *R.A.V. v. St. Paul*, 505 U.S. 377 (1992). It facially invalidated an ordinance because the ordinance prohibited only one viewpoint, even if its goal would be reasonable if applied without such targeting. *Id.* at 388, 393-94 (holding that a state can prohibit obscenity, but not "only that obscenity which includes offensive *political* messages"). The "practical operation" of legal standards by a government actor may result in "actual viewpoint discrimination." *Id.* at 391.

This Court has also found constitutional harm in an investigative context, emphasizing that the government may not just sweep aside Fourth Amendment rights on the hope that "fishing expeditions into private papers" might possibly

"disclose evidence of crime." *See, e.g., Fed. Trade Comm'n v. Am. Tobacco Co.*, 264 U.S. 298, 306 (1924).

This principle holds just as strongly to government targeting through investigative means if the victim claims that its practical operation is viewpoint discriminatory. Such a claim should therefore be ripe.

B. The narrow view of ripeness is not consistent with this Court's precedent.

This Court has found Article III injury when constitutional claims are alleged—period. It has not ignored them to wait for a court order. In fact, threatened enforcement implicating a First Amendment right combined with other factors can create Article III injury. *See Driehaus*, 573 U.S. at 166. In *Driehaus,* the Court concluded that there was Article III injury based on a combination of threats of administrative action and the history of similar recurring targeting and ongoing stifling of speech. *Id.* at 163-64. In finding cognizable injury, this Court emphasized the threat of enforcement was significant when a vendor (a billboard owner) refused to display the plaintiff's message because it did not want to be associated with the group. *Id.* at 165. The Court also noted the "substantial hardship" present when a plaintiff must choose between "refraining from core political speech" or "engaging in speech that risks "costly Commission proceedings and criminal prosecution." *Id*. at 167-68. The Court thus recognizes that threats of court proceedings and significant penalties are in fact cognizable harm.

This Court has also held that someone threatened with arrest did not have to wait until arrested to have

a ripe claim. *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (holding an anti-war protestor had an "actual controversy" based on the fact that he was warned, threatened, and saw others prosecuted). The Court held that the federal court may rightly intervene prior to a state court proceeding to protect a plaintiff's "constitutionally protected activity." *Id.* at 462.

Similarly, the Third Circuit held that threat of prosecution is concrete enough to ripen a First Amendment claim. *Florio*, 40 F.3d at 1468. There the Third Circuit panel reversed an order dismissing a pastor's claim about a change to a nondiscrimination law burdening his speech and held his claim was ripe because the state refused to assure it would not prosecute him, making the threat "real and substantial." *Id.* The Third Circuit also correctly held that a deprivation of constitutional rights is sufficient harm for ripeness purposes. *See, e.g., U.S. ex rel. Ricketts v. Lightcap*, 567 F.2d 1226, 1232 (3rd Cir. 1977) (looking at the "practical impact on the litigants" of the action taken by the prison official and holding the prisoner alleged sufficient constitutional injury).

When constitutional harms are involved, such harms should not be disregarded based on procedural posture. In fact, Plaintiffs here are irreparably harmed each day that their First Amendment freedoms are infringed. *See Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020); *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The strange posture of this case (and the *Smith & Wesson* cases) should not prevent courts from asking the right questions to determine ripeness because they automatically

assume there is no harm when a government official has used a non-self-executing investigative tool. Pet. App. 38a-39a. Interestingly, in *Smith & Wesson*, the court acknowledged that Smith & Wesson "did nothing wrong" prior to the investigation and that the investigation was not a sanction. *Smith & Wesson Brands, Inc. v. Attorney Gen. of New Jersey*, 27 F.4th 886, 892-93 (3rd Cir. 2022). Yet the court also said it is wrongdoing punishable by the state "when it failed to respond to the subpoena." *Id.* at 893. This undoes the idea that a party is free to ignore a subpoena without harm. Pet. App. 41a (district court holding plaintiff could "simply decline . . . without legal or practical consequence"). Because the purpose of ripeness is "to avoid expenditure of judicial resources on matters which have caused harm to no one," *Peachlum v. City of York, Pennsylvania*, 333 F.3d 429, 434 (3rd Cir. 2003), the determination of whether there is hardship and harm to the parties is particularly important.

If constitutional claims cannot be considered based on the idea that there is no harm until a state court has ruled, important constitutional claims will end up being precluded in federal court. That is a result this Court has found unacceptable. *Knick v. Twp. of Scott*, 588 U.S. 180, 182 (2019) (holding that a property owner could raise her Fifth Amendment taking claim right away in federal court because requiring her to first seek state court remedies would result in a preclusion trap). Instead, the *Knick* court stated that as soon as the taking occurred, the claim could be brought in federal court. *Id.* at 181.

Accordingly, this Court should correct the discrepancy caused by an application of the ripeness doctrine that ignores constitutional concerns. Otherwise, the subjects of state investigations—even when there are claims of unconstitutional targeting—will have to struggle to function with a "sword of Damocles" hanging over their heads.

II. Ripeness Is all the More Important When First Amendment Claims are Raised.

Several circuits have rightly affirmed that ripeness and standing should be applied "less stringently in the context of First Amendment claims." *Twitter, Inc. v. Paxton*, 56 F.4th 1170 (9th Cir. 2022); *See also Peachlum*, 333 F.3d at 434. This is partly because the First Amendment itself protects against government overreach. *See, e.g., Texas v. Johnson*, 491 U.S. 397, 410-414 (1989) (holding that the asserted state interests could not justify suppressing the expression of a flag burner because it found it disagreeable).

In this case, the state consumer protection interests are broad, but the First Amendment forbids them from being used to target and muzzle groups based on their viewpoints. *See DeJonge v. Oregon*, 299 U.S. 353, 363 (1937) (holding that states may "protect themselves" from various abuses, but that does not mean they may "curtail[] the right of free speech and assembly" through the application of a syndicalism law); *Fiske v. Kansas*, 247 U.S. 380 (1927) (holding unconstitutional the application of a Syndicalism Act to convict someone advocating membership in a group not shown to be violent)*; U.S. v. Alvarez*, 567 U.S. 709,

716 (2012) (holding the Stolen Valor Act unconstitutional because it targeted falsity in speech only about a particular subject). Even when considering claims of fraud, courts must be careful not to stifle speech because even false statements are only outside First Amendment protection if they involve knowing or reckless falsehood. *Id.* at 719.

In addition, First Amendment violations involve unique harm and may not be backhanded in an investigative context. *Shelton*, 364 U.S. at 485-86 (holding unconstitutional a state affidavit condition on employment for schoolteachers requiring them to reveal every organization of which they are participants). In *Shelton*, the Court acknowledged the state right to investigate teacher competence but narrowed the scope of its authority to protect association rights. The state must avoid "means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Id.* at 488.

First Amendment rights require protection in all contexts. The use of broad investigative authority to silence disfavored viewpoints is particularly problematic. There is the potential of politically motivated and constitutionally suspect practices, and a significant First Amendment chill is likely. *See Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021) (emphasizing the need for narrow tailoring of government action in situations of compelled disclosure). In *Bonta,* this Court emphasized that when the First Amendment is in play, then just identifying an important state interest is not enough; narrow tailoring is required. *Id.* at 609. The government "may regulate in the First

Amendment area only with narrow specificity." *Id.* at 610 (cleaned up).

III. The Experiences of Two Amici Bear This out.

Both Obria Medical Clinics PNW and Gateway Pregnancy Center can provide personal examples of the concrete harm caused by unfounded targeted investigations. Their experiences may not fairly be characterized as "conjectural or hypothetical," but rather as "concrete and particularized" and an "actual controversy." They both received non-self-executing investigative documents from their respective state AG, followed by repeated phone calls, letters, pressure, and threats. The documents themselves threatened enforcement if the recipient fails to obey, emphasizing that the choice to ignore would make the subsequent enforcement effort more severe.[2] These government actions (not just potential future enforcement) resulted in specific, negative impacts to each ministry's activities and speech. For these amici, it was not a potential, hypothetical impact but an actual present hardship.

[2] For example, in amicus Obria's case, Washington law threatens monetary sanctions if the party receiving the Civil Investigative Demand (CID) does not voluntarily comply unless "opposition was substantially justified." Wash. R. Civ. Pro 37(a)(4); *see also* Fed. R. Civ. Pro. 37(a)(5). It is, therefore, not a neutral option to ignore the official demand from the state. In addition, the subpoena duces tecum from the New Jersey AG to amicus Gateway repeated twice on the first two pages that "Failure to comply with this Subpoena may render you liable for contempt of court and such other penalties as are provided by law."

A. Obria Medical Clinics PNW.

Obria has served communities in the state of Washington for over forty years. It has never been informed of a complaint against it, and, as an AAAHC (Accreditation Association of Ambulatory Health Care) clinic, it operates with accountability to the highest standards of health care. *Obria Grp., Inc. v. Ferguson*, No. 3:23-cv-06093 (W.D. Wash. 2024), ECF No. 1, at 6 ("Obria Complaint"). This standard of integrity carries over to all marketing practices.

The Washington Attorney General's Office targeted Obria in 2022. The AG issued a "consumer alert" and then executed his agenda to target pregnancy centers. Obria received a CID in May 2022. *See Obria Grp., Inc. v. Ferguson*, 2025 WL 27691, at *1 (W.D. Wash. Jan. 3, 2025). The 35 interrogatories demanded client, donor, financial, staffing and volunteer information dating back to 2010. Obria responded to the CID with over 1,500 pages of information. Obria Complaint, at 19-20. Dragging out the process, the AG twice served deficiency letters, demanding supplemental answers, which Obria provided. *Id.*; *see also* 2025 WL 27691, at *1. When the AG uncovered other groups connected with Obria, it then issued them CIDs as well. Declaration of River Sussman, *Obria Grp.*, No. 3:23-cv-06093 (W.D. Wash. 2024), ECF No. 48, at 2 ("Aug. 26 Declaration").

At no time was a complaint against, or violation by, Obria ever identified. This continued and intensified threat made clear the purpose behind the onerous, interminable investigation demands. The Washington AG's office had a clearly stated

commitment to use "consumer protection laws" to target pregnancy centers. *Open Letter from Attorneys General Regarding CPC Misinformation and Harm,* Oct. 23, 2023, at 1 (available at https://perma.cc/DL74-3K6L).

This politically motivated targeting was a blatant attempt to use what should be neutral investigative powers intended to ensure protection for the public as a tool to intimidate and silence an organization whose messaging and practices the AG believed were contrary to his policy and political goals.[3] The AG's baseless and viewpoint discriminatory investigation, along with his seeming dissatisfaction with the massive amount of information Obria provided, prompted Obria to file a complaint on November 29, 2023. Obria Complaint, at 1. Yet the legal process that unfolded ignored the abusive tactics, and the court concluded that Obria's speech was not chilled. *Obria Grp.*, 2025 WL 27691, at *6-7. The district court said that because the AG did not bring an action to enforce, and the CIDs in Washington are considered non-self-executing, enforcement was "merely hypothetical" and that every action Obria took in response to the CIDs was "voluntary," making its injuries "self-inflicted." *Id.* at *8.

Obria in fact suffered significant and ongoing harm as a direct result of the AG's intense targeting. First, Obria had multiple First Amendment harms, including chilling of speech. It discontinued operating

[3] Notably, Washington AG Bob Ferguson successfully ran for governor around the same time this case was progressing. *See Democrat Bob Ferguson wins Washington governor's race*, NPR, Nov. 5, 2024.

its website and instead relied upon the larger Obria Group website to list its services. Obria Complaint, at 21. Obria also self-censored by no longer making public statements about Abortion Pill Reversal (APR) because of fear of reprisal, even though it had a First Amendment right to speak. *Id.* The court, however, brushed aside Obria's evidence that the investigation directly caused it to change its speech and stop distributing materials about the safety and efficacy of APR, labeling them "conclusory allegations" instead of recognizing they represent chilled speech. *Obria Grp.*, 2025 WL 27691, at *7.

Second, Obria faced associational harm, as several vendors stopped working with Obria because of the risk that the state government would come after them because of their association with Obria. Obria Complaint, at 19. The vendors, all who resided outside of Washington, had received CIDs from the Washington AG requiring their time and expense to respond. *Id*. at 19-20. The district court, however, said such losses were "voluntary choice based on speculation," and that it was simply "not a concrete, legally cognizable harm." *Obria Grp.*, 2025 WL 27691, at *9.

Third, Obria suffered financial harm. When Obria disclosed to its insurer—based on its annual renewal application questionnaire—it had received CIDs from the state, the insurer denied the coverage renewal "[d]ue to the claims." Aug. 26 Declaration, at 3. Obria's broker eventually found a different insurer with a premium "nearly five times" the previous annual premium. *Id.* When this financial consequence came to light during the course of litigation, and the AG's

legal team was questioned in a hearing before the judge, the AG's office agreed to write a letter specifically "acknowledging that he had closed his investigation." *Id*. at 27.

This blatant attempt to moot the case demonstrates the imbalance of legal sophistication and options that is in play, especially when it involves some of the state's best attorneys up against small nonprofits who often operate with a workforce made up primarily of volunteers. Such efforts at legal harassment intended to silence disfavored viewpoints both disrupt the work being done by these nonprofit organizations and involve crippling expenses.

B. Gateway Pregnancy Center.

Gateway Pregnancy Center of New Jersey also experienced significant demonstrable harm because of the subpoena it also received. Gateway is a religious organization with evangelism as its central purpose. Its volunteer training focuses on spiritual qualifications and the ability to share the gospel; it measures its success as a ministry by how many clients heard the gospel. Gateway's materials are infused with Scripture, and it has ministry relationships with seventy five churches. *See, e.g.,* Gateway.org. When men or women in crisis come through its door, Gateway focuses on loving and caring for their needs—spiritual, emotional, and physical. Gateway shares medical advice only by pointing to the links and resources of other organizations and experts. It does not present itself as an expert in APR or any other medical procedures, keeping its gospel-centered focus.

The facts predating the subpoena provide important context for the targeting of pregnancy centers. The AG established a "Reproductive Rights Strike Force" in July 2022, the month after *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022), was decided. See Press Release, *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-reprodictive-rights-strike-force-to-protect-access-to-abortions-care-for-new-jerseyans-and-residents-of-other-states/. In October 2022, Gateway was targeted and "strong-armed" by state officials into registering as a charity for the first time. In its decades of ministry in New Jersey since being incorporated in 1989, Gateway had never before been told to register, presumably because it qualified as exempt as a religious organization. Gateway's director called the state and tried to clarify that Gateway, as an organization "established for religious purposes," should not have to be registered. Gateway had never had any complaints filed against it and said publicly that it did not offer any medical services. The state repeatedly told the director that Gateway must now register and threatened him with sanctions if Gateway did not register. Then, the AG staff walked him through the registration process. Gateway became a registered charity in June 2023, and the trap was sprung. A couple months later, in November, the same office issued the subpoena to Gateway, right after the AG co-authored the open letter signed by 16 state AGs pledging action against them. Open Letter, *supra*, at 1.

When served with the subpoena, Gateway sought legal advice and had a volunteer attorney who spoke to the AG's office on its behalf. The AG sent emails continuing to pressure Gateway and threatening the use of additional means "to obtain compliance." At one point, in discussing if Gateway should tie its fate to the AG's litigation with another pregnancy center (Petitioner First Choice Women's Resource Centers), the AG drafted a proposed agreement that included language that, in exchange for a delay in the enforcement of its subpoena, Gateway would agree it "will not assert any constitutional or other objections that are similar" to those raised by the other pregnancy center. Gateway sought advice from new counsel and refused to sign away its rights in this manner.

This targeted investigation has harmed Gateway. First, the threat in the subpoena that Gateway would face penalties if it did not "preserve Documents and information relevant or potentially relevant to this Subpoena from destruction or loss" chilled Gateway's speech and religious practice. Gateway understood it must not alter or update its website to avoid additional penalties, preventing it from giving updated information to clients, donors, and volunteers.

Second, Gateway faced associational harm because its board could neither find nor train new leadership. The AG's threat of legal action caused pressure and uncertainty to surround all the ministry's decisions. The threat was not imaginary; Gateway watched costly litigation play out against other pregnancy centers like Petitioner. Gateway's director had

planned to equip and train a new leader to take over the ministry he and his late wife had carried on for decades. Instead, his time was taken up seeking legal counsel, gathering documents, and experiencing anxiety over the uncertainty that prevented him from preparing his ministry for the next generation.

Third, the targeted pressure on Gateway—and the AG's determination to deny Gateway's religious status and evangelistic nature—burdened Gateway's free exercise of religion. The AG's bullying threats distracted Gateway from its mission: to single-mindedly spread the Gospel of Christ to every inquirer.

These unconstitutional harms are neither hypothetical nor voluntarily self-inflicted; they are a direct result of the targeted plan of the same AG (Respondent).

As the stories of both amici demonstrate, the government should not be able to suppress indirectly what it cannot do directly. *See, e.g.*, *New York Times v. Sullivan*, 376 U.S. 254, 279 (1964); *Bantam Books v. Sullivan*, 372 U.S. 58, 66 (1963) (holding unconstitutional practices of a Rhode Island Commission seeking to suppress and stop circulation of certain "obscene" publications); *NRA v. Vullo*, 602 U.S. 175 (2024) (holding a government official violated the First Amendment by seeking to suppress a group's advocacy through coercion and manipulation of other entities). This Court should apply this principle to prevent these unconstitutional and targeted crusades by state AGs.

IV. This Case Provides the Court With the Opportunity to Curtail State Actors' Chilling and Obfuscation of Constitutional Rights.

While ripeness is an important prerequisite for federal court jurisdiction, the barrier must not be so extreme that important constitutional claims may not be heard at all. In concluding that "the Subpoena must be enforced in an unconstitutional form before this Court can consider the Subpoena's constitutionality," Pet. App. 31a, the district court here created a catch-22 for Petitioners, with no way to get to federal court to preserve their constitutional claims. Waiting for state court enforcement of an unconstitutional subpoena means the party must raise its constitutional claims in state court during the enforcement process, the state court will decide on those claims as part of its order, and the claims will therefore likely be precluded in federal court. *See Smith & Wesson,* 105 F.4th 67.

Even if a state has legitimate policy goals, it may not advance them through indirect means that "restrain[] certain speech by certain speakers." *Sorrell v. IMS Health, Inc.*, 564 U.S. 552 (2011) (holding a Vermont law violated the First Amendment when it hindered marketing communications); *Louisiana ex rel. Gremillion,* 366 U.S. at 297 ("regulatory measures . . . cannot be employed in purpose or in effect to stifle, penalize, or curb the exercise of First Amendment rights"). The government needs "so cogent an interest" "to justify the substantial abridgment of associational freedom" caused by certain disclosure demands. *Bates*, 361 U.S. at 524 (holding unconstitutional

ordinances enacted to hamper civil rights organizations by demanding the disclosure of members). Constitutional protection, particularly based on the First Amendment, should not vary based "upon the truth, popularity, or social utility of the ideas and beliefs which are offered." *New York Times*, 376 U.S. at 271 (cleaned up). The Court has clarified "[i]t is characteristic of the freedoms of expression in general that they are vulnerable to gravely damaging yet barely visible encroachments." *Bantam Books*, 372 U.S. at 66. These rights therefore "must be ringed about with adequate bulwarks." *Id.* In *Bantam Books*, the commission was not directly banning books, but rather threatened to invoke legal sanctions. *Id*. at 67. The Court said there that "the record amply demonstrates" what the commission was trying to do—visible when the Court "look[ed] through forms to the substance" of their actions—and noted it "succeeded in its aim." *Id*.

This is an example of what the Court again prohibited in *Vullo*, where a government official tried to indirectly suppress First Amendment rights by misusing the power of her office. The Court looked at the facts and said "[o]ther allegations, viewed in context, reinforce the [] First Amendment claim." 602 U.S. at 193. "Ultimately, the critical takeaway is that the First Amendment prohibits government officials from wielding their power selectively to punish or suppress" First Amendment rights. *Id.* at 198. In *Vullo*, the right was speech; here, the rights are speech and free exercise of religion and association.

The way the New Jersey AG is applying the law here to target pregnancy centers—by wielding

investigative authority to intimidate but not fulfilling his threat of court enforcement—fails to provide constitutional safeguards. There is real constitutional harm here: intimidation and exploitation of unequal power resulting in self-censorship. Moreover, the investigation process itself inflicts harm.

Ultimately, the Third Circuit's ripeness doctrine here means the opportunity of nonprofits like amici to obtain protection in federal court from First Amendment harms perversely depends on the state AG. It is based not on the harm the organization experiences, but rather on whether the *government actors decide* they can accomplish their goals through investigative pressure and threats or through filing in court. This framework gives state investigative agencies free rein (with no accountability other than the political process) to launch onerous and protracted investigations into religious organizations or disfavored ideological organizations with threat of sanctions—so long as they don't ask a court to enforce them. They can burden their enemies with official investigative demands, drag out negotiations, and syphon off their enemies' energy and resources, all without it being considered "harm."

As noted above, two amici here have suffered under such manipulative tactics by state actors, including the same Respondent. Similarly situated parties should be able to raise their constitutional rights in federal court, even when the state actor expertly wields his power through investigative weapons instead of through direct statutory enforcement.

CONCLUSION

This case is about whether or not organizations facing significant harm from the application of state investigative authority in a targeted, viewpoint discriminatory manner can have the opportunity to raise their federal constitutional claims in federal court at all. Because Petitioners (and amici curiae) allege that the government would not have taken investigative action but for their disfavored protected speech, that First Amendment right should be able to be vindicated in federal court. An overly narrow ripeness doctrine must not prevent that.

For the foregoing reasons, and the reasons set forth by the Petitioners, the Petition should be granted.

Respectfully submitted.

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