NO. 24-781

IN THE

Supreme Court of the United States

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

v.

MATTHEW PLATKIN, in his official capacity as Attorney General of New Jersey,
Respondent.

JOINT APPENDIX

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TABLE OF CONTENTS

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

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Plaintiff, v. MATTHEW J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey, Defendant.	Hon. Michael A. Shipp, U.S.D.J. Hon. Tonianne J. Bongiovanni, U.S.M.J. Docket No. 23-CV-23076 **CIVIL ACTION (ELECTRONICALLY FILED)**

DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER

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TABLE OF CONTENTS

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PRELIMINARY STATEMENT

After a preliminary investigation revealed concerns that Plaintiff First Choice Women's Resource Center may have engaged in conduct that misleads the public and otherwise violates state statutes and regulations, the New Jersey Attorney General and the Division of Consumer Affairs issued an informational subpoena to First Choice on November 15, 2023. That Subpoena rests on multiple sources of state authority, including the New Jersey Consumer Fraud Act, the Charitable Registration and Investigation Act, and the Professions and Occupations law. Each of these state statutes tasks the Attorney General with investigating whether an entity is engaged in fraudulent or deceptive practices. The Subpoena therefore requests documents that would allow the State to evaluate whether First Choice or its employees are engaging in conduct that these statutes prohibit, such as misleading donors and clients or engaging in the unlicensed practice of medicine or professional misconduct. *See* N.J. Stat. Ann. §§ 56:8-2 & -3; 45:17A-32(c) & -33(c); 45:1-18, -18.2, -21; N.J. Admin. Code § 13:35-6.10.

Rather than contact the State, respond to any part of the Subpoena, or request to meet and confer regarding its scope, Plaintiff sued the State in federal court on December 13—two days before responses were due. Plaintiff sought a temporary restraining order and preliminary injunction. As directed by the Court, the parties will brief the preliminary injunction motion in February, which will allow this Court to promptly resolve the motion with a better

developed record. Nevertheless, Plaintiff insists that it is entitled to a TRO during this interim period. It is not: Plaintiff's claims all fail to meet the high burden necessary on the merits to justify that relief. But the Court need not even reach the merits to dispose of the pending TRO application because Plaintiff fails to satisfy its burden on the other "gateway factor" for emergency relief: demonstrating irreparable harm that requires immediate relief. Because a TRO is an extraordinary remedy, Plaintiff's failure to establish irreparable harm is itself fatal. *See* Ex. A (proposed form of order).

Specifically, Plaintiff is entitled to a TRO only if it can establish that irreparable harm would occur between now and this Court's adjudication of the PI motion. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974) (TROs exist to avoid "irreparable harm just so long as is necessary to hold a hearing"). But the only action that would happen between now and the disposition of the pending motion for a preliminary injunction is that the State will *initiate* an action in the New Jersey Superior Court—a process required by state law for the State to obtain any document-production order, and which will allow the parties to litigate any state-law challenges Plaintiff has without substantial delay. Nothing else will happen. The State will not seek statutory sanctions in the New Jersey Superior Court for Plaintiff's failure to respond to the Subpoena by the return date. Nor is there any chance that Plaintiff will be required to actually produce any documents before this Court rules on the PI motion. Absent penalties and absent production, the only

claimed harm left is the burden of litigating in an otherwise-proper state-law forum—an argument the Supreme Court has roundly rejected. *See FTC v. Standard Oil Co. of Calif.*, 449 U.S. 232, 244 (1980).

By contrast, entering a TRO would significantly harm the State and the public interest. A TRO would delay the State's ability to even begin the process of litigating state-law claims and obtaining a document-production order—the only way the State can enforce its rights, and those of the public, under three state laws. *See Interstate Commerce Comm'n v. Gould*, 629 F.2d 847, 851-52 (3d Cir. 1980). Requiring the adjudication of the federal claims, and only then beginning adjudication of the state-law claims, risks delaying the State's investigation by the better part of this year, or longer. And entry of this TRO would incentivize other subpoena-recipients to resist compliance, refuse meet-and-confers, and rush into federal court to obtain delay too, compromising the State's investigatory abilities. Weighed against Plaintiff's nonexistent irreparable harm, those harms to the State require denial of a TRO.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

Although the State anticipates developing a more fulsome record with its PI opposition, it highlights certain relevant facts here.

A. Relevant Statutory Framework

Three different statutes—along with their implementing regulations—grant the State the authority to investigate the issues relevant to this case: the New Jersey Consumer Fraud Act ("CFA"),

the Charitable Registration and Investigations Act ("CRIA"), and the Professions and Occupations law ("P&O law"). Each statute empowers the Attorney General to issue subpoenas and initiate investigations to ascertain whether an entity is engaged in an unlawful practice. *See* N.J. Stat. Ann. § 56:8-3 (CFA); § 45:17A-33(c) (CRIA); § 45:1-18 (P&O law).

Each statute defines a number of substantive unlawful practices. For example, the CFA broadly prohibits "any commercial practice that is unconscionable or abusive, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise." N.J. Stat. Ann. § 56:8-2.

The CRIA addresses deceptive and misleading statements or omissions, made by charitable organizations or those soliciting donations on its behalf, relating to "the planning, conduct, or execution of any solicitation or charitable sales promotion," including applicable violations of the CFA and including the use of "information, statements or communications that, although literally true, are presented in a manner that has the capacity to mislead the average consumer." N.J. Stat. Ann. § 45:17A-32(c)(3), (7); see § 45:17A-32(a) (referring to misleading statements made "on behalf of a charitable organization by persons including, but not limited to commercial co-venturers, fund raising counsels, independent paid fund raisers or solicitors").

The P&O law prohibits the unlicensed practice of medicine. N.J. Stat. Ann. § 45:1-18.2. Other provisions and the law's implementing regulations also prohibit licensed medical professionals from engaging in multiple specific deceptive and misleading practices and other forms of professional misconduct. *See*, *e.g.*, N.J. Stat. Ann. § 45:1-21 (establishing that professional licensees may not, among other acts, employ "dishonesty, fraud, deception, misrepresentation, false promise or false pretense," engage in "professional or occupational misconduct," or "permit[] an unlicensed person" to engage in unlicensed practice of medicine); N.J. Admin. Code § 13:35-6.10(c) (prohibiting medical advertising employing "[a]ny misrepresentation of a material fact," "suppression, omission or concealment of any material fact" that the professional "knows or should know" would "prohibit[] a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement," "[a] technique or communication which appears to intimidate, exert undue pressure or to unduly influence a prospective patient or consumer," and/or "[a]n offer to pay, give or accept a fee or other consideration to or from a third party for the referral of a patient"). Moreover, "[a]ny person offering free or discounted medical services shall file copies of any such advertisement with the Board within 30 days of initial publication." N.J. Admin. Code § 13:35-6.10(g)(4). The relevant Board that regulates the professional also "may require a licensee to substantiate the truthfulness of any assertion or representation set forth in an advertisement." N.J. Admin. Code § 13:35-6.10(d).

B. The Investigation And Subpoena

In light of public reporting and actions taken by other jurisdictions, the State learned that certain nonprofit organizations may be misleading donors and potential clients, among others, into believing that they provide comprehensive reproductive health care services, including abortion care and contraception, when they in fact have an objective of deterring individuals from seeking such services.

The Division of Consumer Affairs ("the Division") therefore initiated a confidential investigation to determine whether certain actions taken by First Choice violated New Jersey statutes and regulations. The Division's ongoing investigation included—among other investigative steps—a review of First Choice's registration status with the Charities Registration & Investigation Unit and a review of publicly available information, including First Choice's own divergent representations across its multiple websites and social media accounts. Based on the Division's findings, the Division determined that a subpoena was warranted to gather further information about First Choice's activities and representations, including previous representations to potential clients and potential donors. Ex. B, Certif. of Gregory K. Turner, ¶¶ 4-10 ("Turner Cert.").

Among the initial evidence that led the Division to determine that a subpoena is warranted, the investigation revealed that First Choice maintains multiple websites intended for different audiences, which have dramatically different representations about its work. One website, https://1stchoice friends.org/, states First Choice's "prolife" mission

and confirms that its services are intended to "protect the unborn." Turner Cert. Ex. 2 at AG181-82. Its donation-solicitation page states that "pro-life donors like you have saved lives and served women considering abortion in New Jersey." *Id.* Similarly, that website's Volunteer Application states that First Choice is "committed to assisting women to carry to term" and that First Choice does "not recommend, provide, or refer for abortion or abortifacients." *Id.* at AG177.

But First Choice maintains other websites, https://1stchoice.org (which https://1stchoicefriends .org/ describes as a "Client Site") and https://firstchoicewomancenter.com, that omit any reference to the organization's mission and practices. Instead, language on these sites even suggests that First Choice in fact provides medical consultations for people seeking abortions. For example, one passage states:

> You may be considering abortion as an option. Before you decide, it is important to remember that abortion is a medical procedure and, like any other medical procedure, you should consult a medical professional beforehand. We are a network of clinics providing the best care and most up-to-date information on your pregnancy and pregnancy options and have multiple locations to serve you. We are dedicated to providing you with everything you need to make an informed decision about abortion, at no cost to you. . . . It is important to determine the viability of your pregnancy before paying a high cost for an abortion.

Turner Cert. Ex. 3 at AG235. These sites invite anyone "considering an abortion" to connect with First Choice to "[l]earn more about the abortion pill, abortion procedures, and your options in New Jersey," Turner Cert. Ex. 1 at AG001, and the website touts that "the Right to Choose Includes the Right to Know," *Id.* at AG072. One of these websites provides a donation page, but—in stark contrast to the donation page on the website describing the organization's pro-life mission—omits any mention whatsoever of First Choice's mission or purpose. *Id.* at AG023-26. In short, there are significant discrepancies in how First Choice describes its mission and services across its different websites, based on the distinct audiences each website is intended to reach. *See* Turner Cert. ¶ 5.

First Choice represents that its services are overseen by physicians and that it has nurses on staff. *See*, *e.g.*, Turner Cert. Ex. 3 at AG215; Dkt. 6 at 5. First Choice repeatedly represents that it has medical personnel to provide services. For example, it invites potential clients to contact First Choice to consult with "a licensed medical professional," and states that its "medical staff can answer all of [clients'] questions… with professional accuracy," Turner Cert. Ex. 1 at AG072. *See also id.* at AG001, AG066, AG079, AG081 (images of medical staff, including pictures of individuals wearing scrubs, stethoscopes, and white lab coats). First Choice also makes numerous statements purporting to convey medical information that may be misleading or untrue. For example, one statement claims that "[b]ecause of the risk of serious complications, the abortion pill is only available through a restricted program," Turner Cert. Ex. 1 at

AG076, and that it can lead to "sepsis" and "rupturing of the uterus," *Id.* at AG080. *See also* Turner Cert. Ex. 3 at AG249 ("[A] pre-abortion ultrasound is generally required before you take the abortion pill[.]").

Additional investigation by the Division revealed that First Choice represents in phone calls with potential clients that it has nurses on staff and has doctors who oversee medical services. *See* Turner Cert. ¶ 6. That investigation further showed that, when First Choice meets with potential clients at its facility, it informs potential clients that it has a doctor that oversees the facility, although it admits that it does not have a doctor onsite. *Id.* ¶ 7. First Choice also offers to conduct a pregnancy test and ultrasound, but does not provide information about the risks of abortion absent an agreement to submit to a pregnancy test. *Id.* ¶ 8

This investigation raised significant concerns about the information First Choice provides to potential clients, donors, and the public, about the services it offers, and about the personnel who deliver those services. To learn more, on November 15, 2023, the Division served a subpoena on First Choice's registered agent in New Jersey. Turner Cert. Ex. 4 at AG282. Among other things, the Subpoena sought copies of First Choice's solicitations and advertisements, documents substantiating the claims made therein, and identification of the medical personnel involved in the provision of its services. *Id.* at AG290-95. The Subpoena set a December 15, 2023 deadline for First Choice to respond. *Id.* at AG280.

C. Procedural History

Two days before the Subpoena's return date, Plaintiff filed suit in federal court, raising a host of constitutional claims against the Subpoena and CRIA. Dkt. 13. On December 15, 2023, the Subpoena's return date, Plaintiff filed an emergency motion seeking a TRO and PI. Dkt. 12. Plaintiff had not previously communicated with the State regarding the Subpoena, made any effort to obtain an extension for its response, or requested to meet and confer with the State prior to filing suit.

After a telephonic conference on December 19, the Court ordered the parties to meet and confer on a briefing schedule for the motion and on the possibility of an interim agreement. When the parties met, the State proposed that the State would suspend the Subpoena's return date if Plaintiff agreed to comply with the Subpoena within 30 days after a denial of the PI motion (should the Court so decide), without requiring the State to file a second, successive state-court action. Plaintiff declined, reserving its full rights to litigate additional state-law defenses to the Subpoena, but refusing to litigate those defenses forthwith in state court. *See* Dkt. 17.

On December 22, this Court issued an order adopting the parties' agreed-upon PI briefing schedule and included a provision regarding interim relief. Dkt. 20. After a telephonic hearing on January 2, 2024, this Court issued a text order stating that it "finds good cause to amend the December 22, 2023

Order" and requiring briefing on Plaintiff's motion for a TRO. Dkt. 23.[1]

LEGAL STANDARD

Injunctive relief is "an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 24. A movant for a TRO must first establish two prerequisites: "a reasonable probability of success on the merits" and that "irreparable harm would result if the relief sought is not granted." *Amalgamated Transit Union Local 85 v. Port. Auth. of Allegheny Cnty.*, 39 F.4th 95, 102-03 (3d Cir. 2022). Even if Plaintiff can demonstrate both "gateway factors," courts must also assess "the possibility of harm to other interested persons from the grant or denial of the injunction, and [ ] the public interest." *Reilly v. City of Harrisburg*, 858 F.3d 173, 176 (3d Cir. 2017). Only if "all four factors, taken together, balance in favor of granting the requested preliminary relief" may an emergency injunction be granted. *Id.* at 179.

ARGUMENT

The Court should deny this TRO application. Most fundamentally, Plaintiff cannot satisfy the "gateway factor" of demonstrating that it will suffer irreparable harm unless a TRO is entered. The two additional equitable factors, which require the Court to consider the harm on other interested parties and

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[1] The parties both understand this Court's text order to leave in place the previously-ordered schedule for the PI motion, and to be setting an expedited schedule for the TRO application alone. As a result, the State is filing this TRO opposition brief, to which Plaintiff will reply on January 9. The State intends to file its opposition to the PI on February 2, to which Plaintiff will reply on February 23.

the public interest, weigh decidedly against entry of a TRO. Finally, if this Court considers the merits, Plaintiff has fallen far short of its burden at this stage.

I. PLAINTIFF CANNOT MEET ITS BURDEN OF DEMONSTRATING THE EQUITABLE FACTORS NECESSARY FOR A TRO.

Plaintiff's motion fails because Plaintiff cannot meet its "burden of proving a clear showing of immediate irreparable injury." *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir 1992). As noted above, irreparable harm is always one of the required "gateway factors[]" for emergency relief. *Reilly*, 858 F.3d at 179. But such harm is especially crucial in the context of a TRO, which requires establishing such urgency that a court *must* act to restrain a party even before receiving briefing, evidence, and argument on the PI motion. *See Granny Goose*, 415 U.S. at 439 (TROs exist only for courts to prevent "irreparable harm just so long as is necessary to hold a hearing"). It thus requires Plaintiff to "produce affirmative evidence indicating that he or she will be irreparably harmed" between now and any decision from this Court on the pending PI motion. *Marxe v. Jackson*, 833 F.2d 1121, 1127 (3d Cir. 1987); *see also*, *e.g.*, *Sunbelt Rentals, Inc. v. McAndrews*, 552 F. Supp. 3d 319, 324 (D. Conn. 2021) ("The Court must examine whether the movants have demonstrated a threat of irreparable harm that will occur *immediately* to justify a [TRO], while the temporal context of a preliminary injunction takes a longer view.").

1. Plaintiff cannot show irreparable harm. The only action that would happen between now and this

Court's decision on the PI application, absent a TRO, is that the State will *initiate* a state-court proceeding, which is the only avenue for the State to obtain a document-production order. Plaintiff will not face sanctions, and will not even be required to produce any documents prior to a decision on the PI. Having to litigate a subpoena in state court will not cause Plaintiff irreparable harm. *See FTC*, 449 U.S. at 244.

While Plaintiff claims it might face penalties or sanctions for noncompliance with this Subpoena, *see* Dkt. 6 at 39, that speculative assertion of harm will not occur because the State has already committed not to seek penalties that are ordinarily available for non-compliance with state subpoenas, *see*, *e.g.*, Dkt. 17 at 2; Dkt. 21 at 1, and does so here once again. *See* Ex. A (proposed form of order incorporating the State's commitment not to seek penalties or sanctions for noncompliance). Thus, although New Jersey law permits the Attorney General to seek sanctions, including penalties or the revocation of an organization's charter, N.J. Stat. Ann. § 56:8-6(d) (CFA); *id.* § 45:17A-33(g) (CRIA); *id.* § 45:1-19 (P&O law), Plaintiff obviously cannot be irreparably harmed by those potential penalties when the Attorney General has committed not to seek them for not complying with the Subpoena.

Instead, the State would only initiate a state-court suit to obtain a document-production order. *See* Dkt. 17 at 2; Dkt. 21 at 1. The State has both an immediate and powerful need to do so, because only the state court can issue an order requiring Plaintiff to produce the documents. *See infra* at 32–33 (explaining that while this Court can adjudicate Plaintiff's constitutional claims, it cannot compel

document production). Merely litigating the bases for a document-production order is not an irreparable harm: All Plaintiff would have to do is submit briefs and potentially attend hearings in a state-court action that would decide whether to order document production. Had Plaintiff filed a motion to quash in the normal course, including by raising all defenses or counter-claims, it would have litigated federal-law defenses and state-law defenses on the same schedule. Plaintiff will therefore suffer no irreparable harm by litigating the Subpoena in state court while the PI proceeds.

Plaintiff's various responses are unavailing. First, Plaintiff contends that even having to *litigate* in state court is irreparable harm, a position the Supreme Court has squarely rejected. In *FTC v. Standard Oil Co. of California*, 449 U.S. 232 (1980), defendant challenged the FTC's initiation of an administrative complaint, arguing the agency lacked a basis for issuing the complaint and requesting injunctive relief and declaratory relief in federal court. *Id.* at 235. In seeking an injunction, Standard Oil, much like First Choice here, argued "that the expense and disruption of defending itself in protracted adjudicatory proceedings constitutes irreparable harm." *Id.* at 244. The Supreme Court pointedly disagreed. Instead, the Court held that "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury." *Id.* (quoting *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974)); *see also*, *e.g.*, *Coinbase, Inc. v. Bielski*, 599 U.S. 736, 746 (2023); *Petroleum Exploration, Inc. v. Public Serv. Comm'n*, 304 U.S.

209, 222 (1938). The "litigation expense" Plaintiff describes here is no different.

Second, Plaintiff errs in claiming that it will be irreparably harmed by facing the prospect of a document-production order before this Court resolves the pending PI application. *See* Dkt 6 at 30–31. For one, given the amount of time that it will take to initiate a state-court action, for both parties to file briefs, for a state court to hold a hearing, and for the court to rule, there is virtually no chance that any document-production order from the state court would issue before this Court rules on the PI motion. In any event, as the State explained in the January 2, 2024 conference, even if a state-court document production order issued first, the State would not require Plaintiff to comply with that state-court production order until this Court resolves the pending PI application. In other words, even if the mere production of documents *could* be a harm, under the circumstances here that harm cannot materialize during the interim period before the PI is decided. *See Campbell Soup*, 977 F.2d at 92–93 (injunction not warranted since movant produced no evidence that harm was impending during relevant period); *Omnistone Corp. v. Cuomo*, 485 F. Supp. 3d 365, 367 (E.D.N.Y. 2020) (agreeing "demonstration of irreparable harm must be considered in conjunction with the time frame involved").

Regardless, the mere production of documents does not harm Plaintiff in this case. Plaintiff is wrong to suggest that production of documents—in the event this Court denies a PI and the appellate courts decline to issue emergency relief—would "moot this proceeding" or "require it to forego a merits

adjudication on appeal." Dkt. 17 at 3. Just as "the conclusion of an investigation will not ordinarily moot a challenge to a subpoena if a court can order 'meaningful relief' by, for example, 'ordering the … return [of] records,'" the same is true for production of documents. *Exxon Mobil Corp. v. Healey*, 28 F.4th 383, 393 (2d Cir. 2022) (quoting *Church of Scientology of Calif. v. United States*, 506 U.S. 9, 12-13 (1992)). Moreover, merely having to produce documents is not irreparable harm. *See FTC v. Church & Dwight Co.*, 756 F. Supp. 2d 81, 87 (D.D.C. 2010); *In re Platinum Partners Value Arbitrage Fund*, No. 18-5176, 2018 WL 3207119, at *6 (S.D.N.Y. June 29, 2018).

Third, Plaintiff cannot overcome a lack of irreparable harm merely by pressing constitutional claims. *See* Dkt. 6 at 38 (arguing "constitutional violations constitute irreparable harm"). Courts have repeatedly rejected the argument that the "likelihood of success" and "irreparable harm" prongs automatically merge where a challenge raises constitutional or First Amendment claims. *See Benisek v. Lamone*, 138 S. Ct. 1942, 1943–44 (2018) (reiterating that a preliminary injunction "does not follow as a matter of course" from likelihood of success); *D.T. v. Sumner Cnty. Sch.*, 942 F.3d 324, 326–27 (6th Cir. 2019) (confirming that "even the strongest showing on the other three factors cannot eliminate the irreparable harm requirement"); *Siegel v. LePore*, 234 F.3d 1163, 1177–78 (11th Cir. 2000) (rejecting claim "that a violation of constitutional rights always constitutes irreparable harm"). "Constitutional harm is not necessarily synonymous with the irreparable harm necessary for issuance of a

preliminary injunction." *Hohe v. Casey*, 868 F.2d 69, 73 (3d Cir. 1989).

The plurality opinion in *Elrod v. Burns*, 427 U.S. 347 (1976), is not to the contrary. The Third Circuit has repeatedly rejected an understating of *Elrod* that finds the irreparable harm requirement satisfied in every First Amendment case. *See*, *e.g.*, *Hohe*, 868 F.2d at 73 (holding that showing likelihood of success on First Amendment claim "does not automatically require a finding of irreparable injury"); *Anderson v. Davila*, 125 F.3d 148, 164 (3d Cir. 1997) ("Nothing in [*Elrod*] suggests that the Court meant to do away with the traditional prerequisites for injunctive relief simply because First Amendment freedoms were implicated."); *Conchatta v. Evanko*, 83 F. App'x 437, 442 (3d Cir. 2003) (same); *see also Google, Inc. v. Hood*, 822 F.3d 212, 227–28 (5th Cir. 2016) ("[I]nvocation of the First Amendment cannot substitute for the presence of an imminent, non-speculative irreparable injury.").[2] But even if the

[2] Plaintiff's cited cases are not to the contrary, but instead follow from the actual scenario presented in *Elrod*. *Elrod* itself identified case-specific facts that showed irreparable harm in that case, including the fact that the public employee plaintiffs were "threatened with discharge" based on continued expression of political beliefs, and thus "that First Amendment interests were either threatened or in fact being impaired at the time relief was sought." 427 U.S. at 373. In cases where the specific nature of the First Amendment injury inherently poses irreparable harm, such as employer discipline for political expression, *see Amalgamated Transit*, 39 F.4th at 101, or prior prosecution of a family member for identical conduct, *see Schrader v. Dist. Att'y of York Cnty.*, 74 F.4th 120, 123 (3d Cir. 2023), courts have followed *Elrod* to not require separate showings of irreparable harm. But that is a far cry from this case, where the exclusive action would be initiation of a separate

active abridgment of First Amendment rights generally warranted emergent relief, the harm Plaintiff complains of here—having to litigate state-court defenses—is not a First Amendment harm at all. Since there is no possibility that Plaintiff will face sanctions or have to turn over documents while this Court considers the pending PI motion, there is no basis for interim injunctive relief—because there is no potential harm, irreparable or otherwise, to enjoin.

2. Beyond the lack of irreparable harm, the equities militate strongly against issuing a TRO. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (when the State is a defendant, the other equitable factors—harm to opposing party and public interest—are combined). Injunctive relief can be denied on that basis alone. *See*, *e.g.*, *Winter v. NRDC*, 555 U.S. at 23 (declining to address merits at PI posture and holding that "even if plaintiffs have shown irreparable injury […] any such injury is outweighed by the public interest and the Navy's interest in effective, realistic training of its sailors"); *Def. Distributed v. U.S. Dep't of State*, 838 F.3d 451, 460 (5th Cir. 2016) (affirming denial of PI based on last two factors alone).

Although the State's "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State" generally, *Abbott v. Perez*, 138 S. Ct. 2305, 2324 n.17 (2018), the harm to the State and therefore to the public is particularly profound here. At least three different state laws afford the Attorney General power to investigate potential misconduct in this matter. *See* N.J. Stat. Ann. § 56:8-6(d) (CFA); *id.* §

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action in state court seeking the production of documents, while this Court considers the PI.

45:17A-33(g) (CRIA); *id.* § 45:1-18 (P&O law). Each of those statutes empowers the New Jersey Attorney General to issue subpoenas in service of investigations. And each provides that the Attorney General's remedy for non-compliance—seeking an order requiring the production of documents—lies exclusively in the Superior Court. Thus, while this Court can determine whether this Subpoena violates First Amendment or Fourth Amendment rights in a 42 U.S.C. § 1983 federal action, it cannot compel production of documents, and Plaintiff would remain free to raise state-law defenses even if the federal case concludes in the State's favor. Preventing the State from accessing the only forum in which it can enforce its rights—and the rights of the public—under three state laws is a significant harm to the State and its citizens.

Plaintiff's submissions make this clear. Plaintiff says that it wishes to pursue state-law defenses in state court, a process that will take time as the state court must accept initiating documents, set a schedule, obtain submissions from the parties, hold a hearing, and issue a decision. If that process cannot even *begin* until after this Court rules on the PI motion and after any emergency applications for injunctions pending appeal are decided, the State would be hampered in its investigation of potentially fraudulent and misleading activity for an extended period. The PI motion will not be fully briefed until late February; no decision will likely issue until March or April; and emergency applications to the appellate courts might not conclude until June. The State could not even initiate a subpoena-enforcement action until July, followed by months of litigation in

state court. Despite a Subpoena return date of December 2023, Plaintiff would avoid compliance until at least fall of 2024. In contrast to the lack of irreparable harm Plaintiff would incur, the State would suffer a real harm if its ongoing investigative work is stymied for such an extended period. *See Interstate Commerce Comm'n v. Gould*, 629 F.2d 847, 851–52 (3d Cir. 1980) (agencies "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the [agency's] regulatory authority").

Granting this TRO also would incentivize other subpoena recipients to seek federal-court review to delay analogous subpoena-compliance deadlines. Although the State ordinarily consents to extensions of time when the parties are engaging in meet-and-confer sessions about the scope of a subpoena, here, Plaintiff declined the State's offer of such sessions, taking the position that its objective is to not comply with *any* part of the Subpoena. Allowing entities who have no intention of complying with a duly-issued state subpoena to circumvent the State's statutory authority will have significant repercussions. Such delaying tactics would compromise the State's investigatory abilities. Those real harms outweigh any specter of injury that Plaintiff asserts—injury that, again, is neither imminent nor irreparable.

Finally, Plaintiff incorrectly claims that the public interest favors an injunction when a First Amendment claim is raised. Dkt. 6 at 38. The language Plaintiff cites from *Amalgamated Transit* refers to the burdens on the likelihood-of-success

prong, not the equitable factors. 39 F.4th at 109. Indeed, on the merits, "the burdens at the preliminary injunction stage track the burdens at trial." *Reilly*, 858 F.3d at 173. That means Plaintiff "still retains the burden of proof in two principal ways: it must prove that the law restricts protected speech and that it will suffer irreparable harm." *Id.* at 180 n.5 (citation omitted). Only after Plaintiff meets that burden would the burden shift to the government to "justify its restriction on speech under whatever level of scrutiny is appropriate." *Id.* At bottom, given the lack of harm to Plaintiff from mere state-court litigation about document production, and the tremendous harm to the State and public from delays, the equities clearly counsel against the entry of a TRO.

II. PLAINTIFF IS UNLIKELY TO SUCCEED ON THE MERITS.

Although this Court need not reach the merits in light of Plaintiff's inability to demonstrate irreparable harm during the pendency of the PI motion, *see Granny Goose*, 415 U.S. at 439, Plaintiff also cannot meet its burden of demonstrating a sufficient probability of success on the merits at this stage. Although the State looks forward to further briefing and establishing a record in its response to the PI application, a number of merits defects are readily apparent at this early stage: first, the Attorney General has authority to issue this Subpoena; and second, Plaintiff has not met the high burden for its miscellaneous First Amendment claims.

A. The Subpoena Is Reasonably Relevant To An Authorized Inquiry.

The Attorney General has broad authority to issue the challenged Subpoena. In reviewing this question, courts take a deferential approach, requiring only that "(1) the inquiry must be within the authority of the agency, (2) the demand for production must not be too indefinite, and (3) the information sought must be reasonably relevant to the authorized inquiry." *Chao v. Cmty. Trust Co.*, 474 F.3d 75, 79 (3d Cir. 2007); *United States v. Zadeh*, 820 F.3d 746, 755–56 (5th Cir. 2016). That makes sense: "[t]he decision to investigate is normally seen as a *preliminary* step," *UMDNJ v. Corrigan*, 347 F.3d 57, 69 (3d Cir. 2003), so the validity of a decision to investigate is not "limited . . . by . . . forecasts of the probable result of the investigation." *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 216 (1946).

The challenged Subpoena makes requests that are "reasonably relevant to the" questions the Attorney General is "authorized" to investigate. The Subpoena itself identifies multiple distinct sources of state statutory authority—the CFA, the CRIA, and the P&O law. *See* Turner Cert. Ex. 4 at 2. Each law empowers the Attorney General to initiate an investigation and issue a subpoena if he 1) believes that an entity "engaged in, is engaging in, or is about to engage in" any unlawful practice, or 2) if he "believes it to be in the public interest that an investigation should be made to ascertain" the existence of an unlawful practice. N.J. Stat. Ann. § 56:8-3 (CFA); *see also* N.J. Stat. Ann. § 45:1-18 (same, for P&O law); N.J. Stat. Ann. § 45:17A-33(c) (same for CRIA). The unlawful practices they cover are broad:

they protect, among others, consumers, charitable donors, and individuals receiving professional services from various forms of fraud and professional misconduct.

The Subpoena, on its face, includes inquiries that are "reasonably relevant to" determining whether Plaintiff or others engaged in any fraud, including on charitable donors, that violates state laws or other misconduct. For example, Requests ¶¶ 2, 10, 20, and 26 aim to investigate whether Plaintiff's use of multiple websites—with certain disclosures made on one set of websites, but omitted on others—violates the CFA and/or CRIA's prohibitions on false, misleading, or deceptive statements or omissions. *See* N.J. Stat. Ann. § 45:17A-32(c); § 56:8-2. Requests ¶¶ 14–18, 21, and 27 aim to evaluate whether Plaintiff or its staff is engaged in the unauthorized practice of medicine or professional misconduct prohibited by N.J. Stat. Ann. §§ 45:1-18.2 and -21. Requests ¶¶ 6-9 call for documents substantiating medical claims that Plaintiff makes on its websites, to investigate whether those medical claims violate the CFA, CRIA, or the P&O laws. *See* N.J. Stat. Ann. § 45:17A-32(c); § 56:8-2; N.J. Admin. Code § 13:35-6.10. The State cannot yet know precisely what the Subpoena will yield, but its inquiries are plainly relevant to investigating potential statutory violations.

And there were good reasons for the Attorney General to investigate whether Plaintiff or its staff has violated these statutes. For one, initial review of First Choice's website materials revealed significant discrepancies across its websites, with some detailing a pro-life mission to counsel women against abortion, and others omitting that information about mission

and purpose when stating that First Choice provides professional medical consultations and is "a network of clinics providing the best care and most up-to-date information on your pregnancy and pregnancy options." *Supra* at 7-8. Because donation pages exist on both websites, there are serious questions as to whether omissions on one site misleads potential or actual donors. Moreover, First Choice makes numerous medical claims—and links those claims to the purported involvement by doctors and nurses, which are licensed professionals—that raise concerns about whether it provides misleading information to clients, consumers, and donors. *See supra* at 8. While a decision has not yet been made about whether to initiate civil or administrative actions for violations of these laws, there is clearly ample basis to ask further questions via a subpoena.

Plaintiff wrongly contends in response that even if it does engage in fraud, it cannot be subject to a CFA investigation, because *nothing* in the CFA applies to any nonprofit organization. *See* Dkt. 6 at 29 (citing N.J. Stat. Ann. § 56:8-47). But that runs into at least three problems at this early posture. First, this Court need not resolve this issue at this stage, because so long as *any* of the three statutes support the Subpoena, the Subpoena should not be restrained; Plaintiff's interpretation of the CFA is irrelevant if *other* laws support the Subpoena, too. *See LaSpina v. SEIU Pa. State Council*, 985 F.3d 278, 284 (3d Cir. 2021) (explaining a harm is only "fairly traceable" to an action if there is something "akin to 'but for' causation in tort," which would not be satisfied where independent bases support this Subpoena); *Fischer v. Governor of N.J.*, 842 F. App'x 741, 750–51 (3d Cir.

2021) (explaining that "the redressability element" of Article III is not satisfied where the desired result "would eliminate one of multiple causes of [the claimed] injury without actually decreasing the injury at all," which perfectly describes a Subpoena with multiple bases); *Kaspersky Lab, Inc. v. U.S. Dep't of Homeland Sec.*, 909 F.3d 446, 465 (D.C. Cir. 2018). And Plaintiff cannot argue that it is immune from CRIA (or the P&O law).

Second, even if this Court gets past that Article III problem, this is a matter of state law, not of federal law. When parties' federal constitutional challenges turn on unsettled questions about the interpretation of state statutes, federal courts often abstain pursuant to *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 501 (1941), to allow state courts to resolve the state-law statutory interpretation question in the first instance. *See Chez Sez III Corp. v. Twp. of Union*, 945 F.2d 628, 631 (3d Cir. 1991); *Georgevich v. Strauss*, 772 F.2d 1078, 1089 (3d Cir. 1985).

Third, on the merits, Plaintiff is wrong about the CFA. N.J. Stat. Ann. § 56:8-47 is part of one amendment to the CFA, which relates to the sellers of health club services. *See* P.L. 1987, Ch. 238, *attached as* Ex. C. The reference to exempting nonprofits from "this Act" was to the health club services act alone. That is especially apparent where CRIA itself acknowledges nonprofit entities can face liability for violating the CFA. *See* N.J. Stat. Ann. § 45:17A-32(c)(3). And that is why multiple courts have applied CFA provisions to nonprofit entities. *See Harnish v. Widener Univ. Sch. of Law*, 931 F. Supp. 2d 641 (D.N.J. 2013); *Mason v. Roman Cath. Archdiocese of*

Trenton, 2019 U.S. Dist. LEXIS 48212 at *28–29 (D.N.J. Mar. 22, 2019).

Plaintiff also errs in arguing that even if it engages in fraud, it could never be subject to any CRIA investigation either—arguing CRIA is facially unconstitutional. *See* Dkt. 6 at 31-38. Plaintiff is unlikely to succeed for at least four reasons. First, Plaintiff the same Article III problem applies here, this time in reverse: if this Court agrees the Subpoena is justified by the CFA, it is irrelevant whether the Subpoena is independently justified by CRIA. *See LaSpina*, 985 F.3d at 284; *Fischer*, 842 F. App'x at 750–51. Second, this is another federal constitutional challenge that rests entirely on Plaintiff's reading of a state statute—that CRIA applies to *all* fraudulent representations, rather than to any more tailored set of fraudulent misrepresentations. But as above, federal courts often abstain under *Pullman* from deciding questions of constitutional law before state courts can properly consider the threshold questions of state-law statutory interpretation. *See*, *e.g.*, *Chez Sez*, 945 F.2d at 631. There is no basis to grant a TRO before this Court can even consider whether abstention is required. Third, Plaintiff cannot satisfy the requirement that it show an "indisputably clear" right to facial relief, *Hope*, 972 F.3d at 320, against a state law that has existed for three decades, *see* 1994 NJ Sess. Law Serv. Ch. 16 § 15 (codified at N.J. Stat. Ann. § 45:17A-32).

Fourth, Plaintiff's claim is not likely to succeed on the merits. To show that a law is *facially* invalid, Plaintiff must establish "substantial" "overbreadth": that the "lawful sweep" of CRIA is overshadowed by a "substantially disproportionate" set of real-world

applications that violate the First Amendment. *See, e.g.*, *United States v. Hansen*, 599 U.S. 762, 770 (2023) (because facial invalidation of a statute is "strong medicine" that "destroys" even the many lawful applications of a statute, "a law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep"); *id.* at 784 (requiring that "the ratio of unlawful-to-lawful applications is … lopsided"). Plaintiff cannot do so. As the Supreme Court has made clear, States have the power to prohibit any charitable organizations from engaging in "fraud" when they engage in "charitable solicitation." *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 611–12 (2003); *see Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988) (agreeing "State may vigorously enforce its antifraud laws to prohibit professional fundraisers from obtaining money on false pretenses or by making false statements"). That purpose lies at CRIA's core, and the Subpoena's requests fall well within this core. Plaintiff introduces no record evidence to support that CRIA would be applied in a "lopsided" way to constitutionally-protected conduct instead.[3]

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[3] Nor has Plaintiff met its burden at the TRO posture to prove that CRIA is facially void for vagueness. Vagueness doctrine is "especially lax" for legislation that carries civil rather than criminal penalties; a law must be "so vague as to be no rule or standard at all." *FTC v. Wyndham Worldwide Corp.*, 799 F.3d 236, 250 (3d Cir. 2015); *CMR D.N. Corp. v. City of Phila.*, 703 F.3d 612, 631-32 (3d Cir. 2013) (it is not enough to show a law "contain[s] some ambiguities"). The world "truthful" (*see* Section 32(a)) is a well-established concept found commonly in both statutes and everyday speech. *See*, *e.g.*, N.J. Stat. Ann. § 2C:28-1 (perjury). The phrase "capacity to mislead the average

Beyond their challenges to the Attorney General's authority under the CFA and the CRIA, Plaintiff's other objections to the Subpoena fare no better. Their contention that the State must identify specific "practices engaged in by First Choice that have been declared unlawful" to issue a valid Subpoena is backwards, Dkt. 6 at 29: "[t]he decision to investigate is normally seen as a preliminary step" to determine whether the law has in fact been violated, *UMDNJ*, 347 F.3d at 69; its validity is not "limited ... by forecasts of the probable result of the investigation," *Okla. Press*, 327 U.S. at 216. Plaintiff's argument that the Subpoena's contours are overbroad, Dkt. 6 at 29-30, fails because it made no "reasonable efforts ... to reach accommodation with the government," despite an invitation from the State. *In re Subpoena Duces Tecum*, 228 F.3d 341, 350-51 (4th Cir. 2000). In any event, given the scope of the state statutes and the breadth of the potentially unlawful activities, *see supra* at 4-10, "the nature of the inquiry precludes a trim list of requests." *SEC v. McGoff*, 647 F.2d 185, 193 (D.C. Cir. 1981). Finally, Plaintiff's argument that the Subpoena goes back too many years (Dkt. 6 at 30) fails too: it did not first try to "reach accommodation with the government," *In re Subpoena*, 228 F.3d at 351, and regardless, courts

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consumer" (Section 32(c)(7)) is a familiar standard that this Court, the New Jersey Supreme Court, and the Third Circuit endorse. *See*, *e.g.*, *Gomez v. Extra Space Storage, Inc.*, No. 13-cv-0929, 2015 WL 1472263, at *4 (D.N.J. Mar. 31, 2015) ("The capacity to mislead ... is the prime ingredient of all types of consumer fraud."); *Am. Home Prod. Corp. v. FTC*, 695 F.2d 681, 686-87 (3d Cir. 1982). And Section 32(c)(10)'s reference to any "rules adopted by the Attorney General" is a typical way to grant agencies rulemaking authority.

hold that "[e]vidence that [a subpoena recipient] made material misrepresentations before the limitations period is relevant to [its] present-day intent and could be evidence of a continuing scheme that persisted into the limitations period." *Exxon Mobil v. Schneiderman*, 316 F. Supp. 3d 679, 711 (S.D.N.Y. 2018), *aff'd in part, appeal dismissed in part sub nom. Exxon Mobil v. Healey*, 28 F.4th 383 (2d Cir. 2022).

The Subpoena is based on multiple independent statutory sources. It includes questions reasonably related to evaluating violations of those laws. The State has a basis to ask those questions. Plaintiff's challenges to the underlying state statutes are inconsistent with central principles of standing, abstention, statutory interpretation, and facial overbreadth. Especially in light of Plaintiff's failure to prove irreparable harm, there is no basis for a TRO to restrain the State from initiating an action in state court that seeks only a document-production order.

B. Plaintiff's First Amendment Claims Fail.

Plaintiff's First Amendment theories likewise fail to justify its extraordinary demand for a TRO against this duly-issued state subpoena. As a threshold matter, the State has simply issued a subpoena and has not decided whether to ultimately bring any civil or administrative action against Plaintiff for substantive violations of these three laws. As the Supreme Court has rightly held, the State "violates no constitutional rights by merely investigating" conduct that may violate its laws. *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628 (1986). As the D.C. Circuit has held, such subpoenas "do not directly regulate the content, time,

place, or manner of expression." *McGoff*, 647 F.2d at 188. There is no precedent supporting Plaintiff's position that the mere production of non-privileged records in a state-law fraud and professional standards investigation is itself a violation of First Amendment rights. If there comes a time where the State does seek to enforce any or all of these three state provisions against Plaintiff, it can raise First Amendment defenses or claims at that time.

Besides that threshold issue, Plaintiff's specific First Amendment claims fail on their terms. First, Plaintiff cannot meet their burden for its retaliation, selective enforcement, and viewpoint discrimination claims, which rest on the contention that the Subpoena was issued not for valid cause, but to target Plaintiff's expressive activities. The burden Plaintiff faces is quite high; it must show not only that the enforcement agency was in fact driven by this improper purpose, but also that the agency lacked sufficient cause to justify the action. *See Hartman v. Moore*, 547 U.S. 250, 256–58 (2006) (in a selective prosecution case, plaintiff has burden of proving lack of probable cause to initiate a prosecution to overcome "presumption that a prosecutor has legitimate grounds for the action he takes"); *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1304–09 (11th Cir. 2019) (applying *Hartman*'s test to retaliatory-motive challenge against government-initiated civil suit). Plaintiff cannot show that the Division lacked any sufficient basis for this Subpoena, given what the Division uncovered, *see supra* at 6-10, and given that other jurisdictions have seen reason to investigate or even litigate similar claims of fraud against crisis pregnancy centers, *see*, *e.g.*, *People v. Heartbeat Int'l,*

Inc., No. 23CV044940 (Cal. Sup. Ct.); *Obria Grp. Inc. v. Ferguson*, No. 3:23-cv-06093 (W.D. Wash.).

Moreover, Plaintiff fails to show improper motive. As another district court thoroughly and persuasively explained, statements by an investigating official of his political views and meeting with advocates are not enough to establish an improper motive. *See Exxon Mobil*, 316 F. Supp. 3d at 707. Otherwise, statements about climate change will bar officials from investigating fraud by Exxon, and statements about the dangers of opioids will prevent officials from filing suits against Purdue. *See id.* at 710 n.29. That has never been the law; more is required to show that a state-law fraud investigation is "not based on a good faith belief that [the subpoena recipient] may have violated state laws." *Id.* at 686, 704. Meetings with advocates likewise do not show either that advocates have an "improper," non-fraud-related purpose, or that the Attorney General shared such an "improper" purpose. *Id.* at 708–09; *see SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 130 (3d Cir. 1981) (same). That the Attorney General supports access to reproductive health care, and that he (and multiple other officials) have had reason to warn the public of potential fraud by pregnancy centers broadly, "does not mean [he] does not also have reason to believe that [First Choice] may have committed fraud" based on the representations that the Division has uncovered to date. *Exxon Mobil*, 316 F. Supp. 3d at 707.

Second, Plaintiff's free exercise claim likewise fails. Each of the statutes—the CFA, the CRIA, and the P&O law—are neutral laws of general application, and are therefore subject to rational basis

review. *Emp. Div., Dep't of Human. Res. of Ore. v. Smith*, 494 U.S. 872, 878–82 (1990). They prohibit fraudulent and misleading statements and/or omissions in the context of consumer transactions, doctor-patient interactions, and/or charitable solicitations, and prohibit the unlawful practice of medicine. Plaintiff offers no evidence that the State is improperly targeting it with this Subpoena based on its religious views or activities. Plaintiff bears the burden of showing "comparable secular" activity that was not regulated in the same way by the State. *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002); *Fulton v. City of Phila.*, 141 S. Ct. 1868, 1876 (2021). It has not done so. Plaintiff points to no "comparable secular" entity that has, *inter alia*, published divergent statements regarding its conduct across websites that raise comparable concerns regarding consumer, client, and donor fraud—let alone that linked representations about the involvement of medical professionals to potentially misleading medical information. *See supra* at 6-10. All Plaintiff offers is a comparison to out-of-state organizations offering abortion care that had data-breach incidents—hardly comparable to the concerns animating this Subpoena.

Finally, First Choice's associational claims cannot justify a TRO. First Choice overstates the scope of the requested disclosures, complaining that the Subpoena seeks information regarding its "donors, clients, staff, vendors … officers, directors" and others. Dkt. 6 at 25–27 (citing subpoena requests ¶¶ 10, 11, 15, 16, 18, 22–24, 26). But the State does not seek a comprehensive list of their donors. Subpoena Request ¶ 11 seeks only documents concerning complaints

made by clients or donors. And Request ¶ 26 requests only identifying information for donors who donated "by any means other than through the Donor Solicitation Page"—that is, the donors who gave money on the site that conceals First Choice's pro-life mission and practices. These requests are tailored to investigate whether First Choice's donors were misled, especially donors who gave money without being informed of First Choice's mission and practices—a mission that it is free to pursue, but not one it can mislead its donors about. *See supra* at 6-10.[4] Moreover, if First Choice has *specific* concerns about specific requests contained with the Subpoena, this is precisely the sort of subject the parties can meet and confer to discuss, not a basis to collaterally attack the subpoena through a federal suit demanding an immediate order that restrains the State's efforts to even begin the state-court process of document production.

First Choice's reliance on *Americans for Prosperity Foundation v. Bonta*, 141 S. Ct. 2373

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[4] Likewise, the Subpoena does not seek general disclosure of First Choice's vendors, but rather only communications related to development of these multiple websites (Request ¶ 10). And it does not seek identifying information for all of First Choice's staff, only those relevant to the State's investigation of unlicensed practice of medicine and professional misconduct (*see* Requests ¶¶ 15, 16, 18, seeking licensure information, ultrasound personnel, and ultrasound interpretation referral information). And because the veracity of First Choice's claims regarding "Abortion Pill Reversal" (APR) support an inquiry into whether individuals—including donors—were misled, the Subpoena seeks information related to First Choice's APR services, including with national organizations regarding APR. (Request ¶ 22).

(2021), only highlights the reasonableness of the State's approach. *AFP* concerned California's prophylactic disclosures, known as "Schedule B," which required all charities to disclose every donor who gave over $5,000 on their annual tax registrations. *Id.* at 2379–80. The Court acknowledged the state's legitimate anti-fraud interest, but found that requiring annual disclosures from 60,000 charities was overbroad. *Id.* at 2385. The Court, however, expressly held that the State *could* use narrower alternatives "such as a subpoena or audit letter," when the State had a basis to collect that information to investigate specific concerns about fraud. *Id.* at 2385–86. Here, New Jersey seeks to do just that. *See Madigan*, 538 U.S. at 624 (discussing validity of the State's efforts to combat fraud on charitable donors); *Riley*, 487 U.S. at 800 (same); *New York v. VDARE Fdn., Inc.*, No. 453196/2022, 2023 N.Y. Misc. LEXIS 293 (N.Y. Sup. Ct. Jan. 23, 2023) (enforcing civil subpoena to VDARE, a white-supremacist website, concerning allegations that VDARE had misused donor funds, and rejecting VDARE's reliance on *AFP*).[5]

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[5] Finally, Plaintiff has cited no case—and the State is aware of none—holding that federal courts have "general case management authority" to alter or suspend the deadline for a state-law subpoena. *See* Dkt. 17, at 3. After all, state statutes authorize the Attorney General to issue subpoenas and designate the New Jersey Superior Court as the only court that can enforce them. *See* N.J. Stat. Ann. § 56:8-6(d); N.J. Stat. Ann. § 45:17A-33(g); N.J. Stat. Ann. § 45:1-18. To order that the State suspend the Subpoena's deadline, Plaintiff has to meet the elements for emergency injunctive relief. Plaintiff's reliance on *In re Fine Paper Antitrust Litig.*, 685 F.2d 810 (3d Cir. 1982), is wholly misplaced, since that case discusses a federal district

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Plaintiff cannot prevail on these constitutional claims. But the Court need not even reach the merits of Plaintiff's claims, because the lack of any irreparable harm and the powerful equities on the other side are fatal. All the State seeks to do here is *initiate* a state-court action for document production in the only court that could eventually grant such relief—the state Superior Court. Doing so is necessary to avoid inordinate delays. First Choice, however, cannot be harmed, because it will suffer no penalties or production. First Choice need only litigate the very state defenses it is holding in reserve—which is not an irreparable harm at all.

CONCLUSION

This Court should deny Plaintiff's motion for a temporary restraining order. See Ex. A (proposed form of order).

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF
NEW JERSEY

By: */s/ Angela Cai*
Angela Cai
Deputy Solicitor General

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court's docket-management power over its own discovery deadlines, not the deadlines of a state subpoena or the timing of a state-court proceeding. Nor does the first-filed rule support Plaintiff's argument either—that rule allows a court to stay the proceeding before it, not the proceeding before a separate tribunal.

Dated: January 5, 2024

CERTIFICATE OF SERVICE

I certify that on January 5, 2024 I electronically filed the foregoing Opposition To Plaintiff's Motion for a Temporary Restraining Order with the Clerk of the United States District Court for the District of New Jersey. Counsel for all parties are registered CM/ECF users and will be served via CM/ECF.

By: */s/Angela Cai*
Angela Cai
Deputy Solicitor General

Dated: January 5, 2024

[Exhibits Omitted]

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SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION,
ESSEX COUNTY
DOCKET NO. _____

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

Plaintiffs Matthew J. Platkin, Attorney General of the State of New Jersey ("Attorney General"), and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs ("Director") (collectively, "Plaintiffs"), by way of this Verified Complaint state:

PRELIMINARY STATEMENT

1. The Charitable Registration and Investigation Act, N.J.S.A. § 45:17A-18 to -40 ("CRIA"), New Jersey Consumer Fraud Act, § 56:8-1 to -228 ("CFA"), and Professions and Occupations Law, § 45:1-18, -18.2, -21 ("P&O law"), provide the Attorney General with broad authority to investigate potentially fraudulent and deceptive practices. To effectuate that authority, all three statutes—specifically N.J.S.A. § 45:17A-33(c), § 56:8-3 to -4, and § 45:1-18—authorize the Attorney General to issue subpoenas to any person to determine whether these statutes have been violated. In the event a person fails to respond to such subpoena, all three statutes—specifically, N.J.S.A. § 45:17A-33(g), § 56:8-6, and §

45:1-19—authorize the Attorney General to obtain from the Superior Court an Order, among other things, directing the person to respond to the subpoena.

2. On November 15, 2023, the Division issued an Administrative Subpoena Duces Tecum ("Subpoena") to First Choice Women's Resource Centers, Inc. ("First Choice" or "Defendant") requesting documents regarding its charitable solicitation practices, the qualifications of its personnel, and documents substantiating the medical claims in its advertisements, among other requests. To date, Defendant has failed to produce any documents in response to the Subpoena. Pursuant to N.J.S.A. § 45:17A-33(e), § 56:8-8, R. 4:67-1(a), and R. 1:9-6, Plaintiffs are entitled to summary relief requiring Defendant to appear and show cause why it should not be required to immediately produce all documents requested in the Subpoena.

JURISDICTION AND PARTIES

3. The Attorney General is charged with the responsibility of enforcing CRIA, the CFA, and the P&O law, and the Director is charged with the responsibility of administering CRIA, the CFA, and the P&O law on behalf of the Attorney General. The Attorney General has offices located at 33 Washington Street, Newark, New Jersey and the Director has offices located at 124 Halsey Street, Newark, New Jersey.

4. This action is brought by Plaintiffs pursuant to their authority under the CRIA, CFA, and P&O law—specifically N.J.S.A. § 45:17A-33(c) and 45:17A-33(g), § 56:8-4 and 56:8-6, and § 45:1-18 and § 45:1-

19—and the New Jersey Rules Governing Civil Practice, specifically R. 1:9-6(b) and R. 4:67-1. Venue is proper in Essex County, pursuant to R. 4:3-2, because it is a county in which Plaintiffs reside.

5. Defendant First Choice is a non-profit corporation established in New Jersey on August 13, 1984. First Choice maintains a principal place of business at 82 Speedwell Avenue, Morristown, New Jersey 07960 ("82 Speedwell Avenue"), and has locations in Jersey City, Montclair, Morristown, Newark, and New Brunswick, New Jersey.

6. First Choice's registered agent in New Jersey is Aimee Huber, who maintains a mailing address at 82 Speedwell Avenue.

GENERAL ALLEGATIONS

7. The Attorney General is charged with protecting consumers from deceptive and fraudulent practices that violate CRIA, the CFA, and the P&O law, including misrepresenting one's charitable purpose to obtain donations, the unlicensed practice of professional occupations and professional misconduct, and deceptive advertising.

8. The Division initiated a confidential investigation of First Choice to determine whether certain actions taken by First Choice violated CRIA, the CFA, and the P&O law.

9. The Division's ongoing investigation included—among other investigative steps—a review of First Choice's registration status with the Division of Consumer Affairs' Charities Registration & Investigation Unit and a review of publicly available information, including First Choice's own divergent

representations across its multiple websites and social media accounts.

10. The Division's investigation revealed that First Choice maintains multiple websites, each of which contains dramatically different representations about its work.

11. Upon review of the websites, the Division's investigation revealed that there are discrepancies in how First Choice messages its mission and services across its different platforms, based on the distinct audiences each website appears to be intended to reach.

12. While one website, https://1stchoicefriends.org/, discloses that First Choice's charitable purpose is to "protect the unborn" on its donation page, the other websites geared towards potential clients, https://1stchoice.org and https://firstchoicewomancenter.com, omit any reference to this pro-life mission. More specifically, the client-facing website contains a link to a donation page that does not disclose this pro-life mission.

13. Additionally, First Choice makes numerous statements purporting to convey medical information, and states that it has medical personnel onsite to provide services.

14. Additional investigation by the Division revealed that First Choice represents in phone calls that it has nurses on staff and has doctors who "oversee" medical services.

15. That investigation further showed that when First Choice meets with clients at its facility, First Choice informs them it has a medical doctor that

oversees the facility, although it admits that it does not have a doctor onsite.

16. The Division's investigation also revealed that First Choice offers to conduct pregnancy tests and ultrasounds, as well as to provide pamphlets and videos about the purported risks of abortion, but only if the client first submits to a pregnancy test.

17. The Division's investigation raised significant concerns about the information First Choice and its staff provide to potential clients, donors, and the public, about the services it offers and about the personnel who deliver those services.

18. Based on the Division's investigation thus far, the Division determined that a subpoena for documents was warranted to gather further information about First Choice's representations and practices.

19. On November 15, 2023, the Division served the Subpoena on First Choice's registered agent in New Jersey. Among other things, the Subpoena sought copies of First Choice's solicitations and advertisements, documents substantiating the claims made therein, and identification of the personnel involved in the provision of its services. The Subpoena set a December 15, 2023 deadline for First Choice to respond.

20. First Choice never contacted the State to confer regarding the Subpoena's scope or otherwise engage in a good-faith dialogue; nor did it move to quash the Subpoena in State court.

21. Instead, on December 13, 2023, First Choice filed suit in the United States District Court for the

District of New Jersey against the Attorney General and the Division, First Choice Women's Resource Centers, Inc. v. Matthew Platkin, 3:23-cv-23076 (D.N.J.). In that action, First Choice alleged that the issuance of the Subpoena violated the U.S. Constitution. Among other things, First Choice claimed that the investigation had no factual basis and that the Attorney General was targeting First Choice solely because he disagreed with First Choice's views on abortion.

22. On January 12, 2024, the District Court dismissed First Choice's federal complaint, declining to reach the merits and holding that the court lacked subject matter jurisdiction. First Choice Women's Res. Ctrs., Inc. v. Platkin, No. 23-23076 (MAS) (TJB) (D.N.J. Jan. 12, 2024) (slip op at 4-13).

23. The Court held that an attempt to invalidate a State-issued, non-self-executing subpoena would not be ripe for adjudication, observing that "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." *Id.* at 12, n.7.

24. First Choice has since appealed to the Third Circuit and requested emergency relief, thereby continuing to attempt to circumvent the State court's authority. First Choice Women's Resource Centers, Inc. v. Matthew Platkin, 24-1111 (3d Cir.).

25. Through its federal actions, First Choice seeks to evade any investigation into the lawfulness of its conduct under New Jersey law.

26. To date, First Choice has failed to produce any documents in response to the Subpoena.

COUNT I

VIOLATION OF CRIA BY DEFENDANT (FAILURE TO COMPLY WITH THE SUBPOENA)

27. Plaintiffs repeat and reallege the preceding paragraphs as if more fully set forth herein.

28. CRIA provides, in pertinent part, that:

> (a) Any statement, whether oral or written, made by a charitable organization, or on behalf of a charitable organization by persons including, but not limited to commercial co-venturers, fund raising counsels, independent paid fund raisers or solicitors shall be truthful.
>
> . . . .
>
> (c) The following acts and practices are declared to be unlawful as applied to the planning, conduct, or execution of any solicitation or charitable sales promotion:
>
> (1) To misrepresent the purpose or nature of the charitable institution or the purpose or beneficiary of a solicitation; to solicit contributions for a purpose other than the charitable purpose expressed in the statement of the charitable organization or expend contributions in a manner incon-

sistent with that purpose, or to fail to disclose any material fact. A misrepresentation may be accomplished by words or conduct;

(2) To violate or fail to comply with any of the applicable provisions of this act or the rules adopted under authority of this act;

(3) To violate or fail to comply with any of the applicable provisions of the consumer fraud law, P.L.1960, c.39 (C.56:8-1 et seq.) or the regulations adopted pursuant to that act;

. . . .

(7) To utilize information, statements or communications that, although literally true, are presented in a manner that has the capacity to mislead the average consumer . . . .

[N.J.S.A. § 45:17A-32(a) to (c).]

29. CRIA further provides that:

(b) After notice and an opportunity for a hearing, the Attorney General may revoke, or suspend any [charitable] registration upon a finding that the registrant or any officer, director, trustee or principal salaried executive staff employee of a registrant or any other person subject to the provisions of P.L.1994, c.16 (C.45:17A-18 et seq.):

> (1) Has filed a registration statement containing false or misleading facts or omitting material facts;
>
> (2) Has violated or failed to comply with any of the provisions of this act or the rules adopted under authority of this act;
>
> (3) Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense
>
> . . . .
>
> [N.J.S.A. § 45:17A-33(b).]

30. Under CRIA, the Attorney General has broad investigatory authority to investigate potential violations. Among other things, CRIA provides that:

> (c) Whenever it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in, any practice declared unlawful by this act, or when the Attorney General determines it to be in the public interest to inquire whether a violation may exist, the Attorney General may:
>
> . . . .
>
> (6) Examine any book, document, account, computer data, literature, publication or paper maintained by or for any organization or person registered, exempted or required to be registered under this act, in the

> course of engaging in the activities regulated by this act . . . .
>
> [N.J.S.A. § 45:17A-33(c).]

31. In order to accomplish the objectives of this act, CRIA authorizes the Attorney General to:

> [H]old investigative hearings as necessary and issue subpoenas to compel the attendance of any person or the production of books, records, computer data, literature, publication or papers at any investigative hearing or inquiry.
>
> [N.J.S.A. § 45:17A-33(c)(8).]

32. CRIA addresses the failure or refusal of a person to obey a subpoena issued by the Attorney General and provides:

> (g) If a person fails or refuses to file any statement or report, or fails to grant access to premises from which activities regulated by this act are conducted in any lawfully conducted investigative matter, or fails to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:
>
> (1) Adjudging that person in contempt of court and assessing civil penalties in accordance with the amounts prescribed by this act;
>
> (2) Enjoining the conduct of any practice in violation of this act; or
>
> (3) Granting other relief as required.

[N.J.S.A. § 45:17A-33(g).]

33. Defendant is a "charitable organization" and a "person" within the meaning of CRIA, specifically N.J.S.A. § 45:17A-20.

34. At all relevant times, Defendant has advertised services to the public and solicited charitable contributions through its multiple websites, social media platforms, and through other means.

35. The Subpoena was issued pursuant to the Attorney General's authority under CRIA, specifically N.J.S.A. § 45:17A-33(c).

36. Defendant has violated CRIA by failing to produce the documents requested in the Subpoena.

COUNT II

VIOLATION OF THE CFA BY DEFENDANT (FAILURE TO COMPLY WITH THE SUBPOENA)

37. Plaintiffs repeat and reallege the preceding paragraphs as if more fully set forth herein.

38. The CFA prohibits:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise . . . .

[N.J.S.A. § 56:8-2.]

39. Under the CFA, the Attorney General has broad investigatory authority to investigate potential violations. Among other things, the CFA provides that:

> When it shall appear to the Attorney General that a person has engaged in, is engaging in, or is about to engage in any practice declared to be unlawful by this act, or when he believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in, any such practice, he may
>
> . . . .
>
> (c) Examine any merchandise or sample thereof, record, book, document, account or paper as he may deem necessary . . . .

[N.J.S.A. § 56:8-3.]

40. In this regard, the CFA authorizes the Attorney General to issue subpoenas to any person:

> To accomplish the objectives and to carry out the duties prescribed by this act, the Attorney General . . . may issue subpoenas to any person, administer an oath or affirmation to any person, conduct hearings in aid of any investigation or inquiry, promulgate such rules and regulations, and

> prescribe such forms as may be necessary, which shall have the force of law.
>
> [N.J.S.A. § 56:8-4(a).]

41. The CFA addresses the failure or refusal of a person to obey a subpoena issued by the Attorney General and provides:

> 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) Adjudging such person in contempt of court;
>
> (b) Granting injunctive relief without notice restraining the sale or advertisement of any merchandise by such persons;
>
> (c) Vacating, annulling, or suspending the corporate charter of a corporation created by or under the laws of this State or revoking or suspending the certificate of authority to do business in this State of a foreign corporation or revoking or suspending any other licenses, permits or certificates issued pursuant to law to such person which are used to further the allegedly unlawful practice; and

(d) Granting such other relief as may be required; until the person files the statement or report, or obeys the subpoena.

[N.J.S.A. § 56:8-6.]

42. Defendant is a "person" within the meaning of the CFA, specifically N.J.S.A. § 56:8-1(d).

43. The Attorney General may take investigatory steps "to ascertain whether a person in fact has engaged in, is engaging in or is about to engage in" any practice declared to be unlawful by the CFA, including whether a person is engaged in the sale or advertisement of any merchandise, including "services or anything offered, directly or indirectly to the public." N.J.S.A. § 56:8-3; §56:8-1(c).

44. The Subpoena was issued pursuant to the Attorney General's authority under the CFA, specifically N.J.S.A. 56:8-3 and 56:8-4.

45. Defendant has violated the CFA by failing to produce the documents requested in the Subpoena.

COUNT III

VIOLATION OF THE P&O LAW BY DEFENDANT (FAILURE TO COMPLY WITH THE SUBPOENA)

46. Plaintiffs repeat and reallege the preceding paragraphs as if more fully set forth herein.

47. The P&O law prohibits unlicensed persons from engaging in practices that require licensure, providing that:

(a) The Director of the Division of Consumer Affairs or any board or committee within the division may exercise its investigative power pursuant to section 5 of P.L.1978, c.73 (C.45:1-18) whenever there is reason to believe that there has been a violation of any applicable law or regulation by a person who:

(1) is not licensed, certified, or otherwise permitted by law or regulation to practice a profession or occupation and who represents to the public by any means, that he is able to practice a profession or occupation regulated under Title 45 of the Revised Statutes; or

(2) has engaged or is engaging in the unauthorized practice of a profession or occupation regulated under Title 45 of the Revised Statutes in violation of any law or regulation administered by the director or a board or committee within the Division of Consumer Affairs.

(b) Any person who, following notice and a hearing, has been found to have engaged in the conduct specified in paragraph (1) or (2) of subsection a. of this section shall:

(1) immediately cease and desist from practicing that profession or

> occupation, as ordered by the director or a board or committee; and
>
> (2) be liable to a penalty of not more than $10,000 for the first offense, and not more than $20,000 for each subsequent offense, to be recovered by the director or the board or committee within the Division of Consumer Affairs.
>
> [N.J.S.A. § 45:1-18.2.]

48. The P&O law also prohibits licensed professionals from engaging in deceptive practices and professional misconduct, providing that:

> A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:
>
> . . . .
>
> Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
>
> . . . .
>
> (e) Has engaged in professional or occupational misconduct as may be determined by the board . . . .
>
> [N.J.S.A. § 45:1-21.]

49. Board regulations further specify that deceptive medical advertising is professional misconduct:

> (c) A Board licensee who engages in the use of advertising which contains any of the following shall be deemed to be engaged in professional misconduct:
>
> (1) Any statement, claim or format including but not limited to, a graphic representation, which is false, fraudulent, misleading or deceptive;
>
> (2) Any misrepresentation of a material fact;
>
> (3) The suppression, omission or concealment of any material fact under circumstances which a Board licensee knows or should know that the omission is improper or prohibits a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement;
>
> . . . .
>
> (5) Any promotion of a professional service which the Board licensee knows or should know is beyond the licensee's ability to perform . . . .
>
> [N.J.A.C. § 13.35-6.10(c).]

50. Under the P&O law, the Attorney General has broad investigatory authority to investigate

potential violations. Among other things, the P&O law provides that:

> When it shall appear to any board, the director or the Attorney General that a person has engaged in, or is engaging in any act or practice declared unlawful by a statute or regulation administered by such board, or when the board, the director or the Attorney General shall deem it to be in the public interest to inquire whether any such violation may exist, the board or the director through the Attorney General, or the Attorney General acting independently, may exercise any of the following investigative powers:
>
> . . . .
>
> (d) Examine any goods, ware or item used in the rendition of a practice or activity subject to an act or regulation administered by the board;
>
> (e) Examine any record, book, document, account or paper prepared or maintained by or for any professional or occupational licensee in the regular course of practicing such profession or engaging in such occupation or any individual engaging in practices subject to an act or regulation administered by the board . . . .
>
> [N.J.S.A. § 45:1-18.]

51. In this regard, the P&O law authorizes the Attorney General to issue subpoenas to any person:

> In order to accomplish the objectives of this act or any act or regulation administered by a board, the Attorney General may hold such investigative hearings as may be necessary and the board, director or Attorney General may issue subpoenas to compel the attendance of any person or the production of books, records or papers at any such hearing or inquiry.
>
> [N.J.S.A. § 45:1-18.]

52. The P&O law addresses the failure or refusal of a person to obey a subpoena issued by the Attorney General and provides:

> If any person shall fail or refuse to file any statement or report or refuse access to premises from which a licensed profession or occupation is conducted in any lawfully conducted investigative matter or fail to obey a subpoena issued pursuant to this act, the Attorney General may apply to the Superior Court and obtain an order:
>
> (a) Adjudging such person in contempt of court; or
>
> (b) Granting such other relief as may be required; or
>
> (c) Suspending the license of any such person unless and until compliance

with the subpoena or investigative demand is effected.

[N.J.S.A. § 45:1-19.]

53. The Subpoena was issued pursuant to the Attorney General's authority under the P&O law, specifically N.J.S.A. § 45:1-18.

54. Defendant has violated the P&O law by failing to produce the documents requested in the Subpoena.

PRAYER FOR RELIEF

WHEREFORE, based upon the foregoing allegations, Plaintiffs respectfully request that the Court enter an Order:

(a) Directing Defendant to respond fully to the Subpoena within thirty (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.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF
NEW JERSEY
Attorney for Plaintiffs

By: s/ *Chanel Van Dyke*
Chanel Van Dyke

Deputy Attorney General,
Assistant Chief
Consumer Fraud
Prosecution Section
Pavithra Angara
Deputy Attorney General
Professional Boards
Prosecution Section

Dated: January 30, 2024
Newark, New Jersey

RULE 4:5-1 CERTIFICATION

I certify to the best of my information and belief, the matter in controversy in this action involving the aforementioned potential violations of the New Jersey Charitable Registration and Investigation Act, N.J.S.A. § 45:17A-18 to -40, the New Jersey Consumer Fraud Act, § 56:8-1 to -228, and the Professions and Occupations Law, § 45:1-18, -18.2, -21, is the subject of an action pending in the United States Third Circuit Court of Appeals, First Choice Women's Resource Centers, Inc. v. Matthew Platkin, 24-1111 (3d Cir.).

I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF
NEW JERSEY
Attorney for Plaintiffs

By: s/ *Chanel Van Dyke*
Chanel Van Dyke
Deputy Attorney General

Dated: January 30, 2024
Newark, New Jersey

RULE 1:38-7(c) CERTIFICATION OF COMPLIANCE

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW
JERSEY
Attorney for Plaintiffs

By: s/ *Chanel Van Dyke*
Chanel Van Dyke
Deputy Attorney General

Dated: January 30, 2024
Newark, New Jersey

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Chanel Van Dyke, Deputy Attorney General, is hereby designated as trial counsel on behalf of the Plaintiffs.

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY
Attorney for Plaintiffs

By: s/ Chanel Van Dyke
Chanel Van Dyke
Deputy Attorney General

Dated: January 30, 2024
Newark, New Jersey

VERIFICATION

I, Gregory Turner, of full age, hereby certify as follows:

1. I am an Assistant Deputy of Enforcement of the Office of Consumer Protection ("OCP") within the Division of Consumer Affairs ("Division"). The Division operates under the direction of the Attorney General within the Department of Law & Public Safety.

2. I have read the foregoing Verified Complaint and on my own personal knowledge and review of documents in possession of the Division, I know that the facts set forth herein are true and they are incorporated in this certification by reference, except for those alleged upon information and belief.

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

s/ Gregory Turner
Gregory Turner

Dated: January 30, 2024
Newark, New Jersey

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

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CCO-078-E

No. 24-1111

First Choice Women's Resource Centers, Inc.,
Appellant

v.

Attorney General New Jersey

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

Present: KRAUSE, FREEMAN, and SCIRICA, Circuit Judges

1. Motion by Appellant to Expedite Briefing, Argument, and Ruling with proposed briefing schedule as follows:

   Appellant's Opening Brief due March 22, 2024
   Appellee's Response Brief due April 19, 2024
   Appellant's Reply Brief due April 29, 2024
   Argument before May 9, 2024
   Ruling by May 16, 2024;

2. Response by Appellee in opposition to Motion;

3. Reply by Appellant in support of Motion.

Respectfully,
Clerk/amr

ORDER

Appellant's motion to expedite this appeal is DENIED. The basis for the motion is Appellant's concerns (which Appellant previously stated in its emergency motion for injunction pending appeal)

that, "absent a prompt decision by this Court . . . , First Choice's federal claims will soon become precluded by a parallel state-court enforcement action. . . ." Mot. at 1. We are mindful of those concerns. Indeed, because of them, our order denying Appellant's emergency motion for injunction was without prejudice to the filing of a motion to expedite this appeal. *See* Order, Feb. 15, 2024.

But Appellant did not promptly file a motion to expedite. It did not file the instant motion until February 29, 2019. And when it did, it did not inform this Court that three days earlier—through the same counsel representing it in this appeal—Appellant had filed a petition for a writ of mandamus in the United States Supreme Court. Pet. for Mandamus, *In re First Choice Women's Res. Ctrs., Inc.*, No. 23-941, 2024 WL 865946 (U.S. Feb. 26, 2024).

In that petition, Appellant asked the Supreme Court to "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." *Id.* at 5. Yet that is essentially the same relief Appellant seeks from this Court on an expedited basis. But Appellant did not advise us it was seeking that relief in the Supreme Court. Nor did Appellant advise the Supreme Court that it was filing a motion to expedite in this Court. Instead, it represented to the Supreme Court that it lacked "any effective recourse . . . in the Third Circuit" such that "[n]othing other than mandamus will provide First Choice adequate relief." *Id.* at 27-28. Appellant also disavowed in the Supreme Court any need for that Court to resolve its petition on an emergency basis.

See Ltr. to Clerk, *In re First Choice Women's Res. Ctrs., Inc.*, No. 23-941 (U.S. Feb. 28, 2024).

This Court will not expedite Appellant's appeal while Appellant is simultaneously pursuing extraordinary relief from the Supreme Court and representing to that Court that expedited treatment is not necessary. Moreover, Appellant's counsel are cautioned that they must exercise complete candor in all future filings in this Court. *See Wharton v. Superintendent Graterford SCI Phila. Dist. Attorney's Office*, No. 22-2839, --- F.4d ---, 2024 U.S. App. LEXIS 5642, at *2 (3d Cir. Mar. 8, 2024) ("Courts rely on lawyers' honesty; lawyers may not mislead them."). Failure to do so may result in sanctions.

By the Court,

s/Cheryl Ann Krause
Circuit Judge

Dated: March 11, 2024
CJG/cc: Erin M. Hawley, Esq.
Lincoln D. Wilson, Esq.
Angela Cai, Esq.
Samuel Rubinstein, Esq.

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

PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANT'S MOTION TO QUASH AND IN FURTHER SUPPORT OF PLAINTIFFS' ORDER TO SHOW CAUSE

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Kevin Bui
Deputy Attorneys General
Of Counsel And On The Brief

* * * * *

III. FIRST CHOICE'S FIRST AMENDMENT CLAIMS FAIL.

First Choice's First Amendment claims lack any legal or factual basis. The State has simply issued a subpoena and has not yet decided whether to ultimately bring any civil or administrative action against First Choice for substantive violations of the CFA, the CRIA, or the P&O law. As the U.S. Supreme Court has held, a government entity "violates no constitutional rights by merely investigating" conduct that may violate its laws. Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc., 477 U.S. 619, 628 (1986); see also SEC v. McGoff, 647 F.2d 185, 187-88 (D.C. Cir. 1981) (instructing that such subpoenas "do not directly regulate the content, time, place, or manner of expression"). First Choice's particular First Amendment theories here likewise fall flat.

A. The Subpoena Does Not Violate First Choice's Freedom Of Speech.

First Choice fails to establish that the Subpoena violates the First Amendment through selective or

retaliatory enforcement based on First Choice's viewpoint. First Choice cannot establish that the State lacked sufficient cause to issue the Subpoena, and its allegations regarding similarly situated entities lacks factual basis.

To establish a selective or retaliatory enforcement claim, First Choice faces a tremendously high burden. First Choice introduces its free speech claims by citing a seminal U.S. Supreme Court case, Hartman v. Moore, 547 U.S. 250 (2006). In Hartman, the Court set a dual burden for such claims: the challenger must establish not only "retaliatory animus," but also that the Subpoena would not "have been [initiated] anyway, independently of any retaliatory animus." 547 U.S. at 259-61, 265-66 (noting in criminal context, "establishing the existence of probable cause will suggest that prosecution would have occurred even without a retaliatory motive"); see also DeMartini v. Town of Gulf Stream, 942 F.3d 1277, 1300-1301,1304-09 (11th Cir. 2019) (noting in civil context, the government need only show "a 'reasonabl[e] belie[f] that there is a chance that [a] claim may be held valid upon adjudication" (quoting Prof'l Real Estate Inv'rs, Inc. v. Columbia Pictures Indus., Inc., 508 U.S. 49, 62–63 (1993) (alternations in original))).[17] The dual burden is required because there is a "presumption

[17] First Choice cites Starnes v. Butler Cnty. Ct. of Common Pleas, 971 F.3d 416, 429 (3d Cir. 2020), for the elements of unlawful retaliation. FC.Br.13. But Starnes involved a public employee's unlawful termination claim related to protected speech—not a claim of retaliatory or selective enforcement. Nor is Winters v. N. Hudson Reg'l Fire & Rescue, 212 N.J. 67, 73 (2012), a case about state employment law, relevant to this case. See FC.Br.13.

that a prosecutor has legitimate grounds for the action he takes," Hartman, 547 U.S. at 263 (citing Wayte v. United States, 470 U.S. 598, 607–608 (1985)), and the challenger must present "clear evidence' displacing the presumption that a prosecutor has acted lawfully." Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 489 (1999); see also State v. Di Frisco, 118 N.J. 253, 266 (1990).

First Choice can demonstrate neither of the Hartman requirements: that the State lacked legitimate grounds for issuing the Subpoena, or that there was any discrimination against First Choice at all. First, First Choice has not even attempted to establish that the State lacked legitimate grounds for issuing the Subpoena, which Hartman requires. FC.Br.13-16. Nor could it—the evidence revealed by the State's preliminary investigation into First Choice, which included a number of potentially deceptive and misleading statements, more than establishes a factual basis for further investigation. See supra at 5-9; UMDNJ, 347 F.3d at 64 ("[A]n agency ordinarily 'can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not," (quoting United States v. Powell, 379 U.S. 48, 57 (1964))). And First Choice cannot establish that the State would not have investigated such potential misconduct were it to concern some other entity. As Judge Alper explained in Smith & Wesson, "[w]hether it's guns or widgets, or whatever it is, if an entity is making statements about its products which are not true, then that is something that is properly the subject of an investigation by the Attorney General." Musso Cert. Ex. 8. And the fact that other jurisdictions have also

identified concerns justifying investigations against other CPCs, see, e.g., Musso Cert. Ex. 11; Ex. 12, is confirmatory evidence of—not against—the State's ample basis to initiate an investigation here. See FC.Br.26. Because First Choice has not carried its burden to show the absence of a reasonable belief for issuing the Subpoena, First Choice's retaliation claim fails, and the Court need go no further as to this claim. See DeMartini, 942 F.3d at 1292 (citing Hartman, 547 U.S. at 265-66).

Even if the Court were to look to the other Hartman requirement, First Choice cannot establish that it has been discriminated against at all. To claim discriminatory enforcement, First Choice must demonstrate that the "decision to prosecute is based upon an unjustifiable standard such as race, religion, or other arbitrary classification." Twp. of Pennsauken v. Schad, 160 N.J. 156, 183 (1999); accord Jewish Home of E. Pa. v. CMS, 693 F.3d 359, 363 (3d Cir. 2012) (party "must provide evidence of discriminatory purpose, not mere unequal treatment or adverse effect"). First Choice has shown nothing of the sort.

First Choice's primary argument is that the State has failed to take enforcement action "against dozens of reproductive health-related organizations like Planned Parenthood while targeting pregnancy centers like First Choice." FC.Br.15. But First Choice cannot show that Planned Parenthood is a similarly situated entity that is "in all relevant respects alike." State v. Mortimer, 135 N.J. 517, 536 (1994) (quoting Nordlinger v. Hahn, 505 U.S. 1, 10 (1992)); see also Children's Health Def., Inc. v. Rutgers, 93 F.4th 66, 84 (3d Cir. 2024). To meet this burden, First Choice "must allege more than 'broad generalities' in

identifying a comparator." Stradford v. Sec'y Pa. Dep't of Corr., 53 F.4th 67, 74 (3d Cir. 2022) (citation omitted). First Choice's failure to point to "specifics as to why" another entity is "similarly situated" is "fatal to" its selective enforcement claim. Children's Health Def., 93 F.4th at 85. First Choice makes no effort to identify "specifics as to why" Planned Parenthood is like First Choice "in all relevant aspects." Ibid. Indeed, First Choice has not identified any misrepresentation by Planned Parenthood similar to the alleged misrepresentations the State was concerned with here. See supra at 5-9 (detailing potential misrepresentations). First Choice's sole claim that Planned Parenthood makes "medically inaccurate statements about abortion," FC.Br.19, lacks support in this record: First Choice has not actually identified any statements it claims are inaccurate.

Several aspects of Planned Parenthood's organization confirm that it and First Choice are not alike in all relevant aspects. Children's Health Def., 93 F.4th at 84. For example, Planned Parenthood is a registered ambulatory care center under Department of Health regulations, N.J.A.C. § 8:43A-1.3, while First Choice is not registered.[18] Planned Parenthood makes clear that it must comply with disclosure requirements of public and private insurers, and privacy laws such as HIPAA.[19] First Choice claims it

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[18] See New Jersey Department of Health Search for Hospitals, Ambulatory Care, and other Acute Care Facilities, https://tinyurl.com/yaye3a7n (last visited Apr. 29, 2024).

[19] See Planned Parenthood Notice of Health Information Privacy Practice, https://tinyurl.com/3mrx6a9s (last visited Apr. 29,

is exempt from HIPAA requirements. See Turner Cert., Ex. C at AG275. This distinction is relevant to the State's concern about First Choice's treatment of medical information and patient confidentiality, and thus the Subpoena specifically seeks documents "[c]oncerning representations made by [First Choice] to Clients about the confidentiality of Client information, Including privacy policies." See Request ¶ 5. The Division is entitled to prioritize investigation of entities that raise particular concerns.

Contrary to First Choice's claim that it has been unfairly singled out, the State regularly investigates entities across a variety of industries and fields when there is concern about potential violations of state law, including by seeking to enforce an investigatory subpoena. First Choice does not even suggest that the State would ignore concerns about potential violations; nor could it: the breadth of the State's investigatory work vitiates any such suggestion. See Schad, 160 N.J. at 183 (holding "no evidence that the Township has failed to prosecute any similar violators" defeated disparate treatment claim). For example, the State has initiated investigations of numerous other entities based on complaints of alleged unlicensed practice of medicine (including the utilization of ultrasound, radiofrequency, and cavitation machines), fraudulent advertising practices, and failure of a licensed physician to be present at the time of healthcare services. See, e.g., Musso Cert. Ex. 13. In the charities context, the State has filed complaints and administrative actions

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2024); Planned Parenthood Privacy Policy https://tinyurl.com/3kyejc2v (last visited Apr. 29, 2024)

against charitable organizations for making untruthful oral or written statements, misrepresenting the purpose or nature of the charitable institution or the purpose or beneficiary of a solicitation, and soliciting contributions for a purpose other than the charitable purpose expressed in the statement of the charitable organization or expending contributions in a manner inconsistent with that purpose. See, e.g., Musso Cert. Exs. 9, 10, 14, 15. And this Court has regularly enforced subpoenas seeking to investigate misconduct across a variety of industries and fields. See e.g. Musso Cert., Ex. 1. These subpoenas are consistent with the Legislature's enactment of the CFA, the CRIA, and the P&O law tasking the State with holding noncompliant actors accountable. And while not all investigations and subpoenas lead to enforcement actions, they are crucial to the State's ability to uncover misconduct. Because First Choice has not identified a similarly situated entity that was subject to different treatment, its selective-enforcement viewpoint discrimination claim fails.

First Choice cannot establish any meaningfully differential treatment. And even if it could identify an instance where the State did not investigate an entity based on similar evidence, that would not be enough. "The mere fact that a law has not been fully enforced against others does not give a defendant the right to violate it." Hyland v. Smollok, 137 N.J. Super. 456, 462 (App. Div. 1975) (quoting State v. Boncelet, 107 N.J. Super. 444, 453 (App. Div. 1969)). There are myriad legitimate reasons an enforcement official may decline to pursue other offenders that do not reflect a discriminatory intent, such as that "officials

seek to prosecute a particularly egregious violation and thereby deter other violators." Cook v. City of Price, 566 F.2d 699, 701-02 (10th Cir. 1977) (noting even if the statute were regularly violated without enforcement, a party cannot prevail where "[n]one of the other" violations were of a similar magnitude). Because First Choice alleges no facts to plausibly undermine the presumption that the State "acted lawfully," Reno, 525 U.S. at 489, its selective enforcement claim must be rejected.

Lacking basis for its claims, First Choice presses allegations irrelevant to the legal standard. First Choice points to the Attorney General's public statements about his priority of ensuring access to reproductive care, which First Choice alleges "demonstrate his affinity for abortion, and his contempt for laws that regulate abortion and the courts that uphold them," FC.Br.4; his participation in public meetings with concerned stakeholders such as Planned Parenthood, FC.Br.5; his issuance of a December 2022 Consumer Alert about deceptive practices at CPCs; and his October 2023 open letter with other state attorneys general allegedly "denigrat[ing] unnamed pregnancy centers," FC.Br.5-7. But none of these allegations go to the legal standard: showing that the State lacked legal basis to investigate First Choice, or that it selectively investigated First Choice.

Similar attempts to use these types of allegations in support of meritless constitutional arguments as a shield against fraud investigations have been rightly rejected. In Exxon Mobil Corp. v. Schneiderman, 316 F. Supp. 3d 679 (S.D.N.Y. 2018), the court rejected Exxon's nearly identical attempt to evade compliance

with subpoenas issued by two state attorneys general on the grounds that the real purpose of their fraud investigations was to punish and deter its views on climate change. See id. at 686-87. Exxon relied on the same arguments asserted by First Choice here—i.e., that officials "acted not based on a good faith belief that Exxon may have violated state laws, but to retaliate against Exxon for, or to deter Exxon from, speech that is protected by the First Amendment." Id. at 704. Exxon cited statements by the state officials about climate change, accused them of "derid[ing]" Exxon's statements about the causes of climate change, and claimed outside activists influenced the decision to issue subpoenas. Id. at 706-07. The claims in Exxon were virtually identical to the claims here, swapping out "pro-life" advocacy for climate change.

The court flatly rejected those arguments, because Exxon had not plausibly alleged that the attorneys general were "pursuing an investigation even though [they] do[] not believe that Exxon may have committed fraud"—the exceedingly high bar Exxon needed to meet. Id. at 707; see also id. at 712 ("[W]hether viewed separately or in the aggregate, Exxon's allegations fall well short of plausibly alleging that the [Attorneys General] are motivated by an improper purpose."). The court recognized Exxon's complaint did "not allege any direct evidence of an improper motive" and found "circumstantial evidence put forth" sorely lacking. Ibid. First, the court addressed allegations regarding these state officials' views on climate change, rejecting a "false equivalence between [the officials'] belief that climate change is a settled issue" and any "inference" that investigating a specific oil company's fraud was

"retaliat[ion]" for political speech on issues relating to climate. Id. at 707; see also ibid. ("The fact [an official] believes climate change is real ... does not mean the [official] does not also have reason to believe that Exxon may have committed fraud."). Second, the court rebuffed Exxon's argument that meetings with environmental activists proved an improper motive, finding Exxon did not "plausibly allege" that any meetings between activists and officials show "the [officials] share the activists' improper purpose." Id. at 708; see also id. at 712 (finding "circumstantial evidence. . . fails to tie the AGs to any improper motive, if it exists, harbored by activists").

The same analysis forecloses First Choice's claims here, as its theory of improper motive is even more speculative, falling well short of plausibly demonstrating that the State lacks valid "reason to believe that [First Choice] may have committed fraud." Id. at 707. For one, none of the above alleged public statements about access to reproductive care even mention First Choice, FC.Br.4-5, and so "[i]t is not possible to infer an improper purpose from any of these comments," Exxon Mobil, 316 F. Supp. 3d at 707. The Attorney General's desire to ensure access to reproductive care, as the laws of the State of New Jersey guarantee, in no way proves any improper targeting of First Choice. As in Exxon, the fact that a public official supports access to reproductive health care, and that the Attorney General (and multiple other officials) have had reason to warn the public of potential fraud by CPCs, "does not mean [he] does not also have reason to believe that [First Choice] may have committed fraud" based on the representations that the Division has uncovered to date. Ibid.

While First Choice asserts that the Attorney General's alleged work with pro-choice organizations shows his investigation is motivated by viewpoint animus, see FC.Br.13-14, First Choice fails to demonstrate either that those advocates themselves would believe this investigation to be frivolous, or that their intention and the Attorney General's goals are one and the same. To the contrary, this Court cannot "infer from the existence of meetings between the AG[] and the activists, that the AG[] share[s] the activists' improper purpose," even if they did harbor such a purpose. Exxon, 316 F. Supp. 3d at 708. Said another way, that the Attorney General has generally met with or considered information from groups that promote reproductive healthcare hardly establishes that the State had an improper motive for this particular fraud investigation. See, e.g., SEC v. Wheeling-Pittsburgh Steel Corp., 648 F.2d 118, 130 (3d Cir. 1981) ("That the SEC commenced these proceedings as a result of the importuning of Senator Weicker or CF&I, even with malice on their part, is not a sufficient basis to deny enforcement of the subpoena."). Indeed, "even if the [pro-choice] activists did encourage the AG[] to investigate [First Choice] ..., another logical leap is required to infer [that the AG] agreed to do so without having a good faith belief that [his] investigations of [First Choice] were justified." Exxon, 316 F. Supp. 3d at 709. The "circumstantial evidence" on which First Choice relies "fails to tie the AG[] to any improper motive, if it exists, harbored by activists," Id. at 712.

Nor do the December 2022 Consumer Alert or October 2023 open letter,[20] allegedly "accus[ing]" CPCs "of providing false and misleading information" and calling CPCs "'insidious' and 'designed to deceive,'" FC.Br.14, prove an improper purpose in the State's investigation of First Choice. These documents merely suggest that the Attorney General was concerned that CPCs "have made false statements" and "have committed fraud," Exxon, 316 F. Supp. 3d at 708—valid concerns that underlie this Subpoena. That the Attorney General expressed concern about potentially fraudulent and deceptive practices prior to investigating First Choice out of a similar concern suggests proper motive. For example, the Consumer Alert informs the public about the characteristics and tactics of CPCs in furtherance of the "right to truthful, unbiased and medically accurate health information." See infra at n. 20. As the Consumer Alert lays out, such potential deceptive tactics include (1) using names and signage with pro-choice connotations, (2) offering free ultrasounds, pregnancy tests and supplies targeted at specific populations, (3) offering pregnancy counseling that does not include complete or accurate information regarding abortion, (4) postponing care to delay access to abortion care, and (5) providing false or misleading information about the safety and legality of abortion care. Ibid. These same concerns—combined with additional, specific concerns about First Choice's particular practices based on a

[20] N.J. Div. Consumer Affs., Alert – Crisis Pregnancy Centers (Dec. 7, 2022), https://tinyurl.com/3nyunytv; Open Letter from Attorneys General Regarding CPC Misinformation and Harm (Oct. 23, 2023), https://tinyurl.com/53nvxdh3.

preliminary investigation—animate the Subpoena's efforts to investigate potentially fraudulent and deceptive practices by First Choice.

In sum, none of the statements on which First Choice relies show "an improper purpose" or that the Attorney General "is pursuing an investigation even though [he] does not believe that [First Choice] may have committed fraud." Exxon, 316 F. Supp. 3d at 707. Indeed, were such statements sufficient to establish an improper motive, "it would put … attorneys general in a straight-jacket relative to their public comments." Id. at 710 n.29. Such a rule would effectively bar any public law enforcement official from taking enforcement action on any topic about which they have expressed a public view. See Goldstein v. Galvin, 719 F.3d 16, 30 (1st Cir. 2013) ("Not only do public officials have free speech rights, but they also have an obligation to speak out on matters of public concern."). That would mean "a pharmaceutical company that sells opiate-based pain killers" might be able to "enjoin an investigation" just because "the prosecutor stated publicly that the public should have accurate information about the risks of opiate use[.]" See Exxon, 316 F. Supp. 3d at 710 n.29. That has never been the law—far more is required to show that a state-law fraud investigation is "not based on a good faith belief that [the subpoena recipient] may have violated state laws." Id. at 704. Because First Choice has failed to meet its burden to establish improper motive, its speech claims fails.

B. The Subpoena Does Not Violate First Choice's Free Exercise of Religion.

First Choice's free exercise claim fares no better. This claim largely devolves into the same arguments it makes regarding its free speech claims—that the Subpoena was motivated by an intent to target First Choice based on its religious views, see FC.Br.18, and that other entities were treated more favorably than First Choice, see FC.Br.17. Those arguments fail for the reasons described above. Repackaging the arguments as free-exercise claims makes no difference.

While a party may establish a free exercise claim by "showing that a government entity has burdened his sincere religious practice pursuant to a policy that is not 'neutral' or 'generally applicable,'" Kennedy v. Bremerton Sch. Dist., 597 U.S. 507, 525 (2022) (quoting Emp't Div., Dep't of Human Res. of Or. v. Smith, 494 U.S. 872, 879-81 (1990)), the free exercise right "does not relieve an individual of the obligation to comply with a valid and neutral law of general applicability on the ground that the law proscribes (or prescribes) conduct that his [or her] religion prescribes (or proscribes)," Petro v. Platkin, 472 N.J. Super. 536, 568 (App. Div. 2022) (quoting Smith, 494 U.S. at 879). "A law is 'neutral' if it does not target religiously motivated conduct either on its face or as applied in practice." Combs v. Homer-Ctr. Sch. Dist., 540 F.3d 231, 241-42 (3d Cir. 2008) (citation omitted)).

The statutes on which the Subpoena is based—the CFA, the CRIA, and the P&O law—are neutral laws of general applicability. They prohibit

fraudulent and misleading statements and/or omissions in the context of commercial practices, and/or charitable solicitations, and prohibit the unlawful practice of professional occupations. See N.J.S.A. § 56:8-2 (CFA); N.J.S.A. § 45:17A-33(c) (CRIA); N.J.S.A. §§ 45:1-18.1(a), (b) (P&O law). Nothing in the text of these statutes targets religiously-motivated conduct or beliefs—a point that First Choice does not dispute.

First Choice also has not established that the State has contravened the Free Exercise Clause's neutrality requirement by "exempt[ing] some secularly motivated conduct but not comparable religiously motivated conduct." Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly, 309 F.3d 144, 165-66 (3d Cir. 2002). "[W]hether two activities are comparable for purposes of the Free Exercise Clause must be judged against the asserted government interest that justifies the regulation at issue." Tandon v. Newsom, 593 U.S. 61, 62 (2021). As described supra at 5-9, the Subpoena is supported by concerns about First Choice's potential factual misrepresentations and omissions and other misconduct, not because of First Choice's religious beliefs or any religious statement or conduct. Nor does announcing enforcement priorities of neutral laws of general applicability, or meeting with advocacy groups who shared concerns about such laws' violation, constitute evidence of discrimination against religion. The Consumer Alert and the attorney generals' open letter focus exclusively on potential fraudulent and deceptive practices—not any particular religious, ideological, or political viewpoint.

First Choice has also failed to point to any evidence identifying any "comparable" secular activity that the State treated more favorably despite engaging in comparable conduct. Instead, First Choice merely alleges that the State has "exercised broad enforcement power against First Choice over its statements about [abortion-pill reversal], while leaving problematic statements about abortion procedures by Planned Parenthood alone." FC.Br.17. But, as discussed above, First Choice has not established that Planned Parenthood is a similarly-situated entity. Supra, at 35-36. First Choice's threadbare allegation that the State "target[ed]" it because of its "Christian, pro-life expression," FC.Br.14, 18, without demonstrating that a similarly situated secular entity was treated more favorably, is insufficient to show a lack of neutral treatment towards religion. The State issues subpoenas of this sort to individuals and organizations across the spectrum, including many secular organizations. See Musso Cert Exs. 1, 9, 10, 13. Because First Choice has failed to meet its burden, this Court should reject its free-exercise claim.

C. The Subpoena Does Not Violate First Choice's Freedom of Association.

First Choice also fails to establish that the Subpoena's requests will harm First Choice's associational interests.[21] First Choice claims that the

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[21] While First Choice asserts a free-floating "First Amendment privilege" argument, FC.Br.21, it identifies no distinct constitutional basis for such an argument. And the cases it cites in support of that argument are freedom-of-association cases. See Brock v. Local 375, Plumbers Int'l Union of Am., AFL-CIO, 860 F.2d 346 (9th Cir. 1988); ERISA Indus. Comm. v. Asaro-

Subpoena demands that it reveal identifying information for every one of its "donors, clients, staff, vendors, … officers, directors," and others, which will "both discourage[] new associations with First Choice and encourage[] withdrawal from existing relationships." See FC.Br.20 (citing Requests ¶¶ 10, 11, 14, 16, 18, 22, 23, 26). Not only does First Choice overstate the scope of the requested disclosures, it also makes no showing that the Subpoena would actually burden its associational rights.

Courts apply a burden-shifting framework to First Amendment associational privileges claims against discovery demands in both civil actions and the investigative context. First Choice acknowledges that burden shifting applies here. See FC.Br.21. The party opposing disclosure must first make out a prima facie case of "arguable first amendment infringement" by demonstrating that disclosure will "result in (1) harassment, membership withdrawal, or discouragement of new members, or (2) other consequences which objectively suggest an impact on, or 'chilling' of, the members' associational rights." Perry v. Schwarzenegger, 591 F.3d 1147, 1160 (9th Cir. 2010) (citation omitted). If the opponent makes out its prima facie case, the burden shifts back to the proponent to show compelling interest and tailoring. Id. at 1161; see also Meta Platforms, Inc. v. D.C., 301 A.3d 740, 756-57 (D.C. 2023) (noting party claiming privilege bears initial burden of showing that

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Angelo, No. 20-10094, 2023 WL 2808105 (D.N.J. Apr. 6, 2023). Any First Amendment privilege would be subject to the same burden-shifting First Choice acknowledges applies here, FC.Br.21-22, and First Choice has failed to carry its burden for the same reasons described herein.

discovery request will cause chilling of associational rights); No on E v. Chiu, 85 F.4th 493, 508 (9th Cir. 2023) ("[T]o support an exemption from a compelled disclosure requirement, Plaintiffs must show more than a 'modest burden.'"); AFT Mich. v. Project Veritas, No. 17-13292, 2023 WL 2890152, at *6 & n.7 (E.D. Mich. Apr. 10, 2023).

As an initial matter, First Choice overstates the scope of the disclosures called for by the Subpoena, complaining that the Subpoena seeks identifying information for every one of its "donors, clients, staff, vendors, … officers, directors," and others. See FC.Br.20 (citing Requests ¶¶ 10, 11, 14, 16, 18, 22, 23, 26). But the requests are far narrower. As to donors, the Subpoena seeks only documents concerning complaints made by clients or donors, Request ¶ 11, and identifying information for donors who donated "by any means other than through the Donor Solicitation Page"—that is, the donors who gave money on the site that conceals First Choice's pro-life mission and practices, id. ¶ 26 (emphasis added). These requests are tailored to investigate whether donors were misled, especially those who gave money to First Choice without being informed of its pro-life mission and practices—a mission that it is free to pursue, but not one it can mislead its donors about. See supra at 5-6 (client-facing websites omitting any mention of pro-life mission and practice, including on donation page). Furthermore, the Subpoena seeks information relating to whether donors may have been misled by other statements, including First Choice's representation that it provides accurate medical information, given its potentially misleading medical claims. The Subpoena seeks information

regarding existing complaints, Request ¶ 11, and donor information only for donations made through the patient-facing website that makes no mention of the organization's pro-life mission, id. ¶ 26, in order to investigate this potential fraudulent misrepresentation claim.

Likewise, the Subpoena does not seek general disclosure of First Choice's vendors, but only communications related to development of its multiple websites. See id. ¶ 10. It does not seek identifying information for all of First Choice's staff, but only those relevant to the Division's investigation of unlicensed practice of professional occupations. See id. ¶¶ 14-18 (seeking licensure information, ultrasound personnel, related policies, and ultrasound interpretation referral information). And because the veracity of First Choice's claims regarding "Abortion Pill Reversal" (APR) are relevant to the State's inquiry into whether individuals—including donors—were misled, the Subpoena seeks information related to First Choice's APR services. See id. ¶ 22. Thus, the Subpoena's requests for information on donors, vendors, and staff are limited and narrowly tailored; the State may lawfully seek that information as part of its investigation.

First Choice's reliance on Americans for Prosperity Foundation v. Bonta ("AFP"), 141 S. Ct. 2373 (2021), only highlights the reasonableness of the State's approach. See FC.Br.20. AFP addressed the invalidity of broad, prophylactic disclosures, but explained that states could use investigative subpoenas to obtain donor-identifying information. In AFP, the Supreme Court invalidated California's "Schedule B," which required all charities to disclose

every donor who gave over $5,000 on their annual tax registrations. Id. at 2379-80. The Court acknowledged the state's legitimate anti-fraud interest, but found requiring comprehensive annual disclosures from 60,000 charities was overbroad and fell "short of satisfying the means-end fit" that demands "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." Id. at 2385-86. But the Court expressly recognized that the State could use narrower alternatives "such as a subpoena or audit letter." Id. at 2386. New Jersey seeks to do exactly that.

Further, unlike the plaintiff in AFP, First Choice has made no factual showing that disclosure of information sought in the Subpoena would actually burden its associational rights. First Choice offers no evidence of harassment, membership withdrawal, or any chilling of its rights to make its prima facie infringement case. First Choice again relies on only vague speculation that it may lose "organizational support," claiming, without any factual basis, that "[c]urrent volunteers and supporters will rationally resist subjecting themselves to investigation through their relationship with First Choice." FC.Br.20. Such conjecture is not evidence of any impact on First Choice's associational rights. See Twitter, Inc. v. Paxton, 56 F.4th 1170, 1175 (9th Cir. 2022) (dismissing First Amendment challenge to subpoena because "Twitter's naked assertion [in allegation and declaration] that its speech has been chilled is 'a bare legal conclusion' upon which it cannot rely to assert injury-in-fact."). Moreover, First Choice ignores the fact that a protective order could easily allay those

hypothetical concerns, had First Choice deigned to actually discuss the Subpoena with the State.[22] Because First Choice has made no such effort, its argument must be rejected. See In re Subpoena Duces Tecum, 228 F.3d 341, 351 (4th Cir. 2000) ("[A]s a condition to maintaining the argument that an investigative subpoena is overly broad and oppressive, [the opponent] would have to be able to point to reasonable efforts on his behalf to reach accommodation with the government."); Morton Salt Co., 338 U.S. at 653 ("Before the courts will hold an order seeking information reports to be arbitrarily excessive, they may expect the supplicant to have made reasonable efforts before the [government body] to obtain reasonable conditions.").

Even if First Choice had established a prima facie case, the State has satisfied its burden of showing that there is "substantial relation between the disclosure requirement" in the Subpoena "and a sufficiently important governmental interest." That requirement is easily met when, as here, the donor, vendor, and staff information is sought as part of a targeted investigation. See AFP, 141 S. Ct. at 2383. The U.S. Supreme Court has recognized that "States may maintain fraud actions when fundraisers make false or misleading representations designed to deceive donors about how their donations will be used." Madigan, 538 U.S. at 624; see also Riley, 487 U.S. at 800. States have a long-recognized and compelling interest in investigating and preventing

[22] The State remains ready and willing to discuss the scope of the Subpoena with First Choice, including potentially accepting redacted donor information in an initial production.

the unlawful practice of professional occupations. See Watson v. Maryland, 218 U.S. 173, 176 (1910) ("[T]he police power of the States extends to the regulation of certain trades and callings, particularly those which closely concern public health"). The State therefore has a compelling interest in investigating and prosecuting fraudulent misrepresentation by non-profits or other organizations and preventing unlawful practice of medical care.

The Subpoena is narrowly tailored to serve those compelling interests. It seeks only donor information stemming from a complaint or for which the State has reason to suspect deception. See Requests ¶¶ 11, 26. That information is "highly relevant," Perry, 591 F.3d at 1161, because it would be impossible for the State to investigate whether donor-deception has occurred without donor-identifying information. Likewise, the Subpoena seeks only the identities of staff and referring organizations that are relevant to its investigation of unauthorized practice of medicine. See Requests ¶¶ 14-16, 18. And while the Subpoena must be narrowly tailored, it need not be the least restrictive means to obtain the information sought. AFP, 141 S. Ct. at 2383.

Other courts have held that compelled donor and vendor disclosure via subpoena does not violate the First Amendment. In People v. VDARE Foundation, Inc. ("VDARE"), No. 453196/2022, 2023 WL 360633 (N.Y. Sup. Ct. Jan. 23, 2023), New York sought enforcement of an investigatory subpoena to VDARE, a white-supremacist website, concerning allegations that VDARE misused donor funds, and requiring disclosure of the identities of VDARE contractors, documents concerning its corporate structure, and

transactions with other entities. Id. at *1. The court rejected VDARE's reliance on AFP to resist that disclosure, reasoning that AFP "concerned only donor disclosures in statewide annual filing requirements, while expressly permitting subpoenas seeking the same information as part of a targeted investigation." Id. at *4-5. Accordingly, the state was entitled to disclosure of such documents as they were precisely the material that would permit the state to determine whether VDARE had complied with its regulatory requirements. Id. at *4. Other courts have likewise held that requiring disclosure of donor information that is necessary for litigating claims does not violate the First Amendment. See, e.g., Planned Parenthood Fed'n of Am., Inc. v. Ctr. for Med. Progress, No. 1600236, 2018 WL 2441518, at **1-2, 11 (N.D. Cal. May 31, 2018); AFT Mich., 2023 WL 2890152, at *6-7.

Courts have also compelled disclosure of medical-personnel identities and credentials in an investigation into unlicensed practice of medicine at a CPC. In Evergreen Ass'n, Inc. v. Schneiderman, 153 A.D.3d 87 (N.Y. App. Div. 2017), the New York Appellate Division partially upheld a subpoena from the New York Attorney General to Evergreen, a CPC. New York's claimed basis for the subpoena was the unlicensed practice of medicine. Id. at 89-90. The state sought documents regarding Evergreen's corporate structure including parent or subsidiary corporations, identities and credentials for all staff, and complaints. Id. at 91-94. The court considered both "cherished First Amendment freedoms" as well as the state's interest in preventing unlicensed practice of medicine, and upheld the subpoena as it

related to corporate structure disclosure, staff identities, and complaints, but only as it related to provision of medical services. Id. at 100-01. Here, the Subpoena is already so limited—it seeks staff identities only for those who perform ultrasounds and credentials only for those who render services for clients. See Requests ¶¶ 14-16. Because First Choice has failed to establish that its associational rights have actually been impacted and because the requests are narrowly tailored to serve the State's compelling interests, First Choice's association claim fails.

IV. THE SUBPOENA IS NOT OVERLY BROAD OR BURDENSOME

Although First Choice is precluded from challenging the scope of the Subpoena because it has made no effort to meet and confer with the State, First Choice's arguments fail on the merits as the Subpoena seeks information directly relevant to whether First Choice violated the CFA, CRIA, and P&O law, and it is therefore not overbroad or unduly burdensome.

A. First Choice Is Precluded From Challenging The Scope Of The Subpoena.

First Choice's arguments that the Subpoena is overbroad and that compliance with it would overly burden its financial and staff resources, see FC.Br.32-35, fail at the threshold because it has made no effort to meet and confer with the State to reach an accommodation regarding its scope or time for answering. First Choice has had every opportunity to do what any other subpoena recipient normally does: meet and confer and negotiate the scope or due date

of the subpoena, so that the State's and First Choice's interests could be fairly accommodated. The State could have discussed potential modifications to alleviate any burden, including accepting partial/rolling production, agreeing to narrow specific requests, or extending the time period for responding. But First Choice has made no "efforts … to reach accommodation with the [State]," and therefore cannot "maintain[] the argument that [the] [] subpoena is overly broad and oppressive." In re Subpoena Duces Tecum, 228 F.3d at 351 ("[A]s a condition to maintaining the argument that an investigative subpoena is overly broad and oppressive, [the opponent] would have to be able to point to reasonable efforts on his behalf to reach accommodation with the government.") (emphasis added); see also Morton Salt Co., 338 U.S. at 653 ("Before the courts will hold an order seeking information reports to be arbitrarily excessive, they may expect the supplicant to have made reasonable efforts before the [government body] to obtain reasonable conditions."). For this reason alone, First Choice cannot now argue that the Subpoena is overbroad or unduly burdensome.

B. The Subpoena Is Not Overbroad Under The Fourth Amendment.

Even if this Court examines the Fourth Amendment claims on the merits, the scope of the Subpoena is well within constitutional bounds. While First Choice complains that responding to the Subpoena would take effort and time and that its organization is "understaffed," FC.Br.34-35, that has no relationship to the legal standard. Instead, the standard is that "the documents under subpoena

must 'bear some possible relationship, however indirect, to the . . . investigation.'" State v. McAllister, 184 N.J. 17, 34 (2005) (citation omitted). State agencies may "conduct all reasonable inspections" of any relevant documents "contemplated by statute" so long as the agency defines the search appropriately in its subpoena. See v. City of Seattle, 387 U.S. 541, 544 (1967). The Subpoena only needs to "specify its subject 'with reasonable certainty'" and show that the documents sought "contain evidence relevant and material to the issue.'" Greenblatt v. N.J. Bd. of Pharmacy, 214 N.J. Super. 269, 275 (App. Div. 1986) (quoting State v. Cooper, 2 N.J. 540, 556 (1949)). The State cannot know all the aspects of the investigation that will be relevant before the investigation has begun, so "[s]ome exploration or fishing necessarily is inherent and entitled to exist." In re Addonizio, 53 N.J. at 126 (citation omitted).

The Subpoena is far from a blanket sweep for data; its requests bear a tight and direct relationship to the cited statutory authorizations (CFA, CRIA, and P&O law), and thus fall comfortably within the State's "wide latitude" to determine relevancy and must be enforced unless that determination is "obviously wrong." See In re Gimbel, 77 F.3d 593, 601 (2d Cir. 1996). Each of the Subpoena's requests serves a specific purpose and is relevant to the statutory objectives. As compiled and presented fully in Addendum A, Musso Cert. Ex. 16, each of the Subpoena's Requests is geared toward determining whether First Choice engaged in fraud or other misconduct, including on potential clients and donors, in violation of state law. For example, Requests ¶¶ 2, 10, 20, and 26 aim to investigate whether First

Choice's use of multiple websites—with different disclosures made on each website based on the intended audience—violates the CFA and/or the CRIA's prohibitions on false, misleading, or deceptive statements or omissions. See N.J.S.A. § 45:17A-32(c); § 56:8-2. And Requests ¶¶ 14-18, 21, and 27 aim to evaluate whether First Choice or its staff is engaged in the unauthorized practice of medicine or professional misconduct prohibited by N.J.S.A. §§ 45:1-18.2 and -21. Requests ¶¶ 6-9 call for documents substantiating medical claims that First Choice makes on its websites, to investigate whether those medical claims violate the CFA, CRIA, or P&O laws. See N.J.S.A. §§ 45:17A-32(c); 56:8-2; N.J.A.C. § 13:35-6.10. And the Subpoena seeks information about First Choice and its affiliates to determine whether First Choice utilizes marketing materials from a national affiliate organization, which First Choice could be utilizing to shape its website design and solicitation strategy.[23] The State cannot yet know precisely what the Subpoena will yield, but its inquiries are plainly relevant to investigating potential statutory violations and fully comport with the Fourth Amendment.

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[23] National organizations, such as Heart Beat International (HBI) and Care Net, may "encourage[] affiliates to create two websites, one that describes the anti-abortion mission to secure donors, and one designed for people seeking medical care." Jenifer McKenna & Tara Murtha, Designed to Deceive: A Study of the Crisis Pregnancy Center Industry in Nine States at 1, 34 (2021), https://tinyurl.com/5xcpzpyr; see also Meaghan Winter, "Save the Mother, Save the Baby": An Inside Look at a Pregnancy Center Conference, Cosmopolitan (Apr. 6, 2015), https://tinyurl.com/ycxbh3hp (HBI-hosted conference in which CPCs were advised to have two differently-designed websites).

First Choice is wrong to argue that the "subpoena seeks discovery over a ten-year period, when the statute of limitations of the NJCFA [] is only six years." FC.Br.33; see also id. at 1. The applicable statute of limitations for civil actions commenced by the State is ten years, not six. N.J.S.A. § 2A:14-1.2. Thus, the Subpoena seeks documents and information only from within that limitations period (and indeed, every Request except Requests 6 and 7 seek information within the last three years, see Turner Cert. Ex. D at AG285). Even if the Subpoena's requests went back further in time than the applicable limitations period, that is not evidence of impermissible scope, because, "[e]vidence that [a subpoena recipient] made material misrepresentations before the limitations period is relevant to [its] present-day intent and could be evidence of a continuing scheme that persisted into the limitations period." Exxon Mobil, 316 F. Supp. 3d at 711. The Subpoena's timeframe is not overbroad.

C. The Documents And Information Sought Under The Subpoena Are Proper.

First Choice's remaining arguments under state law lack merit. First, First Choice claims that the State is not entitled to the information it seeks because all of its claims about mifepristone "come from the FDA approved labeling" for that drug, which is publicly available. FC.Br.36. But that claim is simply inaccurate. As illustrated in Addendum B, Musso Cert. Ex. 17, First Choice's claims about mifepristone diverge from the FDA label in material respects, which is why the State seeks information substantiating First Choice's claims. See Requests ¶¶ 6-7, 9. For example, First Choice claims on its website

that side effects from mifepristone "range from unpleasant (cramping, bleeding, nausea, headache, fever) to life-threatening (sepsis, rupturing of the uterus, undiagnosed ectopic pregnancy, and more)." Turner Cert. Ex. A at AG080. By contrast, the FDA label states that "serious" side effects, such as sepsis occur "very rarely" and that "[n]o causal relationship between the use of [mifepristone] and misoprostol and these events has been established." See FDA Label at 2, 8 (describing 0.2% frequency of reported sepsis among U.S. women, and <0.01% frequency among non-U.S. women). First Choice additionally claims that "[a] pre-abortion ultrasound is generally required before you take the abortion pill." Turner Cert. Ex. C at AG249 (emphasis added). The FDA has not imposed any such ultrasound requirement; rather, the label notes that a "healthcare provider may do a clinical examination, an ultrasound examination, or other testing to determine" how far along a patient is in pregnancy prior to prescribing mifepristone. See infra at 8 (emphasis added).

First Choice's claim that complying with the Subpoena would divulge confidential or private information ignores that this concern could be addressed with a protective order and/or

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

Plaintiffs,

v.

FIRST CHOICE WOMEN'S

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY: CHANCERY DIVISION

DOCKET NO. ESX-C-22-24

DEFENDANT'S REPLY BRIEF IN FURTHER SUPPORT OF MOTION TO STAY AND/OR QUASH

RESOURCE CENTERS, INC.,

Defendant.

* * * * *

B. The Subpoena violates the First Amendment.

1. The Subpoena violates First Choice's associational rights.

The Attorney General's claim that his Subpoena does not cause any associational harm is not credible. In *Americans for Prosperity Foundation v. Bonta*, the U.S. Supreme Court held that associational rights were implicated by a compelled disclosure of the plaintiffs' donor identities, which "would make their donors less likely to contribute and would subject them to the risk of reprisals." 141 S. Ct. 2373, 2380 (2021). The same is just as true here. Pro-life organizations have recently been subjected to a spike in violence and harassment, increasing the need for the confidentiality of First Choice's associates. Huber Cert. ¶ 7. Plus, many First Choice staff members, volunteers, and donors desire confidentiality because they give for deeply personal and religious reasons. *Id.* ¶¶ 6, 8-9. Complying with the Subpoena would thus plainly result in a loss of current and prospective donors and other associates, as they would fear similar investigatory reprisals. *Id.* ¶¶ 5, 11. Indeed, other pregnancy resource centers facing similar subpoenas from attorneys general have already suffered these harms. *Id.* ¶ 11; Mot. to Supp. Compl., Ex. 1 ¶¶ 123–28, ECF No. 33-1, *Obria Grp. Inc. v.*

Ferguson, No. 3:23-cv-6093 (W.D. Wash. 2023) (loss of vendors and insurance coverage). "'[I]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action.'" *Americans for Prosperity*, 141 S. Ct. at 2382 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449,462 (1958)). That compelled disclosure plainly impacts First Choice's associational rights here.

Neither can the Attorney General meet the requisite level of scrutiny for an associational rights claim, which a majority of the U.S. Supreme Court holds is *at least* exacting scrutiny. *Compare id.* at 2383 (plurality opinion), *with id.* at 2390 (Thomas, J., concurring), *and id.* at 2391 (Alito, J., concurring). Exacting scrutiny requires narrow tailoring, which the Attorney General can no more meet with his investigation than the compelled disclosure regime could in *Americans for Prosperity*. Here, as in that case, there is "a dramatic mismatch" between the information the Attorney General seeks and his asserted interests. *Id.* at 2386. He claims to need to protect consumers and to police false statements by charities and doctors. Opp. Br. at 5-8. But putting aside the fact that he has not identified any consumer relationship or any false statements, he fails totally in drawing a connection between those interests and his demands.

That is because the Subpoena is plainly directed at obtaining sensitive information from First Choice, not at promoting the Attorney General's asserted interests. He doesn't ask about harm to consumers or free services, or factual support for specific

statements. Instead, he demands *all* documents First Choice has provided to clients and donors in the relevant time frame without any limitation. Def.'s Resp. Br., Ex. 8 at 11 (Document Request 3). He wants *all* documents concerning the pro-life nonprofit organizations CareNet and Heartbeat International, without explaining how information about those charities relates at all to his investigation about harm to consumers or (unidentified) false statements by First Choice. *Id.* at 15 (Document Requests 22-23). And he demands *all* complaints First Choice has received from clients and donors and *all* donations made outside the donor solicitation page, *id.* at 14, 16 (Document Requests 11, 26), even though his investigation is assertedly limited to specific misrepresentations of charitable purpose and of certain medical claims. New Jersey's own Office of Legislative Services has already reasoned that an attempt to apply the NJCFA to pregnancy centers would not survive narrow tailoring. Opinion Letter at 8-9. The result is no different here.

The Attorney General tries to distinguish these extensive demands from *Americans for Prosperity* on the ground that they target First Choice for a specific investigation, while *AFP* involved blanket disclosure requirements for all charities in the State. Opp. Br. at 47. But the fact that First Choice was singled out for investigation does not make the harm to its First Amendment rights any less. Indeed, the Attorney General's attempted distinction only reinforces the unconstitutionality of his Subpoena. At least in *Americans for Prosperity*, the disclosure regime applied equally to all charities in the State. Here, the Attorney General has singled out pro-life pregnancy

centers. That is bad enough given the mismatch between his asserted aims and his document demands, but it is even worse given his candid hostility to pro-life pregnancy centers. Doing so via discovery tools is just as much an infringement as doing so with state law. *Perry v. Schwarzenegger*, 591 F.3d 1147, 1165 (9th Cir. 2010). His attempt to leverage "long-dormant regulatory powers" that "suddenly spring forth to address circumstances that have not changed" while "waving aside concerns about the protections of the First ... Amendment rights of New Jersey residents" should attract deep suspicion. *Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, 27 F.4th 886, 896 (3d Cir. 2022) (Matey, J., concurring). It violates the First Amendment, and the Court should reject it.

2. The Subpoena violates First Choice's freedom of speech.

The Attorney General's opposition to First Choice's retaliation claims rests in a misapprehension of the relevant standard for those claims. He says that under the Supreme Court's decision in *Hartman v. Moore*, 547 U.S. 250, 261 (2006), First Choice must prove "that the State lacked legitimate grounds for issuing the Subpoena." Opp. Br. at 34. Though First Choice meets that standard, *see supra* Section I.A.2, he omits *Hartman*'s direct statement that this standard applies only "[w]hen the claimed retaliation for protected conduct is a criminal charge," which is different from the standard for "a constitutional tort action." 547 U.S. at 260. *Hartman* was equally clear that in *this* context, retaliation requires only a showing, through either direct or circumstantial evidence, that the protected speech was the but-for

cause of the state's enforcement, after which the burden then shifts to the government to demonstrate that "even without the impetus to retaliate [the state] would have taken the action complained of." *Id.*

That standard is amply met here. The Attorney General's actions show that First Choice's pro-life views caused the Attorney General to issue the Subpoena. He scarcely could have made it clearer when he enlisted First Choice's pro-abortion adversaries at Planned Parenthood to help him draft a "consumer alert" that both besmirched pro-life pregnancy centers and outlined a legal theory against them that he could assert using his unique powers. Def.'s Resp. Br., Ex. 1 ¶¶ 55–63. Publicly, he has repeatedly expressed his contempt for pro-life organizations like First Choice, including by joining open letters criticizing them. *Id.* ¶¶ 39, 42, 44, 53, 56. At the same time, he has repeatedly praised and worked alongside pro-abortion organizations, *id.* ¶¶ 47–50, 57–62; and he has made opposition to the pro-life cause a central agenda item for his office, *id.* ¶¶ 34, 36–58. He cites no other reason--that is, no false statement by First Choice--that could justify his investigation. And the content of the Subpoena itself reinforces this plain objective, since it requests all manner of sensitive, internal information about First Choice, wholly divorced from the concerns the Attorney General purports to investigate.

In sum, the Subpoena is part of a comprehensive and targeted effort to silence pro-life viewpoints, not a valid investigation to cure wrongdoing. Thus, it is AG Platkin's burden to demonstrate that he would have issued the Subpoena without a retaliatory impetus. *Hartman*, 547 U.S. at 260. Quite tellingly,

he attempts to do so only by citing to his prior investigations. Opp. Br. at 36. He does not explain, however, whether the other entities he investigated were similarly situated to First Choice, nor does he explain how repeatedly investigating other organizations indicates he has pure motives here.

Attempting to diminish the relevance of his advocacy against pregnancy centers, the Attorney General relies on a New York district court case, *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 705 (S.D.N.Y. 2018), *aff'd in part, appeal dismissed in part sub nom. Exxon Mobil Corp. v. Healey*, 28 F.4th 383 (2d Cir, 2022). Pls.' Opp. Br. at 38. But unlike here, the attorneys general in *Exxon Mobil* identified actually false and misleading statements made by Exxon, which formed the basis of their investigation. *Exxon Mobil*, 316 F. Supp. 3d at 706-08. And Exxon could point to only tangential and inferential connections between the attorneys general and climate activists, *id.* at 708–10, while First Choice has shown that the Attorney General enlisted First Choice's pro-abortion adversaries to condemn First Choice and other pregnancy centers for their pro-life viewpoint, Def.'s Resp. Br., Ex. 1 ¶¶ 55–63. The Attorney General argues that his entanglement with the pro-abortion movement and antipathy towards pro-life groups merely reflect legitimate concerns about First Choice. Pls.' Opp. Br. at 41. But his parroting of Planned Parenthood's "concern" about the practices of *other* pregnancy resource centers while identifying no wrongdoing on the part of First Choice reveals that his investigation is not motivated by First Choice's wrongdoing but by its views on abortion. His decision to enlist Planned

Parenthood's support to pursue pregnancy centers only makes this even clearer.

That also matters to First Choice's viewpoint discrimination claim, which the Attorney General tries to refute by arguing that Planned Parenthood is not sufficiently similarly situated to First Choice to serve as a relevant comparator. *Id.* at 35. To the contrary, First Choice has shown how Planned Parenthood is alike "in all relevant respects," *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992), since it is a nonprofit entity that provides many of the same services to the same clientele with a mission focused on pregnant women. The only relevant difference other than the speech in question cuts against the Attorney General: Planned Parenthood, unlike First Choice, charges for its services and would be subject to the NJCFA.[7] Those similarities are the relevant factors here because the Subpoena targets First Choice over its statements to its clientele and donors about the services it provides and its charitable mission. The only salient distinction between the two organizations is their position on abortion, yet while Planned Parenthood has been found to expose patient data without consent, Def.'s Resp. Br., Ex. 1 ¶ 54, the Attorney General ignores their wrongdoing, while imposing a burdensome investigation on First Choice without cause. Even New Jersey's own Office of Legislative Services has recognized that abortion clinics are similarly situated comparators to

[7] Planned Parenthood's model of charging for services as a non-profit is a good example of what the Attorney General describes where the CRIA incorporates the terms of the NJCFA. Pls. Opp. Br. at 20 (citing N.J.S.A. § 45:17A-32(c)(3)). That is not true of First Choice, which conducts no activities subject to the NJCFA.

pregnancy centers, which is exactly why an attempt to enforce the law against the latter while leaving the former untouched would violate the Constitution. Opinion Letter at 8-9.

The Attorney General's animus towards the pro-life viewpoint and support for Planned Parenthood is the cause for this disparate treatment This Court should quash the Subpoena as a retaliatory and viewpoint-discriminatory violation of First Choice's free speech rights.

3. The Subpoena violates First Choice's free exercise of religion.

The Attorney General tries to refute First Choice's free exercise claim by arguing that the statutes he relies on are neutral and generally applicable. Pls.' Opp. Br. at 43. But the Attorney General has applied those laws in a discriminatory fashion towards First Choice based on hostility toward its religious beliefs. That violates First Choice's free exercise rights because "in situations where government officials exercise discretion in applying a facially neutral law, so that whether they enforce the law depends on their evaluation of the reasons underlying a violator's conduct, they contravene the neutrality requirement if they exempt some secularly motivated conduct but not comparable religiously motivated conduct." *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165-66 (3d Cir. 2002).

The Attorney General next argues that First Choice has not demonstrated comparable secular activity that he permits. Opp. Br. at 44. But as explained, he has left alone Planned Parenthood,

First Choice's ideological opposite, despite its documented mishandling of patient data. Def.'s Resp. Br., Ex. 1 ¶ 54. He argues that his investigation is justifiably premised on consumer protection aims, Opp. Br. at 43, but his lack of explanation for how the Subpoena achieves those aims coupled with his hostility to First Choice's Christian pro-life beliefs reveals that his disparate treatment between First Choice and Planned Parenthood is based on those beliefs. *See* Def.'s Resp. Br., Ex. 1 ¶¶ 33–63. The Attorney General notes that his public statements about pregnancy resource centers have not focused on their religious beliefs or conduct. Opp. Br. at 44. But that excuse cannot cover his religious animus when he has singled out a class of pregnancy centers that are almost entirely Christian.[8] *See Bray v. Alexandria Women's Health Clinic*, 506 U.S. 263,270 (1993).

The Attorney General's disparate treatment of First Choice through the Subpoena has stifled the group's Christian charitable mission by inhibiting its ability to serve women in need. Huber Cert. ¶¶ 18–19. This amounts to a violation of First Choice's rights of free exercise, and this Court should therefore quash the Subpoena.

C. The Attorney General's invocation of the CRIA is unconstitutional.

For the reasons above; the Court should not construe the CRIA here to authorize an investigation of purported "false statements" without a broader showing of harm, intent, or other elements of fraud as

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[8] CRISIS PREGNANCY CENTER MAP, https://crisispregnancycentermap.com/ (last visited Apr. 1, 2024).

the First Amendment requires. *See supra* § I.A.1. In addition, the CRIA's investigatory provisions are unconstitutionally vague because they impose a speech regulation on charities that requires any statement to be "truthful," N.J.S.A. §. 45:17A-32a., and declares unlawful all statements that "although literally true, are presented in a manner that has the capacity to mislead the average consumer," *id.* § 45:17A-32c.(7), while failing to define the terms "truthful" or "mislead." The Attorney General admits that the CRIA includes no definition of these terms to provide guidance to charities like First Choice, but he argues that these terms have settled meanings in other areas of the law, such as the consumer protection context. Opp. Br. at 31. But that is not helpful here, since the terms have been found vague when undefined in other contexts—particularly relevant here, for laws regulating the conduct of professionals. *Winter v. Wolnitzek*, 186 F. Supp. 3d 673, 700 (E.D. Ky. 2016), *aff'd in part, vacated in part, rev'd in part*, 834 F.3d 681 (6th Cir. 2016); *Kishner v. Nev. Standing Comm. on Jud. Ethics & Election Pracs.*, No. 2:10-CV-01858-RLH, 2010 WL 4365951, at *6 (D. Nev. Oct. 28, 2010).

The vagueness of the CRIA matters here because First Choice makes statements about topics such as abortion pill reversal that are factual but contested by pro-abortion advocates. See Def.'s Resp. Br., Ex. 1 ¶¶ 26–27. Without a definition relevant to the context of charitable communications, First Choice and other charities have no way of knowing whether the Attorney General will determine that such statements are not "truthful" or are "misleading" until they are subpoenaed by him for making them.

See Def.'s Resp. Br., Ex. 8 at 12, 14–15 (Document Requests 6, 9, 18, 22). Thus, the CRIA's investigatory provisions are unconstitutionally vague.

II. At minimum, the Court should narrow the Subpoena.

A. First Choice's scope objections are properly before the Court.

The Attorney General argues that First Choice cannot object to the breadth of the Subpoena because it did not first meet and confer with the state to limit the Subpoena's scope. Pls.' Opp. Br. at 51. But *Morton Salt Co.*, upon which the Attorney General relies, prescribes the exact procedure First Choice has followed here. In that case, the defendant corporation resisted an order from the Federal Trade Commission for documents on the theory that the FTC did not have the authority to issue the order. *Morton Salt Co.*, 338 U.S. at 637. Not until the case reached the Supreme Court did the defendant argue that, if the Court concluded the FTC had the power to issue the order, it should nevertheless limit the order as unduly burdensome. *Id.* at 653-54. The Supreme Court refused to entertain this argument, instead rebuking the defendant for not raising the issue to the courts below where they "at least could have made a record that would convince [the Court] of the measure of their grievance." *Id.* at 654. That is exactly what First Choice has done here—while it objects to AG Platkin's authority to issue the Subpoena, it has provided evidence to the Court explaining why, in the alternative, the Subpoena is unduly burdensome. The Attorney General's position would prohibit a party from making alternative arguments about subpoena

validity and scope—instead, he would force litigants into a binary one-or-the-other position.

Furthermore, the conferral requirement imposed by the Court in *In re Subpoena Duces Tecum* is inapposite here. In that case, the plaintiff only brought Fourth Amendment, undue burden, and privacy claims to quash a subpoena issued against him, *In re Subpoena Duces Tecum*, 228 F.3d 341 345 (4th Cir. 2000), so it was reasonable for the court to expect the plaintiff to negotiate with the government to narrow the subpoena to comply with his privacy and overbreadth concerns, *id.* at 351. But here, as First Choice has argued, the Subpoena is invalid in its entirety under the First Amendment, and no limiting of the Subpoena's scope will solve that deficiency. Thus, as *Morton Salt Co.* directs, First Choice brought its claims objecting to the legality of the Subpoena while also presenting its alternative bases for limiting the Subpoena's scope. It would make no sense for First Choice to have negotiated to limit the scope of the Subpoena, potentially compromising its other constitutional claims. It was not required to do so here.

B. The Subpoena is overbroad under the Fourth Amendment and state law.

Not only has the Attorney General failed to demonstrate that the Subpoena is within his authority under state law or that he has a valid basis for his investigation, *see supra* § I.A.2, but his attempt to connect the Subpoena's demands to relevant investigative topics also fails. He tries to support the relevance of his requests by labeling each document request with a potential violation of law. *See* Opp. Br.,

Ex. 16. But this terse explanation is woefully insufficient and fails to provide context for a swath of document requests. For example, the Attorney General fails to explain how "documents concerning representations made by [First Choice] to Clients about confidentiality of Client information" has any connection to purported false statements about consumer products, fundraising, or professional duties. Def.'s Resp. Br., Ex. 8 at 12 (Document Request 5). Or how the individuals to whom First Choice refers for Abortion Pill Reversal bear any relation to whether First Choice employs unlicensed practitioners. *Id.* at 15 (Document Request 16). Or how potentially receiving documents from other organizations might in any way demonstrate unlawful behavior. *Id.* (Document Requests 22-23). The Attorney General's requests cannot conceivably further legitimate investigatory aims, and he has failed to show how they are "relevant in purpose." *Greer*, 288 N.J. Super. at 80.

Not only are the Attorney General's demands unrelated to legitimate inquiries, but also they are unreasonably broad in scope. He fails to explain why he needs *every single* document First Choice has ever provided to clients and donors just to determine if First Choice made misrepresentations in connection with fundraising. Def.'s Resp. Br., Ex. 8 at 11 (Document Request 3). He has not explained why he needs *every single* document concerning legal proceedings or complaints received from clients and donors when his investigation is premised on supposed misstatements about charitable purpose and consumer products. *Id.* at 14–15 (Document Requests 11–12). Nor has he explained why he needs

every single document related to two other pro-life groups when his concerns are ostensibly limited to deceptive advertising by First Choice. *Id.* at 15 (Document Requests 22–23). He has failed to demonstrate the Subpoena is "sufficiently limited in scope." *Greer*, 288 N.J. Super at 80. The Subpoena is not related to a relevant inquiry, it is unreasonably broad in scope, and it is "unreasonably burdensome," *Id.*

C. The Subpoena is unduly burdensome.

The Attorney General makes no attempt to respond to First Choice's detailed showing of the enormous strain compliance with the Subpoena would place on the Ministry. Preliminary IT and legal support alone will cost the Ministry tens of thousands of dollars. Huber Cert ¶¶ 13–14. Document compilation would require 75 percent of First Choice's staff to commit several hours a week solely to subpoena compliance, which would be detrimental to First Choice's ability to serve women in need. *Id.* ¶¶ 16–19. And revelation of First Choice's sensitive, private organizational material would ruin First Choice's trust within the community. *Id.* ¶¶ 5–11. The Attorney General's only response is that First Choice is not allowed to object as to burden. Opp. Br. at 51. But as explained above, that is meritless. *See supra* § II.A.

These burdens are especially unnecessary since much of the information the Attorney General seeks, particularly about mifepristone, the chemical abortion drug, is publicly available. The Attorney General argues that he nevertheless needs *First Choice* to provide this publicly available information

about a drug it does not even provide because the precise language it employs regarding the abortion drug Mifepristone differs from the language on the FDA label for the drug. Pls.' Opp. Br. at 36. First, while the language on First Choice's public website and the fine print on the FDA label do not include the *exact* same wording, both First Choice's website and the FDA label include a warning on the serious health risks associated with Mifepristone, and both explain that healthcare providers may perform ultrasounds before the drug is prescribed.[9] Second, any diverging statements are not a legitimate basis for the Attorney General's inquiry, much less for him to demand information that is publicly available elsewhere.

Complying with the Subpoena would impose a staggering burden on a small nonprofit just so AG Platkin can engage in "a fishing expedition into private papers on the possibility that they may disclose evidence." *Berrie v. Berrie*, 188 N.J. Super. 274, 286 (Ch. Div. 1983) (quoting *F.T.C. v. American Tobacco Co.*, 264 U.S. 298, 306 (1921)). Thus, this Court should quash the Attorney General's "unreasonable" and "oppressive" Subpoena. R. 1:9-2.

CONCLUSION

The Court should stay this case pending the entry of a final judgment, including all appeals, in *First Choice Women's Resource Centers, Inc. v. Platkin*, No.

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[9] *See* U.S. FOOD AND DRUG ADMINISTRATION, *Highlights of Prescribing Information*, MIFEPREX (mifepristone) tablets, for oral use (Mar. 2016), https://www.accessdata.fda.gov/drugsatfda_docs/label/2016/020687s020lbl.pdf.

3:23-cv-23076 (D.N.J. 2023), or, in the alternative, quash or limit the Subpoena.

* * * * *

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

Plaintiffs,

v.

FIRST CHOICE WOMEN'S

SUPERIOR COURT OF NEW JERSEY
ESSEX COUNTY: CHANCERY DIVISION

DOCKET NO. ESX-C-22-24

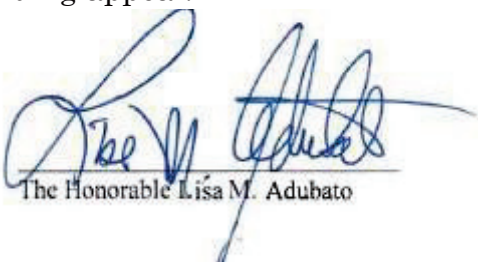
ORDER DENYING MOTION FOR STAY PENDING APPEAL

RESOURCE CENTERS, INC.,

Defendant.

On May 28, 2024, Defendant required that the Court issue a stay pending appeal of the Court's order granting Plaintiffs' Motion for an Order to Show Cause and denying Defendant's Cross-Motion to Stay proceedings and/or Quash the Subpoena. On that date, the Court heard argument from the parties on Defendant's request. Upon consideration of the parties' arguments, and for the reasons stated in the May 28 hearing, the Court **DENIES** Defendant's request for a stay pending appeal.

May 28, 2024



The Honorable Lisa M. Adubato

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MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs,	:	SUPERIOR COURT OF NEW JERSEY ESSEX COUNTY: CHANCERY DIVISION
Plaintiffs,	:	DOCKET NO. ESX-C-22024
v.	:	*DENIED*
FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,	:	**ORDER**
Defendant.	:	

This matter having been opened to the Court by Webber McGill LLC, attorneys for Defendant First Choice Women's Resource Centers, Inc. ("Defendant"), for an Order quashing the Subpoena Duces Tecum from Plaintiff Attorney General Matthew J. Platkin ("Plaintiff") dated November 15, 2023 (the "Subpoena"), and for a Protective Order limiting discovery, and the Court having considered all papers in support and against the application, and

having considered the arguments of counsel. and for good cause shown,

It is hereby ORDERED:

DENIED

1) This matter is hereby STAYED until further notice pending the disposition, including all appeals, of the parallel federal matter involving Plaintiff and Defendant, Case No. 1:23-cv-23076; and

2) The Subpoena be and hereby is quashed, and is of no force and effect; and

3) Defendant will not be compelled to respond to discovery requests from Plaintiff that violate Defendant's constitutional rights, find no basis in statutory law, and/or are overbroad, unduly burdensome, and/or not reasonably calculated to lead to the discovery of admissible evidence, as explained in the accompanying Statement of Reasons; and

4) Defendant is hereby awarded all fees and costs, including, but not limited to, attorneys' fees, incurred in bringing this motion, and counsel is directed to submit a bill of costs within ___ days hereof.

Lisa M. Adubato

The Hon. Lisa M. Adubato, J.S.C.

Dated: May 28 2024

✓ opposed

___ not opposed

Reasons placed on record 5/28/24.

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CCO-124-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. Motion filed by Appellant First Choice Women's Resource Centers Inc for an Injunction pending Appeal or, Alternatively, for Summary Vacatur and Remand
2. Motion filed by Appellee Attorney General New Jersey to Dismiss Appeal as Moot
3. Response filed by Appellee Attorney General New Jersey
4. Response filed by Appellant First Choice Women's Resource Centers Inc
5. Reply filed by Appellee Attorney General New Jersey
6. Reply filed by Appellant First Choice Women's Resource Centers Inc

Respectfully,
Clerk/lmr

ORDER

The foregoing motions are denied as presented.

In this appeal, Appellant seeks review of the District Court's January 2024 order dismissing its complaint for lack of subject matter jurisdiction. Because the District Court concluded that Appellant's claims were not ripe, it did not reach the merits of the claims or the request for injunctive relief.

Based on subsequent developments in state court, it is now undisputed that Appellant's claims are ripe. We therefore DISMISS this appeal as moot and REMAND this action to the District Court for further proceedings. We leave it to the District Court to address any requests for injunctive relief in the first instance.

By the Court,

s/Arianna J. Freeman
Circuit Judge

Dated: July 9, 2024
CJG/cc: Timothy A. Garrison, Esq.
Erin M. Hawley, Esq.
Lincoln D. Wilson, Esq.
Angela Cai, Esq.
Samuel Rubinstein, Esq.

OFFICE OF THE CLERK

PATRICIA S. DODSZUWEIT

CLERK

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
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July 9, 2024

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RE: First Choice Women's Resource Centers Inc v.
Attorney General New Jersey
Case Number: 24-1111
District Court Case Number: 3-23-cv-23076

ENTRY OF JUDGMENT

Today, **July 09, 2024** the Court issued a case dispositive order in the above-captioned matter which serves as this Court's judgment. Fed. R. App. P. 36.

If you wish to seek review of the Court's decision, you may file a petition for rehearing. The procedures for filing a petition for rehearing are set forth in Fed. R. App. P. 35 and 40, 3rd Cir. LAR 35 and 40, and summarized below.

Time for Filing:
14 days after entry of judgment.
45 days after entry of judgment in a civil case if the United States is a party.

Form Limits:
3900 words if produced by a computer, with a certificate of compliance pursuant to Fed. R. App. P. 32(g).
15 pages if hand or type written.

Attachments:
A copy of the panel's opinion and judgment only.
Certificate of service.
Certificate of compliance if petition is produced by a computer.
No other attachments are permitted without first obtaining leave from the Court.

Unless the petition specifies that the petition seeks only panel rehearing, the petition will be construed as requesting both panel and en banc rehearing. Pursuant to Fed. R. App. P. 35(b)(3), if separate petitions for panel rehearing and rehearing en banc are submitted, they will be treated as a single document and will be subject to the form limits as set

forth in Fed. R. App. P. 35(b)(2). If only panel rehearing is sought, the Court's rules do not provide for the subsequent filing of a petition for rehearing en banc in the event that the petition seeking only panel rehearing is denied.

Please consult the Rules of the Supreme Court of the United States regarding the timing and requirements for filing a petition for writ of certiorari.

Very truly yours,
Patricia S. Dodszuweit, Clerk

By: s/ Laurie/cjg
Case Manager
267-299-4936

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

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Plaintiff, v. MATTHEW J. PLATKIN, in his official capacity as Attorney General of the State of New Jersey, Defendant.	Hon. Michael A. Shipp, U.S.D.J. Hon. Tonianne J. Bongiovanni, U.S.M.J. Docket No. 23-CV-23076 **CIVIL ACTION (ELECTRONICALLY FILED)**

DEFENDANT'S BRIEF IN OPPOSITION TO PLAINTIFF'S RENEWED MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Meghan Musso
Deputy Attorneys General

TABLE OF CONTENTS

* * * * *

PRELIMINARY STATEMENT

The New Jersey Legislature vested the Attorney General and the Division of Consumer Affairs with broad statutory authority to investigate potential misconduct relating to consumer dealings, charitable solicitations, and licensed professionals. And it vested the New Jersey Superior Court's Chancery Division alone with the power to enforce subpoenas. After the State conducted a preliminary investigation that revealed concerns that Plaintiff First Choice Women's Resource Centers, Inc. may have engaged in conduct that misleads the public and otherwise violates state statutes and regulations, the State issued a subpoena on November 15, 2023. First Choice moved to quash the Subpoena, raising a bevy of constitutional and other defenses to the state court. That court considered and rejected those objections on May 28, 2024, ordering that First Choice "respond fully" to the Subpoena. Dkt. 41-3. But Plaintiff has barely complied, and now demands emergency relief from this Court to stave off any further compliance with that state-court order.

Plaintiff's emergency lawsuit reflects a direct assault on the state court's power to adjudicate challenges to the Subpoena and to enforce its own orders. When Plaintiff previously attempted to short-circuit the state court's authority, this Court rightly rejected them as jurisdictionally unripe. Dkt. 28. Now, Plaintiff presents an even greater affront: a demand for relief even *after* the state court ruled, and even as the state court considers how best to enforce

its own already-issued order. After all, at this stage in the case, an injunction would prevent the Chancery Division from enforcing its own prior court order in a proceeding currently before it after Plaintiff willfully failed to fully comply with the order enforcing the Subpoena. What's more, it would also require this Court to second-guess the Chancery Division's decision rejecting the very same claims Plaintiff brings here. And it would forestall the Appellate Division's consideration of Plaintiff's own appeal of the Subpoena-enforcement decision.

This Court should deny such an extraordinary request. Initially, Plaintiff is unlikely to succeed on the merits for three independent reasons. First, because an injunction would attack the "processes by which the State compels compliance with the judgments of its courts," *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13-14 (1987), abstention is required. Second, preclusion principles bar Plaintiff from relitigating the same claims and issues that were adjudicated between the same parties in state court. Because the Chancery Division already rejected Plaintiff's First Amendment claims, finding them to be both unsupported and premature, Plaintiff's recourse is an appeal to the Appellate Division, not a do-over in this court. *See Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, 105 F.4th 67, 84 (3d Cir. 2024) ("*S&W II*"). Finally, Plaintiff's First Amendment theories fail. A targeted subpoena merely investigating potential fraud and misconduct based on a preliminary investigation neither violates associational rights nor constitutes selective enforcement.

The equitable considerations undercut Plaintiff, too. Plaintiff cannot establish irreparable harm for multiple reasons. For one, there are alternative (and far more traditional) forums available for relief from a state court order enforcing a state subpoena: the state courts. For another, Plaintiff cannot sustain its burden of showing likely irreparable harm in a case about document production, especially when the State has offered a confidentiality order. Still more, a hasty injunction on days' or weeks' consideration would be particularly inequitable when Plaintiff's litigation choices led to months-long delays, and where it did not act with alacrity in seeking relief in the state court. And on the other side of the ledger, the public-interest considerations are key: interfering with enforcement of the state court's order would undermine federalism, delay the State's efforts to investigate potential deceptive and unlawful practices (now eight and a half months after the Subpoena issued), and incentivize future recipients of subpoenas to rush to federal court to avoid compliance. This Court should deny the motion.

COUNTERSTATEMENT OF FACTS AND PROCEDURAL HISTORY

A. The Investigation And Subpoena

The New Jersey Consumer Fraud Act ("CFA"), the Charitable Registration and Investigations Act ("CRIA"), and the Professions and Occupations law ("P&O law") each empower the Attorney General to investigate whether an entity is engaged in an unlawful practice. *See* N.J. Stat. Ann. § 56:8-3 (CFA); § 45:17A-33(c) (CRIA); § 45:1-18 (P&O law). The statutes and their implementing regulations define a

number of substantive unlawful practices. *See*, e.g., N.J. Stat. Ann. § 56:8-2 (CFA) (deceptive and fraudulent commercial practices); N.J. Stat. Ann. § 45:17A-32(a), -(c)(3), -(c)(7) (CRIA) (incorporating the CFA and addressing certain deceptive and misleading statements or omissions by charities); N.J. Stat. Ann. § 45:1-18.2, -21 (P&O law) (unlicensed practice of medicine, deceptive and misleading practices and other professional misconduct); *see also* N.J. Admin. Code § 13:35-6.10(c), -(d), -(g)(4).

In light of widespread concerns about crisis pregnancy centers engaging in deceptive practices, the State—"charged with seeing that [its] statute[s] are obeyed" and vested with power to "inquire to be assured of compliance," *In re Addonizio*, 248 A.2d 531, 542 (N.J. 1968)—initiated an investigation under the CFA, the CRIA, and the P&O laws. Early investigatory steps revealed First Choice may be violating the law under these statutes and regulations.

Initially, the State became concerned that Plaintiff may be misleading a subset of its potential donors. *See* Certification of Angela Cai ("Cai Cert.") Ex. 1 ("Turner Cert."), ¶¶ 4-10. Its site for donors, https://1stchoicefriends.org/, makes plain that Plaintiff has a pro-life mission to "protect the unborn." Turner Cert. Ex. 2 at AG181-82. That mission is said expressly on its donation-solicitation and volunteer application pages. *See id.* at AG175-82. But Plaintiff also maintains other websites, https://1stchoice.org (which https://1stchoicefriends.org/ describes as a "Client Site") and https://firstchoicewomancenter.com/, that omit references to its mission and practices. These public sites instead promise medical

consultations to facilitate "informed choice" for any individuals seeking abortions. *Id.* at ¶ 5-7, Exs. 1, 3 (Client Sites); *see also* CA3.Dkt.14 at 4; CA3.Dkt. 49-3 at 3-9. They invite anyone "considering an abortion" to "[l]earn more about the abortion pill, abortion procedures, and your options in New Jersey," Turner Cert. Ex. 1 at AG001. One of these websites provides a donation page, but omits any mention of Plaintiff's mission. *Id.* at AG023-26; *see also e.g.*, Turner Cert. Ex. 2 at AG180 (instructing volunteers not to wear "pro-life jewelry or buttons" when engaging with clients).

Moreover, the State became concerned about whether certain individuals are performing diagnostic sonograms and purporting to determine gestational age, viability, and ectopic pregnancies without the requisite qualifications and licensure. *Compare*, *e.g.*, Turner Cert. ¶¶ 5-7 (representation that Plaintiff's services are overseen by a physician); *id.* Ex. 3 at AG226 (representation that First Choice purports to diagnose ectopic pregnancies and determine fetal viability); *with id.* Ex. 1 at AG056, AG059 (pages of its website state that it is "not an obstetrical medical practice" and "does not use ultrasound to . . . diagnose abnormalities"). And the State became concerned that Plaintiff also makes numerous statements purporting to convey medical information that may be misleading or untrue. *Compare*, *e.g.*, Turner Cert. Ex. 3 at AG249 (claiming "a pre-abortion ultrasound is generally required before you take the abortion pill"), *with* U.S. Food & Drug Admin., FDA Label at 17 (Mar. 2016) ("FDA Label"), https://tinyurl.com/2vndx5k3 (noting physicians "*may* do a clinical examination, an

ultrasound examination, or other testing" to determine gestational age if medically necessary (emphasis added)). Plaintiff also claims that "[t]here is an effective process for reversing the abortion pill," Turner Cert. Ex. 1 at AG085, despite a lack of credible scientific evidence supporting such that factual claim, *see*, *e.g.*, Facts Are Important: Medication Abortion "Reversal" Is Not Supported by Science, ACOG, https://tinyurl.com/mrye7fsa (last visited July 29, 2024).

The investigation also revealed concerns about Plaintiff's patient-privacy practices. *See* Cai Cert. Ex. 6 at 7-9. For example, First Choice represents that its services are "confidential" and "private." *See* Turner Cert. Ex. 1 at AG007, AG055, AG061, AG074; *id.* Ex. 3 at AG215, AG222, AG232. But elsewhere, it claims that it is exempt from HIPAA because it does not accept insurance. *See id.* at AG275. That raised concerns about how and whether Plaintiff keeps health or other sensitive information private and secure.

To determine whether Appellant violated state law, the State issued the instant Subpoena on November 15, 2023. *See* Turner Cert. Ex. 4 at AG280-303. The Subpoena set a December 15, 2023 deadline for response. *Id.* at AG280. Rather than respond, two days before the deadline, Plaintiff filed this suit. Dkt. 13, 12.

B. Procedural History.

Since then, Plaintiff's attempts to evade Subpoena compliance have been roundly rejected by multiple state and federal courts. First, this Court dismissed Plaintiff's case, finding Plaintiff's claims

unripe, and denying Plaintiff's TRO and PI motion as moot. Dkt. 28 (opinion), 29 (order). The Third Circuit denied an injunction pending appeal on February 15, 2024. CA3.Dkt.20. The Supreme Court denied Plaintiff's petition for writ of mandamus to require this Court to exercise jurisdiction. *See In re First Choice Women's Res. Centers, Inc.*, No. 23-941, ___ S.Ct. ____, 2024 WL 2116515 (Mem.) (May 13, 2024). In the interim, the Third Circuit denied Plaintiff's request for expedited consideration of its appeal, noting that Plaintiff did not "promptly file a motion to expedite" and that it failed to inform the Court that it was "simultaneously pursuing extraordinary relief from the Supreme Court and representing to that Court that expedited treatment is not necessary." CA3.Dkt.29 (reminding Plaintiff of duty of candor).

Meanwhile, the State moved to enforce the Subpoena in New Jersey Superior Court on January 30, 2024. Cai Cert. Ex. 5, Ex. D; Cai Cert Ex. 8. Plaintiff cross-moved to stay or quash the Subpoena on April 1, 2024, Cai Cert Ex. 5, Ex. E ("Cross-Motion"), and the parties briefed the very same arguments that Plaintiff raised in this court, *see id.*; Cai Cert. Exs. 6, 8, 9. On May 28, after reviewing extensive briefing and three hours of argument, *see* Dkt. 41-11 (transcript of argument), the state court granted the State's application to enforce the Subpoena, denied Plaintiff's cross-motion to quash, and denied Plaintiff's motion for a stay pending appeal.[1] *See* Dkt.41-4 ("Oral Ruling") at 16-17; 31-33.

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[1] The court memorialized its rulings in a series of orders dated May 30 (denying stay pending appeal), June 6 (denying cross-

First, the state court denied Plaintiff's request for a stay pending federal court resolution. Oral Ruling at 6:5-20 (noting a stay would inappropriately "halt future civil investigations in their formative stages").

Next, the court found no "basis to deny the [State's] order to show cause and quash the subpoena." *Id.* at 6:21-23; 16:12-17:2. The court offered several bases for its ruling. It rejected Plaintiff's theory that the Subpoena resulted from "retaliation and bias on the State's part," as "speculation," *id.* at 10:5-18, and spurned Plaintiff's claim that a state official loses its authority to investigate potential fraud because he had taken public positions on reproductive healthcare issues, *see id.* at 10:5-11:17 (emphasizing that "[p]ublic officials, including the Attorney General, frequently make statements of public concern" (quoting *Platkin v. Smith & Wesson Sales Co.*, 289 A.3d 481, 487 (N.J. Super. Ct. App. Div. 2023) ("*S&W State Decision*"))). The court also rejected "the parts of [the Plaintiff's] arguments which center on" the Subpoena's "scope"—including association and Fourth Amendment claims—as Plaintiff had never met with the State to discuss such issues. *Id.* at 11:18-12:10; *id.* at 28:16-29:15 (explaining that it would not grant a stay because "You're asking me to [declare the Subpoena] on its face, [to] be a constitutional violation of your client's rights and I've already decided that it isn't … .").

Additionally, as a "[f]urther" basis for rejecting Plaintiff's claims, *id.* at 12:11, the court concluded

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motion to stay or quash), and June 18 (granting motion to enforce) ("June 18 Order"). Cai Cert. Ex. 2.

that merely requiring compliance with the Subpoena does not violate constitutional rights: "the Attorney General has not, at this very preliminary juncture of this matter, violated any statutory or constitutional tenets which would lead to a quashing of the subpoena at issue," *id.* at 16:12-18. The court thus concluded that Plaintiff's "constitutional arguments are … premature" at the subpoena-enforcement stage. *Id.* at 12:11-13; 13:17-15:20. The state court also denied Plaintiff's motion for a stay pending appeal. *Id.* at 32:6-8; 33:5-24.

Plaintiff waited 52 days from the May 28 ruling to appeal, and did not seek a stay pending appeal from the Appellate Division. Cai Cert. Ex. 3. Instead, on July 18, on the very deadline for compliance with the state court's order, Plaintiff filed a motion for a protective order with the Chancery Division that effectively attempted to renew its application for the stay of enforcement the court had already denied on May 28. *Id.* at Ex. 10. On July 26, the State opposed that motion and cross-moved to enforce its litigants' rights based on Plaintiff's failure to "respond fully" to the Subpoena as ordered. *Id.* at Ex. 4.

After the May 28 state-court ruling, the State moved to dismiss Plaintiff's appeal of this Court's decision on ripeness as moot over Plaintiff's objection on June 14—after failing to obtain Plaintiff's agreement. CA3.Dkt.50. Plaintiff opposed and again moved for an injunction pending appeal. CA3.Dkt.49, 49-1. On July 9, the Third Circuit dismissed the appeal as moot and remanded the matter to this Court. CA3.Dkt.56-1. Ten days later, on July 19, Plaintiff filed the instant motion.

ARGUMENT

The Court should deny an emergency injunction. The "[f]our canonical guideposts" for granting such an "extraordinary" remedy are "(1) the likelihood of success on the merits; (2) the risk of irreparable injury …; (3) the balance of equities; and (4) the public interest." *Delaware State Sportsmen's Ass'n, Inc. v. Delaware Dep't of Safety & Homeland Sec.*, No. 23-1633, __ F.4th ___, 2024 WL 3406290, at *5-6 (3d Cir. July 15, 2024) ("*DSSA*"). The first two factors are required "gateway factors[]" for granting relief, *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017), but "any one factor" is enough to deny relief. *DSSA*, 2024 WL 3406290, at *6. Moreover, the primary purpose of emergency relief is not harm prevention or to prejudge the merits, but "to preserve the court's power to render a meaningful decision." *Id.* at *4.

Because Plaintiff demands a mandatory injunction, its burden is "over and above the showing required to maintain the status quo." *Kim v. Hanlon*, 99 F.4th 140, 155 (3d Cir. 2024). Plaintiff must show that its right to relief is "indisputably clear," *id.*, and must make "a *strong showing* that [it] is likely to succeed on the merits" and that the other factors justify extraordinary relief, *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987) (emphasis added). Plaintiff cannot succeed on this heightened burden.[2]

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[2] At a minimum, a TRO must be denied, since Plaintiff has not demonstrated that it would suffer irreparable harm between now and this Court's adjudication of the PI motion. *See Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423, 439 (1974) (TROs exist

I. PLAINTIFF IS UNLIKELY TO SUCCEED ON THE MERITS.

Plaintiff's claims lack merit, but before even reaching that issue, its claims are barred both by *Younger* abstention and by preclusion.

A. *Younger* Abstention Bars Federal Courts From Enjoining State Court Proceedings In Furtherance Of Their Judicial Functions.

Plaintiff seeks an injunction to relieve it of "compliance obligation[s] pending in state court." PBr.2. It thus asks this Court to enjoin the Chancery Division from performing a quintessential judicial function: ensuring compliance with its own prior orders. *Younger v. Harris*, 401 U.S. 37 (1971) requires this Court to abstain.

Younger, and abstention generally, describe classes of cases in which a federal court must abstain from rendering a decision even though it has jurisdiction to do so. *Younger* is driven by the need for "limits" on the federal courts' "equity jurisdiction" to ensure both that the federal courts "avoid a duplication of legal proceedings and legal sanctions" with the state courts, and to ensure "comity, that is, a proper respect for state functions[.]" *Id.*; *see also PDX N., Inc. v. Comm'r N.J. Dep't of Labor & Workforce Dev.*, 978 F.3d 871, 882 (3d Cir. 2020); *Middlesex Cnty. Ethics Comm. v. Garden State Bar Assn.*, 457 U.S. 423, 431 (1982) (adding that the policies underlying *Younger* reflect "a proper respect for state functions, a recognition of the fact that the entire

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to avoid "irreparable harm just so long as is necessary to hold a hearing, and no longer.").

country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways.”).

There are two steps to the *Younger* analysis. First, as the Supreme Court most recently explained in *Sprint Communications, Inc. v. Jacobs*, 571 U.S. 69 (2013), *Younger* abstention applies where the state proceeding fits one or more of three categories summarized: (1) state criminal prosecutions, (2) civil enforcement proceedings, and (3) civil proceedings that are uniquely in furtherance of the state court’s ability to perform their judicial function.” *PDX*, 978 F.3d at 882. Second, if one of those categories applies, the court considers the *Middlesex* factors to decide whether to abstain: “(1) whether there are ongoing judicial proceeding[s]; (2) whether those proceedings implicate important state interests; and (3) whether there is an adequate opportunity in the state proceeding to raise constitutional challenges.” *Id.* (citation omitted).

At the threshold step, this case fits perfectly within the third *Sprint* category. As the Supreme Court has explained, this category of abstention requires the federal courts to stay their hand where there is a pending state civil proceeding involving orders “uniquely in furtherance of the state courts’ ability to perform their judicial functions.” *Sprint*, 571 U.S. at 73. And the Supreme Court has had multiple occasions to clarify and illustrate what this category encompasses. In *Pennzoil v. Texaco*, the Court required a federal court to abstain from adjudicating a case alleging federal constitutional claims where

the federal plaintiff sought an injunction preventing the defendant "from taking any action to enforce" a previously-issued state-court judgment. 481 U.S. at 6. And in *Juidice v. Vail*, 430 U.S. 327 (1977), the Court expressly held that where a federal plaintiff is in "disobedience of a court-sanctioned [state] subpoena," a federal court should abstain from deciding a challenge that would interfere with "the resulting process" in state court "leading to a finding of contempt of court." *Id.* at 335-36. It reasoned that the process of enforcing a prior court order is so integral to the functioning of the state-court's functioning that "federal-court interference … is an offense to the State's interest … likely to be every bit as great as it would be if this were a criminal proceeding." *Id.* at 336 (citation omitted).[3]

Here, Plaintiff collaterally attacks the "processes by which the State compels compliance with the

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[3] The courts of appeal have repeatedly relied on this language to abstain from cases enforcing state-court orders and other quintessential state court functions. *See e.g.*, *Silver v. Ct. of Common Pleas of Allegheny Cnty.*, 802 Fed. Appx. 55, 58 (3d Cir. 2020) (abstaining from federal-court First Amendment claim seeking to enjoin state-court order that "governs the post-judgment conduct of attorneys and litigants."); *Dandar v. Church of Scientology Flag Serv. Org., Inc.*, 619 Fed. Appx. 945, 947-48 (11th Cir. 2015) (a "pending state proceeding involving enforcement of a settlement agreement entered into in a state-court case" required *Younger* abstention to avoid federal court interference with "a state court's administration of its duties."); *Falco v. Justs. Of the Matrimonial Parts of Supreme Ct. of Suffolk Cnty.*, 805 F.3d 425, 427 (2d Cir. 2015) (abstaining in federal constitutional challenge to a state-court order because the order "implicates the way that New York courts manage their own divorce and custody proceedings–a subject in which 'the states have an especially strong interest.'").

judgments of its courts." *Pennzoil*, 481 U.S. at 13. The June 18 Order is a final judgment adjudicating First Choice's constitutional objections to the Subpoena; it ordered that First Choice "respond fully to the Subpoena." Cai Cert. Ex. 2. First Choice did not fully respond, but, instead, sought a stay. Cai Cert. Ex. 10 at Br.1-3 (seeking relief from "further compliance" with the State's subpoena); *id.* Ex. 4 at Br.1-8 (detailing noncompliance). The State cross-moved to enforce litigants' rights under N.J. R. 1:10-3, under which the Chancery Division has "discretion in fashioning relief to litigants when a party does not comply with a[n] … order." *In re Adoption of N.J.A.C. 5:96*, 110 A.3d 31, 41 (N.J. 2015). Plaintiff's requested injunction would stop the Chancery Division's proceedings to adjudicate whether Plaintiff has violated its own June 18 Order and to determine what remedies are appropriate to compel compliance. *See, e.g.*, Cai Cert. Ex. 10 at Br.6 (arguing federal injunction would prevent Chancery Division "from addressing any issues related to scope or other enforcement disputes"). Such an injunction would attack "the core of the administration of a State's judicial system" to require its orders be followed, and would "be interpreted 'as reflecting negatively upon the state courts' ability to enforce constitutional principles." *Juidice*, 430 U.S. at 335-336. *Younger* "mandates that the federal court stay its hand." *Pennzoil*, 481 U.S. at 14.

To be clear, "not all state court orders trigger abstention." *Smith & Wesson Brands, Inc. v. Att'y Gen. of New Jersey*, 27 F.4th 886, 893 (3d Cir. 2022) ("*S&W I*"). *S&W I* held that an effort by the Attorney General to obtain an order compelling compliance

with an administrative subpoena in the first place does not itself trigger *Younger*, *see id.* at 893-94—which is why the State did not raise *Younger* when this federal case was first filed, before the state court had issued any order requiring compliance. But crucial to *S&W I* was the distinction between suits by the executive agency seeking orders compelling compliance with the subpoena and subsequent enforcement proceedings to *assure* compliance with a *previously-issued* court order—because the latter, not the former, reflects the "processes by which the State compels compliance with the judgments of its courts." *Id.* at 894; *see also Malhan v. Sec'y U.S. Dep't of State*, 938 F.3d 453, 463 (2019) (drawing distinction between initial order as "output" of court functions and subsequent enforcement proceeding of such orders, such as those in *Pennzoil* and *Juidice*); *Silver*, 802 Fed. Appx. at 58 (same). This case is about the latter: the pending post-judgment enforcement proceedings in the Chancery Division concern the *state court's* ability to enforce its prior order, not the entry of the order in the first place.

The non-dispositive *Middlesex* factors likewise support abstention. First, there is an "ongoing" proceeding regarding enforcement of the June 18 Order. Plaintiff filed its preemptive state-court motion seeking relief from noncompliance on July 18, Cai Cert. Ex. 10, before the instant request for a federal injunction. The State initiated its own cross-motion a week later on July 26. *Id.* at Ex. 4. *Younger* applies with "full force" "where state ... proceedings are begun against the federal plaintiffs after the federal complaint is filed but before any proceedings of substance on the merits have taken place in federal

court." *Hicks v. Miranda*, 422 U.S. 332, 349 (1975); *see also*, *e.g.*, *Haw. Housing Auth. v. Midkiff*, 467 U.S. 229, 328 (1984) (same); *M&A Gabaee v. Cmty. Redevelopment Agency of L.A.*, 419 F.3d 1036, 1039-40 (9th Cir. 2005) (same).

This Court has yet to hold proceedings of substance on the merits of First Choice's claims. It previously dismissed the Complaint on ripeness grounds alone. Dkt. 28. And *Younger* applies when a state-court action was initiated after the filing of a federal-court TRO or PI motion. *See JMM Corp. v. Dist. of Colum.*, 378 F.3d 1117, 1126 (D.C. Cir. 2004) (abstaining when state-court action was initiated two months after federal complaint was filed); *Fairfield Cmty. Clean-Up Crew Inc. v. Hale*, 735 Fed. Appx. 602, 604-05 (11th Cir. 2018) (abstention proper where state court action was filed ten days after federal suit and PI). Abstention is especially warranted here, because the State *could not* have moved to compel compliance with the June 18 Order in state court until after the date to comply—July 18—had passed. Plaintiff's next-day rush to this Court does not undo the principles that undergird *Younger* abstention. *See Monster Beverage Corp. v. Herrera*, 650 Fed. Appx. 344, 346 (9th Cir. 2016) (to hold otherwise "would encourage gamesmanship").

Second, the state-court proceedings implicate two important state interests. It concerns the strong interest in ensuring compliance with state-court orders. *Juidice*, 430 U.S. at 335–36. The underlying dispute also implicates the state's strong interests in ably and expeditiously investigating deception and professional misconduct. *See ICC v. Gould*, 629 F.2d

847, 851-52 (3d Cir. 1980) (noting harms of "stop[ping] … investigation[s] in the public interest").

Finally, Plaintiff continues to press its constitutional challenges in state court, which is an adequate forum for such disputes. "[A] federal court should assume that state procedures will afford an adequate remedy," *Pennzoil*, 481 U.S. at 15. Plaintiff must show "procedural barriers to the presentation of the federal challenges" to state law claims, *Gonzalez v. Waterfront Comm'n of N.Y. Harbor*, 755 F.3d 176, 184 (3d Cir. 2014), not merely that it is dissatisfied with the outcome, *see Forty One News v. Cty. of Lake*, 491 F.3d 662, 667 (7th Cir. 2007). And even if a state forum explicitly "refused to consider" Plaintiff's constitutional claims, as Plaintiff incorrectly claims, *Younger* would still apply so long as Plaintiff is "permitted to ... raise[] his federal claims in his appeal to the New Jersey Superior Court, Appellate Division." *Gonzalez* 755 F.3d at 183-84.

B. The State Court Judgment Has Preclusive Effect.

Even without abstention, Plaintiff's claims still fail out of the gate. "Litigants get one opportunity to make their arguments. Not two. And they cannot file a federal lawsuit to hedge against a potentially unfavorable state ruling." *S&W II*, 105 F.4th at 84. Preclusion bars Plaintiff from returning to this Court for a do-over after the Chancery Division has already rejected its constitutional claims.

The claim preclusion doctrine ensures "the just and expeditious determination in a single action of the ultimate merits of an entire controversy between litigants." *McNeil v. Legis. Apportionment Comm'n*,

828 A.2d 840, 858 (N.J. 2003).[4] All three elements of claim preclusion are met here because: (1) the two proceedings involve "identical" parties; (2) the proceedings raise the same claims that arise "out of the same transaction or occurrence;" and (3) the state-court holding is "valid, final, and on the merits;" *McNeil*, 828 A.2d at 859. This court therefore already noted that "res judicata principles will likely bar a plaintiff from filing a claim in federal court pertaining to the state-court enforced subpoena." Dkt. 28 at 10, n.7.

The first two claim preclusion factors are met here because the federal and state proceeding plainly involve the same parties and same claims that arise from the same transaction or occurrence. In both actions, (1) "the acts complained of and the demand for relief are the same"; (2) "the theory of recovery is the same"; (3) "the witnesses and documents necessary at trial are the same"; and (4) "the material facts alleged are the same." *Wadeer v. N.J. Mfrs. Ins. Co.*, 110 A.3d 19, 28 (N.J. 2015). Claim preclusion "does not require exact sameness," but only a "high degree of similarity between the two actions." *S&W II*, 105 F.4th at 76 n.7. On that basis, the Third Circuit recently held preclusion applicable on a virtually identical posture, where a party filed a federal suit to enjoin enforcement of a subpoena issued by the Attorney General, and asserted "the same constitutional concerns" in a cross-motion to quash in a state-court action to enforce the

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[4] "[T]he preclusive effect of a state court judgment or order is determined by the law of the state that rendered the judgment." *S&W II*, 105 F.4th at 73.

Subpoena—precisely what Plaintiff is doing here. *Id.* at 70-72, 76-79 & n.7.

Plaintiff's Cross-Motion shares the federal complaint's facts, theories, proofs, and demand for relief. *See*, *e.g.*, Compl. ¶¶ 16-66; Cross-Motion at 13-16, 18. In both proceedings, Plaintiff seeks an order barring Subpoena enforcement. *Compare* Compl. ¶ 11 *with* Cross-Motion at 2; *see also* Oral Ruling 30:13-14. Both raise the same theories: First Amendment retaliation, viewpoint discrimination and selective enforcement, free exercise, and freedom of association.[5] *Compare* Compl. ¶¶ 80-177 *with* Cross-Motion at 13-24, 27-31. Plaintiff cites the same facts regarding the State's issuance of the Subpoena in both proceedings. *Compare* Compl. ¶¶ 5, 9, 16-66, 67-68 *with* Cross-Motion at 1, 13-16, 18.

As to the third factor, the state court's May 28 decision is also on the merits under state preclusion law.[6] The state court conclusively denied the Cross-Motion, finding that the Subpoena did not "violate[] any statutory or constitutional tenets" to justify

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[5] Plaintiff's instant motion does not address all claims in the Complaint, such as those under the Fourth Amendment, First Amendment overbreadth, or the Due Process Clause. The State reserves the right to challenge those as precluded in a dispositive motion, since all were also raised and adjudicated in state court.

[6] Plaintiff acknowledges the decision was final. *See* Oral Ruling at 24:1-11 (Plaintiff's counsel confirming the decision was not interlocutory); Cai Cert. Ex. 3 (notice of appeal); N.J. Rule 2:2-3(a)(1) (appeals of right permitted only "from final judgments of the Superior Court trial divisions"). The pending appeal changes nothing; under New Jersey law, for preclusion purposes "a judgment is final even pending an appeal." *Bondi v. Citigroup*, Inc., 32 A.3d 1158, 1187 (N.J. Super. Ct. App. Div. 2011).

quashing the Subpoena. Oral Ruling 16:12-16. It enforced the Subpoena "in full," leaving "nothing pending before the Court." Oral Ruling 16:17 to 17:3-5; Cai Cert. Ex. 2. Indeed, after rejecting Plaintiff's first-filed argument, Oral Ruling 5:23-6:23, the state court went on to consider whether there was "any other basis" to "quash the subpoena," in light of the substantial briefing and oral argument on the constitutional claims, *id.* 6:22-23. It found there was not, for three separate reasons.

First, the court rejected, Plaintiff's theories underlying its First Amendment claims. The court noted that "[m]uch of [the Cross-Motion] centers on [Plaintiff's] claim of retaliation and bias … due to [the Attorney General's] disagreement with the views expressed by First Choice." *Id.* 10:5-8. The court disagreed as a matter of law. Addressing Plaintiff's theory that the Subpoena resulted from "retaliation and bias on the State's part," the court called its arguments "speculation," invoking and applying the "same reasoning" as the *S&W State Decision*. Oral Ruling at 10:5-11:17 ("Public officials, including the Attorney General, frequently make statements of public concern." (quoting *S&W State Decision*, 289 A.3d at 487)). The state court averred that Plaintiff identified "few actual facts" other than "selected quotes from the Attorney General's public statements," which cannot support its claims. *Id.* 14:4-10 (quoting *S&W State Decision*, 289 A.3d at 494); *see id.* 12:11-13; 14:1-15:15. Thus, the court rejected the basis for all of Plaintiff's First Amendment claims—that the Attorney General's public policy stances on reproductive healthcare could support a constitutional violation. *See id.* 16:12-18.

That is a merits holding with claim-preclusive effect, notwithstanding any "tendentious reading" to the contrary. *S&W II*, 105 F.4th at 75. Plaintiff conveniently fails to mention this discussion when asserting that the state court did not reach the merits of its constitutional claims. *See* PBr. 33-35. But it cannot ask in this court for a reevaluation of the exact same claims of selective enforcement, *id.* at 19-29, that were already rejected.

Second, the state court found Plaintiff failed at a threshold step of its associational (and Fourth Amendment claims) because it had not met and conferred with the State on a protective order, Oral Ruling 11:18-12:10; 28:16-29:15, which the State had argued would resolve any associational injury that Plaintiff asserted, Cai Cert. Ex. 6 at 48. That doomed Plaintiff's challenge, because, as the state court put it: "You're asking me to get into the idea of the association and how that's going to, on its face, be a constitutional violation of your client's rights and I've already decided that it isn't." Oral Ruling 29:11-15. Plaintiff reasserts the same freedom of association claims here, PBr. 12-19, but the State remains open to a confidentiality order that addresses those claims. *See* Cai Cert. Ex. 4 at Br.15. The fact that Plaintiff has now refused to agree to such an order on baseless grounds is no different than their prior refusal to entertain such an order at all. Given the state court had already held that a facial associational claim cannot stand when such an order protecting confidentiality is *available*, that holding is preclusive.

Finally, the state court separately concluded that the entirety of First Choice's challenge fails. It concluded that "at this very preliminary juncture,"

where all the State has done is issue a Subpoena and seek compliance, "the Attorney General has not … violated any statutory or constitutional tenets which would lead to a quashing of the subpoena at issue." Oral Ruling at 16:12-18. *See also Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628 (1986) (government "violates no constitutional rights by merely investigating" conduct that might violate its laws). The state court drew on the prematurity analysis in the *S&W State Decision*, noting that the constitutional claims were aimed at a hypothetical future *enforcement* action, not a mere demand for document production. *See id.* at 11:10-17. Thus, all of Plaintiff's claims at this subpoena-enforcement juncture failed because at this time, "the Attorney General has not … violated *any* statutory or constitutional tenets." Oral Ruling 16:12-18 (emphasis added). If the State initiates an enforcement action against Plaintiff, the state court decision would not preclude Plaintiff from challenging that action. *See S&W II*, 105 F.4th at 84 ("The preclusive effect of the state court judgment only concerns the subpoena at issue—not any nascent and further investigative step or future enforcement action."). But "entangle[ment]" in that "abstract" hypothetical now is unnecessary. Oral Ruling 15:8-15 (quoting *S&W State Decision*, 289 A.3d at 494).

This prematurity holding rests on the fundamental defects in First Choice's claims, rather than the state court's "procedural inability to consider a case," PBr.34, and is preclusive. At no point did the state court conclude it lacked power to decide Plaintiff's claims; it *rejected* them. *See* Oral Ruling 16:12-18. Moreover, under well-settled New Jersey

law, preclusion *does* apply to a holding that certain claims are premature. *See Watkins v. Resorts Int'l Hotel & Casino, Inc.*, 591 A.2d 592, 600–01 (N.J. 1991). "[A] judgment can be preclusive even if it does not result from a plenary hearing on the substantive claims." *Id.*; Restatement (Second) of Judgments § 20 (judgment for a defendant that "rests on the prematurity of the action … does not bar another action by the plaintiff instituted *after the claim has matured*") (emphasis added). And that makes sense: Plaintiff's injunction request requires this Court to assess whether Plaintiff has cognizable constitutional claims at the subpoena-enforcement stage. That is the very same question that the state court has already answered. Thus, relitigating that same question is incompatible with preclusion's core principles: "finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts, confusion and uncertainty; and basic fairness." *Winters v. N. Hudson Reg'l Fire & Rescue*, 50 A.3d 649, 659 (N.J. 2012) (citation omitted).

Finally, Plaintiff's claims are separately barred by the less demanding and more "flexible" standards of issue preclusion. *Id.* at 660. Issue preclusion merely requires that "(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding." *First Union Nat. Bank v. Penn Salem*

Marina, Inc., 921 A.2d 417, 424 (N.J. 2007) (citation omitted).

Here, the identity of parties and issues are not reasonably in dispute. And as *S&W II* confirmed, the Chancery Division's consideration of briefing and argument on a motion to quash a subpoena means Plaintiff was "provided a full and fair opportunity" to litigate the issues, 105 F.4th at 80, notwithstanding any "difference in posture" from the federal litigation, *id.* at 81. The state court issued a final decision on the merits of those very issues, which were by definition central to the court's decision on those issues. *See supra* at 18-21. Thus, even if the state court's prematurity holding was construed (incorrectly) as a jurisdictional holding that lacks claim-preclusive effect, issue preclusion still applies. Issue preclusion forecloses "[e]ven subject-matter jurisdiction" from being relitigated. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 152 (2009). A prior "dismissal based on a determination that plaintiffs lacked standing under the federal civil rights law, although not on the merits, precludes reconsideration of that issue." *Watkins*, 591 A.2d at 604; *see also Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 n.9 (1982) ("It has long been the rule that [preclusion] principles ... apply to jurisdictional determinations[.]"). "Otherwise[,] there would be nothing to prevent the incessant relitigation of the same jurisdictional challenges by the same parties." *Orlando Residence, Ltd. v. GP Credit Co., LLC*, 553 F.3d 550, 556 (7th Cir. 2009) (Posner, J.). In sum, the state court decision precludes relitigation of Plaintiff's federal constitutional claims in this Court.

C. Plaintiff's First Amendment Claims Fail.

Even if this Court were to reach Plaintiff's First Amendment theories, Plaintiff cannot succeed because it has not made a "strong showing" on those claims. *Hilton*, 481 U.S. at 776. It cites no precedent holding that the mere production of non-privileged records in response to a state-law fraud and professional standards Subpoena violates First Amendment rights. As the Supreme Court has held, the State "violates no constitutional rights by merely investigating" conduct that may violate its laws. *Ohio Civil Rights Comm'n*, 477 U.S. at 628. Should the State eventually bring a substantive enforcement proceeding, Plaintiff can raise its claims then.

1. Plaintiff's Associational Claims Fail

Even if the Court considers Plaintiff's claims now, they cannot justify emergency relief. Plaintiff exaggerates the scope of the requested disclosures and obfuscates their rationale. It complains that the Subpoena seeks "every one" of its donors other than through one website, the identities of "every licensed professional," and correspondence with national organizations. PBr.8 (citing subpoena Requests ¶¶ 8, 14, 22-23, 26). That is not correct: Request ¶ 26 seeks only identifying information for those who donated since January 2021—not "the last ten years," PBr.8—"by any means other than through the Donor Solicitation Page." Cai Cert. Ex. 1 at AG295. The "one website" that Request ¶ 26 exempts also demonstrates that the Subpoena is tailored: it does not ask for disclosures of donations stemming from the donor solicitation page on First Choice client-facing site, which expressly states the organization's

mission. And the Subpoena does not seek identifying information about First Choice's staff and volunteers generally. Rather, its requests are focused on individuals who are regulated professional licensees and those who provide medical services. *See id.* at AG294 (Request ¶ 14). And because the veracity of First Choice's claims regarding "Abortion Pill Reversal" support an inquiry into whether individuals—including donors—were misled, Requests ¶¶ 22-23 seek documents related to Plaintiff's sources of information, including from national organizations. *Id.*

Even if Plaintiff had valid associational concerns about these Requests, they can be resolved by a state-court confidentiality order. Indeed, after Plaintiff initiated a meet-and-confer for the first time nearly six months after the Subpoena's issuance, the State proposed a standard confidentiality order that would prevent disclosure of personal identifying information. Cai Cert. Ex. 4 at Br.5. Plaintiff's resistance of that order—currently before the Chancery Division—is no basis to argue that its associational rights are being harmed.

Plaintiff's reliance on *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021) ("*AFP*"), only highlights the reasonableness of the State's approach. *AFP* concerned California's prophylactic disclosures, known as "Schedule B," which required all charities to disclose every donor who gave over $5,000 on their annual tax registrations. *Id.* at 600-02. The Court acknowledged the state's legitimate anti-fraud interest, but found that requiring annual disclosures from 60,000 charities was overbroad. *Id.* at 610-11. The Court, however, expressly held that

the State *could* use narrower alternatives "such as a subpoena or audit letter," when the State had a basis to investigate specific concerns about fraud. Id. at 612-13. Here, the State seeks to do just that. *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 623-24 (2003) (discussing validity of the State's efforts to combat fraud on charitable donors); *Riley v. Nat'l Fed'n of the Blind*, 487 U.S. 781, 800-01 (1988) (same); *New York v. New York v. VDARE Fdn., Inc.*, No. 453196/2022, 2023 WL 360633 (N.Y. Sup. Ct. Jan. 23, 2023)(same).

Even if the donor disclosure request were subject to "exacting scrutiny," it would survive such scrutiny because it is narrowly tailored[7] and necessary to advance the State's investigation into donor fraud. *See Perry v. Schwarzenegger*, 591 F.3d 1147, 1160-61 (9th Cir. 2010) (compelling donor disclosure because the information was "highly relevant" to claims in the litigation); *AFT Michigan v. Project Veritas*, 2023 WL 2890152 at *5-6 (E.D. Mich. April 10, 2023) (applying *AFP* to find the same); *Evergreen Ass'n, Inc. v. Schneiderman*, 153 A.D.3d 87, 100-01 (N.Y. App. Div. 2017) (upholding subpoena disclosure related to provision of medical services against First Amendment challenge).

Plaintiff's objections likewise find no support in *NAACP v. Alabama ex rel. Patterson*. Unlike First Choice, NAACP did *not* object to disclosing its employees, directors or officials, 357 U.S. 449, 463-64 (1958); instead it "complied satisfactorily with the production order, except for the membership lists . . .

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[7] The Subpoena need not be the least restrictive means to obtain the information sought. *AFP*, 141 S. Ct. at 607-08.

." *id.* at 465. Far from holding disclosure to be a *per se* associational violation, the Court merely held that membership disclosure did not further the investigative purpose because NAACP had already made admissions, complied with the production order and provided significant information for that investigative purpose. *NAACP*, 357 U.S. at 463-66. By contrast, Plaintiff continues to evade compliance with the Subpoena and has made no meaningful effort to provide documents or information necessary for the State to determine whether Plaintiff is violating State laws. Plaintiff has "no right to absolute immunity from state investigation," and the State has the "right to obtain from it such information as the State desires" concerning this entirely lawful and well-grounded investigation. *NAACP*, 357 U.S. at 463-64.

2. Plaintiff's Selective-Enforcement Claims Fail.

For its myriad theories of selective enforcement, First Choice must meet the high burden of demonstrating not only that the enforcement agency was in fact driven by an improper purpose, but also that the agency lacked sufficient cause to justify the action. *See Hartman v. Moore*, 547 U.S. 250, 256-58, 263 (2006) (in a selective prosecution case, plaintiff has the burden of proving lack of probable cause to initiate a prosecution to overcome "presumption that a prosecutor has legitimate grounds for the action he takes"); *DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1304-09 (11th Cir. 2019) (applying *Hartman*'s test to retaliatory-motive challenge against government-initiated civil suit). Plaintiff cannot show that the State lacked a sufficient basis for this Subpoena, given what the Division uncovered, *see supra* at 4-7, and given that other jurisdictions have

investigated and litigated similar claims of fraud against crisis pregnancy centers, *see*, *e.g.*, *People v. Heartbeat Int'l, Inc.*, No. 23CV044940 (Cal. Sup. Ct.); *Obria Grp., Inc. v. Ferguson*, No. 3:23-cv-06093, 2024 WL 1697777 (W.D. Wash. Feb. 20, 2024).

Moreover, Plaintiff cannot show improper motive. As the state court expressly found, Plaintiff's First Amendment "claim of retaliation and bias" is based on mere "speculation." Oral Ruling at 10:5-11:9. Although Plaintiff cites miscellaneous statements from the Attorney General regarding reproductive rights and his past meetings with advocates and reproductive health care providers, Dkt. 41-1 at 22-23, as the state court rightly noted, *supra* at 8-9, such meetings and statements do not show an investigation is "not based on a good faith belief that [the recipient] may have violated state laws." *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679, 686, 704, 710 n.29 (S.D.N.Y. 2018), *aff'd in part, appeal dismissed in part sub nom Exxon Mobil Corp. v. Healey*, 28 F.4th 383 (2d Cir. 2022); *see also SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 130 (3d Cir. 1981) (same). Nor has Plaintiff identified similarly-situated entities that avoided investigation. To the contrary, the State issues subpoenas of this sort to individuals and organizations across the spectrum of industries, including many secular organizations. Cai Cert. Ex. 7 at Exhibits 1, 9, 10, 13.[8]

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[8] While Plaintiff repeatedly complains that the Attorney General has not investigated Planned Parenthood, PBr.23, 25, 26, it cites no evidence that Planned Parenthood (or any other charity) maintains webpages that hide its mission from its potential donors. *See Who We Are*, Planned Parenthood of Northern, Central, and Southern N.J., https://tinyurl.com/54c9y3s (last

Plaintiff's reliance on *National Rifle Association of America v. Vullo*, 602 U.S. 175 (2024) is misplaced. *Vullo* concerned allegations that a New York agency official violated the First Amendment by coercing regulated entities to cease doing business with the NRA and thereby suppress the organization's gun advocacy. *Id.* at 180-81. The decision did "not break new ground" but only "reaffirm[ed] the general principle" that "a government official cannot do indirectly what she is barred from doing directly." *Id.* at 190, 197 (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67-69 (1963)). The contrast between *Vullo* and Plaintiff's claims could hardly be sharper. *Vullo* involved particular allegations that "could be reasonably understood to convey a threat of adverse government action in order to punish or suppress [the challenger's] speech," 602 U.S. at 191, including an alleged meeting at which the official stated that DFS would "ignore" non-NRA insurance violations if that particular company "ceased underwriting NRA policies and disassociated from gun-promotion groups," even though "there was no indication that [other gun] groups had unlawful insurance policies," *id.* at 177, 193. Plaintiff offers nothing of the sort.

For similar reasons, Plaintiff's free-exercise claims cannot justify emergency relief. The fact that Plaintiff's mission is religiously motivated "does not relieve [it] of the obligation to comply with a valid and neutral law of general applicability on the ground

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visited July 29, 2024) (describing mission); *Donor FAQ*, Planned Parenthood, https://tinyurl.com/nkntzr4k (last visited July 29, 2024) (FAQs linked on donation page). Plaintiff has therefore failed to substantiate its "speculation" of bias or discriminatory intent.

that the law proscribes (or prescribes) conduct that [its] religion prescribes (or proscribes)." *Emp. Div., Dep't of Human Res. of Ore. v. Smith*, 494 U.S. 872, 879 (1990) (internal quotation marks omitted). Each of the statutes that authorize the Subpoena are neutral laws of general application, and are subject to rational basis review. *Id.* at 878-82. Plaintiff offers no evidence that the State is improperly targeting it with this Subpoena based on its religious views or activities. The Subpoena is motivated by concerns about First Choice's potential factual misrepresentations and omissions and other misconduct, not by First Choice's religious beliefs or statements. Plaintiff points to no comparable secular entity that has, *inter alia*, published inconsistent statements regarding its mission and conduct across websites, let alone that linked representations about the role of medical professionals with this potentially misleading medical information. *See*, *e.g.*, *Tenafly Eruv Ass'n, Inc. v. Borough of Tenafly*, 309 F.3d 144, 165 (3d Cir. 2002); *Fulton v. City of Phila.*, 593 U.S. 522, 531-32 (2021). The free-exercise claim is thus also unlikely to succeed.

II. THE EQUITABLE FACTORS WEIGH AGAINST A TRO OR PI.

Courts must weigh all the factors for preliminary relief, which are not "a mechanical algorithm." *DSSA*, 2024 WL 3406290, at *6. The factors "help the court balance the risks of mootness against the perils of injunctions." *Id.* Here, none of the equitable factors favor Plaintiff.

1. As the Third Circuit explained, the equitable power of injunction applies "only when there [is] no

adequate remedy at law." *DSSA*, 2024 WL 3406290, at *3; *see also Sampson v. Murray*, 415 U.S. 61, 90 (1974). But an adequate remedy at law exists, and this Court should "withhold this extraordinary remedy" of a TRO or PI. *DSSA*, 2024 WL 3406290, at *5. First, Plaintiff has asked the Chancery Division to "hold[] further compliance with the Subpoena in abeyance pending the federal district court's disposition of First Choice's federal claims." Cai Cert. Ex. 10 at Br.8. Plaintiff's simultaneous request to another tribunal that can grant it the very relief it seeks here means no federal injunction is warranted. Second, Plaintiff has appealed the June 18 Order to the Appellate Division—yet another forum for potential relief. Cai Cert. Ex. 3.[9] Third, "at the end of the case," *this* very court "can still grant an adequate remedy." *DSSA*, 2024 WL 3406290, at *4. A live controversy would still exist for this Court's resolution even after document production because Plaintiff could obtain judicial relief through an order that "prohibit[s] [] the use of the summoned documents." *Gluck v. United States*, 771 F.2d 750, 754 (3d Cir. 1985); *see also Church of Scientology of Cal. v. United States*, 506 U.S. 9, 15 (1992) (compliance with IRS subpoena did not moot appeal because "a court could order" that the records be "returned or destroyed"); *Healey*, 28 F.4th at 393 (same). In short, proceedings in the state court would not moot this Court's ability to render a ruling on the controversy

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[9] Nor does the appeal itself work irreparable harm. *See FTC v. Standard Oil Co. of California*, 449 U.S. 232, 244 (1980) ("[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury" (quoting *Renegotiation Bd. v. Bannercraft Clothing Co.*, 415 U.S. 1, 24 (1974)).

presented by Plaintiff's Complaint, so the "limited purpose" of the extraordinary remedy of emergency injunction would not be served. *DSSA*, 2024 WL 3406290, at *4.

2. Plaintiff's own conduct is incompatible with its demand that this Court issue an emergency injunction—which requires this Court "to prejudge the merits" in the course of days or weeks. *Id.* at *6. "Delay in seeking enforcement of [litigants'] rights …. tends to indicate at least a reduced need for such drastic, speedy action." *Id.* at *8 (citation omitted); *see also* Dkt. 42.

For one, Plaintiff "ch[ose] not to hasten" its efforts to seek relief in the state courts. *DSSA*, 2024 WL 3406290, at *8. It declined to pursue an emergent request for stay pending appeal at the Appellate Division, even though it represented to the Chancery Division that it would seek such relief. *See* Oral Ruling at 18:16-20 (Plaintiff counsel stating it would like to appeal and "ask for a stay"); 35:19-36:2 (court indicating it would immediately enter order denying stay pending appeal so that Plaintiff could seek further relief). And in the nearly two-month period since the Chancery Division's May 28 Oral Ruling, Plaintiff did not seek relief or guidance from the Chancery Division regarding the scope of the subpoena or the parameters of the confidentiality protective order, despite the Chancery Division's express invitation to do so without resort to formal motions. *See* Oral Ruling at 36:3-22.

For another, Plaintiff's own litigation choices in federal court show that any emergency it pleads to this Court is self-created. Plaintiff could have consented to a dismissal or remand of the Third

Circuit appeal of this Court's January 12 jurisdictional decision. But its refusal to do so led to a month's worth of motions practice in the Third Circuit that ultimately led to that Court agreeing with the State and dismissing the appeal as moot. CA3.Dkt.56.[10] Had Plaintiff acted differently, a motion for TRO and PI could have been presented to this Court in early June. "A classic maxim of equity is that it assists the diligent, not the tardy." *DSSA*, 2024 WL 3406290, at *8 (internal quotation marks omitted). Thus, this Court may exercise its substantial discretion in denying such extraordinary equitable relief to a litigant whose demands for immediate action are incompatible with its own dilatory conduct.

3. Even putting aside those core equitable principles, Plaintiff has also failed to meet its "burden of proving a clear showing of immediate irreparable injury." *Campbell Soup Co. v. ConAgra, Inc.*, 977 F.2d 86, 91 (3d Cir. 1992) (internal quotation marks omitted). While it is often the case that courts have presumed First Amendment harms to be irreparable, such as where the State is imposing a direct or discriminatory restraint on speech or the exercise of religion, *see DSSA*, 2024 WL 3406290, at *7, courts have also long held that the mere production of information in response to a Subpoena, standing alone, does not constitute an irreparable harm. *See, e.g.*, *FTC v. Church & Dwight Co.*, 756 F. Supp. 2d 81, 86-87 (D.D.C. 2010) (rejecting claim that subpoena

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[10] Even at the Third Circuit, Plaintiff did not act with alacrity. It took no action for 18 days after the Chancery Division's May 28 ruling, filing its motion for an injunction pending appeal before the Third Circuit on June 14. *See* Dkt. 42.

response is irreparable harm); *In re Platinum Partners Value Arbitrage Fund L.P.*, 18cv5176, 2018 WL 3207119, at *6-7 (S.D.N.Y. June 29, 2018).[11]

The facts in this case do not support a likelihood of irreparable harm. *See Hohe v. Casey*, 868 F.2d 69, 72-73 (3d Cir. 1989) (noting "the assertion of First Amendment rights does not automatically require a finding of irreparable injury" even if the plaintiff can show likelihood of success). The sole harm Plaintiff discusses is something far more speculative: the risk of chill from the production of documents that identify staff or donor identities. PBr.30-31. Putting aside that the majority of the Subpoena does not even relate to this concern, Plaintiff cannot satisfy its burden of showing immediate irreparable injury will result.

Initially, the State has already proposed a confidentiality order that would prevent disclosure of donor and staff identities during the course of its investigation. *See* Cai Cert. Ex. 5 at Ex. P. Moreover, Plaintiff's anonymous donor declaration that purportedly supports its claim of chill does not hold up to scrutiny. *See* Dkt. 41-6. Plaintiff did not submit an anonymized declaration or affidavit. Instead, it contains only an attorney's declaration that he "obtained" an "affidavit" from an unidentified number of donors, but contains only a set of unverified statements. *Id.* Finally, even on its own terms, the donors' claimed statements do not plausibly show how document production in this case would bring irreparable harm. For one, although the donors who

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[11] Even if Plaintiff appears to acknowledge that the State is likely to prevail on its motion to enforce litigants' rights, it cannot show that the state court is likely to enter any immediate penalty, much less one that works irreparable harm.

gave through https://www.myegiving.com/App/Giving/firstchoicewrc express concern regarding the disclosure of their identities, *Id.* at 2-3, that is the very website for which the Subpoena is *not* seeking donor information, because that is the very website where First Choice more fulsomely represented its mission and work.[12] In any event, even if this unspecified set of donors were to withhold donations during the pendency of this litigation, that hardly shows irreparable harm. If this Court ultimately resolves the claims in Plaintiff's favor, Plaintiff is not foreclosed from obtaining any interim donations that were held back.

4. Finally, an injunction would work a profound harm to the State and the public. To begin, the State's "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State." *Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018). But the harm goes deeper here: in this case, the continued delay in enforcing the Subpoena—issued in November 2023—undermines the State's efforts to assess whether Plaintiff has engaged in fraud, and if so, ameliorate that fraud. *See ICC*, 629 F.2d at 851-52 (agencies must be able to investigate "without undue interference or delay"). And an injunction would incentivize subpoena recipients to misuse the federal courts as an alternative source of review of state court orders, in lieu of the usual state-court process. That would not only compromise lawful state

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[12] By contrast, the Subpoena seeks information regarding those who gave through a link on the client-facing site, https://www.myegiving.com/App/Form/24dff450-d338-49d3-b2f9-7ac52352d9f4 (last visited July 29, 2024), which conceals its mission.

investigations but undermine the authority of New Jersey state courts generally.

Indeed, a federal injunction now would undermine federalism and comity by second-guessing a state court's order and by suspending the state court's ability to enforce its own prior decisions. If the Court agrees with the State on abstention or preclusion and denies an injunction, no such harm would ensue. But even if this Court disagrees, it should still consider the harm of entering an injunction that would work "a serious federalism infringement." *See J.B. v. Woodard*, 997 F.3d 714, 722-23 (7th Cir. 2021). While any TRO or PI requires "forecasting the merits" in a manner that "risks prejudging them," the upshot of this particular TRO or PI is that such a "tentative forecast[]," *DSSA*, 2024 WL 3406290, at *3, would be used to "change … the direction and course of the state court proceedings," *J.B.*, 997 F.3d at 723. In such a circumstance, respect for comity and federalism means "federal courts need to stay on the sidelines," *id.*, especially at such an early juncture.

CONCLUSION

This Court should deny Plaintiff's motion for an emergency injunction.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

By: */s/ Angela Cai*
Angela Cai
Deputy Solicitor General

Dated: July 29, 2024

CERTIFICATE OF SERVICE

I certify that on July 29, 2024 I electronically filed the foregoing Opposition To Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction with the Clerk of the United States District Court for the District of New Jersey. Counsel for all parties are registered CM/ECF users and will be served via CM/ECF.

By: */s/Angela Cai*
Angela Cai
Deputy Solicitor General

Dated: July 29, 2024

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, GENERAL
EQUITY PART
ESSEX COUNTY
DOCKET NO. ESX-C-22-24
APP. DIV. NO.

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Defendant.	:	TRANSCRIPT OF MOTION

Place: Wilentz Justice Complex
212 Washington Street
Newark, NJ 07102

Date: September 20, 2024

BEFORE:

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

* * * * *

correct, Your Honor. The only thing I'd just note for record to -- to be clear is that we did file our federal lawsuit first --

THE COURT: Uh-huh.

MR. WILSON: -- before the due date of the subpoena. And then the Attorney General commenced enforced proceedings after that.

THE COURT: Right. Okay.

MR. WILSON: But --

THE COURT: So I knew they parallel, I wasn't sure exactly who went first, but I don't think that's relevant to the discussion right now.

So today -- and interestingly how the motions were filed here, but we have a motion first filed by the defense for a protective order, or basically what I kind of saw as a reconsideration motion based on the Federal Court now having jurisdiction. The State filed not a cross-motion but its own motion saying that -- in aid of litigant's rights, saying that it should be enforced and that they haven't -- that the defense hasn't complied. And then there was, I guess, a cross-motion to that motion filed conditionally, saying, if I'm going to hear that motion, then here's our defenses as to why.

Okay. Again, procedurally, are we about on the right page here, Counsel?

MR. WILSON: I would say that's correct, Your Honor. The only thing we would slightly quibble with is we don't regard our motion for a protective order as a motion for reconsideration, but, rather, a motion

based on new circumstances occasioned by the Court's earlier ruling.

THE COURT: Okay. And that may actually be more relevant to now where we are.

But at this point, is there anything else procedurally that I missed to bring us here today?

MR. WILSON: Your Honor understands the procedural history of this case much better than most of my colleagues, so I commend the Court.

THE COURT: I appreciate that, Counsel.

MS. VAN DRIESEN: I have only, I'm sorry, Your Honor, one addition that the defense has filed a renewed motion for a temporary restraining order in the federal proceeding. So that's still pending right now.

THE COURT: Restraining the State?

MS. VAN DRIESEN: Yes.

THE COURT: Okay. All right.

MR. WILSON: And -- and, yes, Your Honor, I should -- should have noted that. That motion was taken on expedited briefing and is fully submitted before Judge Shipp. It's been pending for approximately 45 days.

THE COURT: Okay. Now the part that I haven't seen in anyone's papers -- although, if I -- if you -- it is and I missed it, but there's a lot to read, so I may have missed it, so let me know -- is how the -- the impact of the fact that this case, my order, including my denial of the stay pending appeal, is on appeal. Jurisdictionally, I am divested of all jurisdiction

except for very limited things like error corrections, clerical errors, mathematical errors. I am not aware of a basis under our court rules or any other authority that's binding on me that says I can entertain this motion today.

It appears to me that this motion either has to go to the Appellate Division, who can then remand it to me to decide, or, in the first instance, will look at it and say in light of this new information, we're going to stay or not stay. That's up to them.

So from an authority standpoint, can any of you tell me why you think I'm even able to hear this case today?

(No verbal response)

THE COURT: I guess I'm correct that no one raised it already.

MS. VAN DRIESEN: That's correct, Your Honor.

THE COURT: Okay.

MS. VAN DRIESEN: If I could respond.

It would be -- the State's position is that Your Honor has the authority to, pending appeal, enforce its own order which was not stayed, pending that appeal and is with -- still has full effect.

THE COURT: I fully agree with that position, that I absolutely have the authority to enforce the order.

What I'm talking about is, my authority to consider the other motions and the interaction between those -- those two things. I -- I don't think I can just -- and I -- nor do I choose to just look at the

enforcement outside of the reality that there has been a change that I do deem rather significant.

But I am not going to say more than that because I do not believe I have jurisdiction. So it would be ultra vires of me to sit here now and say anything else.

Defense want to be heard on that?

MR. WILSON: Your Honor, we do believe the Court has the authority to entertain this motion today. If it has the authority to enforce it's order, it also has authority to -- it's ongoing to stay enforcement of that order further, in light of the pending federal proceedings.

This Court had ruled that it was not deciding the federal issues and the Attorney General has conceded that those are ripe in Federal Court, the Third Circuit has agreed and remanded the action.

THE COURT: I have no issue with the Federal Court and what they're doing. They're entitled to do that. That is not my issue.

What I hear you saying, I think, is that you're saying that the enforcement element that I am allowed to undertake is where your order falls. And I -- your request, your motion falls.

Do you have any authority for that because the -- the cases that I have seen -- and unquestionably, once an appeal is filed, the trial court loses jurisdiction for all substantive matters. It -- it's just -- and that's, actually -- that cite is -- there's many of them, but Rolnick v. Rolnick, 262 N.J. Super. 343, that's an Appellate Division case from 1993.

The Court Rules do allow for certain authority upon the trial court, to continue to deal with the matter in -- as I said, in very limited ways. All right.

I have, as noted, continuing jurisdiction to enforce my order. I have the right to correct errors. Also, if both parties had come in and said it was a clear mistake, then, you know -- and, obviously, now we're kind of back into the realm of reconsideration motions. Right? Which you're saying you don't think this is.

I'm not -- the only other ones I've seen, the only other authority I've been able to find, is, again, clerical errors and mathematical errors, which is Rule 1:13-1, clerical errors. Mathematical errors is Kiernan v. Kiernan, 355 N.J. Super. 89, that's the Appellate Division 2002. An obvious error of fact conceded by all parties. That's McNair v. McNair, 332 N.J. Super. 195. That's Appellate Division 2000.

What I am not clear on and -- and absent authority to the contrary, I don't necessarily believe that what I'm being asked to do today, outside of the enforcement, falls within those areas that I am still allowed to rule on. In the absence of a remand, I think I lack jurisdiction to either correct, which is not what you're -- I'm not being asked to correct. There -- I'm not saying there was an error. This is additional information that was not available at the time I made my ruling. I am not, in fact, reconsidering my decision on the basis that I believed I made in error, as a matter of law.

The -- and believe me, I've -- I'm not thinking this is just an -- an easy decision because, obviously, it's been fully briefed to me. The counsel are here to

argue. I'm not looking to take anyone's time, including my own, for -- for granted. I am, as I said, hesitant to even give my thoughts on the impact of the federal decision -- or the federal jurisdiction now being taken by the District Court, if I'm sitting here saying I don't believe I have jurisdiction.

So I appreciate your agreement, Counsel. But absent authority, I -- the Appellate Division has this case and they've issued -- they just recently issued a scheduling order, I think. The scheduling order was issued September 12th.

So it's an active ongoing case. And so I think in the first instance, you have to bring this there.

MR. WILSON: Your Honor, if I -- if I may, I think that because this issue was not addressed by either side, we would request the opportunity to submit a supplemental brief on it, in connection with the Court's consideration of it and to --

THE COURT: I think that just delays thing, Counsel. And I -- and I don't see that it's going to -- because I -- look, I'm not saying that I exhausted every possible avenue here. But I think if it had been clear that this was a situation I could take, it's going to remain that I have to make a call one way or the other. And I've already made that call.

MS. VAN DRIESEN: And just following up on the State's position. As we expressed in our briefing, we do think this is -- their motion is really a rehash of the first filed arguments that were considered and denied in that first motion to quash.

THE COURT: Even in light of the -- now the Federal Court taking the -- the jurisdiction of the

case, because, you know, obviously, it was that strange -- I don't have jurisdiction, other than on the subpoena, in the -- in the first instance, because, according to my ruling, the constitutional claims weren't -- weren't even impacted. They weren't ripe yet. This was an invest -- investigation. No one's been charged with doing anything improper.

Of course, the Federal Court then in turn says, well, we don't have any jurisdiction because the State hasn't done anything yet.

So it's a -- it's a strange area of overlap. Obviously, we are each in our own lanes. But the State, I don't know -- and -- and this is where I'm being careful to not give you my thoughts on it.

What I will say is that while I do believe I have jurisdiction to hear the enforcement, in light of everything, I am going to decline to exercise that right today. I am not necessarily declining the motion. I'm not making any substantive ruling of has the defendant complied or -- or not complied.

I just think the best course all around is for me to follow what I believe I'm charged to do here, which is -- I do think it's closer than as if you were asking me to do a substantive complete different substantive ruling. Then I wouldn't have even brought you in. I would have just said, no, I don't have jurisdiction.

I really wasn't sure until I really was able to -- to look at the research.

And it didn't -- obviously, it wasn't an issue that either side thought to brief. And it wasn't the first thing that I thought of either. It's not like I knew all along you were going to come in and I was going to

say this. Because then I would have probably given -- I would have wanted briefing. This case to me like today.

So this was not let me bring everybody down here and then tell them I'm not going to hear it. This was not that at all.

I was prepared to have argument on the substance of the motions. But it wasn't until -- and -- and, as I said, no one really brought up the appeal. So it wasn't until I realized it, that it was on appeal, that this became -- and I only really focused on that today as I was finalizing my preparation for today's arguments.

So I do not -- while I appreciate the -- the request to do more briefing, in this case, I don't believe that it's appropriate because it would -- I think the effect will to be to just drag it out, have another argument where I'm going to hear, basically, the same things.

I'm comfortable that there's not an absolute either, you know, a -- there's not a case that says if something occurred that the trial judge believes is -- somehow impacts the original ruling that that now is in jurisdiction of the Court, even pending the -- the appeal. I don't see that. I don't believe that's what the rules say.

And so absent that, I think it's inappropriate.

What I don't want to do is make a ruling and then the Appellate Division says you had no right to make that ruling and now we've got to start over again.

In all -- they may remand it. They may take it on original jurisdiction and say, no, you're going to stay

it now. Or they -- they may remand it and say deal with the whole thing, and then I will. And it's already briefed, so I'm not going to anticipate we'll need anything more.

And I will, also, if either side wishes -- no. Both sides, I guess. I would entertain, if on a remand, hearing it virtually, if that is something that is helpful.

Again, it's not my intent here to -- to just not want to deal with this. I'm ready to go. But I don't think I can for the reasons that I've already said.

So does anyone else want to be heard and make a record for any reason?

MR. WILSON: Your Honor, we'll just note briefly that we -- we do believe that the Court has jurisdiction to hear our motion today, but we respect the Court's decision not to entertain these motions today.

THE COURT: Okay.

MS. VAN DRIESEN: The State would say that we do still believe there's jurisdiction to entertain our motion to enforce the order today and would be ready to be heard on that.

THE COURT: I appreciate that. And -- and as I said, I agree with the State, that I do have jurisdiction to hear that. I believe, however, it would be an improper -- not improper, but an unwise use of what -- obviously, when I'm saying that I have to hear first from the Appellate Division, I do believe at this point it's better to hold that motion in abeyance and see where -- where it goes from there.

Without saying it's denied, I'll carry it. But I'm not going to hear it today.

If you'd rather, I'll deny it and you can appeal it. That's really -- that's up to you. I'm not going to -- but for the motions that I've already said, I'm not going to enforce it because that would lead me into a discussion of some of the substantive -- because it's -- there's a dispute as to whether it's been complied with.

It's not as if I'm sitting here and -- and, you know, the defense hasn't provided anything. It's a dispute. The scope part still -- you know, I think, in the future I'll know better than to leave it to the parties to try to come to some decision. But that's

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC. vs. ATTORNEY GENERAL J. MATTHEW PLATKIN	CIVIL ACTION NUMBER: 23-CV-23076-MAS ORAL ARGUMENT

CLARKSON S. FISHER BUILDING & U.S. COURTHOUSE
402 East State Street
Trenton, New Jersey 08608
October 15, 2024
Commencing at 10:05 a.m.

B E F O R E:
THE HONORABLE MICHAEL A. SHIPP
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

ALLIANCE DEFENDING FREEDOM
BY: LINCOLN D. WILSON, ESQUIRE
ERIK C. BAPTIST, ESQUIRE
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For the Plaintiff

OFFICE OF THE NEW JERSEY ATTORNEY GENERAL
BY: LAUREN VAN DRIESEN, ESQUIRE
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Proceedings recorded by mechanical stenography
Transcript produced by computer-aided transcription

Shannan Gagliardi, Official Court Reporter
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(PROCEEDINGS held in open court before the Honorable Michael A. Shipp, United States District Judge, at 10:05 a.m.)

THE DEPUTY CLERK: All rise.

THE COURT: Please be seated. Good morning. We're here today in the matter of First Choice Women's Resource Centers, Inc. v. Platkin, Docket No. 23-23076.

May I have appearances of counsel, please?

MR. WILSON: Good morning, Your Honor. Lincoln Wilson with Alliance Defending Freedom for plaintiff, First Choice Women's Resource Centers, Inc. I'm joined by my colleague, Erik Baptist, whose pro hac vice motion is pending, and our legal assistant, Olga Ivashina.

THE COURT: Okay. Good morning.

MS. VAN DRIESEN: Good morning, Your Honor. Lauren Van Driesen, Deputy Attorney General for defendant, New Jersey Attorney General Matthew Platkin.

MR. LEIT: David Leit, Assistant Attorney General for the same.

THE COURT: Okay. Good morning to you as well.

So, well, folks, I want to approach today's oral argument a little different because there have been a lot of submissions here. I've had an opportunity to review them. There are state court proceedings. I've had an opportunity to look at the transcripts there. So I have some targeted questions, and I'd like to kind of focus in.

I understand that there was a request to do a PowerPoint presentation, but I'm going to suggest to you that that might go kind of adrift from where I'm interested in focusing. So I'm going to lay out my understanding of the way this case has progressed, lay out what my concerns are, and then kind of pose to you the two or three areas that I believe that we need to focus in on and I'd like to hear from you in those areas, okay?

So let me start by saying plaintiff brought this action in this court after it was served with a state investigatory subpoena seeking certain information. The information included, in part, donor lists and personnel information, among other things.

Contemporaneous with the filing of its complaint, plaintiff filed a motion for a temporary restraining order and preliminary injunction aimed at halting the enforcement of the subpoena on First and Fourth Amendment grounds.

In a January 12, 2024 opinion, this Court found that the question of whether the subpoena was enforceable against plaintiff such that plaintiff risked constitutional injury was not ripe for judicial review.

In short, this Court reasoned that because the subpoena was not self-executing and required a state court to enforce it before it had the power of law, there was no ripe issue for judicial review, and at that time of the January 12 opinion, plaintiff's claims were not ripe because plaintiff simply could decline to disclose the information the state sought with no nonspeculative legal consequence.

Shortly after this Court's decision, plaintiff appealed this Court's ruling to the Third Circuit. While the appeal was pending, the state initiated enforcement proceedings in state court.

On May 28, the New Jersey Superior Court Chancery Division entered an order to show cause to enforce the subpoena and denied plaintiff's motion to quash the subpoena in its order. In its order, the state court found that plaintiff's constitutional challenges to the subpoena were not ripe, a finding based on the New Jersey Appellate Division's decision in *Platkin v. Smith & Wesson*. Plaintiff appealed the state court judge's decision denying its motion to quash to the New Jersey Appellate Division, and that appeal is still pending.

After the state court's May 28 decision, the state then moved to dismiss the plaintiff's appeal as moot in the Third Circuit. In doing so, the state represented to the Third Circuit that the state court enforced the subpoena against plaintiff, and under this Court's prior decision, plaintiff's claims were now ripe for review.

The Third Circuit, in a July 15, 2024 certified order, recognized that the parties no longer disputed ripeness, the issue on appeal before the Third Circuit.

Accordingly, the Third Circuit dismissed the plaintiff's appeal as moot. The Third Circuit then remanded this matter back to this Court for renewed consideration of plaintiff's temporary restraining order to the extent such was still necessary.

Finally, after the parties submitted briefing on the plaintiff's renewed motion for a temporary restraining order and preliminary injunction, the state court held another hearing. At that hearing, the state court judge heard the parties on several new motions related to the enforceability of the subpoena, but the state court denied or otherwise declined to decide the parties' motions.

So at that point that's my understanding of the procedural history. Now, as I understand it with respect to the parties' substantive positions, the plaintiff primarily contends that its First Amendment rights are violated by the subpoena. Plaintiff seeks this Court's intervention to protect those rights by halting enforcement of the subpoena.

Specifically, plaintiff asserts that the state's investigation and the subpoena stemming from it are political retaliation for plaintiff's sincerely held pro-life beliefs. Plaintiff sets forth several First Amendment arguments referencing associational rights, selective enforcement, retaliation, viewpoint discrimination, and violation of the Free Exercise Clause, among other things. Considering the seriousness of these constitutional violations, plaintiff requests that this Court get immediately involved in ceasing the subpoena's enforcement against the plaintiff.

The state, in opposition, contends that res judicata attaches because the state court's decisions

to enforce the subpoena and deny plaintiff's motion to quash constitutes a final decision on the merits between the parties and arising out of the same transaction or occurrence: The issuing of the state subpoena against the plaintiff. The state also contends that collateral estoppel may apply in the alternative and that it remains open to a confidentiality order that may cure plaintiff's associational concerns. Separately, the state asks this Court to consider the efficacy of abstention or otherwise contends that the plaintiff's constitutional claims fail on the merits and that equitable factors weigh in its favor.

So with that, that's my understanding of your respective arguments and the respective procedural history that applies here.

I want to be clear from the outset so as to avoid a lot of unnecessary deviations here that after extensive consideration of plaintiff's submitted evidence, the record, and the parties' briefing, the Court has pretty much concluded that there are only three possible outcomes that this Court can reach when ruling on plaintiff's motion.

The first is res judicata. I don't think either party would dispute that the current action involves the same parties as the state court action, nor would either party dispute that this action arises out of the same transaction or occurrence as that being litigated in state court. As such, the only remaining question is the finality and the meritoriousness of the state court's decision. So I'd like to hear from both parties today about whether the state court's May 28 decision was or was not a final decision on the merits.

The second possible outcome here is that this case is still not ripe for federal court's review. As an initial matter, plaintiff represents in its briefing to this Court and represented orally to the state court that the Third Circuit found that this matter is ripe and granted a remand, and this is not completely accurate of the Third Circuit's certified order.

The Third Circuit granted no motions in remanding this action, more importantly, made no findings of law. Instead, the only legally viable conclusion that can be drawn from the Third Circuit's certified order is that, one, that plaintiff's and defendant's motions before the Third Circuit were denied; two, the Third Circuit found that ripeness, the issue on appeal before it, was undisputed by the parties, a fact that notably cannot establish ripeness itself because the parties cannot agree or simply agree to subject-matter jurisdiction; three, based on the parties' ripeness representations, plaintiff's appeal was dismissed as moot; and four, the case should be sent back to this Court for further consideration because no issue for appeal remains.

Notably, the Third Circuit's certified order did not find that plaintiff's claims are, in fact, ripe for consideration or, two, that this Court's previous opinion is in any way vacated, reversed, or inaccurate, or, three, that the Third Circuit has any opinion on the previous ripeness determination in this Court.

So I say all of that to alert the parties that a lack of ripeness is a second viable outcome in this matter. Specifically, if this Court were to find that there was no final decision on the merits in the state court, then this issue still may not be ripe for adjudication

because a subpoena was not enforced in its then current form as this Court suggested it must be in its previous opinion. Moreover, were there to be no decision on the merits by the state court, then the subpoena by its nature is still in flux and awaiting a final determination as to the constitutional questions and the ultimate enforceability of the subpoena as written. Given these ripeness concerns, I do want to hear from the parties as to why this matter is ripe for review in this Court and if there was no final adjudication on the merits below.

And then third and finally, plaintiff focuses extensively in its brief on the severity of the state's constitutional violations in serving the subpoena. This Court does not intend to minimize these allegations in any way. The Court must note, however, that plaintiff's First Amendment concerns, when viewed separate and apart from the actual enforceability of the subpoena, are not emergent. To this end, I implore the parties to not drift too far down a constitutional rabbit hole and instead focus their arguments principally towards the res judicata and the ripeness concerns.

So with that as a backdrop, let me hear from the plaintiff. It's your motion. I'd like to hear from you first, and then I'll hear from the state in opposition.

MR. WILSON: Good morning, Your Honor. Lincoln Wilson, Alliance Defending Freedom. We have a presentation prepared, but, obviously, we want to address the Court's questions. I may refer to a couple of slides here to the extent they bear on the Court's questions.

THE COURT: Thank you.

MR. WILSON: But we'll be focusing on what Your Honor's asked us to address today.

So first of all, with regard to the issue of res judicata, if we could have the presentation up and go to slide four.

So when we're looking at the effect of the state court's ruling in this case, we have to say what did the Court address and what did it not address. We do agree that the state court's ruling was a final ruling. But if this Court, for example, were to issue a final judgment but it had previously dismissed claims from an action without prejudice, the Court's dismissal without prejudice would leave whatever claims it dismissed without prejudice viable for re-litigation.

That's exactly what happened in the state court. It was a final order. It enforced the subpoena against our clients. It gave them 30 days to comply to fully respond to the subpoena.

Now, with that, though, it did not address the constitutional arguments. I believe the Court's recitation of the procedural history of the case said that it found that the constitutional arguments were not ripe. That's exactly what the Court held and it's exactly what the attorney general acknowledged in open court. After the Court's ruling the attorney general said, "As Your Honor just ruled, there are no ripe constitutional issues at stake in this case."

That matters because we're applying New Jersey preclusion law here, and if you look to the *Watkins* case, on which the attorney general relies pretty extensively, it's very clear that a dismissal for lack of jurisdiction, which is what a ripeness dismissal is, is

not an adjudication on the merits. So the state law grounds in the attorney general's claims were adjudicated on the merits. Our federal constitutional objections were not adjudicated on the merits.

The attorney general, again, he acknowledged this. He said, "There are no ripe constitutional issues in this case." And after he did so, the state court confirmed it, said, "My determination, as pointed out by the plaintiff here, is that there are no ripe constitutional arguments." So right after the attorney general had said that, the Court said, yep, exactly right, no ripe constitutional arguments. So that's the situation that we're in here.

And if there were any doubt about this, the attorney general has tried to point to a couple of stray lines in the transcript that he says suggest a decision on the merits. Well, if they did, those ambiguous lines, such as where the Court said I find no constitutional violation at this juncture, those all have to be construed in light of the clear statements on the record that, "Again as determined by the Appellate Division in *Smith & Wesson*, defendant's constitutional arguments are also premature." The Court said again, "I ruled that they're not ripe yet," with respect to the constitutional arguments.

Over and over again when we were asking the Court to stay its ruling pending appeal, the Court said I don't know what would change to have me say, well, yes, you're right, they are ripe, I should rule on them. The Court was very clear she did not rule on the constitutional arguments. She said, "In large part, the constitutional arguments, number one, as I already indicated, are premature." There's simply no way to

find a merits adjudication of our constitutional arguments in the transcript.

And I know if this Court were to issue a decision on the merits on our constitutional claims, I know the Court's decision would track through all of the constitutional tests for those claims. You'd see a discussion of exacting scrutiny under *Americans for Prosperity* for the association claims. We'd hear about the Supreme Court's decision in *NRA v. Vullo*. We'd hear about the Free Exercise Clause.

But you don't see any of that in the transcript. The attorney general clings to a couple of phrases when there's no substantive discussion of those claims whatsoever in the transcript. Those claims were not adjudicated by the state court, and so they remain live through this Court's resolution in this case.

That also matters because it's a distinction from the lead case that the attorney general relies on. The attorney general relies on the Third Circuit's decision, its 2024 decision in the *Smith & Wesson* litigation. In that case, it was different because the state court had summarily rejected the constitutional arguments. And then on appeal the Appellate Division said we affirm the merits rejection of those arguments, and also, even if we were to consider them, they are not ripe.

And that was different from this case where you have no merits adjudication of the constitutional arguments. It is only a ripeness adjudication. That was what the attorney general acknowledged, that was what the Court acknowledged, and that's what pervades the transcript here.

You can imagine the situation that this would put our clients in if we can't get redress on these federal issues in this court where we are up against a wall of what we have to -- what the attorney general is demanding that we do. The attorney general still demands that we immediately comply with the subpoena, that we turn over this protected information. He says it wasn't sufficient for you to simply respond to the subpoena as the Court directed. He says you need to comply with everything I asked. You need to give me all of your protected donor information, you need to give it to me now, and he wants attorneys' fees for it.

Even after the state court -- just a couple weeks ago, the state court had declined to hear those motions. What the attorney general did just last Friday, and the parties haven't had an opportunity to submit this to the Court yet, but the attorney general is now asking the Appellate Division to send the appeal back to the trial court for a ruling on his motion to compel compliance. He says I want that to happen first before anything else happens, and that shows you that this is a situation where we're going to be up potentially having to comply with these demands in state court before any court has adjudicated our constitutional claims.

THE COURT: And just as a small footnote here, are there still open issues as to the scope or any kind of protective order on that subpoena?

MR. WILSON: Yes, Your Honor. It's our understanding that there are. The trial court had reserved a ruling on scope, and that was one of the issues that was proffered to her in the recent hearing.

And she declined to decide any of those questions while the case was on appeal.

But the attorney general is asking that the case go back to her and that she decide those issues of scope and those issues of all the other constitutional -- not the constitutional protections, of the information that we believe is beyond the scope of the subpoena before any court has adjudicated our federal claims.

We think, honestly, that the state court's order is best understood as keeping these federal issues live for this Court to resolve them because that's exactly what happened, and I think that's exactly how you transition into the ripeness discussion here that the Court's addressed, which is that as soon as we got this enforcement order where the state court said that the subpoena was enforceable and gave us 30 days to respond to it, as soon as that happened, the attorney general said, well, we agree now that these claims are ripe. And the parties did agree on that much and put it before the Third Circuit.

We thought different relief was appropriate than what the Third Circuit thought was appropriate, but we think that the Third Circuit's finding that this controversy is -- or rather that its remand is an acknowledgment that the case is ripe because Your Honor mentioned that jurisdiction can't be conferred by agreement.

At the same time, the Third Circuit notes that, and the Third Circuit could not have found the appeal moot if it had not satisfied itself that there was a live dispute that existed. The Third Circuit had to find that this was a live controversy for it to resolve in

order to be able to send the case back for this Court to decide.

So we've been bouncing around between state and federal court. That controversy is fully ripe for this Court to decide. That's also clear from the Third Circuit's 2022 decision in the *Smith & Wesson* case.

I have this on an abstention slide, but could you pull up Slide No. 3?

So this was in the 2022 *Smith & Wesson* decision by the Third Circuit, and what the Third Circuit held was basically the same procedural posture as this case. The only difference was that the initial dismissal was for abstention rather than for ripeness, as in this court. And what the Third Circuit held was that once *Smith & Wesson* had received the subpoena, before there was any state court action filed to compel compliance, before there had been any ruling on compliance, the Third Circuit said that federal law authorized *Smith & Wesson* to ask a federal court to adjudicate its rights and obligations rather than producing documents on the day specified.

And that's because the threat of having to do that and the attorney general maintaining that the law required those documents to be produced, that is a First Amendment harm. The threat to the donor privacy rights that we have under *Americans for Prosperity*, that threat was a ripe harm that could be adjudicated at that time.

You also see this, for example, in the Ninth Circuit's decision in *Perry* that the attorney general has cited as favoring his position. The Ninth Circuit held that once you have the threat of compelled

disclosure by a court that documents are required to be produced that relate to these associational injuries, that's not just a ripe injury. It's something that, like the Ninth Circuit held, warranted mandamus where a district court had compelled those documents to be produced over an objection.

So we think the same thing is true here. We have First Amendment harms related to the associational rights, related to our general right to not be subject to a retaliatory subpoena. If our allegations are correct that the attorney general has brought this -- filed this subpoena -- excuse me, served this subpoena on us because of our pro-life views, that itself is a First Amendment injury, and as long as that subpoena remains in effect, we are -- every day we are subject to irreparable harm from that subpoena.

That also addresses the fact that we have irreparable harm from the potential loss of a federal forum because the instant that there is a merits adjudication in the state court of our constitutional claims, there hasn't been one yet, but as soon as that happens, then we are in preclusion land. We are in a situation where we can't litigate those issues in federal court. And the loss of that federal forum or the potential loss of that federal forum is another irreparable harm.

There's also irreparable harm in being subject to conflicting parallel state and federal litigation, and this Court has the ability, by holding the attorney general to the limits of its constitutional authority, to ensure that that does not happen.

This Court can enjoin further enforcement of the subpoena as required by the First Amendment's

association protections and its speech protections and its religion protections and protect First Choice from these harms, and we submit that's exactly what it should do.

I'd like to briefly now turn to the merits of these claims, if we could have slide seven.

So this is a situation where we think the Court has to reach the merits. There hasn't been any decision on our claims, our constitutional claims. The controversy is clearly ripe. The Third Circuit necessarily had to find it ripe. The law supports that it's ripe. *Elrod v. Burns* supports that this controversy is ripe now.

If the Court reaches the merits of the claims, as we submit that it's required to do, there's no way that the attorney general's demands can survive here because let's look at the lead demand that we focused on in this case, the demand that we disclose our donors here.

He says that he wants the identities of every donor over a two-year period who did not give through one specific website. Let's look at the people he's talking about here. He thinks -- his theory of deception is that First Choice's donors don't realize that it's a pro-life organization. He says that they may have seen its website and not realized it was pro-life, so he needs to know all their identities over a two-year period everyone who didn't give through the donor website.

That means he wants anyone who showed up at the annual fundraiser gala, he wants their identity. Anyone who gave through a church baby bottle

campaign, he wants to know who these people are. He says they may not have known they were giving to a pro-life organization. Anyone who gave a gift of stock or anyone who just Googled First Choice, found the client website and said, oh, there's an organization I know and want to support, let me submit through this website, he says I want all these names of all these people over a two-year period. And we're not talking about a small number of people here.

THE COURT: Mr. Wilson, I cautioned in the beginning I don't want to get too deep into the merits on this piece. I do want to hear from the attorney general in response to the arguments that you've already made. Some of the substantive issues and arguments like this the Court's familiar with. I can deal with this. I really wanted to get into the debate on the issues that I put out there initially first.

So what I'd like to do, if you have anything else you want to speak to as it pertains to the res judicata or the ripeness, I'll hear from you, but I want to hear from the attorney general. Then I'll hear from you again in reply. You'll get the last word on it. It's your motion.

But I'd like to stay away from some of the deep dives of the merits of this right now because I believe you folks have sufficiently briefed those issues. The issues that I was concerned about I put out there in the beginning.

MR. WILSON: Certainly, Your Honor. We understand and appreciate that. I don't think I have anything further to say about preclusion or ripeness at this time, but we'll respond once the attorney general's made his case.

THE COURT: Thank you.

Ms. Van Driesen or Mr. Leit, whoever's going to argue, let me hear from you.

MS. VAN DRIESEN: Thank you, Your Honor. Looking first to the issue of whether the state court's order was final and on the merits, the state court's decision here is embodied in three separate orders in which the state court entered the state's order to show cause, enforcing the subpoena in full, denying First Choice's motion to quash, again, in full and with prejudice, and then denying a stay pending appeal and finding that there were no further issues before the Court for decision.

Now, we can grapple with the actual text of the Court's oral decision, but she made clear that there was no constitutional violation that rendered the subpoena unenforceable in any way, and that clearly leads to a preclusion analysis. The state court did, in fact, consider the constitutional arguments made by First Choice here. There was extensive briefing from the parties on those arguments and there was oral argument on those.

THE COURT: What about Mr. Wilson's point that there's no real articulation of the tests that we are normally accustomed to seeing when we do some kind of judicial review of these kinds of constitutional principles?

MS. VAN DRIESEN: So that is correct that she did not, in her oral ruling, render a decision on those tests, but her ruling was really that these constitutional defenses made by First Choice are premature at the subpoena enforcement stage

generally, and that's similar to what was found in the state court's initial *Smith & Wesson* decision that when the subpoena is served, that in and of itself does not violate any of these constitutional provisions and that their constitutional arguments are preserved if the state later brings a statutory enforcement action against them. And that's really the heart of her decision here, that these claims are premature when all that's been done is the service of a subpoena, which she found did not violate any statutory or constitutional tenet.

And that's then a second path to preclusion if you find that those three orders are not fully on the merits. The mere fact that she found these arguments to be premature at the subpoena enforcement stage, that is a clear holding that they're inappropriate for this stage of the proceeding, that they can bring them in an enforcement litigation at a later date if and when one does occur, and I think both of those theories of the opinion get to claim preclusion here and res judicata.

Turning to the ripeness decision, if the Court agrees that the state court did reach a final ruling on the merits, the state agrees that this case is ripe and that Your Honor can find claim preclusion here. But if there was no final ruling on the merits and there still remains an open question of whether the subpoena can be enforced, we're back at the beginning, and this case isn't ripe for the reasons that Your Honor stated in his opinion back in January. If there's no risk of enforcement, there's no ripe judicial dispute here.

But the state would maintain there was a final decision on the merits, the subpoena does not violate any constitutional tenet, and First Choice should not be permitted to relitigate that clear decision that came from the state court.

THE COURT: Okay. You also had some points as it pertained to abstention and the efficacy of the abstention route. Do you want to be heard on that?

MS. VAN DRIESEN: Sure, Your Honor. As Your Honor found in his initial opinion, before the subpoena was enforced, there was no grounds to abstain under *Younger*, but we are now in a separate different abstention posture, the *Sprint* category three. There's an ongoing judicial proceeding that's uniquely in furtherance of the state court's ability to -- the state court's judicial function.

Judge Adubato enforced the subpoena, and because First Choice has not complied, the state has filed a motion to enforce litigants' rights akin to a civil contempt order seeking to coerce compliance with that subpoena and that court order. And as we're in that *Sprint* category three, similar to the Supreme Court's decisions in *Juidice* and *Pennzoil*, we're at a different footing than in the *Smith & Wesson* case where there had been an enforcement order, but there was no second proceeding to enforce that state court order and no -- it was speculative if there would ever be.

But here that decision -- that motion is currently pending. As Mr. Wilson noted, the state has filed a motion for limited remand to seek that the Appellate Division direct the state court to hear the state's motion to enforce litigants' rights, which it had

previously held in abeyance. So that's still an ongoing judicial proceeding. And for the state court to be able to serve its judicial function and enforce this Court's order, abstention is appropriate here.

THE COURT: Okay. And both sides mentioned or had some arguments as it pertains to judicial estoppel and arguments that were raised in one court and different positions being taken here. Let me hear from you on that, and I'll also hear from Mr. Wilson when he returns.

MS. VAN DRIESEN: So the judicial estoppel argument here is similar to the claim preclusion. First Choice has raised their constitutional defenses in one forum, the state court, and they were rejected. It does not now get the opportunity to relitigate those same exact positions. As the Third Circuit said in *Smith & Wesson*, it doesn't get to hedge against that negative state court ruling by seeking the same relief now in the federal forum.

THE COURT: Okay. Thank you.

MS. VAN DRIESEN: Thank you.

THE COURT: Mr. Wilson.

MR. WILSON: Just a few brief points, Your Honor. With regard to preclusion, I believe Ms. Van Driesen conceded that the state court did not address the reasoning for rejecting federal claims in its order. We think that's because it was very clear it did not reject the federal claims. It dismissed them as unripe and said that First Choice had an opportunity to litigate them later, that they were preserved. They specifically said they were preserved.

Ms. Van Driesen attempted to say that *Smith & Wesson* was on similar footing in this regard and that the trial court here was just relying on *Smith & Wesson*. I think that just doesn't bear scrutiny, Your Honor. In that case, the Third Circuit recognized, it said that the trial court in *Smith & Wesson* had, quote, summarily rejected the constitutional defenses. So it rejected them on the merits.

There's no indication of that here. There's no merits rejection in the transcript. There's no reasoning through the elements. Instead, time after time, the transcript shows ripeness, ripeness, ripeness. That was the rationale for the Court's decision.

Now, with regard to the actual question of ripeness before this Court, I think that this is another instance where judicial estoppel applies. It applied, first of all, as raised in our briefing, because the attorney general told the Third Circuit and then told the US Supreme Court that, don't worry, First Choice is going to get an opportunity to address its federal claims in state court.

To be fair, Your Honor, I think that we thought we would, and I think your order that had dismissed this case the first time around contemplated that we would. But as soon as we got there and the state court, after extensive briefing by the parties, declined to reach those federal issues but enforced the subpoena anyway, we didn't get that adjudication that we needed of our federal claims. And the attorney general is now saying that's just fine. That's okay. He prevailed on a different position that we would have

the opportunity to address those claims. Now he switched sides.

And we now just see judicial estoppel in another context here because, as Your Honor pointed out in your recitation of the procedural history, the attorney general, after the state court's order, went to the Third Circuit and asked the Third Circuit to dismiss the appeal as moot because the attorney general said this dispute is clearly ripe, everyone agrees that it's ripe, the appeal is moot, there's nothing to decide here, send it back, which is what the Third Circuit did. The attorney general asked for that relief and obtained that relief, and now the attorney general is getting up and saying, actually, Your Honor, this federal dispute is not ripe.

Well, I think if that's the case, this needs to go back up to the Third Circuit, which was deciding this issue, because the attorney general took a position, prevailed on it, obtained the relief, and is now denying that the dispute is ripe.

Now, certainly it's this Court's prerogative to decide whether it is ripe, but we think that the Third Circuit has necessarily resolved that question by remanding this action. It had a sua sponte duty to determine that it had jurisdiction that this was a ripe controversy, and it found that even under this Court's decision, the controversy was now ripe and had to be sent back to this Court. So this is again shifting positions and shifting positions. First Choice is entitled to redress on its constitutional claims and should receive that.

Lastly, as to abstention, this is another case where the Third Circuit's 2022 decision in *Smith &*

Wesson answers every issue here. The attorney general just represented that there's been a filing of a motion to enforce litigants' rights, which they said was similar to contempt. Well, as the cases that are cited in our briefing are very clear, New Jersey law holds that a motion to enforce litigants' rights is not contempt. They are very different things.

And even if they were, there's two problems here. One is that in *Smith & Wesson* in 2022, the attorney general argued the exact same thing, and the Third Circuit rejected it. The attorney general just referred to two cases, the *Juidice* and *Pennzoil* cases. Well, the Third Circuit considered those in that case as well, and it said that the thread running through those two cases was that there was certainty of contempt. Only when there is certainty of contempt is there ground for abstention.

And the Third Circuit held in that case there's simply a possibility of contempt, that maybe *Smith & Wesson* would not obey the order, and there would have to be some finding about it. But absent that certainty, abstention did not apply.

Could we actually have slide three and advance it one more point? I'm sorry. One more point in the order there.

This was the language: "Although the state court in this case has issued an order requiring *Smith & Wesson* to comply with the subpoena, *Smith & Wesson* has complied, so there is still only a possibility of contempt, and that is insufficient to warrant abstention." That's exactly what we have here.

Now, the attorney general maintains that First Choice has not complied with the state court's order. We believe we are in full compliance with the state court's order and we've done everything we're required to. But what's also clear is the state court declined to even get into it. The state court specifically said at page 19 of the recent hearing transcript, the September 20 hearing, she said, well, this is not a case where they haven't done anything. They produced documents. She said it's a dispute about compliance.

So the Court said if this were a clear-cut case, then maybe she would have entertained these motions, but it wasn't. First Choice was directed by the state court to fully respond to the subpoena, and that's exactly what First Choice did. It furnished written responses and objections to the subpoena, and it's produced 2,000 pages of documents while maintaining its scope objections that, as the Court noted, remain to be litigated in state court. First Choice did everything that it was required to. There's no issue of compliance or contempt. And under the Third Circuit's 2022 decision, there's no basis for abstention to apply.

Now, we think that all this means that the Court has to reach these issues. The Third Circuit remanded so this Court would be able to address any request for injunctive relief in the first instance.

Could we have slide two?

So the Court's indicated that it's already familiar with the briefing on these issues, and so I don't want to go into issues that the Court hasn't asked to be addressed. But I'll just say that this is why we think

that the Court should issue a preliminary injunction now.

The Third Circuit remanded this matter so this Court could address injunctive relief in the first instance. The Third Circuit rejected abstention. Directly parallel circumstances in the 2022 *Smith & Wesson* decision. The state court didn't decide on constitutional claims. It specifically held over and over again they weren't ripe. And we're likely to prevail on both of the theories that we're asserting in our preliminary injunction motion, our association claim, because the attorney general can't meet exacting scrutiny, and our retaliation and selective enforcement claim, because the attorney general has not met his burden.

The last thing that I'll note on those two claims is that the burden is all on the attorney general here because normally a preliminary injunction movant comes in and they have the burden, but when it comes to likelihood of success on First Amendment issues, the Third Circuit held in *Greater Philadelphia Chamber of Commence* that it's actually the burden is on the government in First Amendment cases to justify the action.

And with these two claims in particular, once you've shown a threat to associational privacy to donor disclosure, that puts the burden on the attorney general to show that what he's done meets exacting scrutiny, and once we show that his actions have some connection to our speech, as his consumer alert makes very clear, the burden is on him to show that he would have taken the same approach even but for that speech.

The Court's indicated it's familiar with those issues. They're briefed. We think it's very clear. He cannot meet his burden, he has not met his burden, and we'd ask the Court to enter a preliminary injunction enjoining further enforcement of the subpoena.

So unless the Court has any further questions.

THE COURT: Those are all the concerns that I have. If there's something else you wanted the Court to consider, I'll hear from you. I am also open, if you'd like to submit or hand up your PowerPoint, I understand that you went through the trouble of preparing it for today's oral argument, and I probably derailed you by saying I don't want to hear your PowerPoint, I want to hear specific areas of concern.

So if you want to hand that up, you're certainly free to hand that up, and certainly the state is free to submit any opposition to this PowerPoint you want to submit. I'm happy to receive it, but I don't need you to spend a lot of time walking through the other issues that you've outlined here.

MR. WILSON: No, that's fine, Your Honor. I'd be a terrible advocate if I was focused on my issues rather than on yours, and I like to think I'm not a terrible advocate. The Court will miss out on the beautiful animations that we had in that presentation.

THE COURT: That's why I'm specifically allowing you, if you want to hand it up, you can hand it up. Or if you want to email it, you can email it. We would hate to miss out on the animations.

MR. WILSON: My heart will grieve that the Court does not get to see the animations, but we'll consider what's appropriate.

THE COURT: Okay. Thank you so much.

MR. WILSON: Thank you, Your Honor.

THE COURT: Is there anything else from the state that the Court needs to be aware of?

MS. VAN DRIESEN: Nothing further, Your Honor, and we can file later the motion for limited remand.

THE COURT: I'd like to have that.

MS. VAN DRIESEN: We'll file that today.

THE COURT: Well, with that, folks, I intend to issue a written decision on this. I intend to get it out as soon as I can practically get it out, so you will hear from me shortly. But in the meantime, we'll take all this under advisement. I thank you for your oral argument today and I thank you for being here. Thank you.

THE DEPUTY CLERK: All rise.

(Proceedings adjourned at 10:46 a.m.)

CERTIFICATION

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/S/Shannan Gagliardi, RDR, CRR 10/17/24

Court Reporter/Transcriber

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

ECO-011

No. 24-3124

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

v.

ATTORNEY GENERAL NEW JERSEY

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

Present: BIBAS, Circuit Judge

1. Appellant's Motion to Expedite with the following proposed briefing schedule:

Appellant's brief and appendix due November 22, 2024

Appellee's brief due December 2, 2024

Appellant's reply brief due December 5, 2024

2. Appellee's Response

Respectfully,
Clerk

ORDER

The foregoing motion to expedite is GRANTED as follows. Briefing will proceed as proposed by the motion:

Appellant's brief and the appendix are due November 22, 2024, at 12 noon;

Appellee's brief is due December 2, 2024, at 12 noon;

Appellant's reply brief is due December 5, 2024, at 12 noon.

The Clerk will calendar this appeal before a merits panel during the week of December 9, 2024.

By the Court,

Circuit Judge

Dated: November 18, 2024
TMM/JK/cc: All Counsel of Record

STANDING ORDER REGARDING MOTIONS TO EXCEED THE PAGE LIMITATIONS OF THE FEDERAL RULES OF APPELLATE PROCEDURE

Effective Immediately

PRESENT: McKEE, **Chief Judge**, and SLOVITER, SCIRICA, RENDELL, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN, GREENAWAY, JR, VANASKIE, ALDISERT, WEIS, GARTH, STAPLETON, GREENBERG, COWEN, NYGAARD, ROTH, BARRY, and VAN ANTWERPEN, **Circuit Judges**

AND NOW, it being noted that motions to exceed the page/word limitations for briefs are filed in approximately twenty-five percent of cases on appeal, and that seventy-one percent of those motions seek to exceed the page/word limitations by more than twenty percent;

Notice is hereby given that motions to exceed the page or word limitations for briefs are strongly disfavored and will be granted only upon demonstration of extraordinary circumstances. Such circumstances may include multi-appellant consolidated appeals in which the appellee seeks to file a single responsive brief or complex/consolidated proceedings in which the parties are seeking to file jointly or the subject matter clearly requires expansion of the page or word limitations.

Accordingly, it is **ORDERED** that a three-judge Standing Motions Panel is hereby appointed to rule on all motions to exceed the page/word limitations for briefs since the page/word limitations, prescribed by Fed. R. App. P. 32(a)(7), should be sufficient to address all issues in an appeal.

It is further **ORDERED** that Counsel are advised to seek advance approval of requests to exceed the page/word limitations whenever possible or run the risk of rewriting and refiling a compliant brief. Any request to exceed page/word limitations submitted in the absence of such an advance request shall include an explanation of why counsel could not have foreseen any difficulty in complying with the limitations in time to seek advance approval from the panel.

This order shall not apply to capital habeas cases.

By the Court,

/s/ Theodore A. McKee
Chief Judge

Date: January 9, 2012
A True Copy:

Marcia M. Waldron

Marcia M. Waldron, Clerk

SUPERIOR COURT OF
NEW JERSEY
CHANCERY DIVISION
GENERAL EQUITY PART
ESSEX COUNTY
DOCKET NO. ESX-C-22-24
APP. DIV. NO. _____

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Defendant.	:	TRANSCRIPT OF MOTION

Place: Dr. Martin Luther King, Jr. Justice Building
495 Dr. Martin Luther King, Jr. Boulevard
Newark, NJ 07102

Date: November 19, 2024

BEFORE:

HONORABLE LISA M. ADUBATO, P.J.Ch.

TRANSCRIPT ORDERED BY:

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

I N D E X

Colloquy

(Proceedings commenced at 2:11:53 p.m.)

THE COURT: We are on the record in the matter of Platkin v. First Choice. This is C-22-24. I'm Judge Lisa Adubato. Today is November 19th, and it is 2:12 p.m.

I'm going to get appearances and ask counsel to please spell your last name for the record. We'll start with plaintiff, please.

MS. VAN DRIESEN: Good afternoon, Your Honor. Lauren Van Driesen, V-A-N, D-R-I-E-S-E-N, Deputy Attorney General on behalf of Matthew Platkin, Attorney General of New Jersey, and Cari Fais, Acting Director of the New Jersey Division of Consumer Affairs. And with me at counsel table is David Leit, L-E-I-T, Assistant Attorney General.

THE COURT: Thank you.

And for our defendant, please?

MR. WEBBER: Good afternoon, Your Honor. James Webber, Webber McGill, for First Choice Women's Resource Centers. It's W-E-B-B-E-R.

THE COURT: Thank you, Counsel.

MR. WILSON: Good afternoon, Your Honor. Lincoln Wilson with Alliance Defending Freedom for defendant, First Choice Women's Resource Centers, Inc. And that's W-I-L-S-O-N.

THE COURT: Okay. You can all have a seat, please.

Counsel Wilson, you have an appearance on the record here? Yes.

MR. WILSON: Yes, Your Honor.

THE COURT: Okay. All right. Lots to talk about. This matter is back before me following an initial decision back in May, I believe -- and maybe the order was June, where I denied a motion to quash a subpoena, that also had a matter that was pending in the federal court. The -- procedurally, there's been a significant amount of developments, including -- up to and including just this today or yesterday.

And so, I think I'm caught up on everything. I've tried to review all the letters. I have read Judge Shipp's decision and have gone back and reviewed the arguments that counsel had made in the -- the motions that are pending before me again today as a result of the Appellate Division's limited remand back to this Court, which I've been ordered to -- to resolve by December 2nd.

Much of the arguments -- not all of them, but many of the arguments that were made by the parties were made with the procedural posture that the matter was pending a decision in the federal court. The district court was appealed to the Third Circuit initially on the motion to quash or stay this Court's decision and for TRO and preliminary injunctive

relief. That was then in front of the Third Circuit, which remanded back to the federal court four months ago or so. And just within, as I said, the past few days, Judge Shipp issued a very extensive decision that results in a denial by Judge Shipp of -- I'm just looking for the date here, but I know it's here somewhere -- that the matter is not yet ripe for review in the federal court for the many reasons that Judge Shipp went through, including the fact that I did not decide the -- the motions that I currently have which are now back in front of me.

And then today, apparently, the -- let's see -- where is today's letter? The -- the Third Circuit has taken the matter on expedited appeal, which is going to be apparently decided in early December -- or this argument on the 5th or something. Sorry I don't have all of the exact dates at my fingertips here. And then there's also been a request for an expedited appeal.

I don't know if that was actually -- is that now on an expedited basis to the Third Circuit?

MR. WILSON: I could provide some clarity, Your Honor, on that.

THE COURT: Please.

MR. WILSON: There's two things pending in the Third Circuit right now. There's the appeal itself, which the Third Circuit has expedited and set for argument the week of December 9th. And there's also our motion for injunction pending appeal, which is an emergency motion. That motion will be fully briefed next Monday, and we would expect a decision shortly thereafter, hopefully before the remand from the Appellate Division is complete.

THE COURT: Okay. Which, of course, leads to what I was going to say anyway at the beginning of this; that I -- I will be hearing argument today but I, in all likelihood, will be reserving to be able to really digest everything and not necessarily -- I'm not saying it because I want to wait and see what the federal court does. That's not the basis for it. If I believed I had enough today, in light of all these changes to rule -- and I still may, depending on the argument, I will. But I anticipate that I will be reserving at least until I have a chance to do everything, certainly before the -- the 2nd. Okay? So, that's the -- that's the plan. But let's see how it goes today.

So, what I have in front of me today, I think let's at least get that settled so there's no confusion. And I'm looking at counsel whoever's letter from November 8th and I think that this is correct, just as it outlines what's in front of me today. And that's the defendant's motion for a protective order to hold further compliance in abeyance pending the federal court resolution of the Constitutional claims.

So that's what I was saying is I haven't made that decision yet, if that's going to be the reason that I don't decide it today. So, I think I was -- may have been a little unclear on that. I understand that's in front of me and I have to decide that. I don't know that I'm deciding that today.

The second thing is the attorney general's motion to enforce litigant's rights based on my prior order, and then the cross-motion -- conditional cross-motion for a protective order. I'm gathering you mean conditional, assuming that I don't grant the first relief?

MR. WILSON: I think what we mean, Your Honor, is that assuming that the Court takes up the attorney general's motion, which we don't believe is -- is ripe --

THE COURT: Uh-huh.

MR. WILSON: -- if the Court does take it up, then we would move on a cross-motion basis to uphold our scope objections.

THE COURT: Okay. Now, for the second and third -- I'm sorry, from the State's side, is that what -- do you agree that that's what's in front of me today?

MS. VAN DRIESEN: Yes, Your Honor.

THE COURT: Okay. For the second and third, matters, which really is what was filed that I didn't rule on because the Appellate Division had it, as I said, that's been fully briefed. There has been some changes to the arguments because, as I started to say earlier, a number of the arguments were based on the fact that things that have now happened in the federal court had not yet happened at that point.

So I will hear today more as a matter that I want to hear the arguments. If I indeed intend to rule on them, I'm not going to decide this piecemeal. So it's already been briefed. It's back in front of me. I have to make a decision. I don't have the luxury, nor do I think the parties want to then let me just rule on the first one today and then depending on that, have you come back again and re-argue this. I don't want to do that again. Okay?

So, I am aware that there may be argument that is made today that ultimately would not be

substantively -- substantively ruled on if I decide to hold everything pending the federal. Okay?

Any questions about that? No?

Okay. You actually understood what I said? Okay. Good.

All right. So, I think, though, it makes sense to -- to begin with the argument to -- for the protective order as it's been styled here, for me to just do nothing else until the federal court rules. Is that is a -- is that a proper description of what you're asking?

MR. WILSON: Yes, Your Honor, that's correct.

THE COURT: Okay. And who's going to argue that for --

MR. WILSON: I'll be arguing for First Choice, Your Honor.

THE COURT: Okay. Any reason procedurally to not hear that motion first that the State wants to weigh in on?

MS. VAN DRIESEN: No, Your Honor. (Indiscernible).

THE COURT: So because it's First Choice's argument, I'll hear from them first and then I'll hear from the State, please.

All right. Counsel, who is going to start?

MR. WILSON: And I --

THE COURT: Wilson -- Counsel Wilson, yes?

MR. WILSON: I put together --

THE COURT: Your first name is Lincoln?

MR. WILSON: Yes, that's correct, Your Honor.

THE COURT: Okay. So, I didn't mean to call you Counsel Lincoln.

MR. WILSON: No, I have --

THE COURT: Counsel Wilson.

MR. WILSON: -- the misfortune of three last names of Lincoln Davis Wilson. It sounds like of like a law firm, but --

THE COURT: All on your own. Okay. Counsel Wilson?

MR. WILSON: And I have presentation that relates to all the motions that I'd like to show, if I may?

THE COURT: Okay. Do you want to make sure we're -- I didn't know we were going to be doing that. I would have made sure it was set up before.

COURT CLERK: (Indiscernible)?

THE COURT: I don't know.

MR. WILSON: If it's going to be a difficulty, I can dispense with it for the time being.

THE COURT: It's -- it's not a difficulty. It's just that I didn't know we were going to do it, so I just have to -- (indiscernible) -- I think we should be able to do it.

COURT CLERK: I think it's (indiscernible).

THE COURT: That's fine. It's on here, but is it plugged in there?

COURT CLERK: It's connected over there.

THE COURT: Is it connected properly?

MR. WILSON: (Indiscernible).

(Setting up technology for presentation)

MR. WILSON: Well, it's -- it's less important for the first motion. If we can get it in place for the -- the second motion, there are a couple things that I'd like to be able to show the Court.

THE COURT: Well, is it connected properly, Jess?

MR. WILSON: It's connected here.

COURT CLERK: Do you see it here, or no?

MR. WILSON: I don't see it.

THE COURT: I don't know. We might have to lose the Zoom.

Dyanne, can you close that out?

All right. Now, if we go to -- and you have it ready to go on your laptop?

MR. WILSON: Yes.

(Setting up technology for presentation)

THE COURT: Future reference, not even just for this case, just give us a heads up if you need this because you would think it's easier than it appears.

COURT CLERK: Can I try that?

THE COURT: Yeah, try that. I think it's -- yeah, it's definitely on right, attorney right. And then is it on the -- the right input -- the correct input?

(Setting up technology for presentation)

THE COURT: You know what? While we're arguing the first motion, can you just -- see if you can get IT to get up here right away, if they can.

Okay. We'll see what we can do. But for now --

MR. WILSON: I can go forward with the first motion.

THE COURT: Okay. Why don't we do that?

MR. WILSON: Again, it's more important for the --

THE COURT: All right. And then in the interim, if somebody can come in and set us up, we'll be fine. All right. So, we're going to address the request by the defense to hold the matter -- this matter in front of me, further compliance in abeyance pending the federal court resolution.

Argument

Okay, Counsel Wilson.

MR. WILSON: Thank you, Your Honor. I'd like to begin just very briefly with a lay of the land where -- where we stand. The Court already gave a recap, which I think is very thorough and understands the status of proceedings. I just want to get into a little more detail because I think it's relevant to understanding this motion in particular.

So, the Court's order, which was entering the attorney general's proposed order in this case, granted one item of relief on the subpoena, which was that First Choice respond fully to the subpoena within 30 days. First Choice has done that.

First Choice served a written response to the subpoena within 30 dates of the -- days of the Court's order. And --

(Phone buzzing in background)

THE COURT: We've just got phones buzzing. Please turn them off. Off. Not just silent. Just turn them off, please.

Go ahead, Counsel.

MR. WILSON: First Choice served that written response and objections and it produced documents. It's produced documents since then, a total of 920 to date, totaling 2,363 pages. And it has additional documents that it will produce once the -- a protective order has been entered in this case. It's also holding back documents that relate both to its scope objections and also to its federal objections based on its Constitutional rights.

THE COURT: And those have been delineated as such in the reply?

MR. WILSON: I -- I believe so in general categories, they've been described in our written responses in terms of the documents we're holding back. The most significant of them would, for example, be the list of our donors that the attorney general has asked that we disclose and also the identities of our medical staff and personnel.

THE COURT: Okay.

MR. WILSON: And in the federal courts, what's going on right now is after the Court entered its order enforcing the subpoena, we had our pending Third Circuit appeal -- appeal.

THE COURT: Uh-huh.

MR. WILSON: We moved for an injunction pending an appeal and we asked the Third Circuit to grant us that relief. The attorney general filed a motion instead and said, just dismiss this appeal as moot because the federal claims are conceitedly ripe in federal court now. I believe the language of its motion was "all agreed the claims are ripe now."

THE COURT: Uh-huh.

MR. WILSON: No. We didn't think that was the right result. We felt the Third Circuit should have granted an injunction. But the attorney general said, no, this should be worked out in the district court because this action is ripe now. And the Third Circuit agreed with the attorney general and remanded the action to the district court, concluding that the appeal was moot and directed the district court to decide injunctive relief in the first instance.

THE COURT: Of course, Judge Shipp does not agree with your characterization that that's what the Third Circuit did.

MR. WILSON: He -- he does not, Your Honor. That's -- that's correct. But I would invite the Court to ask the attorney general to confirm his position on the record.

THE COURT: I don't think that's argued. I think Judge Shipp even acknowledges that both sides here agreed that the matter was ripe. Obviously, his decision says that's irrelevant. He has to decide if it's ripe, not the parties.

MR. WILSON: We -- we believe that the Third Circuit, by determining that the appeal was moot, it could not have determined that the appeal was moot and could not have remanded it to a Court that lacked jurisdiction.

THE COURT: Well, let me -- so I'm a little confused as to why you're arguing this to me. I'm not going to overturn what Judge Shipp did. I mean, he made a decision and he -- he gave a very thorough decision as to why he believed that the Third Circuit made no such ruling. They just said that -- whether I agree with Judge Shipp or I don't agree with Judge Shipp, I'm not sure what you want me to do with that information.

So just clarify for me why it's important that I accept arguably the party's agreement that it's ripe versus what the judge who was directed to hear it has decided.

MR. WILSON: Happy to, Your Honor. And we certainly aren't asking the Court to sit and review Judge Shipp's decision. That's for the Third Circuit. But what this matter is for is that it tells you that this is a ripe dispute, and I think this is the reason that the Third Circuit expedited this appeal.

As soon as Judge Shipp's order came down, we filed our motion to expedite the appeal. The attorney general's opposition came in to that motion. The attorney general said don't expedite the appeal; give us until a couple of days before Christmas for our response. And I think it was within 15 or 20 minutes of the attorney general's opposition coming in that the Third Circuit expedited the appeal, entering the schedule exactly as requested by First Choice.

To me, that's strongly indicative of how the Third Circuit sees both the merits of our argument as to jurisdiction and the merits of our argument as to the Constitutional claims and also, the urgency of the situation in light of the timeline put on this by the Appellate Division. So --

THE COURT: Well, the only thing I'll say to that is -- is that -- and again, I'm not -- this is not really the substantive argument of what's in front of the Third Circuit. But to the extent that sometimes, when I don't respond, then people think I'm agreeing. I don't know that I would conclude that the Third Circuit's decision to take it expedited is an agreement with the merits as proposed by First Choice.

I -- I agree that it seems that it means something, but I am not going to read into it. And I understand this is your argument on behalf of the client, but the way you phrased it, I just wanted to -- to make note of that. I don't know what the going do.

MR. WILSON: Well, certainly, Your Honor. And I make this point only to -- the Court, in your initial comments, noted that where we stand procedurally is different than when this motion was filed.

THE COURT: Uh-huh.

MR. WILSON: Now, we're in the Appellate Courts and I'm -- I'm raising this -- the Court can certainly read the tea leaves different than we do, but we think that Judge Shipp's decision really can't stand and it will likely be overturned by the Third Circuit. And we want the Court to have comfort that the Third Circuit, whatever decision it's going to make is -- we think it's going to be in our favor, but we also -- it's very clear

that it's coming soon because we're likely to get a decision on our motion for injunction pending appeal before the end of this month. And we think that we are likely to get a decision on our appeal itself by mid-December, given the schedule that the Third Circuit has already set.

THE COURT: How does that interact with my charge from the Appellate Division state court to render a decision and what, procedurally, do you see happening in terms of if I rule by -- if the -- if the Third Circuit grants your motion. Right? Your -- your -- your argument to the Third Circuit is a twofold argument. The first argument is that they, what, stay the subpoena?

MR. WILSON: We have a motion pending in the Third Circuit and then we have our appeal pending in the Third Circuit.

THE COURT: Right.

MR. WILSON: The motion is asking for an injunction pending an appeal. We think that would be --

THE COURT: Against the subpoena -- subpoena being complied with.

MR. WILSON: It would be against the attorney general enforcing the subpoena. And I think that if that -- if that order came in, then the attorney general would be enjoined by the third Circuit from enforcing the subpoena pending the outcome of the appeal.

THE COURT: Okay. So --

MR. WILSON: Now, I think --

THE COURT: -- the enforce the injunction would be against the attorney general, not my -- with me.

MR. WILSON: That's correct.

THE COURT: Okay.

MR. WILSON: But I think the attorney general would -- would do the right thing and come to this court and the Appellate Division and say, "I've been -- I've been asked to hold off. Please -- please do so." And I think that would be the right thing in those proceedings.

In terms of what -- what this means for -- for these proceedings now, I think what it tells you is that a decision by the federal courts is going to be imminent in this case. We had waited for four months for a decision from Judge Shipp and ultimately got this dismissal. We think we're very likely to get a decision on the merits, either of our injunction motion or our appeal from the Third Circuit very soon. And so, the Court is not going to be delaying things substantially. And we think --

THE COURT: Tell me again, Counsel, just because I am trying to keep all this straight here, tell me again the -- the points on your appeal to the Third Circuit.

MR. WILSON: The main issues --

THE COURT: Is it constitutionality?

MR. WILSON: There's really three issues that are going to be on appeal. The first one is the question of whether the district court got it right in finding that there was no ripe controversy. The second one is going to be on one of the Constitutional issues, specifically

the associational rights that First Choice has to the privacy of its donors. And the third issue is going to be a selective enforcement claim, which we had also presented, both under theories of retaliation, viewpoint discrimination, and free exercise.

But the facts relating to that claim are -- are all the same. And those are the same issues that were presented to Judge Shipp. But --

THE COURT: But -- but that he did not rule on.

MR. WILSON: He did not rule on them. But they are before him because he denied First Choice's motion for a preliminary injunction because he found he had no jurisdiction.

THE COURT: So the -- appeal wise, I mean, it's certainly potentially a result is that Third Circuit doesn't rule in the first instance on those issues and remands it yet again.

MR. WILSON: But --

THE COURT: I mean, I -- they're going to take original jurisdiction on those things?

MR. WILSON: It's possible it could go either way, Your Honor, but we would think that if we were remanded, there would be likely a request, as with our first appeal to the Third Circuit, that there would be the entry of a TRO along with remand to hold the status quo in place while that motion was adjudicated.

THE COURT: Okay.

MR. WILSON: The Court asked earlier about whether granting this motion would be consistent with the Appellate Division's mandate. We think it

100 percent is because the attorney general's motion -- when this Court declined to rule on these issues pending appeal, the attorney general asked the Appellate Division, send back First Choice's motion for a protective order and send back our motion to enforce litigant's rights. That's the relief that he asked for.

The Appellate Division granted his motion.

THE COURT: Wait, say that again, I'm sorry. One more time.

MR. WILSON: The attorney general asked the Appellate Division to remand his motion to enforce litigant's rights and our motion for a protective order to hold further compliance in abeyance.

THE COURT: Right. Okay.

MR. WILSON: So when the Appellate Division granted that motion, it necessarily sent those issues back. And the language of its order was for this Court not to reach any specific outcome, but to consider these enforcement questions. This Court can consider those issues and complete its remand by ruling on the pending motions by December 2nd.

We think the -- the easiest, best, right, most straight-forward way to do that is by granting First Choice's motion to hold further compliance in abeyance. And we also think, as the Court has already suggested, that December 2nd is the prudent date to do that in light of the -- the pending federal proceedings.

THE COURT: Okay.

MR. WILSON: We also -- the Court had raised the last time we were before it that this was similar to a reconsideration motion. We think it's not a reconsideration motion because how the state of play has changed since that time. The first time we were raising the first filed rule, and that's -- has a unique application under Smith & Wesson and it was with regard to whether the subpoena was going to be enforced.

Now, we're in a position where the Court has determined that the subpoena is enforceable, but it hasn't reached these federal issues that -- it hasn't reached the Constitutional questions. It held that they were not ripe. Now, the attorney general acknowledged that the Court's order changed the game in federal court according to his position. Now, we thought --

THE COURT: My order.

MR. WILSON: Yes, your order changed the game. Now, we thought the federal case was ripe from the beginning. We continue to maintain that. But it was clear, at least to the attorney general, that that was a significant development; that when this Court held the subpoena enforceable, that meant that those claims are ripe in federal court.

This Court hasn't decided them. The attorney general and First Choice agree that they are ripe in federal court now. And so, it makes sense for this Court to defer ruling pending the federal proceedings.

THE COURT: Are they -- you know, if it's determined that -- that Judge Shipp is correct, they're not ripe because I haven't addressed the -- in -- motion

to enforce litigant's rights argument because there's no risk of any penalties what -- because it's not enforceable yet. That's how I read his decision.

MR. WILSON: That's certainly what Judge Shipp thinks. And if Judge Shipp were correct, that that would be what would happen. I don't think though that Judge Shipp's -- his order, we think, has some significant flaws. And perhaps, the most significant is that the attorney general is here today asking that First Choice be sanctioned today for what it's done.

Now, if -- we don't think there's any basis for that, but the threat is there and for the federal court to say there's no threat when that's the thing we're deciding today, it doesn't really -- it doesn't really make sense. So, again, we recognize the Court is not here to sit in review of Judge Shipp. And frankly, I don't sit in review of Judge Shipp either and I'm taking it up to the Third Circuit.

But we think this is a good reason for the Court to hold further compliance in abeyance. And we think it's also, frankly, required by the Constitution. We recognize that the Court has ruled that the federal claims are not ripe. But at this stage, where we are being asked -- the attorney general is here saying First Choice needs to turn over the names of 5,000 of its donors. That issue, the Constitutional protection of those donors' privacy is ripe today.

And the U.S. Supreme Court has been very clear that where there's an associational First Amendment privilege objection asserted, this is the Gibson case cited in our briefing, Courts must decide those objections. And of course, you're in a situation of trying to put the toothpaste back in the tube and un-

ring the bell and, you know, get the horse back into the barn if you decide that after the names have already been released. And the U.S. Supreme Court has also been clear that a protective order is no answer to that associational harm.

In Americans for Prosperity, The U.S. Supreme Court said that even where California promised to keep donors' information confidential once they were disclosed, the Supreme Court said there's still associational harm here. That was true there; it's true here.

Those objections are unquestionably, as in the words of the Third Circuit, it is undisputed that those objections are ripe in federal court, as the Third Circuit held. They should be adjudicated in federal court. The Third Circuit is about to do so and this Court should stay proceedings -- or stay further compliance in the meantime.

THE COURT: So if I were to -- hypothetically speaking, because I don't know what I am going to do, but if I were to grant the -- the motion in aid of litigant's rights, does that -- is it your -- is it your belief on behalf of your client that that would overcome Judge Shipp's finding of no -- the jurisdiction and allow him to then hear it?

MR. WILSON: I -- I think that appears to be Judge Shipp's position that it would. But it was also Judge Shipp's position that once the subpoena was enforced, it -- the claim would be ripe. And that's what happened, and that's why we conceded it would be ripe. And that's not the conclusion that he reached.

I do think that would ripen it, but I also don't think that it would be supported for the Court, just as a matter of state law for this Court to enforce litigant's rights. We'll obviously talk about that later, but we don't think that the attorney general's position on that issue is merited.

THE COURT: Okay.

MR. WILSON: If the Court has no further questions on this motion, I'll -- I'd like to reserve a little time for rebuttal, but I --

THE COURT: Yes. I'm going to take -- just let my IT person come in. I want to hear from the State. And I think they need to check your settings.

So, Jess, you want to come in now? And I'll be -- I'll be right back.

So, let's just pause the record for just a minute. If this doesn't get set up pretty quickly, then we'll have to figure something else out.

MR. WILSON: Well, if the Court can live without my PowerPoint -- it's a beautiful PowerPoint, but --

THE COURT: Okay. Let's pause the record.

(Off the record from 2:43:39 p.m. to 2:50:37 p.m.)

THE COURT: Continue. All right. So, I -- let's go back on the record. Platkin v. First Choice, C-22-24.

I would like to hear the State's response to the defendant's request for basically a stay of everything here.

MS. VAN DRIESEN: Yes, Your Honor. The request -- First Choice is seeking an extraordinary request of a stay pending a decision in the federal

courts. While there have been developments since Your Honor's May decision, we're back at the same place, really. A decision on jurisdiction by the Federal District Court is up on appeal at the Third Circuit. It may come out one way. It may come out the other way.

We -- the Attorney General's Office obviously disagrees with defendant's take on the Third Circuit's expedite order and reading the tea leaves on that. But there's no reason to stay this action pending resolution of the federal claims. And --

THE COURT: What is -- what is the harm, though? And I know I'm kind of turning it on its head because, obviously, the party seeking the stay is supposed to demonstrate that they are being harmed --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- and I understand the arguments in that regard. This appears to me potentially to be one of those areas where it might be prudent for the Court to look at the -- the harm, the balance, and considering the time -- potential time which arguably may not be too much longer, a few weeks or a month. What is the harm to the State if I were to say, let me just wait and see what the federal court does, rather than, as to pull one of the three or four metaphors, I have to put the toothpaste back in the -- in the tube after the -- the order that the subpoena be complied with? What is the harm to the State to wait and maybe put a -- a time that I won't wait any longer? Is that an option that the State thinks has any validity?

MS. VAN DRIESEN: No, Your Honor. And a lot of this goes back to while the motion today was not

brought under the first filed rule, the Appellate Division's decision in Smith & Wesson saying that the first filed rule does not apply in the subpoena enforcement circumstances really brings to light why a stay here in abeyance of the federal proceedings is incorrect. The Appellate Division appropriately recognized that if a subpoena recipient can run to the federal courthouse to seek an injunction against a State subpoena, it upends the whole subpoena enforcement action in the state court and really undermines the power of the state courts and the State. They're simply seeking that same relief under a different name.

And here, the attorney general served the subpoena more than a year ago. Your Honor ordered compliance with the subpoena six months ago. At this point, we cannot keep delaying because of the federal court. And on the Constitutional issues, there's no toothpaste to be put back in the tube because the Constitutional issues are before Your Honor and Your Honor can decide them. There's no entitlement to have them specifically heard by a federal court. Your Honor already decided them.

THE COURT: No. Well, that's -- that's where I have some questions for the State. I want to know specifically what you mean when you say that I already decided the Constitutional issues because my recollection and my review of the record is that I very specifically did not decide the Constitutional issues and, in fact, said that that would be the subject of potentially something I would consider if it's brought back to me after -- if you remember, I was unhappy the parties hadn't conferred. And apparently, some of that has happened.

I don't know, as I sit here today, that I can articulate if there's been a narrowing of the scope of the -- you'll have to tell me. But what it is exactly when you say I've decided the Constitutional issues? What is it that you're specifically saying? Because I want to make sure I really understand that argument.

MS. VAN DRIESEN: Sure. At -- at -- in your May ruling, Your Honor specifically said that you did not find the subpoena violated any statutory or Constitutional tenant and you found there was no kind of viewpoint discrimination in the service of a subpoena. While you sent the parties back to confer on scope, the issue of the association claims has been before Your Honor, even though you declined to rule on them. And on the motion to enforce litigant's rights, they are again before Your Honor in which you can rule whether or not enforcement of the subpoena again will violate those rights.

THE COURT: See, part of what I'm not -- at least what my intent was -- was more along the lines of respond to the subpoena. But a response can well be that we object, which I'm gathering is what happened -- we object because wha -- privilege or, you know, it's a violation of Constitutional -- and then, kind of as was outlined in -- outlined in -- in Judge Shipp's decision with the varying stages of -- of enforcement or the subpoena process -- that the -- for the reasons that I'm not going to repeat that I said on the record earlier, I did not think the Constitutional claims were necessary to adjudicate on that motion because of the -- I don't know -- investigatory nature of the subpoena. That it was not, on its face, really requesting -- requiring that I make that Constitutional argument.

Now, on the motion to -- for the protective order, that may now be in front of me. But this concept that I've already decided it is still troubling to me. And I'm not saying I didn't say what you -- you read. I just would have to go back and look at the context of whether that was in -- in me saying that I didn't make any ruling on this as opposed to saying I absolutely find there was no Constitutional violation. So I just want to be real careful about that part.

But I do understand your first –- first-filed rule argument. And the -- well, I understand it. Did you want to add anything else?

MS. VAN DRIESEN: Just to respond on the whether or not Your Honor has ruled on the Constitutional issues.

THE COURT: Uh-huh.

MS. VAN DRIESEN: Even if you find you did not reach the associational claims, that's something Your Honor can still do now on the motion to enforce litigant's rights, which we're happy to start arguing if you're ready to move on. Or --

THE COURT: Um --

MS. VAN DRIESEN: -- if you have any further questions.

THE COURT: Before I do that, I want to see if there's a response over here on the first mo -- on the first motion. And then we'll -- we'll see. Counsel?

MR. WILSON: Thank you, Your Honor. Just a -- a few brief responses.

First, we think the Court has it exactly right to look at this in -- on a balance of harm perspective. If

the Court grants the Attorney General's motion to enforce litigant's rights and compels First Choice to turn over the names of 5,000 of its donors, that's an irreparable harm that can't be undone no matter what once the ef --

THE COURT: But -- but what -- well, how -- but, again, that first-filed rule is -- is -- it's a -- it's an argument that is not something that I can just ignore. It was clearly a -- as -- and I think that -- that it was properly cited, in terms of -- of the -- what the -- the Appellate Division has -- have -- have held. So, what's your response to that?

MR. WILSON: On the -- on the first-filed rule, we think that the -- the rule is about whether the deter -- the action is going to be determined first or second.

And this Court essentially determined the Attorney General's action. The Attorney General moved -- or filed an action to enforce a subpoena. This Court declined to stay proceedings pending the Federal proceedings and held the Attorney General's subpoena was enforceable.

Now, we're in a different phase. It's not a question of which action gets adjudicated first. We're in this enforcement phase. And the -- the Court -- this Court didn't let the Federal Court go first. This Court said we're going to go and -- ahead and enforce this subpoena.

But now that we're there, and now that this Court has held that those Constitutional issues have not been resolved, it makes sense to wait for the Federal Court, which does have those issues in front of it.

THE COURT: But the Federal Court did rule. Judge Shipp ruled. He said until I do something more, the Federal Court has no jurisdiction. So, it -- it's not just a question of me waiting -- but you're talking about waiting on the Appellate process.

MR. WILSON: Yes. But it's a -- a very expedited Appellate process. And I think that the -- the harm is certainly -- well, I -- we don't think the Attorney General has any harm in waiting a few days for the names of 5,000 donors to a Pro-Life organization.

We -- we don't think that's any harm, much less an irreparable harm. He hasn't shown any enforcement need to get that information. But there's no prejudice to the Attorney General from -- from waiting for that decision to -- to play out in the Federal Courts.

And it simply can't be right that First Choice has nowhere to go to get a decision on its Federal rights. The U.S. Supreme Court's been very clear that there are these protections for privacy of donors. Now, if this Court has held those are not ripe here, they've got to be ripe somewhere. There's got to be somewhere we can go to get an adjudication of whether or not these people have to have their identities known by a law enforcement official who publicly castigates their position in all his social media posts and in consumer alerts that he's propagated through the State. There's got to be somewhere we can go to get that adjudication.

It's before the Third Circuit right now, and it's going to be decided in a matter of weeks. I think --

THE COURT: We think --

MR. WILSON: -- the Court's --

THE COURT: We think.

MR. WILSON: Well --

THE COURT: They didn't say that they were going to issue a decision in a couple of weeks.

MR. WILSON: That -- that's correct, Your Honor. But we did -- the fact that the Court took it on such an extraordinarily expedited basis, setting hearing immediately the week following the completion of briefing, we think it's a very strong signal to that effect. And it's because of --

THE COURT: Well, I guess it means something. I don't --

MR. WILSON: Yes.

THE COURT: -- know. Like I said before, it certainly is not something you see every day. I'll put it that way.

MR. WILSON: I -- I'd just like to add a couple other points to -- this might be a nice bleed-over moment into the -- the second motion. The Attorney General represen --

THE COURT: Which I know is your motion, but we'll --

MR. WILSON: Yeah.

THE COURT: -- I'll allow that. Go ahead.

MR. WILSON: The -- the Attorney General represented that First Choice did not comply with the order. We did comply with the order, as -- as the Court

observed. The Court directed us to respond fully to the subpoena. And response can well be that we object.

And we didn't just object; we've produced documents. We've produced 2600 pages of documents, and we have more ready to go, subject to the entry of a protective order.

I had a similar case in -- in Washington court where a pregnancy center produced 1500 pages, and the Attorney General said, that's enough; you've substantially complied; all done; dropping it.

The Attorney General here says, no, no, no; sorry, you've got to give us everything; you've got to give us your donor list. We don't think -- we think we have complied with the Court's order.

And again, this will pertain to the second motion, but I think I have as much trouble understanding the Attorney General's position about what this Court did with the Federal issues as -- as the Court does. Because when we were before the Court on May 28th, the Attorney General stood up and said, as the Court has ruled, there are no ripe Constitutional issues. This Court then repeated that on the transcript. Over and over again, said, I did not rule on that.

Now, today, the Attorney General stood up and said, first, that the Cour -- the issues are before the Court today to decided, even though there's been no briefing on them, and then said, actually, the Court's already decided them.

You know, I don't know which story is correct because the -- the Attorney Gen -- Attorney General is telling different things to the Third Circuit at the same time. But I do know what this Court ruled. And

this Court was very clear that the Constitutional issues were not ripe, and it was not going to rule on them. That means they remain ripe for the Federal Courts to decide, and this Court should defer ruling pending that.

THE COURT: Just real quickly before I jump back over here. Specifically, what -- and it may be in here, but what was the specific objection made to the document demand for the donor names?

MR. WILSON: There were a number of objections made. But the most significant of them would be First Amendment association protections and First Amendment privilege. But we also think, as a State law basis, that they're beyond the reasonable and proportional scope of -- of discovery in this case. And that's because the documents that we have produced, in relation to those requests, show that there's no basis for the Attorney General's su -- su -- suspicion here.

And, again, we'll get into this more, but the Attorney General says he's concerned that First Choice's donors, some 5,000 of them, ha -- roughly half of its donors may not know that it's a Pro-Life organization. They may think it's -- actually supports abortion. And he says, so, I need all those people's names. If they didn't give through the donor website, he says, I want to know every one of their names. So, if they went to a First Choice fundraiser, if they gave through their church, he says, I want to know all those names.

We said, that's -- there's no basis to think those people were deceived. And we actually produced to him -- we said, we're going to give you the mailing that

we send out to every First Choice donor that says right on the outside, thank you for helping us protect life.

And the Attorney General's theory is that there are people out there who gave to First Choice, didn't know it was Pro-Life, got that mailing sent to them, and no one's ever complained about it, but he still needs 5,000 of their names.

Because he's out there to protect these donors to this pregnancy center. He's concerned about protecting these donors of the organization that he has issued a consumer alert against. He's here to protect them. He has eight attorneys here to protect those donors.

Your Honor, it -- it doesn't make any sense, but we'll hear more about it in the next motion.

THE COURT: Okay. All right. I'm going to, please -- remind the people that are here listening, please, no comments, not even under your breath. Just everything is picked up by the record, and it's very distracting to me and to counsel. So, please, if you can't control yourself, you can wait outside. All right? Thank you.

All right. Counsel, I'm sorry. DAG Van Driesen, let me hear -- because I think the way it went was that motion to enforce, and then it was cross-motion. Right? So, we'll start with -- with that. To the extent that you want to respond, first, to what was just said, that's -- I'll leave that to your discretion.

MS. VAN DRIESEN: Sure. I'd like to respond to First Choice's statements regarding what they have

done in response to the subpoena since Your Honor's May ruling.

The parties, first, shortly after the order was issued, started on the in confer process. And we tried to negotiate the scope of subpoena, but we were doing things out of order. Typically, when you do that, we would've had the written responses and objections to understand exactly what the subpoena recipients' problems were.

Instead, First Choice came to us, asking us to limit the scope and did not give us the opportunity to kind of see what their claims were on each request and then go back. We were doing things a bit out of order.

But First Choice counsel focuses on the amount of pages that they have produced to us. But they do leave out that they have wholesale not responded by -- to producing documents to nine of the subpoena's 28 requests. They say these are protected by Constitutional rights; we will not be responding to them in any form. They have made no effort to come to the negotiation table on those requests.

THE COURT: Let me ask you something, DAG Van Driesen. On that, is that where the argument then comes back around to your saying -- taking the position that I already decided that? Because -- or is that your response to the privile -- we'll call it a privilege argument of the Constitutional argument on the donors, or whatever those other nine -- whatever the nine --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- areas are. Is the response of the State that you can't take that position because the Court already decided it's Constitutional?

MS. VAN DRIESEN: Your Honor, the State does believe that the Court decided that the subpoena -- the investigatory subpoena is Constitutional. And we cited throughout our papers that the near issuance of an investigatory subpoena does not violate a Constitutional right. And that is from the Supreme Court, Ohio Civil Rights Commission.

THE COURT: Right. But in that case, was it -- what was the objection based in? So, not just -- because I agree, and I think that was part of my ruling --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- is that the existence of the subpoena itself is not unconstitutional, based on our State -- the -- the three statutes that allow for this investigatory process. So, to that extent, I agree that I ruled --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- on that. But to the specific argument about the association and -- and the scope -- the content of the subpoena versus the existence of the subpoena, which is what I think we're focused on now. Right?

MS. VAN DRIESEN: Uh-huh.

THE COURT: The -- the content?

MS. VAN DRIESEN: Yeah.

THE COURT: What is it about -- the -- what is the State's response back to the objection of privilege there?

MS. VAN DRIESEN: On the -- the merits of their objection?

THE COURT: Has there been --

MS. VAN DRIESEN: Uh-huh.

THE COURT: Let me ask it this way. Has there been a response provided to the -- was it in a privilege log or something?

MS. VAN DRIESEN: It was in responses and objections.

THE COURT: Okay. So, we're not going to get into what's the proper way to do that. But let's assume that that was done properly. Then what was the State's response to the objection?

MS. VAN DRIESEN: At the point that the responses and objections were served to us, the parties have not engaged in further meet and confer because of these pending motions.

THE COURT: Okay.

MS. VAN DRIESEN: Including First Choice's motion for a protective order, where they asked Your Honor for an order saying they do not need to comply with the subpoena. So it's hard to come to the ta -- table and negotiate when one party is seeking an order saying we do not need to comply with the subpoena.

THE COURT: So, what is the State's position with respect to the objection?

MS. VAN DRIESEN: Your Honor, the State's position is that the -- and this is a bit difficult because there are separate objections and analysis for each --

THE COURT: Okay. Well, whatever you --

MS. VAN DRIESEN: -- of the requests.

THE COURT: -- think you need to -- to -- just --

MS. VAN DRIESEN: So --

THE COURT: -- just let me know what you're focused on --

MS. VAN DRIESEN: Sure.

THE COURT: -- and then we'll do it that --

MS. VAN DRIESEN: Focusing first on the request for donor information.

THE COURT: Okay.

MS. VAN DRIESEN: So that's request 26 in the subpoena.

THE COURT: Okay.

MS. VAN DRIESEN: And that seeks the identity of dona -- identify donations made through means other than the donor solicitation page. This -- this request does not violate the First assoc -- First Amendment association right because it is narrowly tailored.

First Choice relies heavily on the Americans for Prosperity case. But there, the California law mandated disclosure without issuance of subpoena or any narrowing. Here, we're seeking a very limited subset of documents, and the State is willing to narrow this request.

And as it's argued throughout its briefing, the focus of this request is people that donated through the First Choice patient client sites that the --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- State does have concerns may be misleading. We've never had the opportunity to meet and narrow that with First Choice because their position has always been we will not be producing any documents until the Federal Court rules on our Constitutional defense.

THE COURT: Okay. So that's on the – number 26.

MS. VAN DRIESEN: Uh-huh.

THE COURT: All right. And then when you said other than donor solicitation page --

MS. VAN DRIESEN: Yes.

THE COURT: -- is that one of the other areas?

MS. VAN DRIESEN: So, since we've kind of perceived some documents First Choice and seen from their briefing that other than the donor solicitation page, we understand that First Choice receives donations through other means: galas --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- kind of direct to mail, the State does -- reserves its right to maybe come back and seek that information. But at this time, that's not the focus of the State's investigation.

THE COURT: So, the focus right now, and the narrowing of -- of that, would be to say -- I don't know what we called it during our -- but bas -- basically, the patient facing --

MS. VAN DRIESEN: The client site.

THE COURT: Client site. Okay. Okay. Are we going to go into each one specifically now, which I -- we probably should. Because I'm wondering if it makes sense to -- well, just keep track of them, and then I'll -- I'll ba -- how -- because there are not that m -- how many are there?

MS. VAN DRIESEN: There -- I believe there are nine, and a lot of them co -- do cover --

THE COURT: Okay.

MS. VAN DRIESEN: -- similar ground.

THE COURT: Let's -- let's try that. I'll try to keep it straight.

MS. VAN DRIESEN: I guess the next kind of category of request that they've plugged into this association claim is to identify their service providers. So, their volunteers or staff that provide medical services to clients.

And they have claimed that this is also protected by their association right. But these are regulated services by licensed professionals, and it's well within the State's authority to have an understanding of where licensed professionals are providing services, what medical services they're providing, and whether they're being providing within the scope of their licenses.

THE COURT: And where -- I know we covered a lot of this back in May, but I'm just not that good. Where is it -- where has it been established that there are licensed professionals onsite? Is it more that it

was the State's position that they're advertising that there are?

MS. VAN DRIESEN: It's our understanding that there are. They say that they offer diagnostic ultrasounds. They offer pregnancy tests. We understand they do have a medical director. And in order to determine if First Choice is providing these services that should be provided by a licensed professional, we need to know who is providing the services in the first instance.

THE COURT: And so, this is beyond their employees? Or this is including em --

MS. VAN DRIESEN: I --

THE COURT: -- employees --

MS. VAN DRIESEN: I think --

THE COURT: -- or some kind of independent contractor or something?

MS. VAN DRIESEN: I think it would include employees, independent contractors, or any volunteers that are providing and interacting with their clients.

THE COURT: Okay.

MS. VAN DRIESEN: Because we also need to understand the scope of what that interaction is.

THE COURT: Okay. Okay. So, that's the second one?

MS. VAN DRIESEN: That is the second category of association claims. And I think the remainder of the requests that they have kind of wholesale declined to

respond to is based on their claims of selective enforcement and viewpoint enforcement.

And I think on that score, Your Honor did rule -- because that goes directly to the quotations Your Honor read from Smith & Wesson -- that simply because the Attorney General has made some statements about a area or enti -- or a type of entity does not mean that they're being targeted for some sort of selective enforcement, and they just have not hit the threshold to make that sort of claim here at all.

THE COURT: Okay. So, those are the remainder?

MS. VAN DRIESEN: I believe those are the remainder. I think there are some non-Constitutional objections they're still making.

THE COURT: You -- can you just go through them --

MS. VAN DRIESEN: Yeah --

THE COURT: -- quickly.

MS. VAN DRIESEN: -- of course. So, they're claiming that they should not need respond further to the requests related to the Consumer Fraud Act because it's their assertion that the documents that they have produced to date show that they are not covered by the Consumer Fraud Act. But, again, we're in the investigatory stage, and it is the Attorney General's prerogative to make that determination. And it's offered no other grounds on which to challenge those requests.

THE COURT: And this was the -- the argument that they don't engage in merchandise --

MS. VAN DRIESEN: Correct --

THE COURT: -- (indiscernible).

MS. VAN DRIESEN: -- Your Honor.

THE COURT: All right. So, that's the -- so, that's not su -- is -- is that subsumed under the selective enforcement or it's just a general --

MS. VAN DRIESEN: I think that's a separate --

THE COURT: Okay.

MS. VAN DRIESEN: -- appli -- application of the Consumer Fraud Act.

THE COURT: Okay. And then, what were the selective enforcement ones? Do you have those there?

MS. VAN DRIESEN: I don't have -- I just need a minute to find --

THE COURT: Sure. Sure. Sure.

MS. VAN DRIESEN: -- the request.

THE COURT: Why don't we see if that's working at the moment while counsel -- or DAG Van Driesen's looking for her -- we -- are -- believe this --

MR. WILSON: We'll do a quick test.

THE COURT: -- is now going to work?

COURT STAFF: (Indiscernible) we can hope.

THE COURT: One would hope, yeah.

MR. WILSON: It is.

THE COURT: Alrighty. Look at that. Wonders never cease. Is it on the other monitors, though?

MR. WILSON: I -- I think because we're going through this, it's -- it's --

THE COURT: Oh.

MR. WILSON: -- it's just up there. I'll --

THE COURT: Okay.

MR. WILSON: I'll only put the really cool stuff up, though.

THE COURT: So what is that all about now? It can't work on here because there's no --

COURT STAFF: I don't know. I don't think he really explained why (indiscernible). Just (indiscernible) --

THE COURT: All right. Can we put a ticket in?

COURT STAFF: A ticket in? Yeah.

THE COURT: Yeah. Thanks. Well, because I don't know if they're going to want to use it tomorrow for the trial. Okay.

MS. VAN DRIESEN: The remainder of the objections are those that would identify third parties, not necessarily donors or staff, but that may be associated with First Choice, so --

THE COURT: I don't know what that means.

MS. VAN DRIESEN: So, any complaints that have been made by anyone to them, anything regarding settlements, lawsuits, kind of -- just any third par -- anything that would require identification of a third party --

THE COURT: Okay.

MS. VAN DRIESEN: -- they have objected to.

THE COURT: All right. Was there anything else?

MS. VAN DRIESEN: So, the remainder of their two objections that they have claimed is that it's an undue burden for them to have to conduct a search of their electronic records --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- because they say it's not reasonable and proportional. But that's not the standard at issue in an investigatory subpoena. That's a civil discovery standard.

THE COURT: Uh-huh.

MS. VAN DRIESEN: The Attorney General has much broader powers to search. And it cannot say it will produce the records it has at hand and decline to search its electronic records.

THE COURT: Was there a -- were there specific terms provided to search for?

MS. VAN DRIESEN: There have been no terms exchanged.

THE COURT: Okay. All right. And then I think you had said to -- that was -- the rest --

MS. VAN DRIESEN: Yeah.

THE COURT: -- were encompassed in that?

MS. VAN DRIESEN: Yeah. And there's one final that the time period of 10 years is overbroad. The State will note that only requests six and seven have that 10-year time period. The rest of the subpoena is a three-year period. And those requests we gave a broader period because they pertain to scientific

documentation. So it gives a broader area if studies were done earlier, that we would accept those as well.

THE COURT: And then the rest are three -- three to four years?

MS. VAN DRIESEN: They're three years, yes.

THE COURT: Three years. Was that -- was any of that narrowed as a result of --

MS. VAN DRIESEN: No, Your Honor.

THE COURT: -- meet and confer? That was the original --

MS. VAN DRIESEN: Yeah.

THE COURT: Okay.

MS. VAN DRIESEN: That's the original subpoena.

THE COURT: Okay. All right. Anything else on your motion at the moment?

MS. VAN DRIESEN: We would just restate that First Choice has made every effort to avoid compliance with the subpoena. They've received orders from the State Court and run to the Federal Court and vice versa. And the State served the subpoena more than one year ago, and it still has not provided a fulsome response.

And the State would just ask that you grant the motion in aid of litigant's rights.

THE COURT: Do you think that -- in light of my prior ruling that I would be able to address the -- for instance, the association arguments, without further briefing and/or argument?

MS. VAN DRIESEN: The S -- we do, Your Honor, because these were briefed and presented to Your Honor on the May papers ex -- excuse me -- extensively in the motion to quash, and they're also, while not directly addressed, they are addressed in this briefing in terms of the associational claims.

THE COURT: Okay. So, you think it's enough what I already have?

MS. VAN DRIESEN: Correct, Your Honor.

THE COURT: Okay. Is that it for now?

MS. VAN DRIESEN: Thank you, Your Honor.

THE COURT: All right. Thank you, DAG. Okay. Let's hear the response -- now, at -- at this point, is your response going to also include your motion for protective order, or are we doing that separate?

MR. WILSON: I -- I think we can do it at the same time, Your Honor. It basically is asking the Court to uphold our scope objections to the subpoena.

THE COURT: Okay.

MR. WILSON: So, I want to briefly touch on some of the things that the Attorney General said about the history of conference in this case between the parties because I just don't think they're accurate.

THE COURT: The history of conference?

MR. WILSON: Of the conference between the --

THE COURT: Between the --

MR. WILSON: -- parties.

THE COURT: -- two of the parties?

MR. WILSON: Yeah.

THE COURT: Okay.

MR. WILSON: So, this -- there's been some shifting of the Attorney General's positions in this case that I'd like to highlight and just kind of lay the groundwork through here.

This Court ruled that First Choice's Constitutional arguments were premature, preserved, not right for adjudication, and would not rule on them. And the Attorney General agreed with that. He said, as the Court just ruled, there are no ripe Constitutional issues at stake in this case. This Court then said that the determination of the proper scope of the actual demands of the subpoena was premature before the parties had conferred. And the AG had actually suggested that. He suggested that the parties should confer over the scope of the subpoena and then, if there are any issues, bring it back to the Court.

THE COURT: But that has happened. There's been some --

MR. WILSON: It has not happened --

THE COURT: There's --

MR. WILSON: -- as I'll -- as I'll detail.

THE COURT: -- not been any conferring?

MR. WILSON: Let me explain what happened at the next poi -- the -- the Court directed us to fully respond to the subpoena. And here's what the AG said to us when we started conferral two days after the Court's order. The Attorney General said to us in the course of that email thread -- and this is cited as an exhibit in our conferral record. He said he was more

than willing to continue to meet and confer about your client's responses and production once we have your written responses to the document request.

Well, let's see the contrast between what the AG said and what happened. Even though he had admitted that there were no ripe Constitutional issues in this case based on the Court's ruling, now, he claims that this Court's already rejected the Federal claims on the merits and that First Choice is trying to relitigate them. He said that the parties should confer over the scope of the subpoena and then, if there are issues, bring it back to the Court. But then, when we raised our scope objections during conferral, he didn't ever explain why our scope objections were improper.

The Court asked the Attorney General just now -- I believe the question was, what was the State's response to these objections? And, Your Honor, the only response we ever received was, give us everything. He said, we're not going to accept anything less than everything we asked for. We never heard a response during that conferral.

And then he said he would confer further after he received our client's responses and objections. What -- the written responses. So, what did we do? We did as he proposed. We served written responses and objections, and we produced documents.

The Attorney General suggested that First Choice has refused to comply. Your Honor, that is not true. We have agreed from the beginning we would comply with the Court's order. We did comply with the Court's order. We served our written responses and objections. We produced documents. And he said he

would confer further after he received those written responses and objections. What was the next thing we heard from him? He filed this motion.

THE COURT: So, when was --

MR. WILSON: It was the next thing.

THE COURT: When was -- just give me some time frame, so I -- I can just orient myself. So, you're talking about after my order, there was -- I thought, from what I remember reading, relatively soon, there was a -- a exchange of --

MR. WILSON: That's correct, Your Honor.

THE COURT: -- information -- whatever.

Okay. And then, when did you send the -- what's the time frame for when you said you sent the responses and the production, including, I guess, the objections, and you claim that the Attorney General said he would be more than willing to meet and confer? I'm guessing that's in a -- that's in your memo -- in your --

MR. WILSON: Yes.

THE COURT: Okay.

MR. WILSON: So --

THE COURT: And then, right after the motion was filed. Right --

MR. WILSON: Yes.

THE COURT: -- after that?

MR. WILSON: That's correct. So, on the 30th day was when we served our written responses and objections and our initial document production. And

the Attorney General, the next thing we heard from him was his filing of this motion to enforce litigant's rights. So, there hasn't been meaningful conferral.

And, frankly, I was surprised to hear many of the things that the Attorney General just said in the presentation there because they're things I'm hearing for the first time about the scope objections that haven't been raised in correspondence, haven't been raised in briefing, but they're being said for the first time here.

That's -- that's why this issue shouldn't be before this Court, among many other reasons. So, I'm going to -- the perils of making a slide presentation in advance is some things you have to adjust. I'm going to skip this slide.

THE COURT: Go right ahead.

MR. WILSON: We already covered that motion.

THE COURT: Well, ju -- make a note for me that I would like a response to that -- as to why no answer, then just went right to motion, please. Go ahead.

MR. WILSON: So, the Attorney General's motion is not ripe. He said he was more than willing to confer about our responses once he received our written objections. He didn't do so. Rule 1:6-2(c) says that for all pretrial discovery motions, the movant has to certify a good faith attempt to confer orally or in writing that continued non-compliance will result in an appropriate motion being made without further attempt to resolve the matter.

The -- the Attorney General's motion doesn't contain that certification. That matters also because --

THE COURT: Excuse me, Mis --

MR. WILSON: Yeah.

(The Court confers with Court Staff on unrelated matter)

THE COURT: Sorry. That was our next matter. Okay.

MR. WILSON: Should --

THE COURT: The continued --

MR. WILSON: Should I proceed?

THE COURT: -- non-compliance on the 1:6-2(c). Okay.

MR. WILSON: So, the Martino case from the Appellate Division in 2022 -- that involved a failure to certify under 1:6-2, to make a good faith attempt at resolving the discovery dispute. And the Appellate Division said that that precludes the relief granted by Trial Court.

THE COURT: Well, failure to s -- yeah. In that case, I -- if I'm not mistaken, I don't think that specifically involved a subpoena. I think it was answers to discovery, but --

MR. WILSON: Tha -- that's correct, Your Honor. And that's -- the Attorney General is asking the Court to ignore that case, he says, because it's non-precedential, and he says that -- in -- did not involve a subpoena.

But, Your Honor, I think that the -- the fact that it involves a subpoena before there's any litigation that's been filed, no enforcement action, is -- I don't thi -- I think that cuts the opposite way.

THE COURT: Well, what about the fact that we have to remember where we are in this procedurally, right? I mean, there's not even a complaint filed against the -- so, I understand you're saying it cuts both ways. But I'm looking at it -- if I'm looking at it in the -- in the course of a 1:6-2 motion, I -- usually, I'm in the middle of a -- of an ongoing litigation and -- and the delay dis -- the discovery delays are leading to a trial delay and -- and there's -- I -- part of the reasoning that I allowed the subpoena up to the -- this point is because of where the -- the statutory -- that's -- that's kind of -- somewhere, I'm going to need you to focus on that. That by New Jersey law, the legislature has conferred this authority on the Attorney General to do these investigative subpoenas.

This is not a -- I don't know that it matches up to the exact precedent that you're asking me to look at procedurally because there are different concerns at hand. Right? Because we're not even in a -- really, there is no litigation at this point except over the subpoena. You haven't -- your client hasn't been accused of anything, as far as I know.

MR. WILSON: That's correct, Your Honor. But I think that those concerns cut the opposite direction. Because when you have at least a -- an allegation and a complaint that someone's done something wrong, and it's particularized, and it's good enough to se -- get past a motion to dismiss, you have the certainty that, well, okay, we know what's at issue here, and we

ha -- know what the guardrails of discovery are, and we can determine what someone -- the reasonable protections are on someone.

The Attorney General's saying that none of that applies because this is -- this is pre-suit. It should be the opposite. Where we don't have any allegation that our client's done something wrong, but he gets to engage in this wide-open inquiry over everything, every document we've ever had. I think the -- the Attorney General said it's his prerogative to make decisions about whether or not our documents, you know, show the application of a statute.

That -- that can't be right, Your Honor. The Fourth --

THE COURT: Whether they do what?

MR. WILSON: He says that it's -- the fact that we showed in our document production that First Choice has never sold any kind of --

THE COURT: Are you talking --

MR. WILSON: -- merchandise that would make it s --

THE COURT: -- about the CFA claim?

MR. WILSON: Yes.

THE COURT: Okay.

MR. WILSON: He says that it's his prerogative to inf -- to determine whether that's good enough. That can't be right. There's got to be Fourth Amendment guardrails to this type of an inquiry. Because once you get to the point where the Attorney General says, I don't even have to confer with you before I file a

motion against you; I don't have to let you know that I'm going to do this; in fact, I can say to you that we'll confer more after I receive your responses, but that's not binding on me; I -- I -- it's not binding on me; I don't have to live by what I said I would do because this is pre-suit. It's got to be the opposite that -- from that, Your Honor.

THE COURT: Do you have any authority specific to the -- the pre-suit discovery that would have this type of a -- specifically, this type of analysis apply -- I understand your argument on the Constitutionality. I'm not saying that that's not -- I mean, that's the framework we've been in. You've brought it into this framework. Is there -- is this just an -- an argument by analogy? Or do you have anything to point to authority-wise?

MR. WILSON: I -- I don't have anything to point to, Your Honor, but the Attorney General hasn't cited anything otherwise. The Attorney General's response at this point just said, don't listen to Martino because it's unpublished and because it was not in the subpoena context.

But the Attorney General would be breaking new ground by saying that he's completely exempt from any kind of restrictions on civil discovery and exempt from following the things that he said he would do.

THE COURT: But -- but that's two different -- that you said that the Attorney General said it's -- it's up to him, his prerogative to decide if there's a violation of the statute. Are you saying that's not true?

MR. WILSON: I think it's the Court's prerogative to decide whether or not his --

THE COURT: Well, to bring the action, really, is what the argument is. I can't tell the Attorney General whether they have enough to bring the action. That would be the subject of a post-complaint motion to dismiss for failure to state a claim.

I'm not aware of how -- that's why I'm -- I'm struggling a little bit with your -- your -- I understand the argument. I get it. I -- I want to hear the response to it because I do think it has some merit.

But you brought up this argument that, you know, the -- there shouldn't just be free rein of the Attorney General to determine if a -- an entity or a defendant is -- potential defendant is violating, for instance, the CFA. I'm not sure I'm following that.

MR. WILSON: Let -- let me see if I can provide some clarity on that. And since the Court's asking about it -- well, I -- I can jump ahead to the Consumer Fraud Act or if -- if the Court would like me to address that now, would that be helpful?

THE COURT: Whate -- I -- I'm --

MR. WILSON: Okay.

THE COURT: -- not trying -- I don't know how the rest of your argument goes, so I'll leave it to you to make that choice, counsel.

MR. WILSON: Let me --

THE COURT: It's up to you.

MR. WILSON: Let me briefly answer that question there.

THE COURT: Okay.

MR. WILSON: We're not saying that, you know -- certainly, the Attorney General is the enforcer of the Consumer Fraud Act. He gets to decide when to bring a -- a suit under it. But what he's saying is that if he serves us with discovery under the Consumer Fraud Act that no amount of proof that we've never done anything subject to the Consumer Fraud Act can get us out of that discovery. He says, it's up to me; I get to decide when the limit is. So, he says, I get to know the reasons for every single statement you've ever made on any website, in any advertisement, ever, and all that backup -- he says, I get to know all that information because I think you might have done something subject to the Consumer Fraud Act.

THE COURT: Can you point me specifically to the -- the subpoena -- the -- the request that is asking for every --

MR. WILSON: I think, if you -- if I'm remembering correctly, and I'll have to pull it up here, it's going to be the -- like, one through six primarily of the subpoena asks for the scientific support for several -- many, many different statements that First Choice has made on its website.

So, First Choice is a non-profit Christian organization being asked to provide scientific support for the -- the free speech that it makes on its website.

THE COURT: Well, did it make scientific claims?

MR. WILSON: It --

THE COURT: Or medical claims?

MR. WILSON: As it's entitled --

THE COURT: Did it make the claims?

MR. WILSON: As -- the claims that every American citizen is entitled to make, First Choice made those claims. We do believe --

THE COURT: It's not --

MR. WILSON: -- that they're true.

THE COURT: -- what I asked you. I'm not saying as a free speech matter, did they have the right to make those claims. I don't think that that's ever been the argument of the State.

You said they were asking for the backup for making those claims. Not that you can't make them, but what did you base them in?

MR. WILSON: Yes.

THE COURT: Is that -- is that a proper recita -- because that's what I remember reading?

MS. VAN DRIESEN: That's correct, Your Honor.

THE COURT: Okay.

MR. WILSON: That's correct, Your Honor. And we do believe that the claims that we make on our website are 100 percent supported. And we have produced some of that substantiation to the Attorney General.

But the notion that he gets to invoke a statute that doesn't apply to us and ask for that substantiation when we can prove that the statute doesn't apply, when we can prove that we've never done anything subject to the statute -- he --

THE COURT: Is that the only statute that that question was asked under -- was the CFA?

MR. WILSON: Concerning scientific claims made to -- as clients, yes, that would be the only statute.

THE COURT: And that was my next question. It was claims made to clients or potential clients?

MR. WILSON: That's correct, Your Honor.

THE COURT: Is that the s --

MR. WILSON: Yeah.

THE COURT: Is that what it's limited to?

MR. WILSON: But the -- I don't -- I think for the charitable assets or so -- excuse me -- the Charitable Registration and Investigation Act, the claims made to donors, these claims are not anything that the Attorney General was alle -- alleged that a donor was deceived by. His theory with regard to the donors is completely different. He says that they didn't know that it was a Pro-Life organization when they -- when they gave money to it.

THE COURT: Okay.

MR. WILSON: I want to come back to the New Jersey Consumer Fraud Act, but let me just jump into this about what First Choice has done.

THE COURT: Okay.

MR. WILSON: If the Attorney General is here, having moved to enforce litigant's rights, he's -- the Court's -- what rights does he have? This Court's order directed First Choice to respond fully to the subpoena. So, the Attorney General has a right to a full response to the subpoena. What does that mean?

That means he has the right to a timely written response that both furnishes documents and objects on specific grounds. That's what the rules provide for.

THE COURT: Uh-huh.

MR. WILSON: And this was the order that he proposed. And that's what he's received.

First Choice provided timely written responses and objections, filed a timely motion for a protective order, and has produced 2,363 pages of documents, with more waiting in the wings once a protective order is entered. So, we've done what the Court required.

The Attorney General's theory is that response means something completely different here. He says, actually, response means comply with every detail.

THE COURT: Hm.

MR. WILSON: Well, that would -- first of all, it would be inconsistent with the language of the rule, which defines response in a completely different way. I assume it's inconsistent with what the Court meant since the Court noted earlier that response could very well mean that you -- you serve an objection.

But it's also consi -- inconsistent with the substance of the Court's order. The Court ordered that we were going to confer about scope, that we were going to see if there was any narrowing that could happen. And the Attorney General said, no, we're not narrowing it; I got an order that you -- requires you to give me everything. And so, he didn't confer about any of our objections. He refused to respond. And he filed this motion.

So, let's dig a little more into -- you know, we think all of those are reasons that the Court doesn't even need to reach the scope objections because the Attorney General has received the right that was given to him by this Court. He's received a full response. And the parties need to confer about it.

But if the Court decides to reach those objections, let's drill down into them. This is why the New Jersey Consumer Fraud Act matters here. Because the documents that First Choice has produced completely refute the notion that the New Jersey Consumer Fraud Act applies here.

First Choice produced 10 years of its financial statements showing that it does not charge for its services. I think if -- there's a small line out of here. These are just screen shots, but it says, like, re -- service -- or revenue from services, and every single one of these has a zero line in it. Because First Choice doesn't charge for any of its services. It's a -- it's a charity.

THE COURT: So, I'm -- I'm going to just try to con -- I understand the -- what you're saying. So, now, as a result, you're saying that this, as a matter of law, and the way that I should look at this, means that the Attorney General would -- would have to be able to point to something that would be the -- the hook into the CFA.

MR. WILSON: Exactly, Your Honor. And Miss -- the Attorney General didn't mention it in the presentation, but the Attorney General tried to do so in reply. This is what the Attorney General said. Here's the reason that I still think that you have done something subject to the Consumer Fraud Act. He

pulled out an -- a form that First Choice filed with the IRS a couple years back. And he says, the -- here's some suggestions that First Choice may have done something subject to the Consumer Fraud Act.

THE COURT: Uh-huh.

MR. WILSON: He points to insurance reimbursement in 2019. Well, part of this, Your Honor, is why --

THE COURT: But -- but wait. Here's the issue. And this is what I was raising before in terms of where we are procedurally. It's one thing to say that we've provided everything they've asked for and there's simply no more to give versus we're not producing anything else because you have no basis to find that we are even subject to the Consumer Fraud Act. How am I deciding that now?

MR. WILSON: Well, I think that that's part of what the ordinary conferral is on these things, Your Honor. You know, I -- in my -- my practice I've been -- I've actually been inside an AG's office -- not -- not this one. And I've been representing companies that are often -- get these sort of demands by AGs. And ordinarily, when you get one of them, the Attorney General has a bunch of things they want, and the person responds, and they say, well, this one doesn't apply, and we can show it doesn't apply because of -- of these reasons.

THE COURT: No, I get that because that -- and that's why I said you've got to do that. The -- your argument now is that they haven't, in good faith, done that.

MR. WILSON: Exactly, Your Honor. And this is -- this is why it matters. Because we came to them in the course of that conferral, and we said, we have a document production we can give you that shows that the Consumer Fraud Act doesn't apply. We're going to give it to you, and we look forward to hearing back from you on whether it sa -- satisfies your concerns.

THE COURT: Uh-huh.

MR. WILSON: And the Attorney General had told us -- he said, after I receive your written responses, that's what I'm going to do.

THE COURT: Right.

MR. WILSON: We didn't hear from him. Instead, we got this motion. So, now we're in the -- in his reply brief, this is the thread he's trying to hold onto. He says First Choice got a couple thousand dollars of insurance reimbursement in 2019. I -- I don't know how insurance reimbursement --

THE COURT: The --

MR. WILSON: -- relates --

THE COURT: -- one -- let me --

MR. WILSON: -- to that.

THE COURT: The one that's jumping out at me -- let's say book sales.

MR. WILSON: Book sales. Well, this is another one where it would've been really great if the Attorney General had conferred with us about it because all this relates to is that First Choice, in 2021, had a -- a fundraiser where the person presenting at the fundraiser had written a book and donated their book

sales to First Choice. They sold copies of their book at the fundraiser, and First Choice got the proceeds.

Now, if First Choice sold books on one day in 2021, I don't think that means that every single statement on its website is subject to the Consumer Fraud Act.

THE COURT: But, again, w -- why am I deciding that part now? This is what I'm saying. I'm not exactly sure what you're asking me to do with respect to these claims that there's a Consumer Frau -- is -- is it that you're saying we need further conference to -- to figure this out? Or that because what you -- according to you -- what you produced does not put your client in the purview of the CVA, they're not entitled to ask anymore? Is -- I'm not sure what it is you're asking me to do.

MR. WILSON: I think Your Honor could take any number of different approaches here. We think the -- the most straightforward one is to say that -- to deny the Attorney General's motion on these grounds because we responded fully to the subpoena. He has filed a motion to enforce his rights. He already got his right. We responded fully to the subpoena.

THE COURT: And then what?

MR. WILSON: And then, if -- if the Court doesn't -- then we continue to confer about scope. And -- because that conference hasn't happened yet.

THE COURT: And then what?

MR. WILSON: And then, after there has been a good faith conference and the Attorney General has detailed whether or not the documents produced by First Choice answered his concerns, if there's a

remaining issue lingering, he can bring it back to this Court. That's what we thought was going to happen from the beginning when he proposed it in -- back in May.

THE COURT: And -- meaning --

MR. WILSON: It didn't happen.

THE COURT: -- that -- enforce the specific issues in terms of what they're seeking, but only after a --

MR. WILSON: Exactly.

THE COURT: -- good faith conference.

MR. WILSON: But if the Attorney General had concerns about $940 of book sales, I should've heard about it back in July when I was asking him if our document production was good enough. I shouldn't have heard about -- about it from him when he filed a motion to enforce litigant's rights right afterward.

THE COURT: Okay.

MR. WILSON: So, moving on to the third-party identity disclosure.

THE COURT: Uh-huh.

MR. WILSON: This relates to, most significantly, the identities of donors. The Attorney General described this as narrowly tailored, a very limited subset of donors.

THE COURT: Uh-huh.

MR. WILSON: It's not. It's approximately 5,000 donors, roughly half of the donors of -- to First Choice that --

THE COURT: Generated --

MR. WILSON: -- would be called for.

THE COURT: -- from where?

MR. WILSON: Basically, the Attorney General, his theory --

THE COURT: No. Where are the ones that you're claiming that these 5,000 are from?

MR. WILSON: It's everything except the donor website -- what the Attorney General calls the donor website. First Choice has one website called First Choice Friends, where supporters can give.

THE COURT: Well, I heard today, though, counsel, that they're really fo -- now, this may be you don't know this. This might be one of the things that you said is the first time you're hearing this. I don't know. But let's assume -- I'm going to take them at their word -- and they're looking for the -- what are we calling it? The patient --

MS. VAN DRIESEN: The client site.

THE COURT: The client site. Does that -- what does that do with the number of -- of donors they're looking for?

MR. WILSON: Your Honor, I have no idea because, in a year of litigation, that was the first I've heard about it. That's -- the -- the Attorney General's been filing briefing in the Third Circuit, briefing in the Federal District Court, two rounds of preliminary injunction briefing, up to the Supreme Court of the United State. We've been talking about how overbroad this request is. He took -- this Court decided not to address the issue. It went up the Appellate Division. The Attorney General asked to

send it back. And only now, after the Third Circuit expedited the appeal, the Attorney General's ready to talk turkey. Now, we're hearing for the first time that --

THE COURT: Can you point anywhere in the record where, prior to today, you said to them that we're now (indiscernible) only to client's site?

MS. VAN DRIESEN: So, in our private briefing, when defending the -- that request, it's always been tied to the statements made on the client site and that they made and is leading -- I don't have a specific cite to that briefing now. But that's always been the hook of that request and how it's been defended in the briefing of this case. And I can pull that up for Your Honor if you'd like.

THE COURT: All right. I just wanted to -- to -- because I would forget to ask. Go ahead.

MR. WILSON: It -- Your Honor, it's never been accompa -- accompanied by any narrowing. The Attorney General has said he objects to statements on the client website. And we've said, hey, but you're calling for way more than that. You're calling for the names of everyone who went to a fundraiser.

THE COURT: All right. So, did you give them the client website ones, if you -- if that was included?

MR. WILSON: No, Your Honor, because we don't think that that's supported either. And I'm happy --

THE COURT: All right. Well, that's a different --

MR. WILSON: -- to show you why.

THE COURT: -- reason --

MR. WILSON: Yes.

THE COURT: -- then. So -- what's --

MR. WILSON: Yes.

THE COURT: -- the reason for that?

MR. WILSON: So, for here, the Attorney General's theory is -- he says there's a client website that he says he thinks it's not clear enough that First Choice is a Pro-Life organization.

THE COURT: Uh-huh.

MR. WILSON: Never mind the fact that it says on every web page, First Choice --

THE COURT: That's --

MR. WILSON: -- doesn't --

THE COURT: It --

MR. WILSON: -- provide abortions.

THE COURT: Yeah. That's --

MR. WILSON: Okay.

THE COURT: Yeah. Uh-huh.

MR. WILSON: He says he's concerned that someone who gave through that website may have been deceived about First Choice's mission. And so, he says he wants the names of the -- everyone who gave through sources other than the donor website. The -- focusing in on the client website.

THE COURT: Uh-huh.

MR. WILSON: What First Choice did is said, if that's your concern -- if you're concerned about the possibility that -- that that gift -- of someone having

been deceived, we're going to give you -- we're going to produce to you the communication that we send out to every single person who comes to -- who gives to First Choice. So, everyone's going to get a mailing that says, thank you for helping women choose life every day. And let me tell you that the inside of that mailing is every bit as clear about the Pro-Life mission as the outside.

THE COURT: Wait. Is there some way to connect that you're -- just let me make sure I'm understanding. Every person who -- what requests information or -- what -- what triggers them getting that?

MR. WILSON: The Attorney General's concerned that people who get --

THE COURT: I'm asking you, factually, what triggers this card, or whatever, going out?

MR. WILSON: If you give to First Choice --

THE COURT: Already have donated?

MR. WILSON: Yes. Through -- anyone who has -- gives to First Choice through any source --

THE COURT: But they've already donated at that point.

MR. WILSON: W -- here's -- here's why it matters, Your Honor. Is -- the Attorney General's also requested that we provide complaints from donors, and we agreed to provide --

THE COURT: You're -- you -- counsel, you're not answering my question.

MR. WILSON: Okay.

THE COURT: The question was, identify -- right -- the -- the -- the third-party identity -- disclose the identity of whoever donated through the -- let's say, the client website. We're going to narrow it to -- to that. Okay? And your response was, well, it's very clear; there's no basis for these people to ever believe that they donated to anything other than a -- a right to -- you know, right to life kind of organization. That that's clearly what they are.

But in support of that, you're saying -- and we know that's true because they get this. And you were about to show me what this is. And my question to you is, when do they get this? And now you say they get it after they donate.

MR. WILSON: That's correct, Your Honor. And --

THE COURT: Okay. So, I don't really care about that part right now. What is on the website that leads them to donate? And does this information appear on the website? That was the argument in -- the last time we were together in May, I think.

MR. WILSON: Let me briefly explain. Well, I'll answer your question and then la -- briefly explain this -- relevance of this.

THE COURT: Uh-huh.

MR. WILSON: So, what it does say on the website -- again, every page says First Choice does not provide or refer for abortions.

THE COURT: Uh-huh.

MR. WILSON: And if you go to that client website, to -- if you want to give, you have to select a tab -- and I wish I had the slide about this. But if you

-- you select a tab, and there's a -- a menu of options. One says FAQ, and one says give, or donate, or support, or something like. And those two things right next to each other -- if you click on the FAQ, once again, it states under the FAQ, there's a question, does First Choice provide abortions? Answer, no. It's about as clear as it could possibly be. If someone -- I know that if I was concerned about considering giving to an organization, I'd want to know what its mission was. I'd look --

THE COURT: But they --

MR. WILSON: -- at the FAQ --

THE COURT: -- don't have to click on FAQ to donate. You just said that. They're two different --

MR. WILSON: They --

THE COURT: -- things.

MR. WILSON: They don't have to. They're right next to each other.

THE COURT: Okay.

MR. WILSON: So, I think there's -- there is that disclosure.

THE COURT: But --

MR. WILSON: But --

THE COURT: -- this is what I'm saying. Okay? I'm not -- I don't want to go any further on this because now we're getting too much into the substance.

Remember, what's in front of me is, does the AG have a basis to request this information? And your

argument is that they don't, and then you're walking me through all of these reasons they don't. But it still doesn't -- and -- and maybe they don't -- maybe you're right that ultimately this has nothing to d -- there's never going to be anything shown that anyone has ever been misled. Maybe that's -- and maybe they decide that and don't file a complaint. I don't know. That's not where we are, though.

Wha -- that was my point before. What are you asking me to do? Are -- you're saying because of all of this information that you're telling me, they don't have the right to ask the question.

MR. WILSON: So, let me -- let me try to provide some clarity on that. We think that, with regard to the Attorney General's motion to enforce litigant's rights, the proper course is for the Court to deny it --

THE COURT: Got that.

MR. WILSON: -- because --

THE COURT: But then --

MR. WILSON: -- all that.

THE COURT: -- you said, let's go further in --

MR. WILSON: But --

THE COURT: -- the case. Right. Uh-huh.

MR. WILSON: -- if the Court decides to address the scope objections, which we don't think are right and should be subject to --

THE COURT: Uh-huh.

MR. WILSON: -- conferral, especially where they're being narrowed ad hoc during the hearing --

THE COURT: Uh-huh.

MR. WILSON: If the Court decides to reach these, then the Court should find, as a matter of State law, that this information is not relevant to his request. And that's -- they'll -- I'll just point very briefly to the relevance of this.

THE COURT: What is the standard that I'm supposed to be looking at here in light of the statutory authority provided to the AG's office? Because if it's a discovery standard, relevance isn't going to help you right now. Right? It's not -- it's not an objection at the moment. In pretrial discovery, so to speak, relevance isn't really an objection. That's not even -- not really. It's not an objection.

So, what are you pointing me to to say that, in the law, that if it's not relevant, they can't ask? That's different than saying it's Cons -- not Constitutional. You're saying not relevant.

MR. WILSON: I -- I'm not saying not relevant, Your Honor. I think what we're saying is not reasonable and proportionate. And that's a standard that the New Jersey Courts have -- have developed where --

THE COURT: For -- for this procedural posture or for discovery?

MR. WILSON: Well, I -- I'll be -- I'll concede, Your Honor, that we are a little bit in the Wild West when it comes to the subpoena enforcement actions and what the standard is. But I think Rule 4:10-2 wou -- outlines the scope of discovery, and it has those limits on, you know, reasonableness that are -- that are built into it.

And where the Attorney General has said he's got this concern about deception, but he hasn't identified a donor complaint. First Choice has never received a donor complaint ever. And every donor gets this mailing, making clear that First Choice is a Pro-Life organization. That's -- that's an issue.

It's not -- so his discovery request is not proportional, especially when it's going to bring in the identities of all these people. Because another thing that happens is the Attorney General assumes that the only people going to cli -- the client website are clients. But it's quite likely, and I think very common, that someone wants to give to First Choice, so they Google First Choice, the client website comes up --

THE COURT: Wait. They --

MR. WILSON: -- they click --

THE COURT: They want to give to First Choice? Or they want to give to a right to life organization?

MR. WILSON: They already know that -- that they support --

THE COURT: Okay. Well --

MR. WILSON: -- First Choice.

THE COURT: -- that's different. That's --

MR. WILSON: They're familiar --

THE COURT: That's different.

MR. WILSON: They're familiar with it.

THE COURT: Uh-huh.

MR. WILSON: My -- my point is that the Attorney General's request is going to call for the names of all

those people. And I don't know what's going to happen. Is he -- are they going to get a call from the Attorney General saying, hey, we heard that you donated to a Pro-Life organization?

THE COURT: I don't know.

MR. WILSON: You know?

THE COURT: I mean, that's -- that the --

MR. WILSON: Do you know it was a Pro-Life organization?

THE COURT: But, again, while I -- I understand logically your argument, legally, I'm asking you, what am I -- what standard am I tying that to?

MR. WILSON: I -- I think you tie it to the -- the discovery standard un -- under Rule 4:10-2.

THE COURT: Uh-huh.

MR. WILSON: Now, the Attorney General may argue that that doesn't apply. I -- I think there's got to be limits procedurally, and there certainly are Constitutionally, under the Fourth Amendment, to his authority to demand those documents.

THE COURT: Okay.

MR. WILSON: I think we covered, though, the --

THE COURT: The -- yeah, that's fine on that.

MR. WILSON: Yeah.

THE COURT: The other one that I just wanted to make sure was the -- we did CFA. We did the donor. And -- oh, was that all the donor info one?

MR. WILSON: I think that's -- that covers --

THE COURT: And what about --

MR. WILSON: -- the donors.

THE COURT: -- the providers?

MR. WILSON: The providers? This is another one where, in terms of reasonableness and pro -- proportionality, we don't dispute that the Attorney General has a legitimate interest in -- in determining that licensed services are provided. But the -- the statute that he invokes gives him much simpler tools to address those concerns, where he can request a sworn statement by First Choice, provi -- de -- setting forth whether it has -- whether its services are licensed, whether its ultrasound technicians are licensed, whether it has a licensed medical director.

First Choice is happy to provide that detail, and it's offered to do so, but the Attorney General has said, no, you need to give us the names of everyone. And that's -- that's the con -- the thing that concerns me, Your Honor, is that over and over again, the Attorney General says answering his concerns isn't good enough.

THE COURT: But --

MR. WILSON: It's --

THE COURT: -- why -- so, again, you want me to make a determination that the AG should be satisfied by you saying, yes, everyone is licensed, or we don't do that, or whatever. And they don't have the right to verify. So, you're just saying that -- is -- is it your client's position that the standard is that, as long as you provide some information, they don't have to ver -- they don't have the right to verify?

MR. WILSON: Well, it's -- I think we -- we can cross that bridge when we get there. But part of the reason that that hasn't happened is because when we've offered to confer on these issues, it's -- it's gone nowhere. We've offered to -- to provide that statement --

THE COURT: Okay.

MR. WILSON: -- but didn't receive --

THE COURT: No, I understand that.

MR. WILSON: -- a response on it.

THE COURT: All right.

MR. WILSON: But I don't think -- another reason the Court doesn't need to reach this issue. But we do think this also illustrates why there's these Constitutional issues lurking in the background.

THE COURT: Well, it also -- and -- again, and I understand that it gets me to -- I may not reach this depending on how I rule on your first motion. But if I am going to reach it, I didn't want to have to come back and redo it. I'm not guaranteeing we don't have to anyway. But I'm getting a -- a -- a good amount of information about the -- the -- the arguments of the parties, and that's helpful to me.

So -- was there any -- were there any other basis that you believe they're not entitled to the information, beyond what we talked about with the Constitutional --

MR. WILSON: I'll -- I'll raise just a -- a couple more.

THE COURT: Uh-huh.

MR. WILSON: The -- this is -- one is about the hard drives and search times being an -- an unreasonable burden. The Attorney General took the position that -- that he's not bound by the civil rules, and he's not bound by proportionality. And so he's allowed to -- to get unlimited discovery from First Choice. First Choice has to hire document -- IT technicians to go and pull all its hard drives, run search terms across them, retain a te -- a team of attorneys to review those and filter out --

THE COURT: And you're saying that this was the position that he took where? In --

MR. WILSON: Just now, the Attorney General -- I think it was the first time I've heard this on this point -- which was he said that he's not bound by the civil rules on proportionality. I think that's a breathtaking assertion.

What's in the briefing is even more troubling. In his reply brief -- this was the justification for -- that the Attorney General has, I think, for why he -- he should be allowed to get this and shouldn't have to -- he should get unlimited electronic discovery from First Choice.

He says First Choice submitted a declaration that its Executive Director, Aimee Huber -- which shows that First Choice has nearly 3.5 million on hand as of July 31st, two and -- 2024. This declaration belies First Choice's objections that it lacks the resources to comply with the subpoena. Three point five million.

Now, Your Honor, I would wonder why First Choice was retaining me pro bono if First Choice had $3.5 million cash in hand. So, let's look at what that

declaration actually says. It says that between June 1st, 2022, and July 31st, 2024, a two-year period, donors contributed a total of almost 3.5 million.

So that means that's First Choice's total revenue to operate five centers throughout Norther New Jersey over two -- a two-year period. And the Attorney General says that because we received that money, and, you know, frankly, that's at barely scraping by --

THE COURT: Is that the only place in that declaration that there's a reference to that money?

MR. WILSON: That's correct, Your Honor. So, the Attorney General's characterization of that document, the -- they -- is -- is not fair, not correct, not accurate.

THE COURT: Okay.

MR. WILSON: And so, the Attorney General is then asking that this small non-profit be subjected to this burdensome electronic discovery, that it re -- again, retain --

THE COURT: Well, I don't know how burdensome it is. I don't know. It's the -- one of the things I asked is wha -- are there terms? What is it that they're looking for specifically?

MR. WILSON: Well, we haven't --

THE COURT: And that may go back to the confer issue.

MR. WILSON: I –

THE COURT: I don't know.

MR. WILSON: I think that's correct, Your Honor. The Attorney General has -- has never proffered search terms. He didn't proffer a reason why he should get this electronic discovery.

THE COURT: What is the general question, though, that they're asking for?

MR. WILSON: Well, I -- I think what it would mean, Your Honor, is --

THE COURT: No.

MR. WILSON: -- that --

THE COURT: What is the actual question that you're saying you'd have to search your hard drives and your --

MR. WILSON: It -- it's not a question. I think the way that it would be done is that -- you know, when we've done this -- a -- another context is, if -- if you have to pro -- produce all documents -- which is what the Attorney General wants -- then you have to pull all your hard drives that relate to that information.

THE COURT: So, you're talking about just, across the board, all of these questions will require --

MR. WILSON: Exactly.

THE COURT: -- or a good number of them --

MR. WILSON: So, then --

THE COURT: -- will require -- okay.

MR. WILSON: Then you have to review every document and ask, is it responsive to any one of the 28 requests that he's --

THE COURT: Got it.

MR. WILSON: -- made here?

THE COURT: Okay.

MR. WILSON: And if it is, then you have to determine its privilege, redact --

THE COURT: Uh-huh.

MR. WILSON: -- patient information, and -- and produce it.

THE COURT: And --

MR. WILSON: That's --

THE COURT: -- that's your argument? That it's just -- it's overly broad?

MR. WILSON: Yeah. Just to get past the first step, just to get the --

THE COURT: Burdensome.

MR. WILSON: -- IT professional --

THE COURT: Okay. All right.

MR. WILSON: -- is -- is in the tens of thousands of dollars.

THE COURT: All right. Anything else?

MR. WILSON: And we have a declaration to that effect in the record.

Last point is that we think that, if we are going to produce this information, a one-year time limit is -- is appropriate. And that one's -- that one's fairly straightforward.

THE COURT: Okay.

MR. WILSON: The Attorney General didn't mention it in his presentation, but there's also a dispute between the parties over the protective order that the Court will enter. The parties were conferring on a protective order --

THE COURT: Yeah.

MR. WILSON: -- and got to loggerheads about the attorney's eyes only provision. We think that that's appropriate because of the importance of protecting donor privacy if that information is going to be discussed.

THE COURT: What if the -- if the argument is that, once it gets the information, it needs to be able to talk to, I don't know, sources that would -- could be outside an attorney? Is -- is -- and that -- that's the only way that they can make a -- it's not going to be a disclosure to the general public, but, I don't know, more of a control group kind of argument.

MR. WILSON: I think the attorney's eyes only language that we proffered would allow him -- it's not just the attorneys. It -- it's --

THE COURT: It captures the --

MR. WILSON: -- his team and his, you know, legal assistants and paralegals, that they could work with that information. But once it becomes wide-ranging, any one in -- in the AGO can -- can get this, you know, we're much more concerned about it.

THE COURT: Okay. All right.

MR. WILSON: A la -- I'll make the last point here. The Attorney General's asked for sanctions on this motion.

THE COURT: I'm not granting sanctions on this motion.

MR. WILSON: Thank you, Your Honor.

THE COURT: Okay.

MR. WILSON: Unless there's anything -- further questions the Court has --

THE COURT: Not at the moment. Okay. Please --

MS. VAN DRIESEN: So, Your Honor, I'll start with -- Your Honor had questions about the timeline in which the motions were filed. And something that counsel glazed over is that the same day that we received the response and the objections, they also filed the motion for protective order, seeking --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- a stay of compliance. So, how can we meet and confer when a party is seeking an -- a complete stay of their compliance of the order? That is what broke down the negotiations here. And that's what happened before our motion was filed.

THE COURT: Okay. I would like both sides to, perhaps, include all of their relevant information, not just that which is helpful to you because that doesn't help me. We spent an awful lot of time talking about that. I probably would've short-circuited it if I -- that's why I like to go back and forth on each --

MS. VAN DRIESEN: I didn't want --

THE COURT: -- issue.

MS. VAN DRIESEN: -- to stand up to interrupt.

THE COURT: No, I -- I understand. Okay.

MS. VAN DRIESEN: And then going next to the issue of whether this motion is ripe and the s -- requirement for meet and confer. So, the meet and confer requirement under Rule 1:6-2 requires a meet and confer for motions regarding pretrial discovery and calendar issues.

THE COURT: Uh-huh.

MS. VAN DRIESEN: And here we're in an investigatory subpoena, not pretrial discovery.

THE COURT: So tell me -- this is exactly what I want to know, from the State's position, because I think, candidly, the -- the defense has indicated that there really isn't anything to point to. Sounds to me then that the State's argument is that the 1:6-2 protection, so to speak -- or requirements are more restrictive than would be allowed in the investigatory phase. That tying that into the -- to the statement by the defense that -- that the Attorney General doesn't believe that he has to give any reason to be limited in -- in what he's looking for. Where -- how does that logically even make sense?

MS. VAN DRIESEN: Well, so, I think that what counsel and how counsel explained our position is a bit incorrect.

So, the 1:6-2 standard, reply and conferral, does not apply in this context, and certain of the pretrial discovery rules also do not. Because we are not in the Wild West in an investigative subpoena. There is law dictating the scope of the subpoena. It has to be reason -- bear some possible relationship to the

investigation. And that's State versus McAllister, 184 N.J. 17.

There is case law and an understanding of the rules that govern here, and the concerns that underlie the civil discovery rules are just simply different than in the investigative subpoena area. There can't be a reasonable and proportional relation to a complaint because there is no complaint. And the legislature has granted the Attorney General broad investigatory powers. And where there's no complaint, they cannot be cabined by kind of a general understanding of what the investigation's --

THE COURT: But then you --

MS. VAN DRIESEN: -- about.

THE COURT: -- have that information. Right? So, how does -- I hate -- I hate to keep going back to the toothpaste or the -- let's use the -- the horse left the barn on this one. How am I putting that back in? So, if this information leads to a complaint, now you're saying, okay, now we'll go to the discovery standard? But you already have it. So, how d -- how does that mesh?

MS. VAN DRIESEN: I don't know that -- that's just how the Court Rules -- and it -- it works this way in all s -- areas of investigative --

THE COURT: It just seems absent something -- and maybe it is. And I'm not saying I -- I have intimate knowledge of what you're talking this -- in the McAllister case and what the standard is.

But I don't know -- and if it does exist, point me to where you cite it -- that -- and it may not be in the

context of how we're arguing it. I don't th -- I think you're right. It's not done in the context of what happens in discovery. I -- I appreciate that. I think it's an interesting analogy, and -- and it's not -- it -- it -- it does raise some issues for me. So, I'm not rejecting it out of hand. But I also agree that it's not the same thing.

Where is the -- where are the standards laid out? Is there something equivalent -- or at least in the same area of something like a 1:6-2 rule -- that exists in the pre-action investigatory stage?

MS. VAN DRIESEN: To my knowledge, there's no specific Court Rule.

THE COURT: Hm.

MS. VAN DRIESEN: There's this --

THE COURT: No, not a specific Court Rule. I'm saying like --

MS. VAN DRIESEN: Yeah.

THE COURT: -- something authoritative that says, you know -- or -- or based on prior -- you know, we have the Smith & Wesson one.

MS. VAN DRIESEN: Uh-huh.

THE COURT: We know that that's similar to -- you know, is there some other case where a Court has looked at it and said --

MS. VAN DRIESEN: Yeah.

THE COURT: -- well, of course, they can't just ask anything. I mean, obviously --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- the Constitutionality argument -- I don't think the State's arguing that it doesn't matter if it's unconstitutional; we get to ask anyway. That's not --

MS. VAN DRIESEN: Right.

THE COURT: -- the State's --

MS. VAN DRIESEN: No.

THE COURT: -- position. Right.

MS. VAN DRIESEN: And --

THE COURT: So, kind of bringing that down more from the ultimate --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- largest issue to the more narrow --

MS. VAN DRIESEN: Yeah.

THE COURT: -- issue.

MS. VAN DRIESEN: So, this actually does come up in the Smith & Wesson Chancery --

THE COURT: Okay.

MS. VAN DRIESEN: -- decision.

THE COURT: Yeah. I -- yeah. I think it's (indiscernible) -- uh-huh.

MS. VAN DRIESEN: And Judge Alper sought -- cites to Greenblatt versus New Jersey Board of Pharmacy --

THE COURT: Yeah.

MS. VAN DRIESEN: That it needs to be sufficiently limited scope, relevant in purpose, and specific in directive. So --

THE COURT: Thank you, coun --

MS. VAN DRIESEN: -- that compliance is not --

THE COURT: That -- no, that's helpful.

MS. VAN DRIESEN: -- unreasonably --

THE COURT: Bu --

MS. VAN DRIESEN: -- burdensome.

THE COURT: For that reminding me. Right. I appreciate --

MS. VAN DRIESEN: So, I think that --

THE COURT: -- that.

MS. VAN DRIESEN: -- really encapsulates --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- what the standard for determining --

THE COURT: Right.

MS. VAN DRIESEN: -- whether it's an appropriate request as opposed to the 4:10 standard.

THE COURT: Right. No, that's -- I appreciate that. Okay. Anything else?

MS. VAN DRIESEN: So, a few other points to respond to.

THE COURT: Uh-huh.

MS. VAN DRIESEN: In terms of what it means to respond fully, and this is another area where a full

response to a document request under the civil discovery rules is the responses and objections, but the investigatory subpoena that they received did request the doc -- the production of the documents --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- is the full response. Just wanted --

THE COURT: That may -- part of that, by the way, may be the -- that the State is entitled to rely on what my order says.

MS. VAN DRIESEN: Uh-huh.

THE COURT: But that my order was -- wa -- was entered with my thought process being more along the lines of the discovery rules. And -- and that's how I envisioned it --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- would happen. Which I think is somewhat similar to Judge Shipp said as well. But -- but I will tell you that my intention was -- so, I'm not faulting the State --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- for following my order because it says fully comply. And if there's -- you know, as you're indicating, that's not the same thing as the civil discovery rules. I'm telling you that in my intent --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- was that it would be objections and then -- you know, that's the framework I was in.

So, if -- I don't know if that -- I -- I'm not trying to anticipate your argument, but I -- I kind of saw that that's where that was going. So, I'm not -- again, I'm not going to hold it against the State if, in fact, my order, that --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- I think I got from you, was -- was not as clear as I should've made it.

MS. VAN DRIESEN: Yeah. I understand, Your Honor.

THE COURT: Okay.

MS. VAN DRIESEN: And then to -- on the protective order --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- the attorney's eyes only is actually a problem for the State because, while -- for example, me and AAG Leit are counsel of record in this proceeding --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- it's not our investigators and staff that are doing the investigation. It's investigators in the Division of Consumer Affairs. And we don't -- we don't employ them. We don't control them. It's a separate entity. So, there are specific issues that are -- arise from the structure of the State that --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- make that designation difficult for us to agree to.

THE COURT: Doesn't seem that it's impossible to get to a resolution on that, though. It can't be the first time that you're coming across this. And there's got to be some basis to -- to limit it to the narrowest of -- of eyes, so to speak. I --

MS. VAN DRIESEN: Uh-huh.

THE COURT: I understand the specific attorney's eyes might be overly narrow, but --

MS. VAN DRIESEN: Uh-huh.

THE COURT: -- there's a -- a -- a large area that can, you know, maybe go right after that as opposed to just no restriction. I understand your -- you've been discussing a protective order. You just haven't gotten to a resolution.

MS. VAN DRIESEN: Correct.

THE COURT: Okay. All right.

MS. VAN DRIESEN: And then, I guess, just to close out, is that the big issue here is that First Choice does not want to give us the information that the subpoena requests and wants to make a claim that they get to decide when they have given enough information.

But in order for the Attorney to -- General to determine whether there's any violation of law happening here, it's the Attorney General's decision to file a complaint or not file a complaint. And -- as when you serve a subpoena before it goes to a Court, it's the parties that are -- determine whether there's been substantial compliance. And that's going to be on a case-by-case basis. That can't be compared to,

say, a case in Washington, where 1500 pages was enough. We don't know what those 1500 pages --

THE COURT: Uh-huh.

MS. VAN DRIESEN: -- were.

THE COURT: What is the State's position with the -- and -- and in the context of now understanding the timing that it was at the sa -- after the order came -- or the motion came here -- that was filed by the defense. What, in terms of this meet and confer posture, where -- what's the State's position right now? Is it that that ship sailed while all of this is pending?

MS. VAN DRIESEN: Ye -- that's essentially the State's position, Your Honor.

THE COURT: Okay.

MS. VAN DRIESEN: If you have no further questions --

THE COURT: No, I'm -- I'm good. Thank you. Anything else you feel urgently you need to put on the record?

MR. WILSON: Just --

THE COURT: I just -- I -- I really have to bring this to a close.

MR. WILSON: Br --

THE COURT: I have another matter in the hole.

MR. WILSON: Very bri -- briefly, Your Honor. Get this HDMI port back in.

THE COURT: Are you back on?

(Indiscernible).

MR. WILSON: I just wanted to --

THE COURT: Okay.

MR. WILSON: -- respond briefly to the Court's concern --

THE COURT: Thank you.

MR. WILSON: -- that we were trying to hide the ball about conferral, so I pulled up the conferral record. I -- I would certainly be disturbed if -- if we had sprung that motion on the Attorney General and at the same time we're cla -- claiming that he hadn't conferred adequately with us.

But we raised with him in this email -- eight days before we filed, we said that we're con -- continuing to comply with the Court's order; we think that it makes sense to stay proceedings in light of the Third Circuit's recognition that this case is ripe.

THE COURT: Uh-huh.

MR. WILSON: Please let us know your thoughts. And it said, nevertheless, we are -- I'm sorry. This is the wrong email.

THE COURT: No, I -- I read the one you're talking about. I -- I know what you're --

MR. WILSON: It's --

THE COURT: Yeah.

MR. WILSON: This one right here. Then we said at the same time, that said, we think it's continued to -- proper to continue conferring about the subpoena's scope and the protective order on confidentiality while our Constitutional objections are being litigated. We said we were still going to serve our responses and

objections. We said we were still going to produce documents.

So, we di -- we were not hiding the ball. We didn't spring this on him. And what we got back was simply the statement that we were required to fully respond to the subpoena in 30 days; we are proceeding accordingly.

THE COURT: Uh-huh.

MR. WILSON: There was nothing about further conferral, nothing about asking -- talking about scope objections. It was --

THE COURT: Yeah.

MR. WILSON: It was -- that was it.

THE COURT: Okay.

MR. WILSON: Unless the Court has any further questions, I have nothing further.

THE COURT: No. All right. Anything else from anyone? Nope? Okay.

I -- I -- look, I have my own timeline here I have to abide by. I think the only thing I decided today is that I'm not entering sanctions in this case. Other than that, I'm going to take it all under advisement. Obviously, if anything occurs on the Federal side, please make sure I'm advised if it happens before you hear from -- from me and you get my decision.

It's a lot to think about. I appreciate all of counsel's arguments. As always, well-briefed, well argued. I -- I really can't say more than that. So thank you to everyone. And I will endeavor to respond in the

proper time frame. Do with that what you will. All right. Thank you, all. We are --

MR. WILSON: Thank you, Your Honor.

MS. VAN DRIESEN: Thank you, Your Honor.

THE COURT: -- off the record. Appreciate it.

(Proceedings concluded at 4:15:15 p.m.)

CERTIFICATION

We, ANGELA M. D'AMICO and LISA M. SABA, the assigned transcribers, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 2:11:53 p.m. to 4:15:15 p.m., is prepared to the best of our ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Angela M. D'Amico, Lisa M. Saba
All Signatures

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Date

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 24-3124

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,
Plaintiff-Appellant,
v.
ATTORNEY GENERAL NEW JERSEY,
Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY
(No. 23-cv-23076 (MAS))

BRIEF OF DEFENDANT-APPELLEE

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TABLE OF CONTENTS

* * * * *

INTRODUCTION

The New Jersey Attorney General and Division of Consumer Affairs initiated an investigation into Appellant First Choice Women's Resource Centers, Inc. based upon concerns that it may be misleading donors and potential clients regarding the character and scope of its services. Because the Division's preliminary investigative steps—including a review of Appellant's publicly-available websites, which make divergent representations as to its mission and operations depending on the target audience of the website—furthered concerns that Appellant may be violating the state consumer-fraud, charities, and professional licensing laws, the State issued a Subpoena on November 15, 2023. The Subpoena is not self-executing; it can only be enforced by a New Jersey state court. But before even lodging objections in state court, Appellant filed this collateral attack in federal court, arguing that the mere issuance of the Subpoena violated its federal constitutional rights.

The district court correctly dismissed the federal court action twice over, each time concluding that Appellant's federal claims were unripe. As the court explained, and as decisions of the Supreme Court and other circuits confirm, Appellant faced no imminent

injury from the mere issuance of the non-self-executing Subpoena. The rule is clear: when the sole statutory authority to compel compliance with a subpoena rests with a state court, a collateral federal suit challenging the subpoena alone is premature—because any harm to that plaintiff depends on future decisions by the state court of whether to order enforcement. That is especially clear when the subpoena recipient faces no sanctions for failing to comply at that time. That describes this case perfectly: Appellant brought this suit before the state court had taken *any* action with respect to the Subpoena. And although the state court subsequently rejected Appellant's motion to quash the Subpoena, it has expressly not yet decided whether to order compliance, and has promised to review these federal constitutional issues first. As a result, Appellant's federal challenge remains unripe as the state court continues to evaluate the very claims it lodges in this appeal—at least as of the time the State finalized this brief for filing.[1]

In any event, even if Appellant could clear that jurisdictional defect, it is not entitled to a preliminary injunction. Initially, it will not succeed on the merits of its First Amendment claims. Appellant's retaliation and selective-enforcement claims fail because it has not even tried to show that the State lacked legitimate grounds for issuing the Subpoena. Moreover, the Attorney General's statements expressing concern

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[1] Given this brief's deadline is the same day that the state trial court must issue its next decision in this case, the State will submit a Fed. R. App. P. 28(j) letter to update this Court as to that decision and welcomes the opportunity to submit supplemental briefing on the impact of that decision.

that certain nonprofit entities may be misleading the public about reproductive care hardly show that this Subpoena was premised on an improper motive—if anything, it demonstrates good-faith concerns about violations of state law. And Appellant's associational claims also fall short. The State has good reason to think some of Appellant's donors may have been misled about Appellant's mission and operations from two of its websites, and sought information so the Division can speak with a representative sample to assess whether they were misled. The State has a well-established interest in combatting misleading charitable solicitations, and a targeted subpoena is precisely the kind of approach it may use to serve that end—especially when the Division has no alternative, other than accepting Appellant's say-so, to ensure Appellant's donors were not misled.

Finally, Appellant cannot establish that the equities favor preliminary relief. Because the state court has not yet compelled Appellant to produce documents, Appellant suffers no threat of irreparable harm. And even if the state court does order production, a loss from a state tribunal after due consideration of one's claims is not irreparable harm either. Finally, the balance of the equities favors the State, which would be unable to investigate and root out fraud and misconduct if an injunction were to forestall its efforts well into 2025—over a year after the Subpoena issued in November 2023. Such a result would harm the public interest and would incentivize future subpoena recipients to avoid compliance and stymie subpoena enforcement.

COUNTERSTATEMENT OF JURISDICTION

For the reasons set forth below, this Court lacks Article III jurisdiction. This Court has appellate jurisdiction under 28 U.S.C. § 1291.

COUNTERSTATEMENT OF ISSUES

I. Whether the district court correctly held that Appellant's constitutional challenges to a non-self-executing subpoena are unripe because the state court has not compelled compliance.

II. Whether, even if Appellant's claims are ripe, Appellant has failed to establish a likelihood of success on its constitutional theories.

III. Whether Appellant has demonstrated irreparable harm or shown that the remaining equities weigh in favor of a preliminary injunction.

RELATED CASES AND PROCEEDINGS

The State adopts the list of related cases from Appellant's brief. FC.Br.6–7.

COUNTERSTATEMENT OF THE CASE

A. New Jersey Statutes.

The New Jersey Consumer Fraud Act ("CFA"), the Charitable Registration and Investigations Act ("CRIA"), and the Professions and Occupations law ("P&O Law") empower the Attorney General and Division of Consumer Affairs to investigate whether an entity is engaged in certain specified unlawful practices. See N.J. Stat. Ann. § 56:8-3 (CFA); § 45:17A-33(c) (CRIA); § 45:1-18 (P&O Law). The statutes and regulations define the covered practices, which include deceptive and fraudulent commercial

practices, N.J. Stat. Ann. § 56:8-2 (CFA), deceptive and misleading statements or omissions by charitable organizations, N.J. Stat. Ann. § 45:17A-32(a), -(c)(3), -(c)(7) (CRIA), and the unlicensed practice of medicine, deceptive and misleading practices, and other professional misconduct, N.J. Stat. Ann. § 45:1-18.2, -21 (P&O Law). The Attorney General and Division are "charged with seeing that" these statutes are "obeyed" and empowered to "inquire to be assured of compliance." *In re Addonizio*, 248 A.2d 531, 542 (N.J. 1968).

The CRIA addresses deceptive and misleading statements or omissions made by charitable organizations that relate to "the planning, conduct, or execution of any solicitation or charitable sales promotion," including applicable violations of the CFA and the use of "information, statements or communications that, although literally true, are presented in a manner that has the capacity to mislead the average consumer." N.J. Stat. Ann. § 45:17A-32(c)(3), (7); *see also id.* § 45:17A-32(a) (referring to misleading statements made "on behalf of a charitable organization by persons including, but not limited to commercial co-venturers, fund raising counsels, independent paid fund raisers or solicitors").

The P&O Law bars the unlicensed practice of medicine. N.J. Stat. Ann. § 45:1-18.2. Other provisions and regulations prohibit licensed medical professionals from engaging in deceptive and misleading practices and other forms of professional misconduct. *See*, *e.g.*, N.J. Stat. Ann. § 45:1-21 (prohibiting professional licensees from using "dishonesty, fraud, deception, misrepresentation,

false promise or false pretense," engage in "professional or occupational misconduct," or "permit[ing] an unlicensed person" to engage in the unlicensed practice of medicine); N.J. Admin. Code § 13:35-6.10(c) (prohibiting medical advertising that uses a "misrepresentation of a material fact" and any "suppression, omission or concealment of any material fact" that the professional "knows or should know" would "prohibit[] a prospective patient from making a full and informed judgment on the basis of the information set forth in the advertisement").

B. The Investigation and Subpoena.

This case arose from the Division's work to investigate whether Appellant's conduct violated state laws—in particular, whether Appellant misled its donors and potential clients, among others, into believing Appellant provides comprehensive reproductive health care services, including abortion care and contraception, when it in fact aims to deter individuals from seeking such services. Early investigatory steps, including a review of the different websites Appellant maintains for different audiences, revealed that Appellant may be violating state law. The core website Appellant maintains for donors, https://1stchoicefriends.org, says that Appellant has a pro-life mission to "protect the unborn," JA857–58, including on its donation-solicitation and volunteer application pages, *see* JA852–58. Its donation page states, "pro-life donors like you have saved lives and served women considering abortion in New Jersey." JA857. And the site's Volunteer Application likewise confirms that Appellant is "committed to assisting women to carry to term." JA853.

But Appellant maintains other websites, namely https://1stchoice.org (which it describes as its "Client Site") and https://firstchoicewomancenter.com, that omit references to its mission, even though these websites also have donation pages. JA698-701. For example, one passage on the Client Site states:

> You may be considering abortion as an option. Before you decide, it is important to remember that abortion is a medical procedure and, like any other medical procedure, you should consult a medical professional beforehand. We are a network of clinics providing the best care and most up-to-date information on your pregnancy and pregnancy options and have multiple locations to serve you. We are dedicated to providing you with everything you need to make an informed decision about abortion, at no cost to you.... It is important to determine the viability of your pregnancy before paying a high cost for an abortion.

JA912; *see also*, *e.g.*, JA747 ("the Right to Choose Includes the Right to Know."). Although these sites contain a disclaimer that "First Choice Women's Resource Centers is an abortion clinic alternative that does not perform or refer for termination services," JA681, this fine print appears on the bottom of the webpage and does not disclose First Choice's mission as a pro-life ministry and does not appear on the Client Site's donation page, *see* JA JA698-701. Moreover, the donors who give via https://1stchoice.org and https://firstchoicewoman center.com are told that Appellant invites those women "considering an abortion" to "[l]earn more

about the abortion pill, abortion procedures, and your options in New Jersey." JA676. But they are not told about the pro-life work in which Appellant engages. *See id.*; *see also*, *e.g.*, JA856 (Appellant instructing volunteers not to wear "pro-life jewelry or buttons" when engaging with clients).

Based on its review of publicly available information, the State also became concerned that Appellant is making medical statements that may be misleading or untrue. *Compare* JA926 (stating that "a pre-abortion ultrasound is generally required before you take the abortion pill"), *with* U.S. Food & Drug Admin., Mifeprex (Mifepristone) Prescribing Information 17 (Mar. 2016), https://tinyurl.com/2vndx5k3 (noting ultrasound is an option, but not indicating this is generally required). Appellant also claims that "[t]here is an effective process for reversing the abortion pill," JA760, despite a lack of credible scientific evidence supporting that factual claim, *see*, *e.g.*, *Facts Are Important: Medication Abortion "Reversal" Is Not Supported by Science*, Am. Coll. of Obstetricians & Gynecologists, https://tinyurl.com/mrye7fsa (last visited Dec. 1, 2024). The Division's review of Appellant's public-facing materials identified other concerning factual claims. *See*, *e.g.*, JA751, 755 (claiming that "[b]ecause of the risk of serious complications, the abortion pill is only available through a restricted program," and that the pill can lead to "sepsis" and "rupturing of the uterus").

The State also identified concerns about the role (or lack thereof) of licensed professionals in Appellant's operations. For one, it identified serious questions as to whether certain individuals working for Appellant perform diagnostic sonograms and even

purport to assess gestational age, viability, and ectopic pregnancies without possessing the requisite qualifications and licensure. *Compare* JA673 (representing Appellant's services are overseen by a physician), *and* JA903 (purporting to diagnose ectopic pregnancies and determine fetal viability), *with* JA731, 734 (website stating that it is "not an obstetrical medical practice" and "does not use ultrasound to ... diagnose abnormalities"). For another, the State's review of Appellant's materials, and its own undercover phone calls to Appellant, raised concerns as to whether Appellant's personnel who provide medical services are properly licensed, and whether licensed personnel comply with applicable standards of care when providing services like ultrasounds or informing clients regarding the risks of abortions. *See* JA747, 892 (Client Site inviting potential clients to contact them to consult with "a licensed medical professional," and adding that Appellant's "medical staff can answer all of [clients'] questions … with professional accuracy); JA676, 741, 754, 756 (images on websites of medical staff, including individuals wearing scrubs and stethoscopes); JA673 (Appellant representing to undercover investigator that doctors oversee medical services, but are not necessarily onsite; confirming that staff conduct ultrasounds; and indicating staff will not provide information about the risks of abortion absent an agreement to submit to a pregnancy test).

The investigation also revealed concerns about Appellant's patient-privacy practices. Appellant represents to clients that its services are "confidential" and "private." JA682, 730, 736, 749. But

elsewhere, Appellant claims that it is exempt from HIPAA, *see* JA952, and its privacy policy indicates that it shares information with affiliates, *see* JA704. That raised concerns about how and whether Appellant keeps health or other sensitive information private and secure.

To determine whether Appellant violated state law, the State issued the instant Subpoena on November 15, 2023. *See* JA122–145. Consistent with other subpoenas issued by the State in investigating a wide variety of entities, the Subpoena's 28 requests seek documents that will enable the State to evaluate whether Appellant has violated the relevant portions of the P&O Law, CRIA, and/or CFA, as follows:

Requests 1-2	The methods and contents of solicitations and advertisements by Appellant
Requests 3-5, 13-19, 21, 27	The services Appellant provides to clients, including documents and videos shown to clients, confidentiality and privacy policies, the ultrasound imaging technology utilized and personnel who provide ultrasound services, licensure requirements for such services, professional licensees that provide services to clients, personnel training procedures, and policies, referrals, and compliance policies and procedures

Requests 6-9	Documents substantiating specific medical and scientific claims made on Appellant's websites
Request 10	Development of Appellant's websites
Request 11	Complaints or concerns from clients or donors and Appellant's processes for handling same
Request 12	Legal or administrative proceedings related to Appellant's services, advertisements, solicitations, and medical claims
Requests 20, 26	Donations to Appellant other than through the Donor Solicitation Page, and how personnel are instructed and in fact communicate with donors regarding Appellant's charitable purpose
Request 22, 23	Appellant's affiliation with Care Net and Heartbeat International, Inc.
Request 24, 25	Appellant's organizational structure and tax-exempt status
Request 28	Appellant's document retention policies

See JA122–145. All but two requests seek information for the 3 years prior to the Subpoena's issuance. JA127. And Requests 6 and 7 only seek 10 years' worth of documents substantiating medical

claims to ensure Appellant can present all relevant support. JA133–34. Further, just one request (Request 26) implicates disclosure of donor information, targeted at donors who may not have been aware of Appellant's pro-life mission. JA137 (seeking documents "sufficient to Identify donations made to [Appellant] by any means other than through the Donor Solicitation Page"). As the State has since clarified, this request is focused on (1) the *donors* who made contributions through the Client Pages, where the State already has cause to believe they may have been misled by the webpages they reviewed, and (2) information identifying the *methods* of donations other than the Donor Solicitation and Client Pages, so that the State can further investigate what other information these donors had. JA632–633.

The Subpoena set December 15, 2023, as the deadline for response. JA123. Rather than respond, Appellant filed this suit in federal district court two days before the deadline. JA056–90.

C. Procedural History.

Appellant's challenges to the Subpoena have spawned litigation before the New Jersey Superior Court, the Appellate Division, the federal district court, this Court, and the U.S. Supreme Court. A brief summary of the relevant proceedings follows.

1. Federal Action: District Court Dismissal And Initial Appeal.

On January 12, 2024, the federal district court dismissed this lawsuit, finding Appellant's claims unripe. JA192–202. The district court reasoned that the State lacked power to enforce the Subpoena

because state law places exclusive authority to enforce or quash an investigatory subpoena with the New Jersey Superior Court. JA195–96 (citing N.J. Stat. Ann. §§ 56:8-6; 45:17A-33(g)). As a result, the court held, because it "cannot yet know whether the state court … 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." JA200.

The district court cited significant precedential support for its ripeness ruling. In particular, it emphasized the "factually identical" *Google v. Hood*, 822 F.3d 212, 225 (5th Cir. 2016), which found a federal constitutional challenge to a non-self-executing state investigatory subpoena was unripe because the recipient had not "be[en] forced to comply with the subpoenas nor subjected to any penalties for noncompliance." JA198. This had long been the rule for review of non-self-executing federal subpoenas, JA197 (citing *Reisman v. Caplin*, 375 U.S. 440, 443–46 (1964)), and *Google* and the district court were "skeptical that a state administrative subpoena can be ripe for federal court adjudication where a similar federal administrative subpoena would not be." JA198–99 (explaining 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." (quoting *Google*, 822 F.3d at 226)).

Appellant appealed. This Court denied an injunction pending appeal on February 15, 2024.

CA3.Dkt.20.[2] It also denied Appellant's request for an expedited appeal, noting Appellant did not "promptly file a motion to expedite" and had failed to tell the Court that it was "simultaneously pursuing extraordinary relief from the Supreme Court and representing to that Court that expedited treatment is not necessary." CA3.Dkt.29 (reminding Appellant of the duty of candor). The Supreme Court denied Appellant's petition for a writ of mandamus to require the district court to exercise jurisdiction, without noted dissent. *See In re First Choice Women's Res. Centers, Inc.*, 144 S. Ct. 2552 (2024).

2. State Action: Superior Court Denies Appellant's Motion To Quash.

Meanwhile, the State moved to enforce the Subpoena in New Jersey Superior Court on January 30, 2024—ten months ago. JA983. Appellant cross-moved to stay or quash the Subpoena on April 1, 2024, *id.*, and the parties briefed the same constitutional arguments Appellant raised in its federal action, *see id.*; *see* SA45–67, SA500–10. On May 28, the state trial court granted the State's application, denied the cross-motion to quash, and denied Appellant's motion for a stay pending appeal. JA260, 267–68. The court memorialized its rulings in orders dated May 30 (denying stay pending appeal), June 6 (denying cross-motion to stay or quash), and June 18 (granting motion to enforce) ("June 18 Order"). JA989–992, JA247–49.

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[2] This brief cites the prior appeal in this matter, CA3 No. 24-1111, as "CA3.Dkt.," and the docket in this appeal, CA3 No. 24-3124 as "Dkt."

The state trial court's ruling found no "basis to deny the [State's] order to show cause and quash the subpoena." JA255–60. The court rejected Appellant's view that the Subpoena resulted from "retaliation and bias on the State's part," finding Appellant's claim to be "speculation." JA257. The court rejected Appellant's argument that the Attorney General's positions on reproductive healthcare supported its First Amendment claim that the Subpoena reflected improper animus, holding that "public officials, including the Attorney General, frequently make statements of public concern" but can still investigate entities that operate in those relevant industries if the State has sufficient cause to do so. JA257 (quoting *Platkin v. Smith & Wesson Sales Co., Inc.*, 289 A.3d 481, 487 (N.J. Super. Ct. App. Div. 2023)).

But the state trial court did not address all the constitutional claims. It recognized that Appellant had certain arguments that did not challenge the entire Subpoena on its face, but "which center on" the Subpoena's "scope"—including Appellant's claims that certain of the requests would violate its First Amendment associational rights and that others were burdensome or unreasonable. JA257–58. But, the court emphasized, Appellant had never met with the State to discuss such issues. *Id.* So although the state court stated that "the Attorney General has not, at this very preliminary juncture of this matter, violated any statutory or constitutional tenets which would lead to a quashing of the subpoena at issue," JA260, the court concluded that Appellant's "constitutional arguments [we]re … premature" at that time, JA258. The state court's June 18 Order thus directed

Appellant to "respond fully" to the Subpoena by July 18. JA248–49.

3. Subsequent State Court Motions and Appellate Filings.

In the two months between the May 28 ruling and July 18 deadline, Appellant did not seek a stay or any other relief from the New Jersey Appellate Division. *See* JA985–86. Instead, on July 18, the deadline for compliance with the state trial court's June 18 Order, Appellant filed a motion for a protective order ("PO Motion") with the state trial court. JA986. Appellant also identified a list of specific Subpoena requests to which it objected. Appellant then filed a notice of appeal, but again did not move for a stay. *Id.*

On July 26, the State opposed Appellant's motion and cross-moved to enforce litigants' rights ("Motion to Enforce June 18 Order") based on Appellant's failure to comply with the court order. JA463–65. On September 20, the state court held a hearing and found that it lacked jurisdiction to hear Appellant's PO Motion given the pending appeal to the Appellate Division, which divested the state trial court of the authority to review it. SA517–18. Despite acknowledging that it had jurisdiction to hear the State's pending enforcement motion despite the pending appeal, the state court held that motion in abeyance. SA518–22. The Appellate Division then granted a remand to allow the trial court to consider these motions by December 2. JA575.

4. Subsequent Federal Filings And Decisions.

After the May 28 state-court ruling, Appellant waited 18 days to file a motion for an injunction

pending appeal in its prior appeal before this Court. CA3.Dkt.49, 49-1. The State moved to dismiss that appeal as moot in light of the state court's June 18 Order—which the State believed required Appellant to "respond fully" by producing all requested documents by July 18. CA3.Dkt.50. On July 9, consistent with the State's request, this Court dismissed the prior appeal as moot and remanded the case to district court. CA3.Dkt.56-1. 10 days later, Appellant filed another TRO/PI motion in the district court. DNJ.Dkt.41.

On November 12, the district court denied Appellant's TRO/PI motion and dismissed its claims without prejudice. *See* JA045–46. It found the state court had not yet compelled compliance with the Subpoena. Instead, Judge Shipp found that while the state court had required Appellant to provide *responses* to the Subpoena, including objections, it "remain[ed] an open question" whether Appellant would be compelled to disclose the materials it believed were constitutionally protected, and the state trial court had not yet decided whether to order such production. JA025. Because the recipient of a non-self-executing Subpoena faces no sanctions until the *court* decides that it must comply, the district court again held that the matter remained unripe under Article III. *Id.* The district court later also denied a Fed. R. App. P. 8 motion for injunction pending appeal. DNJ.Dkt.70.

Appellant appealed, and this Court granted Appellant's motion to expedite this appeal, setting oral argument for December 10. On November 15, Appellant moved for an injunction pending appeal before this Court.

5. The State Court's November 19 Oral Argument.

On November 19, 2024, the state trial court heard argument on the State's Motion to Enforce and Appellant's PO Motion. Although Appellant's opening brief provides little information about that hearing, the state court provided significant clarity regarding the scope and impact of its prior orders.

Initially, the court clarified the meaning of its June 18 Order, which directed Appellant to "respond fully" to the November 15, 2023 Subpoena. The State and its counsel had read the June 18 Order to require Appellant to produce the subpoenaed documents—indeed, that was why the State believed the June 18 Order had ripened the dispute in federal court. *See* JA663–64. Appellant, by contrast, believed that "respond fully" meant it simply had to provide some response that could be nothing more than an objection, including an objection based on its alleged constitutional rights or on some asserted privilege. *See* JA628 (Appellant arguing it "did comply with the order" because the "response can well be that we object"). The state court ultimately agreed with Appellant that its June 18 Order to "respond fully" meant only that Appellant could "object" to requests based on "constitutional claims" or "privileges." JA628; *see* JA663 (adding its "thought process" and "intention" in ordering Appellant to "fully comply" was only to solicit Appellant's responses and objections and then to adjudicate them). The court emphasized it was "not faulting the State" for its reading, acknowledging the requirement to "fully comply" was "not as clear as I should've made it" and emphasizing it would not "hold" this "against the

State." JA663. But the court did conclude that it had not yet required Appellant to make any productions pursuant to the Subpoena. JA663–64.

The court also explained that it would not require production pursuant to the challenged subpoena requests until it further reviews the associational claims—the precise claims Appellant raises here. *See* JA625, JA637. And the state court categorically stated that it would not be issuing any sanctions for Appellant's nonproduction to date. *See* JA659 ("I'm not granting sanctions on this motion."). The court reserved decision on all other matters. *See* JA666.

In light of the state court's statements at the November 19, 2024 hearing, the State ultimately opposed Appellant's motion for an injunction pending appeal in this Court on the basis that the dispute was in fact still unripe. *See* Dkt.20. That remains the case as of the morning of December 2, when the State finalized this brief.

STANDARD OF REVIEW

This Court "review[s] the District Court's denial of a preliminary injunction for abuse of discretion and any underlying legal questions de novo." *ADP, LLC v. Rafferty*, 923 F.3d 113, 119–20 (3d Cir. 2019). The movant must first "demonstrate a reasonable likelihood of success and that it would likely suffer irreparable harm absent an injunction." *Id.* If both are satisfied, "the court balances these factors, along with the relative hardship that the grant or denial of an injunction would inflict on the parties and the public interest." *Id.* at 120.

SUMMARY OF ARGUMENT

I. The district court correctly concluded that Appellant's claims are not ripe. Well-settled precedent establishes that a collateral challenge to a non-self-executing administrative subpoena is unripe unless and until a court with authority to enforce it compels production under threat of sanctions. Until then, the recipient has no obligation to comply with the subpoena and suffers no Article III injury. That principle fits this case perfectly: the state court has not yet compelled compliance with the Subpoena, and in fact has now confirmed Appellant faces no sanctions for non-production.

Appellant's counterarguments are unavailing. This Court never previously held the lawsuit was ripe, but instead dismissed the appeal as moot based on the parties' agreement that the case was ripe—a position based on an understanding of the state-court's June 18 Order that the state court has since disclaimed. Appellant also identifies no cognizable harm from merely litigating its claims before the state court. And Appellant presents neither evidence nor precedent establishing that the mere issuance of the Subpoena results in chill sufficient to establish injury-in-fact.

II. Even if this Court finds this suit is justiciable, Appellant is unlikely to succeed on the merits.

A. The First Amendment retaliation and selective enforcement/viewpoint discrimination claims are not likely to succeed. For one, Appellant cannot prove that the State lacked sufficient cause for the Subpoena—a dispositive requirement. *See Hartman v. Moore*, 547 U.S. 250 (2006). The State had

ample cause to investigate, including inconsistent and potentially misleading representations Appellant made to clients and donors across its websites, its potentially misleading or untrue medical statements, and concerns about potentially unlicensed professional practice.

Moreover, Appellant cannot show the Subpoena was driven by improper motive. The Attorney General's public statements and meetings on reproductive healthcare are not evidence of improper targeting but rather of legitimate concern about fraud. Appellant's reference to Planned Parenthood are inapt, as the two organizations are not similarly situated in any relevant respects. Significantly, Appellant makes divergent representations regarding its mission and operation across separate websites, which sets it apart from other organizations it claims warrant the same subpoena.

B. Appellant fares no better on its associational claims. Combating donor fraud is a undisputedly a compelling state interest. This Subpoena is narrowly tailored to that interest; a subpoena is a prime example of an appropriately-targeted way to investigate fraud. *See Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 613–14 (2021) (AFP). And the State's Requests regarding medical employees and affiliate organizations are similarly tailored to identify whether the professionals are complying with the state licensure rules.

III. Nor can Appellant satisfy the remaining preliminary-injunction factors. To begin, Appellant cannot demonstrate irreparable harm. As the state trial court recently confirmed, it has not compelled

compliance with the Subpoena. Moreover, Appellant's claim of irreparable harm is undercut by its lack of alacrity in seeking relief in both state and federal fora. Further, neither document production nor being required by a state court to comply with a state law subpoena before federal-court review would work an irreparable harm. By contrast, the State would be harmed if it cannot investigate potential fraud and professional misconduct. And any injunction would incentivize other subpoena recipients to collaterally attack state subpoenas, further compounding harm to the public's interest.

ARGUMENT

This Court should affirm the district court's denial of a preliminary injunction for three reasons. First, the federal lawsuit is currently unripe. Second, even if this lawsuit were ripe, Appellant's First Amendment claims are unlikely to succeed on the merits. Finally, the equities likewise compel denial of preliminary relief.

I. THE DISTRICT COURT CORRECTLY FOUND APPELLANT'S CLAIMS ARE NOT RIPE.

The district court properly held that Appellant's claims in federal court are not yet ripe. Precedent instructs that a collateral challenge to a non-self-executing administrative subpoena is unripe unless and until the sole court with authority to order compliance actually does so. The state trial court—tasked by New Jersey law with enforcing the Subpoena—has confirmed that it has not yet done so.

1. A challenge to a non-self-executing administrative subpoena is unripe unless and until a court with authority to enforce it actually compels production. *See Reisman*, 375 U.S. at 448–50; *Schulz v. IRS*, 413 F.3d 297, 303 (2d Cir. 2005); *Mobil Expl. & Producing U.S., Inc. v. Dep't of Interior*, 180 F.3d 1192, 1203 (10th Cir. 1999); *In re Ramirez*, 905 F.2d 97, 98–100 (5th Cir. 1990); *Belle Fourche Pipeline Co. v. United States*, 751 F.2d 332, 334–35 (10th Cir. 1984); *Gen. Fin. Corp. v. FTC*, 700 F.2d 366, 371 (7th Cir. 1983). This Court's decisions are in accord. *See Shea v. Off. of Thrift Supervision*, 934 F.2d 41, 45–46 (3d Cir. 1991) ("The subpoenaed party faces actual harm only after a successful enforcement action has been brought and ... has been ordered to comply. It is at that time, and not before, that the party may have an order reviewed by this court."); *Wearly v. FTC*, 616 F.2d 662, 667–68 (3d Cir. 1980) (finding challenge to agency subpoena unripe because plaintiff "was free to await enforcement proceedings").

Reisman is instructive. There, the Supreme Court held that the recipient of an IRS summons could not obtain an injunction before a court enforced the summons. 375 U.S. at 443–46. Because the recipient would have a "full opportunity for judicial review before any coercive sanctions may be imposed," the recipient "would suffer no injury while testing the summons," and the Court therefore dismissed the suit "for want of equity." *Id.* at 443, 449–50. For decades, courts—including this one—have uniformly applied Reisman to find that collateral challenges to non-self-executing subpoenas are unripe unless and until a court requires compliance. *See Wearly*, 616 F.2d at 667–68; *Schulz*, 413 F.3d at 300; *Belle Fourche*

Pipeline, 751 F.2d at 334–35; *Gen. Fin. Corp.*, 700 F.2d at 371.

As this Court and others have recognized, that rule follows from blackletter ripeness principles. *See, e.g.*, *Wearly*, 616 F.2d at 667. As *Abbott Laboratories v. Gardner* explained, the ripeness doctrine "prevent[s] the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until" the "effects" of an agency action are "felt in a concrete way by the challenging parties." 387 U.S. 136, 148–49 (1967). Only when an administrative action "requires an immediate and significant change in the plaintiffs' conduct of their affairs with serious penalties," has the federal plaintiff suffered a "hardship" to render the pre-enforcement challenge ripe for judicial review. *Id.* at 149, 153. The Reisman line of cases confirms that those principles apply to non-self-executing subpoenas. Unlike other actions that immediately attach constitutional injury, the mere issuance of a subpoena attaches "no injury" on the recipient until a court compels compliance with the subpoena and threatens sanctions, *Reisman*, 375 U.S. at 447–50. Until then, the recipient suffers no hardship from having to first litigate its challenges in the designated forum. *See id.*; *see also Shea*, 934 F.2d 45–46.

These ripeness principles apply to state agency subpoenas. For example, in *Google*, the Fifth Circuit relied on *Reisman* and its progeny to find unripe a challenge to a state-law subpoena analogous to the ones at issue here. *See* 822 F.3d at 225–26. As *Google* explained, because the Mississippi statute in *Google*

provided that the Attorney General could only enforce his subpoenas by "'apply[ing]' to certain state courts" for "'an order' granting injunctive or other relief," any challenge to his subpoena remained unripe until such an order issued. *Id.* at 225. And because Google could not be "forced to comply" or face sanctions "absent a court order," it "would 'suffer no undue hardship from denial of judicial relief.'" *Id.* New Jersey law similarly requires the Attorney General to apply to a state trial court for an order enforcing the subpoena, and that court has discretion on whether to grant relief. *Compare* Miss. Code Ann. § 75-24-17, *with* N.J. Stat. Ann. § 56:8-6 (CFA); § 45:17A- 33(g) (CRIA); § 45:1-19 (P&O Law).

In the instant case, the state court has not yet compelled compliance with the non-self-executing Subpoena, and Appellant faces no threat of sanctions, making this dispute unripe. *See* JA666. While the state trial court previously issued an order on June 18 requiring Appellant to "respond fully" to the Subpoena, the court has since clarified at the November 19 hearing that its June 18 Order did not actually compel Appellant to produce documents. Instead, the court explained that "respond fully" meant only that Appellant could still "object" to requests based on "constitutional claims" or "privileges." *See supra* at 17–18; JA625, 663. And the court confirmed Appellant faces no risk of sanctions at this time. *See* JA659. When the State finalized this brief on December 2, the state court has not decided whether to compel compliance, *see supra* at 18, making this federal case still unripe.

To be clear, this was not the State's position before the federal district court because the State had

previously understood the state court's June 18 Order differently. But contrary to Appellant's refrain that the State has impermissibly shifted positions, the State's legal argument has not changed. Instead, the difference is that the state court has now clarified what it had ordered on June 18—which candidly was not how the State understood it. The State understood the June 18 Order's command that Appellant "respond fully" to the Subpoena to require full production. Thus, the State forthrightly told this Court and the federal district court that the case was ripe. But the state court explained in the November 19 hearing that it has adopted *Appellant*'s contrary view of the June 18 Order—that it merely required Appellant to respond with *objections* rather than documents. *See* JA663 (state trial court "not faulting the State" for its interpretation, acknowledging requirement to "respond fully" was "not as clear as I should've made it" and emphasizing court would not "hold" misunderstanding "against the State"). Because the state court has confirmed it had not yet decided to compel compliance with any disputed requests, and no sanctions loom, this dispute is still unripe.

2. Appellant's arguments to the contrary do not pass muster. *First*, Appellant incorrectly reads this Court's July 9 mootness order as holding that Appellant's claims were already ripe. FC.Br.21–22. Rather, this Court held that the first appeal was moot because "it is now undisputed" between the parties that the claims in the district court were ripe based on the state court's ruling as it was then understood. See CA3.Dkt.56-1 at 1–2. This Court did not hold Appellant's claims were ripe—it simply remanded the

appeal in light of the state court's intervening June 18 Order. It is not unusual for this Court to dismiss an appeal as moot while "express[ing] no opinion on whether the case itself is moot." *Sczesny v. Murphy*, No. 22-2230, 2023 WL 4402426, at *1 (3d Cir. June 14, 2023). Moreover, even if this Court read the state court's June 18 Order the same way the State did, the state court's clarification would require this Court to revisit this jurisdictional ripeness question anew.

Second, Appellant currently faces no harm for not complying with the Subpoena, contrary to its unsupported statements about the threat of sanctions. *See* FC.Br.23. The power to impose penalties lies with the state court: New Jersey statutes require the Attorney General to apply to the state court for an order enforcing the Subpoena, and that court has discretion on whether to grant relief. *See* N.J. Stat. Ann. § 56:8-6 (CFA) (providing upon failure to "obey any subpoena," the Attorney General "may apply to the Superior Court and obtain an order … [g]ranting such other relief as may be required"); N.J. Stat. Ann. § 45:17A-33(g) (CRIA) (similar); N.J. Stat. Ann. § 45:1-19 (P&O Law) (similar). Here, the state court explicitly stated Appellant faces no threat of sanctions because it is under no obligation to produce documents. *See* JA666, 659 ("I'm not granting sanctions on this motion.").

Third, even if Appellant could overcome *Reisman*, Appellant nonetheless fails to demonstrate Article III injury because it fails to show that the Subpoena has a chilling effect on its free expression. *See Nat'l Shooting Sports Found. v. Att'y Gen. of N.J.*, 80 F.4th 215, 220 (3d Cir. 2023). Courts are hesitant to find that service of a non-self-executing subpoena alone

"chills" speech to create a justiciable claim. *See Seattle Pac. Univ. v. Ferguson*, 104 F.4th 50, 57–58 (9th Cir. 2024) (recipient of attorney general's request for documents lacked injury-in-fact despite assertion of chilling effect on religious exercise because request "carries no stick");[3] *Twitter v. Paxton*, 56 F.4th 1170, 1172 (9th Cir. 2022).

While Appellant cites *Twitter*, FC.Br.24, which declined to apply *Reisman* to a First Amendment subpoena challenge and expressly diverged from *Google*, that case does not help Appellant because *Twitter* still found the challenge premature. 56 F.4th at 1175. *Twitter* rejected a subpoena recipient's "naked assertion that its speech has been chilled" as conclusory and insufficient to demonstrate Article III injury. *Id.* That makes sense; the Supreme Court has made clear that the "mere existence" of an investigation does not alone "produce[] a constitutionally impermissible chilling effect" that warrants review. *Laird v. Tatum*, 408 U.S. 1, 10–14 (1972); *see also*, *e.g.*, *UMDNJ v. Corrigan*, 347 F.3d 57, 69 (3d Cir. 2003) ("Courts should hesitate to scrutinize decisions to initiate administrative audits and investigations …."). Other courts have similarly dismissed challenges to investigative subpoenas as unripe where claims of "chill" were not supported with

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[3] *Seattle Pacific University* also found that the university had standing to bring pre-enforcement claims against an impending enforcement action under the Washington Law Against Discrimination, which were distinct from the claims challenging the request for documents alone. 104 F.4th at 59–61. By contrast, Appellant has confirmed that its lawsuit concerns the Subpoena only, "not some later, unfiled substantive lawsuit" for enforcement of state law. FC.Br.26; *see* JA88.

facts. *See*, *e.g.*, *CBA Pharma, Inc. v. Perry*, 2023 WL 129240, at *4 (6th Cir. Jan. 9, 2023) (describing allegation that "investigation will harass and intimidate shareholders" as "speculative"); *U.S. News & World Reports v. Chiu*, 2024 WL 2031635, at *13 (N.D. Cal. May 7, 2024) (plaintiff failed to demonstrate that "it has changed, or will change, its behavior to adjust to the [subpoenas]"); *Second Amendment Found. v. Ferguson*, 2024 WL 97349, at *4 (W.D. Wash. Jan. 9, 2024).

Here, Appellant similarly fails to establish "chill" sufficient to demonstrate a concrete injury. Appellant makes a series of unsupported assertions (1) that it lacks the resources to respond to the Subpoena without threatening "its mission-driven activities" and (2) disclosure of its employees, donors, and affiliated organizations will cause those entities to cease their relationships with Appellant and deter others. *See* JA73–74, ¶¶ 71–79.[4] These speculative allegations boil down to the untenable notion that "any investigation into" its "practices creates a First Amendment injury." *Seattle Pac. Univ.*, 104 F.4th at 58. And Appellant fails to offer any evidence of alleged financial strain it will face by complying with the

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[4] Nothing requires that the investigation be prompted by an underlying consumer complaint. State law vests the Attorney General with discretion to initiate an investigation if he "believes it to be in the public interest that an investigation should be made to ascertain" the existence of an unlawful practice. *See* N.J. Stat. Ann. § 56:8-3 (CFA); *see also* § 45:1-18 (P&O Law); § 45:17A-33(c) (CRIA); *Okla. Press Publ'g Co. v. Walling*, 327 U.S. 186, 216 (1946) (holding that the validity of a decision to investigate is not "limited by forecasts of the probable result of the investigation" (cleaned up)).

Subpoena or that such compliance will actually harm its mission. *Cf. Second Amendment Found.*, 2024 WL 97349, at *4 (finding similar allegation was not "an allegation of actual, chilled speech"). Nor has Appellant pointed to any evidence that *any* person or organization would definitively cease its relationship with Appellant as a result of the Subpoena. *Cf. CBA Pharma., Inc.*, 2023 WL 129240, at *4 (rejecting as impermissibly speculative the plaintiff's claim that the investigation would harm relationship with investors where "no allegations suggest that any investors contacted by [the State] pulled their investments, threatened to pull their investments, or reconsidered the investment relationship"). Because Appellant has not shown an actually impending injury based on the Subpoena alone, its claims are unripe.

II. APPELLANT IS UNLIKELY TO SUCCEED ON THE MERITS.

Even if this Court reaches the merits of this preliminary injunction motion, Appellant's First Amendment claims are unlikely to succeed. This case concerns an investigation alone, where the State served its Subpoena but has not decided if it will pursue any civil or administrative action against Appellant for violations of the CFA, the CRIA, or P&O Law. That means Appellant bears a particularly high burden: typically, a public agency "violates no constitutional rights by merely investigating" conduct to determine whether its laws were violated. *Ohio Civil Rights Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 628 (1986); *see SEC v. McGoff*, 647 F.2d 185, 187–88 (D.C. Cir. 1981) (holding that investigative subpoenas themselves "do not directly

regulate the content, time, place, or manner of expression" for First Amendment purposes). Appellant tries to evade that rule by claiming this Subpoena reflects animus against it, and that a subset of the Subpoena's requests unlawfully burden associational rights. Both claims will fall short.

A. Appellant Is Not Likely To Succeed On Its Retaliation, Selective Enforcement, Or Viewpoint Discrimination Claims.

Appellant's retaliatory / selective enforcement and viewpoint discrimination theory, JA74–76, fails for two principal reasons: the State had sufficient cause to justify its Subpoena, and the claims of improper motive are speculative and unsupported.

1. Initially, Appellant cannot show the State lacked sufficient cause for its Subpoena. Precedent confirms that when an individual or entity challenges the State's enforcement action as retaliatory, the challenger must show not only "retaliatory animus," but also that the action would not "have been [taken] anyway, independently of any retaliatory animus." *Hartman*, 547 U.S. at 259–61, 265–66 (in criminal cases, "establishing the existence of probable cause will suggest that prosecution would have occurred even without a retaliatory motive"); *see Nieves v. Bartlett*, 587 U.S. 391, 404 (2019) (explaining that "[a]bsent … a showing [of a lack of probable cause], a retaliatory arrest claim fails" regardless of the number of government actors in the causal chain). This burden is required since there is a "presumption that a prosecutor has legitimate grounds for the action he takes," *Hartman*, 547 U.S. at 263, and thus a plaintiff must have "clear evidence' displacing the

presumption that a prosecutor has acted lawfully," *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 489 (1999).

That principle applies to civil enforcement actions. *See DeMartini v. Town of Gulf Stream*, 942 F.3d 1277, 1304–09 (11th Cir. 2019) ("[A]s with § 1983 First Amendment retaliation claims arising in the criminal prosecution and arrest context, the presence of probable cause will generally defeat a § 1983 First Amendment retaliation claim based on a civil lawsuit as a matter of law."); *Scott v. Tempelmeyer*, 867 F.3d 1067, 1070–72 (8th Cir. 2017) (applying *Hartman*'s no-probable-cause requirement to case involving local building code, citing similar circuit precedents); *McBeth v. Himes*, 598 F.3d 708, 720 (10th Cir. 2010) (civil licensure suspension); *see also Meadows v. Enyeart*, 627 F. App'x 496, 505 (6th Cir. 2015) (health department proceedings); *see also DeMartini*, 942 F.3d at 1298–99 (discussing pre-*Hartman* precedents examining "whether the underlying civil action was frivolous" in valuating retaliation claims). That is, in the civil litigation context as much as in "retaliatory criminal prosecution cases," the absence of legally sufficient cause is "necessary to bridge the gap between the defendant's alleged animus and plaintiff's injury." *DeMartini*, 942 F.3d at 1304.

That rule makes sense. For one, as *DeMartini* explained, a government-initiated civil proceeding is the fruit of some investigation and information-gathering, a legal recommendation by counsel, and a decision by the relevant officials to further investigate or file an enforcement action. *Id.* at 1304. That "widen[s] the causal gap" between "any … retaliatory animus" a government official is alleged to have and

the actual government action taken. *Id.* Moreover, like in criminal prosecutions, government has a "legitimate interest and motivation in protecting" its "citizens" through civil litigation and investigations alike, "independent of any motivation to retaliate." *Id.* at 1305.

Thus, to prevail on its claims for retaliatory enforcement under Section 1983, Appellant must show that the State lacked proper cause for the Subpoena. Appellant cannot do so.[5] In general, good cause to investigate is a low bar. *See*, *e.g.*, *UMDNJ*, 347 F.3d at 64 ("[A]n agency ordinarily 'can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not.'" (citation omitted)). Here, the concrete bases for the Division's investigation included the presence of divergent statements regarding Appellant's operations across different websites, potentially misleading or untrue medical statements, and potential misrepresentations regarding the role that licensed professionals play. *See supra* at 6-11.

The Subpoena Requests enable the State to investigate those potential legal violations—or obtain assurance that these laws are not being violated. To take a few examples, Requests 6(b-c), 6(e-f), 6(j-m), 7(d) and 8 ask for information to substantiate

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[5] Appellant agrees its claims for retaliatory and selective enforcement and viewpoint discrimination rise and fall together. FC.Br.46 ("The same facts that establish retaliation also show that the Attorney General has selectively enforced the law based on viewpoint."). Given that the investigation was based on good cause rather than "an 'unjustifiable standard,'" *Hill v. City of Scranton*, 411 F.3d 118, 125 (3d Cir. 2005) (citation omitted), Appellant's trio of First Amendment theories all fail.

Appellant's claims about the risks of the abortion pill, and are relevant to whether Appellant's factual statements on the subject are well-grounded or lack support. JA133–35. Similarly, Requests 6(w-cc) and 8 ask for information to substantiate Appellant's claims regarding the safety and efficacy of abortion pill reversal. *Id.* Requests 14 and 15 seek the identities of those providing medical services on behalf of Appellant, and if licensure is required for services provided to clients, to assess whether individuals are providing unlicensed care, or whether medical professionals have been involved in misleading medical statements. JA136. Request 26 would enable the Division to contact a representative sample of donors and ensure they have not been misled by representations they encountered on https://1stchoice.org and https://firstchoicewomancenter.com, which contain differing representations regarding Appellant's mission and services than https://1stchoicefriends.org. JA137. Finally, Request 5 would enable the Division to assess the accuracy of Appellant's representations to clients about the confidentiality of client records. JA133.

The Subpoena followed an investigation by career Division investigators; the Division ultimately issued these November 15, 2023 demands; and counsel from across the Department of Law and Public Safety participated in the suit enforcing the Subpoena, further confirming the sufficient basis underlying the Subpoena. *See supra* at 6–10. *See Tempelmeyer*, 867 F.3d at 1071 (noting causal gap between animus allegation and alleged retaliation exists even where the action was carried out by subordinates of the official allegedly driven by improper motive).

Rather than grapple with the relevant standard in *Hartman*, Appellant cites *Lauren W. ex rel. Jean W. v. DeFlaminis*, 480 F.3d 259, 267 (3d Cir. 2007). But *Lauren W.* is inapposite: it did not involve a State's efforts to protect its residents via regulatory enforcement or investigation, *see DeMartini*, 942 F.3d at 1304, but rather, alleged retaliation by a school district against a student—by "refusing to release tuition reimbursement money"—for exercising certain statutory educational rights, *Lauren W.*, 480 F.3d at 266–67. But as numerous precedents explain, a claim of retaliatory investigation or prosecution, civil or criminal, is best viewed through *Hartman*'s standard. *See*, *e.g.*, *DeMartini*, 942 F.3d at 1289–1300; *Tempelmeyer*, 867 F.3d at 1070–72. Appellant cannot satisfy that standard.

2. Even assuming Appellant could clear that dispositive bar, it nonetheless fails to establish this Subpoena was driven by improper motive.[6] Notwithstanding the considerable bases for this investigation, Appellant asserts that the Attorney General and Division were motivated by animus by citing to (1) the Attorney General's public statements and meetings on reproductive healthcare, (2) a prior consumer alert and open letter, and (3) the failure to subpoena Planned Parenthood. FC.Br.8–10. But none show that the Subpoena was issued based on an

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[6] "[I]f the plaintiff establishes the absence of probable cause, 'then the *Mt. Healthy* test governs: The plaintiff must show that the retaliation was a substantial or motivating factor behind the [Subpoena], and, if that showing is made, the defendant can prevail only by showing that the [Subpoena] would have been initiated without respect to retaliation.'" *Nieves*, 587 U.S. at 404 (citation omitted).

"unjustifiable standard" or that similarly situated comparators were not investigated. *Hill*, 411 F.3d at 125. That dooms Appellant's retaliation, selective enforcement, and viewpoint discrimination claims.

As a threshold matter, far from singling out Appellant, the Division regularly investigates entities across a variety of industries and fields when there is concern about potential violations of the CFA, the CRIA, or the P&O Law, including by issuing a subpoena. For example, the State has investigated numerous entities based on complaints of alleged unlicensed practice of medicine (including utilization of ultrasound, radiofrequency, and cavitation machines), fraudulent advertising, and failure of a licensed physician to be present at the time of the healthcare services. *See* SA335–85. And it has filed complaints and administrative actions against charities for making untruthful oral or written statements, including misrepresenting the purpose or nature of the charitable institution or the purpose or beneficiary of a solicitation, soliciting contributions for any purpose other than the charitable purpose expressed in the statement of the charitable organization, and/or expending contributions in a manner inconsistent with that purpose. *See* SA128–299, 387–453.

Although Appellant says that the Attorney General's statements on reproductive care generally means this investigation must be borne of animus, courts have repeatedly rejected this kind of attack. In *Exxon Mobil Corp. v. Schneiderman*, 316 F. Supp. 3d 679 (S.D.N.Y. 2018), a court rebuffed Exxon's nearly identical attempt to evade compliance with two subpoenas issued by two state attorneys general on

the grounds that the real purpose of their fraud investigations was to punish and deter its views on climate change. See id. at 686–87. Exxon cited statements by the officials about climate change and claimed outside activists influenced the subpoena decisions. *Id.* at 706–07. The court rejected those arguments, holding Exxon had not shown the States were "pursuing an investigation even though [they] do[] not believe that Exxon may have committed fraud"—the high bar Exxon needed to meet. *Id.* at 707, 712. The court emphasized a lack of "direct evidence" of improper motive, and held the "circumstantial" evidence—the statements on climate change—did not show this investigation was retaliatory. *See id.* at 707 ("The fact [an official] believes climate change is real ... does not mean the [official] does not also have reason to believe that Exxon may have committed fraud."). Nor did meetings with environmental activists fill the gap: such "circumstantial evidence … fails to tie the AGs to any improper motive, if it exists, harbored by activists." *Id.* at 712.

As the state court already recognized in this case, Appellant's claim is at least as speculative. *See* JA257 (rejecting Appellant's position that the Subpoena resulted from "retaliation and bias on the State's part" because its claim was "speculation"). As in *Exxon*, there is no "direct" evidence that animus motivated this Subpoena—nothing Appellant identifies demonstrates that he and the Division did not also believe Appellant may be engaging in fraud or misconduct. None of the statements mention Appellant. Moreover, "public officials, including the Attorney General, frequently make statements of

public concern." JA257. Were that enough to foreclose investigations into entities who operate in those industries, it would put the officials "in a straight-jacket relative to their public comments" and could mean "a pharmaceutical company that sells opiate-based pain killers" has the right to "enjoin an investigation of it if the prosecutor stated publicly that the public should have accurate information about the risks of opiate use." *Exxon*, 316 F. Supp. 3d at 710 n.29; *see also SEC v. Wheeling-Pittsburgh Steel Corp.*, 648 F.2d 118, 130 (3d Cir. 1981). The Attorney General's support for access to reproductive care, consistent with New Jersey state law, *see* N.J. Stat. Ann. §§ 10:7-1 to -2 (Freedom of Reproductive Choice Act), and his meetings with advocacy organizations and healthcare providers who broadly share that view, do not show improper motive.

Nor are Appellant's specific arguments about the Attorney General's public statements more persuasive. See FC.Br.8–10, 40–41 (citing JA289–90 (Consumer Alert)); Open Letter from Attorneys General Regarding CPC Misinformation and Harm, Calif. Off. of the Att'y Gen. (Oct. 23, 2023), http://bit.ly/3CtAShf. Far from showing that the Attorney General harbors some improper purpose for his fraud investigation, these materials confirm that concerns about potentially fraudulent and deceptive practices motivated the issuance of this Subpoena. For example, the Consumer Alert informs the public that organizations like Appellant may engage in potential deceptive tactics including (1) using names and signage with pro-choice connotations, (2) offering free ultrasounds, pregnancy tests, and supplies targeted at specific populations, (3) offering

pregnancy counseling that does not include complete or accurate information regarding abortion, (4) postponing care to delay access to abortion, and (5) providing false or misleading information about the safety and legality of abortion. JA289. These same concerns—combined with others from the State's preliminary investigation into Appellant's practices—animate the Subpoena. That the State used informational alerts to combat potential fraud hardly undermines its efforts to investigate potential fraud.

Appellant gets no further by suggesting that the State is treating Appellant differently than other entities—in particular, Planned Parenthood. To prevail on this argument, Appellant must establish that the State is not treating "similarly situated" entities alike, *Hill*, 411 F.3d at 125, and that the party which avoided investigation is "alike 'in all relevant respects,'" *Children's Health Def., Inc. v. Rutgers*, 93 F.4th 66, 84 (3d Cir. 2024). "'[B]road generalities' are insufficient." *Stradford v. Sec'y Pa. Dep't of Corr.*, 53 F.4th 67, 74 (3d Cir. 2022). Appellant cannot meet this standard.

The basis of this investigation is not whether an entity serves those considering abortions, *see* FC.Br.43; rather, it is whether an entity is providing false or misleading statements to potential donors and clients. On that front, Appellant's briefing fails to identify any misrepresentations by Planned Parenthood remotely similar to the alleged misrepresentations the State was concerned with here. Appellant argues that Planned Parenthood maintains separate websites for its medical services and political PAC, FC.Br.44–46, but the mere fact of multiple websites is not the concern—it is the

divergent representations Appellant makes across those websites as to its mission and operations. *See supra* at 6–8. By contrast, the Planned Parenthood websites Appellant references all state the organization's mission and services—eliminating any risk that any donor or client was misled. *See* FC.Br.45. Moreover, as to medical information, Appellant's sole assertion that Planned Parenthood makes misleading statements about the safety of abortion medication, FC.Br.43, lacks support in this record—a sharp contrast to the specific concerns the State identified above regarding Appellant's representations. *See supra* at 8 (comparing statements to FDA label and medical association's website). Additional differences abound: Planned Parenthood is registered as an ambulatory care center with the N.J. Department of Health, N.J. Admin. Code § 8:43A-1.3, while Appellant is not; Planned Parenthood must comply with laws such as HIPAA, while Appellant says it is exempt. *See* N.J. Dep't of Health, Hospitals, Ambulatory Care, and other Acute Care Facilities, https://tinyurl.com/yaye3a7n (search by Name of Facility for "Planned Parenthood") (last visited Dec. 2, 2024); Planned Parenthood Notice of Health Information Privacy Practice, https://tinyurl.com/3mrx6a9s (last visited Dec. 2, 2024). Appellant's attack cannot withstand scrutiny.

Finally, *National Rifle Association of America v. Vullo*, 602 U.S. 175 (2024), is not to the contrary. *Vullo* involved allegations that a public official had coerced regulated entities to cease doing business with the NRA in order to suppress the organization's advocacy. *Id.* at 180–81. Vullo did "not break new

ground" but only "reaffirm[ed] the general principle" that "a government official cannot do indirectly what she is barred from doing directly." *Id.* at 190, 197. That has no bearing here, because the Subpoena is not a direct nor indirect means of advancing unlawful goals. Rather than "convey[ing] a threat of adverse government action" to punish speech, *id.* at 191, the Subpoena is a standard way to investigate violations of consumer-protection, charities, and professional occupations laws. Appellant's claims that the investigation lacks basis or is borne of improper motive are unlikely to succeed.

B. Appellant Is Not Likely To Succeed On Its Association Claim.

Appellant's associational claims also fall short. To start, Appellant's argument applies only to the Subpoena's Requests for the identities of its donors, medical staff, and affiliates—and so, even if likely to prevail, would support a preliminary injunction against the enforcement of those Requests alone. That said, the entire claim founders, as it misunderstands both the law and the record.

The standard governing an associational challenge to a disclosure requirement is exacting scrutiny, which requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *AFP*, 594 U.S. at 607 (citations omitted). In the context of a challenge to a broad state law requiring disclosure of donors, the Supreme Court held that exacting scrutiny also "requires that a government-mandated disclosure regime be narrowly tailored to the government's asserted interest," although it need not be "the least

restrictive means of achieving that end." *Id.* at 597. Under this "less intense standard," exacting scrutiny "require[s] a fit that is not necessarily perfect, but reasonable." *Gaspee Project v. Mederos*, 13 F.4th 79, 85 (1st Cir. 2021) (upholding state election donor disclosure requirement under *AFP* standard). While Appellant suggests in passing that strict scrutiny might apply, FC.Br.30, the *AFP* Court expressly rejected the invitation to apply that standard to associational challenges, holding instead that "exacting scrutiny *does not*" incorporate strict scrutiny's least-restrictive means requirement. *AFP*, 594 U.S. at 608. Regardless, under any standard, the challenged requests—for donor identities, medical personnel, and communications with specific national groups—survive.

First, the Subpoena's sole Request for donor information, JA137 (Request 26), is constitutional because it is tailored to the State's powerful anti-fraud interest. It is undisputed that States have compelling interests in investigating and combatting fraud on donors. *See Ill. ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 623–24 (2003) (recognizing the Supreme Court has "repeatedly recognized the legitimacy of government efforts to enable donors to make informed choices about their charitable contributions"); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 800 (1988) ("[T]he State may vigorously enforce its antifraud laws to prohibit professional fundraisers from obtaining money on false pretenses or by making false statements"); *see also AFP*, 594 U.S. at 612 (same). Although courts have held that certain *prophylactic* laws requiring charities to disclose their

donors on a blanket basis may be insufficiently tailored, the Supreme Court confirmed that a more targeted measure to investigate donor fraud is permissible, citing a reasonably supported "subpoena or audit letter" as the canonical example. *AFP*, 594 U.S. at 613–14; *Madigan*, 538 U.S. at 617 (finding "critical" distinction "between fraud actions trained on representations made in individual cases and statutes that categorically ban solicitations when fundraising costs run high"); *Riley*, 487 U.S. at 795 (expecting rigorous enforcement of state "antifraud law").

The donor information that Request 26 seeks reflects a tailored response to the State's well-supported concerns of potential fraud and misrepresentations. As noted above, the State's initial investigation revealed that Appellant may have misled donors through inconsistent representations across multiple websites—with sharply different information about its mission and operations, one of which states as its mission to "protect the unborn," and the others of which say that Appellant invites women "considering an abortion" to "learn more about the abortion pill, abortion procedures, and your options in New Jersey." *Supra* at 6–7. Indeed, as counsel explained at the November 19 state-court hearing, the Division is currently only seeking enforcement of that Request as to the identities of donors who had contributed through the two Client Sites, https://1stchoice.org and https://firstchoice womancenter.com, *not* as to those donors who contributed in other ways—such as, at galas and church fundraisers. *See* JA632–33. Although the Division is seeking information as to the other

methods of solicitation and donation, so that it can assess whether misrepresentations were made there too, the only names of donors Appellant need provide relate to those two websites.

The State's request is well-grounded: it seeks information regarding the donors most likely to have been misled, so the Division can contact a representative sample and determine what they did or did not know about their charitable giving. Indeed, Appellant does not identify any other way that the State could learn this information. Moreover, Appellant's suggestion that the State seeks information on donors who made contributions at "benefit dinners" or "church … campaigns," FC.Br.12, conspicuously omits the State's confirmation at the November 19 hearing that it was *not* currently seeking the names of donors who contributed in that way. *See* JA632–33. While the Division will continue to evaluate whether other avenues of donation are susceptible to misrepresentation, the scope of the current Request is narrow and carefully tailored to the concern about misrepresentations on Appellant's diverging websites.[7]

The fact that the Division also "can[not] obtain … the information [it] seek[s] from other sources," *Perry v. Schwarzenegger*, 591 F.3d 1147, 1164 (9th Cir. 2010), further supports the constitutionality of its request. The Division cannot otherwise contact donors who contributed via these websites to evaluate

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[7] Although Appellant claims the State seeks identities behind 5,000 donations, it has never divulged how many donors gave via donation links on https://1stchoice.org and https://firstchoicewomancenter.com.

whether they were misled. Appellant replies that the Division should be satisfied instead by the mailer it purportedly sends to every donor—which Appellant only turned over in response to the Subpoena—that states its pro-life mission. FC.Br.33-34.[8] But the central inquiry under the CFA and the CRIA focuses on the representations in Appellant's solicitations—not what Appellant might communicate after donations are made. And even if the Court were to consider this post-donation mailer, Appellant's theory is pure speculation: it assumes individuals who make their charitable giving online are actually opening and reading such mailings. In any event, all of this may bear on whether the Division ultimately files an enforcement action, and what defenses are available to Appellant should the Division do so. But these alleged defenses do not obviate the Division's underlying need to *investigate* whether Appellant made representations capable of misleading donors.

Second, Appellant's objection to the four Subpoena Requests relating to its medical personnel's licensure, qualifications, work and referrals has two independent flaws. *See* JA136 (Requests 14-16, 18). Initially, it is not evident that associational rights

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[8] Similarly, Appellant's claim that "every page of the client website states that First Choice does not provide or refer for abortions," FC.Br.31, hardly counters the concern. The statement does not reveal Appellant's pro-life mission, especially when viewed in context. *See supra* at 6-7. The statement also does not appear on the donation page for the Client Site, *see* JA698-701; https://tinyurl.com/5fu43b8h (last visited Dec. 2, 2024), and instead can only be found in the fine print at the bottom of the webpage, which Appellant cannot plausibly claim is read by most visitors. JA676-81.

attach in this context. Appellant cites no case law for this proposition, and *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958) implies a result to the contrary. There, while applying associational rights to disclosure of members of the NAACP to the state, the Supreme Court noted there was no corresponding "object[ion] to divulging the identity of [NAACP's] members who are employed by or hold official positions with it," which "would not on this record appear subject to constitutional challenge and have been furnished." 357 U.S. at 463-65. And while the *NAACP* Court could not "perceive" on the record before it that disclosure of the member list would "substantial[ly] bear" on the purpose of the state's investigation, *id.* at 464, that is not the case here, where the Division's Requests related to Appellant's professional licensees and staff providing services to clients directly bear upon the issue of compliance with the P&O Law.

Moreover, the record lacks any evidence (or even allegation) sufficient to establish a "reasonable probability that the compelled disclosure … will subject [medical personnel or affiliates] to threats, harassment, or reprisals." *Gaspee Project*, 13 F.4th at 92. The declarations that Appellant provides regarding its *donors* fail to demonstrate a burden on its associational rights related to disclosure of *medical personnel and affiliates*. Appellant has not established the Subpoena's Requests for identities of medical personnel is "more than a 'modest burden'" on associational rights. *No on E v. Chiu*, 85 F.4th 493, 508 (9th Cir. 2023) (citation omitted).

In any event, even assuming a burden on associational rights, the Subpoena's request for

information about medical personnel and staff are again narrowly tailored to the compelling State interest in investigating potential unlicensed practice of medicine and conformance to the applicable standards of care. *See* N.J. Stat. Ann. § 45:1-18.1. The State's initial investigation raised serious concerns on these fronts. Appellant's websites represent that it has medical personnel onsite to provide services. *See* JA673, 790 (promising to "serve[] women and men in unplanned pregnancies, by providing counseling, medical services, and practical support.") The Client Site invites potential clients to contact Appellant to consult with "a licensed medical professional," and states its "medical staff can answer all of [a client's] questions … with professional accuracy." JA747; *see also* JA903 ("Our trained client consultants and in-house medical professionals are ready to assist you."); JA898 ("We are … dedicated to the highest standard of medical care…."). Its websites are laden with imagery of medical personnel in advertisements for ultrasound services. *See*, *e.g.*, JA676, 679, 728, 731 (images of individuals wearing scrubs, stethoscopes, and lab coats).

The personnel information the Subpoena seeks reflects a tailored response to the State's legitimate concerns. The Subpoena is an effort to identify the participation of licensed professionals and individuals without proper licensure—and to determine whether these personnel are complying with applicable state standards in providing medical services. The State's investigation revealed that Appellant informs potential clients that it has a doctor that "oversees" the facility and even admits that it does not have doctors onsite, even while Appellant apparently offers

a range of medical services. JA673. For example, Appellant represents that its sonographers—not medical doctors—conduct ultrasounds to determine gestational age, viability, and ectopic pregnancies. JA903. Appellant also represents that it provides counseling services related to abortion, pregnancy, and STI testing services. *See*, *e.g.*, JA059, 060, 908, 930. And Appellant provides pamphlets and videos about the purported risks of abortion, if the clients first submit to a pregnancy test. JA678, 680, 682. Although Appellant claims the Division should be satisfied instead with receiving general information about the nature of the services it provides, that information gives the State no assurance that all those providing medical services for Appellant are appropriately licensed and complying with applicable standards.

Finally, Appellant errs in challenging the Subpoena's two Requests for information about its relationship with national affiliate organizations—Heartbeat International (HBI) and Care Net. *See* FC.Br.38; JA136 (Requests 22-23). Again, this challenge fails at the outset because it fails to explain how this request implicates or harms associational rights. *See supra* at 46-47. More fundamentally, these Requests are narrowly tailored to the State's interest in rooting out potential fraud. For one, the State seeks to assess whether Appellant used materials or made referrals related to HBI's Abortion Pill Rescue Network, *see* https://tinyurl.com/5yurhpn7 (last visited Dec. 2, 2024), which facilitates abortion pill reversal, an experimental procedure that lacks scientific basis, does not meet clinical standards, and is not FDA-approved, *see* Am. Coll. of Obstetricians &

Gynecologists, *supra*. For another, given that Appellant's privacy policy indicates it shares client information with affiliates, the requested information would enable the State to assess whether information shared with HBI or Care Net includes protected client information. And finally, in light of public reporting that these national organizations specifically "encourage[] affiliates to create two websites, one that describes the anti-abortion mission to secure donors, and one designed for people seeking medical care," Jenifer McKenna & Tara Murtha, *Designed to Deceive: A Study of the Crisis Pregnancy Ctr. Industry in Nine States* at 7, 33-34 (2021), https://tinyurl.com/5xcpzpyr, information regarding Appellant's coordination with these organizations can inform the investigation of the divergent representations across Appellant's websites—and whether enforcement under the CFA, CRIA, or P&O Law is warranted.[9]

III. THE EQUITIES FORECLOSE A PRELIMINARY INJUNCTION.

Appellant's request for a preliminary injunction should also be denied because it cannot demonstrate irreparable harm, nor can it establish that the remaining equitable factors weigh in its favor. *See Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d Cir. 2017) (irreparable harm is a "gateway factor" for emergency relief); *K.A. ex rel. Ayers v. Pocono Mountain Sch. Dist.*, 710 F.3d 99, 105 (3d Cir. 2013)

[9] Finally, even if Appellant were entitled to injunctive relief on its associational claims, that relief would apply only to the relevant Requests, not the entire Subpoena.

(discussing traditional four-part test and appellate standard of review).

1. Appellant's theory of irreparable harm hinges on the incorrect premise that it will face legal sanctions for noncompliance with the Subpoena. FC.Br.22–24. But because the state trial court confirmed that she was not awarding any sanctions for their nonproduction to date, *see* JA659, there is simply no irreparable harm, *see supra* at 29–30. And although this Court will "presume that First Amendment harms are irreparable" since "suppressing speech or worship inflicts irreparable injury," *Del. State Sportsmen's Ass'n v. v. Del. Dep't of Safety & Homeland Sec.*, 108 F.4th 194, 204 (3d Cir. 2024), the State is not suppressing or enjoining speech—it is just *investigating* fraud and requesting documents. *See Ohio Civil Rights Comm'n*, 477 U.S. at 628 (agency "violates no constitutional rights by merely investigating"). Appellant faces no "Hobson's Choice" between production or sanctions.

Indeed, Appellant's claim that it is facing irreparable harm from the Subpoena is impossible to square with its own delays in this case. *See DSSA*, 108 F.4th at 206 ("Delay in seeking enforcement of [litigant's] rights, however, tends to indicate at least a reduced need for such drastic, speedy action."). For one, Appellant "ch[ose] not to hasten" its efforts to seek relief in the state courts. *Id.* at 206. It declined to pursue a stay pending appeal from the Appellate Division, despite representing to the state trial court that it would do so. *See* JA260–61 (counsel stating that Appellant would like to appeal and "apply for a stay"); JA269–70 (court indicating it would immediately enter order denying stay pending appeal

so that Appellant could seek further relief). Nor has Appellant acted with alacrity in federal court. When this case was last before this Court, Appellant only belatedly sought to expedite the appeal. *See* CA3.Dkt.29. And even after the state court issued its May 28 oral ruling, Appellant waited 18 days before renewing its efforts for an injunction in this Court—and then engaged in weeks-long motions practice when the State agreed to remand the case for the district court to consider a TRO/PI motion in the first instance. *Supra* at 16–17. If the Subpoena was working an irreparable harm on Appellant's speech each day it remained in effect, Appellant's litigation choices are hard to explain.

Nor does Appellant's explicit concern that it will have to produce additional documents before a *federal* court has reviewed its challenges constitute irreparable harm sufficient for an injunction. *See* FC.Br.1. Case law is clear that having to litigate one's federal constitutional arguments in state court rather than federal court is no irreparable harm at all. *See, e.g.*, *FTC v. Standard Oil Co. of Cal.*, 449 U.S. 232, 244 (1980) (agreeing that "[m]ere litigation expense, even substantial and unrecoupable cost, does not constitute irreparable injury"); *see Coinbase, Inc. v. Bielski*, 599 U.S. 736, 746–47 (2023) (same); *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) (adding that "state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States."); *Mo. Pac. Ry. Co. v. Fitzgerald*, 160 U.S. 556, 583 (1896) (same); *cf. In re Diet Drugs*, 282 F.3d 220, 234 (3d Cir. 2002) (concurrent state and federal litigation, in which "[e]ach court is free to proceed in its own way

and in its own time, without reference to the proceedings in the other court," is legally permissible). The state trial court expressly promised to review the briefing on the constitutional challenges before requiring Appellant to produce documents, and it is as of yet uncertain how that court will adjudicate them. The only harm that Appellant faces is that it may not prevail in litigation, the same risk every litigant faces—not an injury meriting extraordinary injunctive relief.

2. The remaining equities militate against issuing preliminary relief. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (when the State is a defendant, the other factors—harm to opposing party and public interest—combine). Unlike Appellant, the State would face irreparable harm were a preliminary injunction entered against it. *See Abbott v. Perez*, 585 U.S. 579, 602 n.17 (2018) (noting that the "inability to enforce its duly enacted plans clearly inflicts irreparable harm on the State."). At least three different state laws afford the Attorney General power to investigate potential misconduct in this matter. *See* N.J. Stat. Ann. §§ 56:8-4, -6(d) (CFA), 45:17A-33(g) (CRIA), 45:1-18 (P&O Law). Each empowers the Attorney General to issue subpoenas in service of investigations. And each provides that the Attorney General's remedy for non-compliance—seeking an order requiring the production of documents—lies in the state court, where the parties already are actively litigating the scope of the trial court's enforcement order.

A preliminary injunction would also allow Appellant to continue to delay the investigation. Despite the long-surpassed Subpoena return date of

December 2023, Appellant has yet to fully comply. A federal injunction at this late date would potentially forestall compliance into 2025. The State would suffer harm if its ongoing investigative work is stymied for such an extended period. *See Interstate Commerce Comm'n v. Gould*, 629 F.2d 847, 851–52 (3d Cir. 1980) (agencies "must be free without undue interference or delay to conduct an investigation which will adequately develop a factual basis for a determination as to whether particular activities come within the [agency's] regulatory authority"). And granting an injunction would incentivize subpoena recipients to file collateral challenges to avoid compliance and stymie state-court enforcement, further compromising future state investigations. Thus, the equities counsel against a preliminary injunction.

CONCLUSION

This Court should affirm.

Respectfully submitted,

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By: s/Jeremy M. Feigenbaum
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Solicitor General

Dated: December 2, 2024

COMBINED CERTIFICATIONS

I hereby certify that the following statements are true:

1. I am an attorney in good standing of the bar of the Third Circuit.
2. This brief complies with the typeface, type style and type-volume limitation requirements of Fed. R. App. P. 32 because this brief has been prepared in a monospaced typeface using Microsoft Word, in Times New Roman, 14-point, type style, and contains 12,940, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).
3. The text of the paper copies of this brief and the text of the PDF version of this brief filed electronically with the Court today are identical.
4. Prior to electronically filing this brief with the Court today, it was scanned by Crowdstrike Falcon, version 7.17.18721.0, a virus detection software, and found to be free from computer viruses.
5. On December 2, 2024, this brief was filed electronically with the Clerk of the United States Court of Appeals for the Third Circuit by using the appellate CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served via CM/ECF.

Dated: December 2, 2024

s/ Jeremy M. Feigenbaum
Jeremy M. Feigenbaum
Solicitor General

CONSUMER ALERT
Crisis Pregnancy Centers

consumeralert

WARNING: Crisis Pregnancy Centers (CPCs) do NOT provide abortion care. CPCs are organizations that seek to prevent people from accessing comprehensive reproductive health care, including abortion care and contraception. Here's what you need to know about CPCs.

Your right to an abortion is protected in New Jersey. You have the right to truthful, unbiased, and medically accurate health information about abortion care and where to access such care. If you are pregnant, consult with a licensed health care provider to understand your options for abortion care and other reproductive health care services. Need help finding a provider? See the resources identified under "How Can I Find an Abortion Provider."

WHAT IS A CRISIS PREGNANCY CENTER?

Crisis Pregnancy Centers try to convince pregnant people not to have abortions. *CPCs may appear to be reproductive health care clinics, but they do not provide abortion care or provide referrals for abortion care, contraception, or other reproductive health care.*

Many CPCs do not provide any health care at all, despite suggesting to the public that they do. In addition, many CPCs are not licensed medical facilities and do not employ licensed medical professionals, which means that CPC staff likely are not required to keep your health information private

or follow medical ethics rules and standards of care. CPCs may also provide false or misleading information about abortion—including the physical and mental health effects of abortion—to deter people from choosing abortion.

Some CPCs offer non-diagnostic ultrasounds, which may be performed by an unlicensed person *who may not be qualified to provide that service*. This non-diagnostic ultrasound may provide inaccurate or misleading results, including about how far along you are in your pregnancy. Only a licensed health care professional can accurately tell you how many weeks pregnant you are.

HOW CAN I SPOT A CRISIS PREGNANCY CENTER?

A Crisis Pregnancy Center may:

- Be a website, a call center, an app, or a physical location that looks like or is located near a clinic or doctor's office.
- Have a name that is similar to that of a health care provider, including words like "care," "health," "pregnancy," "resource," and "choice." (Note that many CPCs do not call themselves "crisis pregnancy centers"; nor do they use that term in advertising.)
- Offer free services (including pregnancy tests, ultrasounds, and adoption information) or supplies (including diapers and baby clothes) to individuals seeking abortion or reproductive health care services.

- Offer limited "counseling" services without providing complete or accurate information regarding all options for reproductive health care, including abortion.
- Postpone or reschedule appointments to delay individuals' access to abortion care.
- Pressure individuals to delay an abortion or continue a pregnancy, including by providing false or misleading information about the safety and legality of abortion care.

A facility may be a Crisis Pregnancy Center even if it:

- Has staff and volunteers who wear medical attire and collect personal and health information.
- Contains examination rooms with medical equipment (like an ultrasound machine) and supplies.

WHAT QUESTIONS SHOULD I ASK?

The New Jersey Division of Consumer Affairs recommends that individuals seeking an abortion or other reproductive health care services conduct their own research to determine what type of care is best and where to go for it. Look at reviews of the center and look at its website to see if comprehensive pregnancy-related services are offered. If staff are unable or unwilling to answer your questions, consider seeking treatment elsewhere. Be cautious of any attempts by the center to delay or dissuade you from the services that you are seeking. It is critical that you have timely access to care when you need it. When you arrive for your appointment, make sure you

are in the right place, as many CPCs are located near clinics that provide abortion care.

If you are considering abortion and would like to be sure that you are not contacting a Crisis Pregnancy Center, here are some questions that you can ask:

- Does this center provide abortions? If so, what type (medication, surgical procedures)?
- If you don't provide abortion care yourselves, do you provide referrals to a provider where people can find abortion care?
- If I come in for a visit, will I be seen by a licensed medical professional? If so, what kind of licensed medical professional (doctor, nurse, midwife, etc.)?
- What services do you provide (for example, contraception, STD testing and treatment, ultrasound)?
- How much does treatment cost?
- Does the center accept health insurance or Medicaid?
- How will my health information and the services provided by this center be protected and kept private?
- Is the facility licensed? If so, what type of license?

You can check the status of a health care provider's license at https://newjersey.mylicense.com/verification. A listing of licensed health care facilities can be found at https://healthapps.state.nj.us/facilities/acSearch.aspx.

The Division of Consumer Affairs also recommends that health care professionals and social service organizations exercise caution so as to avoid unknowingly referring individuals seeking comprehensive reproductive health care or abortion care to a CPC.

WHAT SHOULD I DO IF I'M UNSURE ABOUT OR UNCOMFORTABLE WITH THE CARE THAT I AM RECEIVING?

You should leave. If at any point you realize or suspect that you are at a CPC and want to leave, it is generally your right to do so. You are under no obligation to a CPC or its staff.

HOW CAN I FIND AN ABORTION PROVIDER?

If you are seeking reproductive health care or access to abortion providers and services in New Jersey, the following external resources list licensed health care providers and services that may be available in your area:

- **Planned Parenthood**, which provides a list of abortion providers, in addition to reproductive health care services and educational resources – https://www.plannedparenthood.org/.
- **The National Abortion Federation**, which provides a list of abortion providers – https://prochoice.org/.
- **Abortion Finder**, which provides a list of abortion providers – https://www.abortionfinder.org/.

- **Abortion Clinics Online**, which provides a list of abortion providers – https://www.abortionclinics.com/state/new-jersey-abortion-clinics/.

If you think you may not be able to afford the cost of abortion care, talk to your health care or abortion provider about funding options that might be available to you.

HOW CAN I FILE A COMPLAINT?

If you believe you are a victim of fraudulent, deceptive, misleading, or unlawful conduct, please file a complaint with the **New Jersey Division of Consumer Affairs** at https://www.njconsumeraffairs.gov/Pages/Consumer-Complaints.aspx or **973-504-6200.**

State of California
Office of the Attorney General

ROB BONTA
ATTORNEY GENERAL

October 23, 2023

OPEN LETTER FROM ATTORNEYS GENERAL REGARDING CPC MISINFORMATION AND HARM

We are 16 Attorneys General representing consumers across the country. We have watched with increasing concern in recent years as anti-abortion crisis pregnancy centers (CPCs) have proliferated in our states, outnumbering abortion clinics by a three-to-one ratio, while misleading consumers and delaying access to critical, time-sensitive reproductive healthcare.[1] As the legal officials charged with enforcing our jurisdictions' consumer protection laws, we support Yelp's efforts to ensure that consumers receive clear information about the limitations of the services and staff available at CPCs. CPCs do not provide full-scope reproductive healthcare and often use deceptive tactics to lure in patients seeking

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[1] Kimberly Kindy, *Partisan Battle Grows over State Funding for Antiabortion Centers*, Wash. Post (Sept. 14, 2023), https://www.washingtonpost.com/politics/2023/09/14/gop-lawmakers-crisis-pregnancy-centers-state-funding/; Melissa Montoya et al., *The Problems with Crisis Pregnancy Ctrs.: Reviewing the Literature & Identifying New Directions for Future Rsch.*, 14 Int'l J. Women's Health 757-63 (2022), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9189146/.

reproductive healthcare. These tactics can have dire health consequences and rob patients of their healthcare choices. Efforts such as Yelp's warnings help educate consumers and ensure patients are informed of what services are and are not available at CPCs, which ultimately protects the public health.

I. CPCs Do Not Provide Full-Scope Reproductive Healthcare

Abortions and abortion services are healthcare. CPCs, however, actively aim to prevent people from accessing abortion care and do not provide abortions or abortion services.[2] Accordingly, CPCs are, by their very nature, limited reproductive healthcare facilities—to the extent they provide healthcare services at all.[3]

A recent study looking at 607 CPCs in nine states found that the majority did not offer medical services beyond urine pregnancy tests (which pregnant people can purchase at drug stores and self-administer).[4] In addition to these pregnancy tests, CPCs most

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[2] Amy Bryant & Jonas Swartz, *Why Crisis Pregnancy Ctrs. Are Legal but Unethical*, 20 AMA J. Ethics 269-77 (Mar. 2018), https://journalofethics.ama-assn.org/article/why-crisis-pregnancy-centers-are-legal-unethical/2018-03.

[3] *See* Soc'y for Adolescent Health & Med. & N. Am. Soc'y for Pediatric & Adolescent Gynecology, *Crisis Pregnancy Ctrs. in the U.S.: Lack of Adherence to Med. & Ethical Practice Standards*, 65 J. Adolescent Health 821-24 (2019); *Crisis Pregnancy Ctrs.*, Crisis Pregnancy Center Map, https://crisispregnancycentermap.com/cpcs/.

[4] *Designed to Deceive: A Study of the Crisis Pregnancy Ctr. Indus. in Nine States*, The Alliance 5, 13, https://alliancestateadvocates.org/wp-content/uploads/sites/107/Alliance-CPC-Study-Designed-to-Deceive.pdf.

commonly offered maternity and baby supplies (but usually only if pregnant individuals attend religious-based programming) and peer-to-peer support "counseling" (largely provided by volunteers rather than licensed healthcare providers).[5] While 56% of CPCs offered ultrasounds, those ultrasounds were limited and undiagnostic, meaning the ultrasound only confirmed that a person was pregnant but did not provide any information about the medical condition of the fetus or the pregnant person.[6] The CPC-provided ultrasounds cannot "determine gestational age, study placenta or amniotic fluid, or detect fetal abnormality, ectopic pregnancy, or fetal distress."[7] Only 28.1% of the CPCs offered STI testing services, and only 16.6% offered any sort of sexual education.[8] The least-offered services were prenatal care (5.1%), well-person care (4.8%), and contraceptive care

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[5] *Id.* at 14.

[6] *Id.* at 13, 15; *Crisis Pregnancy Ctrs. Issue Brief*, Am. Coll. Obstetricians & Gynecologists, https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-crisis-pregnancy-centers (CPCs may "perform[] ultrasounds to emotionally manipulate and shame pregnant people under the guise of informing or diagnosing them").

[7] *Designed to Deceive: A Study of the Crisis Pregnancy Ctr. Industry in Nine States, An Update*, The Alliance 2 (Fall 2022), https://tinyurl.com/yjxtau2a ("It is unclear whether those performing CPC ultrasounds are trained to do so or if they are able to recognize any issues with a pregnancy. This CPC practice offers no medical benefit to the pregnant person or fetus but may give pregnant people a false sense of security and contribute to a delay in accessing legitimate prenatal care. Additionally, CPCs have been found to have shared ultrasounds with clients which belonged not to the clients but to other pregnant people.").

[8] *Designed to Deceive*, *supra* note 4 at 44-60.

(0.2%).[9] Related to their limited scope of healthcare services, CPCs frequently disclaim any obligation to keep patients' medical information private.[10]

Consistent with their limited services, only a small minority of CPCs have affiliated licensed medical personnel. In a recent survey, only 16% of CPCs responded that they have an affiliated physician, and just over 25% indicated they have an affiliated registered nurse—no CPCs reported whether the affiliated medical provider was on staff or working full-time.[11] Nor is it clear that when CPCs have affiliated medical providers, those professionals are seeing patients or have expertise in reproductive healthcare; "[a]necdotal reports also indicate some physicians working with CPCs are licensed in fields

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[9] *Id.* at 14. These findings are consistent with over a decade of research into CPCs, all of which shows that CPCs rarely offer meaningful healthcare services. *See*, *e.g.*, *The Availability of HIV & Sexually Transmitted Infection Testing & Treatment Servs. at Crisis Pregnancy Cntrs. in the United States*, Crisis Pregnancy Center Map, https://crisispregnancycentermap.com/wp-content/uploads/2021/10/CPC-HIV-STI-Study-Fact-Sheet.pdf; Joanne D. Rosen, *The Public Health Risks of Crisis Pregnancy Ctrs.*, 44 Perspectives on Sexual & Reprod. Health 201-05 (Sept. 12, 2012), https://tinyurl.com/yc48yyem.

[10] *See* Abigail Abrams, *Exclusive: Elizabeth Warren & Senate Democrats Press Crisis Pregnancy Ctrs. on Abortion Data Gathering*, Time (Sept. 21, 2022), https://time.com/6214503/elizabeth-warren-crisis-pregnancy-centers-abortion-data/ (CPC "forms and websites often contain fine print that explain they are not bound by federal privacy laws").

[11] *Designed to Deceive*, *supra* note 4 at 26.

unrelated to reproductive health, including as optometrists and chiropractors."[12]

CPCs also generally will not even refer for abortion services.[13] Referrals are "often used in medical care to ensure patients have access to specialty care as needed."[14] Providing referrals for necessary healthcare when the provider will not, or is not able to, provide that care is a crucial part of the standard of care.[15]

In short, the vast majority of CPCs do not provide anything close to the full spectrum of reproductive healthcare and will not refer patients for care that they do not offer.

II. CPCs Often Use Deceptive Tactics to Lure in Patients Seeking Actual Reproductive Healthcare

Studies, news reports, investigations, and other evidence suggest that CPCs frequently use deceptive and unethical methods to lure pregnant people who

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[12] *Id.* Even the Lozier Institute—an anti-abortion organization—admits that medical staff comprise only about a quarter of paid CPC staff. *Pregnancy Ctrs. Stand the Test of Time*, Lozier Inst. 26 (2020), https://lozierinstitute.org/wp-content/uploads/2020/10/Pregnancy-Center-Report-2020_FINAL.pdf. A larger number of licensed medical providers (6,424) volunteered with CPCs, but it is unclear whether those volunteers are interacting with patients, as opposed to serving on boards and as medical directors, or whether those volunteers are qualified to provide reproductive healthcare. *Id.*

[13] Bryant & Swartz, *supra* note 2.

[14] *Failure to Refer*, Standards of Care, https://www.standardsofcare.org/medical-malpractice/types/failure-to-refer/.

[15] *Id.*

are seeking comprehensive reproductive healthcare—including abortion—into their centers.[16] And when those people visit, CPCs often provide inaccurate and deceptive information about reproductive health. In 2015, Reproductive Freedom For All, formerly known as NARAL Pro-Choice America, conducted a study of CPCs and made the following findings:

- CPCs employ online strategies to target women, ensuring that when someone types "abortion clinic" into a search engine (e.g. Google), they "get[] results for CPCs, which use false advertising tactics to lure women to their facilities instead of actual health clinics";[17]

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[16] *See*, *e.g.*, *Designed to Deceive*, *supra* note 4; *Crisis Pregnancy Ctrs. Lie: The Insidious Threat to Reprod. Freedom*, NARAL Pro-Choice America (2017), https://www.prochoiceamerica.org/wp-content/uploads/2017/04/cpc-report-2015.pdf; Unlicensed Activity Investigation Report, Fla. Dep't of Health, https://www.documentcloud.org/documents/23439929-201805741_invfile_redacted-1-3 (complaint to the Florida Department of Health that CPC staff was practicing medicine without a license); Stephanie Mencimer, *The Trump Admin. Is Giving Family Planning Funds to a Network of Anti-Abortion Clinics*, Mother Jones (Jan./Feb. 2020), https://www.motherjones.com/politics/2019/11/the-trump-administration-is-giving-family-planning-funds-to-a-network-of-anti-abortion-clinics-obria/ (woman misled into visiting CPC because she thought it was a full-service clinic); Compl., *People v. Heartbeat Int'l, Inc.*, No. 23CV044940 (Alameda Cnty. Super. Ct., Sept. 21, 2023) (Heartbeat International uses misleading statements about "abortion pill reversal").

[17] *Crisis Pregnancy Ctrs. Lie: The Insidious Threat to Reprod. Freedom*, *supra* note 16 at 4.

- CPCs provide "misleading information" connecting abortions to, *inter alia*, infertility, breast cancer, and mental illness, claiming "that abortion directly results in a fictitious condition called either 'post-abortion syndrome' or 'post-abortion stress'" as well as "grief and regret";[18]
- CPCs often provide misleading information regarding contraception, including falsely claiming that birth control is an "abortifacient" and that condoms are ineffective, and they fail to discuss the risk of STIs;[19] and
- CPCs purposely locate their centers "near comprehensive health clinics or in medical buildings that give the impression that medically accurate services are available. By locating near clinics that provide comprehensive information and services, CPCs purposefully try to confuse patients into mistakenly entering their deceitful clinics."[20]

Other public reports support these findings. For example, according to a 2018 NPR article, CPCs often choose similar sounding names to nearby reproductive health clinics or engage in other tactics to cause confusion between their centers and real reproductive health facilities that are located in the vicinity, like having non-medical personnel wear white coats and asking pregnant patients to fill out

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[18] *Id.* at 9.

[19] *Id.* at 11.

[20] *Id.* at 5-6.

medical history forms when they arrive.[21] Many CPCs appear to intend to make it difficult for patients to differentiate between CPCs and nearby reproductive health clinics so that patients seeking abortion instead wind up in their centers.[22]

CPCs notably often target vulnerable populations and communities facing barriers to reproductive healthcare access with their deception and misinformation, such as young people, people of color, and those for whom English is not their primary language.[23] CPCs purposely advertise with billboards near high schools, colleges, and low-income neighborhoods to reach a target audience of low-income and vulnerable pregnant people.[24]

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[21] Nina Totenberg & Sarah McCammon, *Supreme Court Sides with Cal. Anti-Abortion Pregnancy Ctrs.*, NPR (June 26, 2018), https://www.npr.org/2018/06/26/606427673/supreme-court-sides-with-california-anti-abortion-pregnancy-centers.

[22] *See* Jennifer Lincoln, *How to Spot Anti-Abortion 'Crisis Pregnancy' Ctrs.*, Medpage Today (May 2, 2023), https://www.medpagetoday.com/opinion/second-opinions/104305; *see also Crisis Pregnancy Ctrs. Lie: The Insidious Threat to Reprod. Freedom*, *supra* note 16 at 5-6.

[23] Nicole Acevedo, *Latinas Are the Targets of Abortion Misinformation. Providers & Advocates Are Pushing Back.*, NBC News (Aug. 5, 2022), https://www.nbcnews.com/news/latino/latinas-abortion-misinformation-online-spanish-hispanic-rcna40590; Montoya et al., *supra* note 1 (describing, for example, that "Care Net has an 'Urban Initiative' which focuses on bringing Black and Latina women to centers by advertising on the Black Entertainment Network (BET) and drawing comparisons between abortion and slavery").

[24] *Crisis Pregnancy Ctrs. Lie: The Insidious Threat to Reprod. Freedom*, *supra* note 16 at 4.

CPCs also commonly promote and administer an unproven and potentially risky medical protocol, "abortion pill reversal" (APR), claiming that it can "reverse" the effects of the first drug of the two-drug medication abortion regimen. They further claim—falsely—that through APR "thousands of lives" have been "saved."[25] There is no credible science or evidence supporting either of these claims.[26] The only scientifically rigorous study had to be halted almost immediately due to serious "safety concerns" after 3 of the 12 study participants had to be transported by ambulance to the hospital after "severe vaginal bleeding" occurred.[27] Many CPCs nevertheless

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[25] Heartbeat International, *Abortion Pill Rescue Network*, https://www.heartbeatinternational.org/our-work/apr (as of Aug. 21, 2023); *Abortion Pill Reversal Overview*, Abortion Pill Reversal/Abortion Pill Rescue Network, https://reverseabortionpill.com/abortion-pill-reversal/overview (last visited Jan. 31, 2022, 2:26 PM).

[26] Some physicians claim that "abortion reversal" is "safe and effective," but these claims have been debunked by leading scientists. *Compare* George Delgado et al., *A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone* (2019), https://www.heartbeatservices.org/images/pdf/Delgado_et_al__Revisions_-_FINAL_0919.pdf, *with* Daniel Grossman & Kari White, *Abortion "Reversal" — Legislating without Evid.*, 379 N. Eng. J. Med. 1491-93 (Oct. 18, 2018), *and* Mitchell D. Creinin & Melissa J. Chen, *Mifepristone Antagonization Requires Real Studies to Evaluate Safety & Efficacy*, 100 Contraception 427-29 (Nov. 14, 2019), https://www.contraceptionjournal.org/article/S0010-7824(19)30450-0/fulltext.

[27] Jessica Washington, *Study of "Abortion Reversal" Pill Halted Because It's Too Dangerous*, Mother Jones (Dec. 6, 2019), https://www.motherjones.com/politics/2019/12/study-of-abortion-reversal-pill-halted-because-its-too-dangerous/; Kayla Epstein, *Some Lawmakers Push 'Abortion Reversal' Treatments.*

promote and partner with anti-abortion licensed healthcare providers to administer APR.

People seeking reproductive healthcare need timely, accurate information, not misinformation.

III. CPC CONDUCT HARMS PATIENTS

Unnecessary delays in accessing reproductive healthcare can harm patients and can even put a person's life at risk. CPCs delay pregnant people from accessing critical reproductive healthcare—by dissuading pregnant people from seeking abortion care and by frequently holding themselves out as full spectrum healthcare providers when most of them are anything but.[28]

This conduct has real consequences. For example, according to a recent lawsuit, a Massachusetts woman ended up with a ruptured fallopian tube and emergency surgery after staff at a CPC missed that her pregnancy was ectopic.[29] She reportedly visited the CPC for an ultrasound after searching online for a nearby place to confirm her pregnancy and was told

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A Study Shows How Dangerous They Are, Wash. Post (Dec. 24, 2019), https://www.washingtonpost.com/health/2019/12/24/some-lawmakers-push-abortion-reversal-treatments-new-study-shows-how-dangerous-they-are/.

[28] *Designed to Deceive: A Study of the Crisis Pregnancy Ctr. Indus. in Nine States, An Update*, *supra* note 7 at 1-2; *Crisis Pregnancy Ctrs. Lie: The Insidious Threat to Reprod. Freedom*, *supra* note 16 at 12-13.

[29] Julianne McShane, *Crisis Pregnancy Ctr. Failed to Spot an Ectopic Pregnancy, Threatening Patient's Life, Lawsuit Alleges*, NBC News (June 28, 2023), https://www.nbcnews.com/health/womens-health/crisis-pregnancy-center-ectopic-pregnancy-lawsuit-rcna91660.

by the CPC that she had a viable, intrauterine pregnancy.[30] Similarly, a patient in New Mexico reported that, after being counseled not to get an abortion, a CPC refused to provide an ultrasound for at least two weeks, which was highly risky given the patient's history of ectopic pregnancy.[31] The patient visited the CPC because it advertised that it would provide information about all of her options, including medication abortion, and she needed that information given her medical history.[32] In another instance, a CPC told a patient "she was not pregnant and just had a stomach virus," which was not true.[33]

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[30] *Id.*

[31] *Designed to Deceive*, *supra* note 4 at 27.

[32] *Id.*

[33] Laura Morel, *How Anti-Abortion Pregnancy Ctrs. Can Claim to Be Medical Clinics & Get Away With It*, Reveal News (Dec. 15, 2022), https://revealnews.org/article/how-anti-abortion-pregnancy-centers-can-claim-to-be-medical-clinics/ (the provider at the CPC claimed to be a "cancer doctor," but was not actually licensed as a medical professional). And reports of CPC misinformation are not limited to abortion. Patients are also often provided with false and misleading information about contraception and other sexual health issues. *See*, *e.g.*, Casey Tolan et al., *The Crisis Pregnancy Center Next Door: How Taxpayer Money Intended for Poor Families Is Funding a Growing Anti-Abortion Movement*, CNN (Oct. 25, 2022), https://www.cnn.com/2022/10/25/us/crisis-pregnancy-centers-taxpayer-money-invs/index.html (discussing Ohio patient's report that during a visit to a CPC "an employee claimed that condoms were only 50% effective, the spread of STDs could only be prevented if people followed 'God's plan' of avoiding sex before marriage, and that if a woman who has an STD gets an abortion, 'your STDs travel up your cervix into your organs and could kill you.'"); *Crisis Pregnancy Ctrs. Lie: The Insidious Threat to Reprod. Freedom*, *supra* note 16 at 13 (describing CPC in Missouri telling an investigator that "condoms sometimes have

Nor is physical harm the only risk. A Minnesota patient reported that a CPC lied to her and suggested she commit suicide.[34] That patient reflected that "[g]oing to a CPC endangered my health, my life, and fundamentally affected the way I look at myself – and prevented me from seeking care from other providers."[35]

Other patient accounts detail pregnant women being told by CPCs that they are not pregnant when in fact they are, or being told by CPC staff that they are further along in their pregnancies than a CPC ultrasound operator had reported.[36] Delays in receiving reproductive healthcare can have significant impacts on patient health, future fertility, and even mortality.[37] Delayed or inadequate prenatal

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holes and that buying a condom is like buying a bag of balloons and expecting that not one will have a hole in it.").

[34] *Designed to Deceive*, *supra* note 4 at 27.

[35] *Id.*; *see also* Diana G. Foster, The Turnaway Study: Ten Years, a Thousand Women, & the Consequences of Having—or Being Denied—an Abortion (2021); Zara Abrams, *The Facts About Abortion & Mental Health*, Am. Psych. Ass'n (June 23, 2022), https://www.apa.org/monitor/2022/09/news-facts-abortion-mental-health.

[36] Kate Vlach, *What's Old Is New Again: How State Att'ys Gen. Can Reinvigorate UDAP Enforcement to Combat Crisis Pregnancy Ctr. Deception*, 39 Columbia J. Gender & L. 140-94, 148 (May 13, 2020), https://journals.library.columbia.edu/index.php/cjgl/article/view/6071.

[37] Celeste Krewson, *Recent Increase in Barriers to Reprod. Care Observed*, Contemporary OBGYN (Apr. 17, 2023), https://www.contemporaryobgyn.net/view/recent-increase-in-barriers-to-reproductive-care-observed ("For women of reproductive age, reproductive health care is one of the most common health care necessities, with increased risk of morbidity and sexually transmitted infections when reproductive care is

care increases risks for both the mother and the child.[38] In many states with laws setting gestational limits on abortion care, delays may prevent those who wish to terminate their pregnancies from obtaining abortions altogether.[39] Denials of abortion are in turn associated with worse outcomes for both the parents and children, including poor birthing and infant health outcomes, higher rates of poverty, and lower educational attainment for both parents and children.[40] Delays can also force patients who would

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delayed or forgone."); Aliza Adler et al., *Changes in the Frequency & Type of Barriers to Reprod. Health Care Between 2017 & 2021*, 6 JAMA Network Open. e237461 (2023), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2803644; Gabriela Weigel et al., *Potential Impacts of Delaying "Non-Essential" Reprod. Health Care*, KFF (June 24, 2020), https://www.kff.org/womens-health-policy/issue-brief/potential-impacts-of-delaying-non-essential-reproductive-health-care/ (delayed care increases the risks of unintended pregnancies; untreated STIs, which in turn can lead to infertility, pelvic inflammatory disease, and ectopic pregnancies; undetected gynecologic cancers; untreated conditions like endometriosis and fibroids).

[38] Gabriela Weigel et al., *supra* note 37.

[39] Mabel Felix & Laurie Sobel, *A Year After Dobbs: Policies Restricting Access to Abortion in States Even Where It's Not Banned*, KFF (June 22, 2023), https://www.kff.org/policy-watch/year-after-dobbs-policies-restricting-access-to-abortion/ (describing, for example, that "in states where telemedicine for abortion is banned and there are waiting periods in place, a pregnant patient may no longer meet the gestational limit by the time they are able to get an appointment to get their abortion.").

[40] *See* Foster, *supra* note 35; Diana G. Foster et al., *Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children*, 205 Pediatrics 183, 186-87 (2019), https://www.jpeds.com/article/S0022-3476(18)31297-6/pdf; Heidi D. Nelson et al., *Ass'ns of Unintended Pregnancy with*

have otherwise chosen medication abortion to undergo procedural abortions—which, although safe, are unnecessarily invasive procedures for those for whom medication abortion would have been recommended, and are generally more costly to provide and to obtain.[41] And the research is clear that these harms are generally felt most acutely by racial and ethnic minorities, immigrants, and low-income people, who already experience disparities in healthcare access and outcomes.[42]

Maternal & Infant Health Outcomes: A Systematic Review & Meta-Analysis, 328 JAMA 1714, 1714-29 (2022).

[41] *See*, *e.g.*, Christina Rørbye et al., *Med. Versus Surgical Abortion Efficacy, Complications & Leave of Absence Compared in a Partly Randomized Study*, 70 Contraception 393-99 (2004), https://pubmed.ncbi.nlm.nih.gov/15504379/; Br. for State of New York et al. as Amici Curiae at 22-27, *Alliance for Hippocratic Med. v. FDA*, No. 23-10362 (5th Cir. May 4, 2023) (estimating procedural abortion costs five times as much as a medication abortion to provide).

[42] *See* Commonwealth Fund, *The U.S. Maternal Health Divide: The Limited Maternal Health Services & Worse Outcomes of States Proposing New Abortion Restrictions*, https://www.commonwealthfund.org/publications/issue-briefs/2022/dec/us-maternal-health-divide-limited-services-worse-outcomes; Priya Pandey, *A Year After Dobbs: People with Low Incomes & Communities of Color Disproportionately Harmed*, Ctr. L. & Soc. Policy, https://www.clasp.org/blog/a-year-after-dobbs-people-with-low-incomes-and-communities-of-color-disproportionately-harmed/ (June 23, 2023); Samantha Artiga et al., *What are the Implications of the Overturning of Roe v. Wade for Racial Disparities?*, KFF (Jul. 5, 2022), https://www.kff.org/racial-equity-and-health-policy/issue-brief/what-are-the-implications-of-the-overturning-of-roe-v-wade-for-racial-disparities/; Sarahn Wheeler & Allison Bryant, *Racial & Ethnic Disparities in Health & Health Care*, 44 Obstet

In other words, when CPCs spread misinformation and use delay tactics to steer patients from full-scope reproductive healthcare to their centers, they endanger the health and lives of those patients.

The Attorneys General of California, Connecticut, Delaware, Hawai'i, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Vermont, Washington, and the District of Columbia oppose efforts by CPCs to mislead consumers and delay or impede access to the full spectrum of reproductive healthcare, including abortion. That is why our states continue to take numerous actions aiming to mitigate the harmful effects of CPC misinformation and delays.[43] We

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Gynecol Clin. N. Am. 1-11 (Mar. 2017); Aliza Adler et al., *supra* note 37.

[43] *Consumer Alert, Know the Difference: Crisis Pregnancy Ctrs. v. Reprod. Healthcare Facilities*, Cal. Dep't of Justice, Office of the Att'y Gen., https://tinyurl.com/mr2kxfvb; *AG Healey Warns Patients About Crisis Pregnancy Ctrs.*, Mass. Office of Att'y Gen. Maura Healey (July 6, 2022), https://tinyurl.com/muyvwk3a; *Know Your Rights: Reprod. Health Care*, Wash. State Att'y Gen.'s Office, https://tinyurl.com/mr2kxfvb; *Consumer Alert Crisis Pregnancy Ctrs.*, N.J. Div. of Consumer Affairs, https://tinyurl.com/5yaeeejj; *Attorney General Ellison Issues Consumer Alert about Crisis Pregnancy Ctrs.*, Minn. Att'y Gen. Keith Ellison (Aug. 22, 2022), https://tinyurl.com/3hp9eehb; *see also Attorney General Tong Announces New Actions to Protect Abortion in Connecticut*, Conn. Office of the Att'y Gen. (October 11, 2022), https://tinyurl.com/yzcva6kp; *Reprod. Rights: Abortion Is Legal in Delaware*, Del. Dep't of Justice, Attorney General Kathy Jennings, https://tinyurl.com/ysdbkm5n; *Consumer Alert: Questions & Answers on Abortion Care & Freedom of Expression in the District of Columbia*, Office of the Att'y Gen. for the District of Columbia (Jan. 13, 2023),

applaud efforts to ensure the public is aware of what services are and are not offered at CPCs so that patients can get prompt access to reproductive healthcare and reproductive health information from a provider that offers the services they seek. Actions like Yelp's warnings to consumers help inform patients and prevent these harms, protecting the public health.

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https://oag.dc.gov/release/consumer-alert-questions-and-answers-abortion-care; *Know Your Rights: Abortion in Maine*, Office of the Maine Att'y Gen., https://tinyurl.com/mrx6akvn; *Reprod. Rights*, Office of the N.Y. State Att'y Gen., https://tinyurl.com/58uwzhrj; *Spotlight: Reprod. Rights*, Ore. Dep't of Justice, Attorney General Ellen F. Rosenblum, https://tinyurl.com/bddjmfuz; *Resource: Know Your Reprod. Rights*, Office of the Vermont Att'y Gen. (June 30. 2022), https://tinyurl.com/mrwcudae.

Sincerely,

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Attorney General of California

WILLIAM TONG
Attorney General of Connecticut

DANA NESSEL
Attorney General of Michigan

KATHLEEN JENNINGS
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KEITH ELLISON
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Give To First Choice

Give Now Sign in

Person's Name

First Name | Last Name

Company Name (optional)

Address

Address Line 1 | Address Line 2

City

State | Country: United States | Zip Code

Phone Number (optional)

Choose a Designation

Recurring | **One-time**

Fund | $ Amount

+ **Add Donation**

Radio Button(s)

- Yes
- No
- I already receive email updates

Give

Description	Job #	Litho Ver	Personalization Type	Colors	Notes
OE: #10 left window carrier envelope inkjet printed in 2/0 no bleeds (ministry logo, return address and teaser copy) on 60 # white offset. Affix live stamp.	49265	All Clients	Inkjet	PMS 668 C + K	

firstchoice
WOMEN'S RESOURCE CENTERS
82 Speedwell Avenue
Morristown, NJ 07960-8617

Thank you for helping women choose life every day!

Your February newsletter is enclosed

Thank you for not letting despair win out!
Your support shares HELP and HOPE with women facing an unplanned pregnancy.

February 5, 2024

Dear Mr. and Mrs. Donor,

The compassionate partners who support First Choice — you and other generous friends — are such a blessing. With each gift, your generosity accomplishes something truly meaningful, starting with the saving of innocent lives.

That's why I've included a copy of our latest newsletter for you. I especially want to draw your attention to Emily's story on Page 1 AND the good news on Page 4 about the wonderful result of your giving.

Your prayers and financial partnership are working together to ensure that despair doesn't win out . . . that hope prevails for the women who come to us every day, facing the choice of whether to give life to their unborn babies.

When you're done reading your newsletter, please consider giving again in these early days of 2024 to provide even more women with the free services that will help bring them to a decision for life — pregnancy testing, ultrasounds, compassionate care and so much more.

May God bless you for your generous heart, which is so much like His own.

Together in partnership,

Aimee Huber

Aimee Huber, Executive Director

P.S. As we navigate the new year, I want to thank you for your commitment to working together to save every life we possibly can. I hope you'll give again now to save even more lives in 2024.


First Choice Women's Resource Center • 82 Speedwell Avenue • Morristown, NJ 07960-8817 • FirstChoiceGive.com • 973.538.1428

Your gift will save lives!

YES, AIMEE! I want to save innocent lives. Here's my gift to provide free pregnancy testing, ultrasounds, compassionate care and other resources:

☐ $30 ☐ $50 ☐ $100 ☐ $250 ☐ $500 ☐ $_____

☐ Make this a monthly gift.

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firstchoice

App. 533

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Person's Name

First Name Last Name

Company Name (optional)

Address

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Zip Code

Phone Number (optional)

Choose a Designation

Recurring

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Fund

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

MATTHEW J. PLATKIN, Attorney General of the State of New Jersey, and CARI FAIS, Acting Director of the New Jersey Division of Consumer Affairs, Plaintiffs, v. FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC., Defendant.	SUPERIOR COURT OF NEW JERSEY ESSEX COUNTY: CHANCERY DIVISION DOCKET NO. ESX-C-22-24 **CERTIFICATION**

CERTIFICATION OF AIMEE HUBER

Pursuant to N.J. Ct. R. 1:4-4(b), I, E. Aimee Huber, do hereby affirm and state as follows:

1. I am employed as the executive director of First Choice Women's Resource Centers, Inc. I have been employed by First Choice since 1990 and have held the position of executive director since 2000. As executive director, I oversee the daily operations of First Choice's five locations, the ministry's

fundraising efforts, and its marketing and media outreach, and I work closely with its board to strategize and maximize the ministry's charitable reach.

2. I have personal knowledge of the facts set forth below.

Background on First Choice

3. First Choice is a small religious nonprofit that exists to encourage and equip women and men to make informed pregnancy decisions. Supported entirely by private donors who seek to further its Christian, pro-life mission, First Choice operates five centers in New Jersey. As a small nonprofit, many employees at First Choice must wear multiple hats by performing both administrative and client-service functions throughout the organization. We always have open staff positions, but in the past two years, we have been especially challenged to fill positions. As a result, many of us have been stretched thin, working additional hours and taking on added responsibilities to serve our clients well.

4. On November 15, 2023, I received a subpoena issued to First Choice from AG Platkin seeking the production of broad range of documents in First Choice's possession (the "Subpoena"), a copy of which is attached as Exhibit 1.

Impact on Donors

5. Complying with the Subpoena would be likely to have a significant adverse impact on First Choice's religious pro-life mission because it seeks confidential information that is likely to harm First Choice's relationships with donors and others. Confidentiality

regarding information about donors, clients, personnel, and affiliates is critical to First Choice. But the Subpoena requires that First Choice divulge that information, demanding all documents First Choice provided to clients and donors; documents identifying donations; all communications First Choice made or received about Abortion Pill Reversal, the risks of abortion, and contraceptives; all complaints from clients and donors; communications with personnel about interacting with clients and donors; and all documents about Heartbeat International, Inc., the Abortion Pill Reversal Network, and Care Net. Ex. 1, "Document Requests" ¶¶ 3, 9, 11, 19–20, 22–23,

6. Many donors desire for their donations and communications with First Choice to remain confidential, and First Choice avidly guards the confidentiality of donor information.

7. Since the publication of a leaked draft of the *Dobbs* opinion in 2022, pro-life organizations, especially pregnancy resource centers like First Choice, have been subjected to an increased level of criminal acts, intimidation, and harassment. Based on this pattern of violence and intimidation, First Choice is concerned that if its donors' identities became public, they may be subjected to similar threats. Thus, First Choice guards donors' identities to protect them from potential violence and harassment.

8. In addition, many donors give to First Choice for deeply personal reasons, which they communicate to me and First Choice staff in confidence. Many donors have themselves faced unplanned pregnancies without support and give to First Choice to help

women in similar situations. Donors often give in accordance with their faith, which also compels them to give in confidence. For example, many give privately in accordance with the Bible's teaching in Matthew 6:1, which states, "Be careful not to practice your righteousness in front of others to be seen by them. If you do, you will have no reward from your Father in heaven."

9. First Choice staff and volunteers often contribute to the ministry's mission for personal reasons, and some do not seek for their involvement in the ministry to be publicly broadcast.

10. First Choice respects the confidentiality of all organizations it affiliates with and accordingly does not publicly divulge its communications with those organizations or share private information about them.

11. The large majority of our donors, clients, personnel, and affiliates have a strong expectation that First Choice will keep their information and communications private. Therefore, I believe that divulging information about such individuals and affiliates as the Subpoena requires would be a betrayal of their confidences. Based on my experience as executive director, I believe it is likely that divulging such information would harm our current relationships with these individuals and affiliates. Other pregnancy resource centers, such as the Obria Group in Washington, which is facing an investigation similar to AG Platkin's, have already experienced these harms. I believe divulging such information would also weaken our ability to recruit new donors, personnel, and affiliates, as prospective

partners would be hesitant to risk the revelation of their personal information through government investigation.

Costs of Electronic Document Discovery

12. Complying with the demands of the Subpoena will require, among other things, searching First Choice's electronic devices for relevant documents. The Subpoena requests, to provide just a few examples, all of First Choice's advertisements, all documents supporting a host of claims on First Choice's websites, all complaints received from donors and clients, and all communications sent or received about the risks of Abortion Pill Reversal, the risks of abortion, and contraception. Ex. 1, "Document Requests" ¶¶ 1, 6–8, 9, 11. The documents responsive to those requests reside not on a dedicated server, but on individual devices and accounts at each of its five locations.

13. First Choice does not have dedicated information technology (IT) personnel on staff and contracts with outside companies for IT services. Thus, to evaluate the burden of responding to the Subpoena, First Choice requested an estimate of certain data review costs from an IT consultant. The consultant estimates that device imaging and virtualization alone, which are prerequisites to a search for relevant documents, would require 50–60 hours of work and would cost First Choice $7,000–$8,400. This estimate does not include the other necessary data discovery and documentation costs.

14. Once the data is imaged and uploaded to a review platform, it would need to be filtered by search terms and then reviewed individually by attorneys for

responsiveness, privilege, and redaction of information protected by HIPAA. Although it is not possible to know how many responsive documents exist before the documents have been collected, imaged, and filtered by search terms, the volume is likely to consist of up to 20 Terabytes of data. Assuming review by contract attorneys at a modest rate of $250 per hour, even a minor collection of documents requiring two weeks of work by a single attorney is likely to cost $20,000. A greater volume of responsive documents requiring redaction will increase those costs dramatically.

Costs of Other Discovery

15. Searching for much of the documentation demanded by the Subpoena would require a significant effort by the organization's limited staff. For example, it is likely that many communications with clients, donors, and First Choice personnel may not be searchable on First Choice's computers, and First Choice personnel will thus be required to manually search for these documents. *See* Ex. 1, "Documents Requests" ¶¶ 3, 9, 11, 19–20, 26.

16. Searching for these documents and information would require a dedicated effort by myself and First Choice's director of health services, center directors, bookkeeper, financial manager, medical director, and medical staff. In total, these efforts would require the support of 75 percent of First Choice's staff. I anticipate that many of these individuals would have to spend several hours a week for at least a month identifying the location of relevant documents and searching for documents to comply with the Subpoena. Some individuals may be

required to dedicate multiple hours per day, and I would likely be required to expend additional hours managing and coordinating these efforts.

17. These significant Subpoena-compliance efforts would divert First Choice staff and volunteers from performing the ministry's charitable mission, and the number of services First Choice provides to the public would be reduced. Time spent complying with the Subpoena necessarily means less time serving clients. First Choice's medical services, such as ultrasound exams, STI screenings, and Abortion Pill Reversal administration, would suffer the most. First Choice's ability to schedule clients, mentor them through our parenting education program, provide material assistance such as baby clothes and furnishings, train staff, draft grant proposals, and fundraise, among other activities, would also suffer.

Impact on First Choice's Religious Expression

18. First Choice's mission and every service it provides are expressions of the ministry's Christian faith. Central to the ministry's mission is the belief that every person is created in the image of God and is valuable at all times, from conception to death. To protect the lives of the unborn, First Choice offers services such as Abortion Pill Reversal, which is undertaken to increase the chances that an unborn child will survive after a woman takes the first pill in the chemical abortion protocol. This service is provided in response to women who seek this service and to support vulnerable women facing unplanned pregnancies, First Choice provides counseling and material support. First Choice seeks to serve women

and the unborn as the Bible instructs in James 2:26, "As the body without the spirit is dead, so faith without deeds is dead."

19. Subpoena compliance would divert the ministry's resources from the charitable services compelled by its faith and would weaken the ministry by compromising its ability to coordinate with clients, donors, personnel, and affiliate organizations. All of these harms would be a substantial burden on First Choice's expression of its faith.

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

Aimee Huber
Aimee Huber

MATTHEW J. PLATKIN
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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.	Hon. Michael A. Shipp, U.S.D.J. Hon. Tonianne J. Bongiovanni, U.S.M.J. Docket No. 23-CV-23076 CIVIL ACTION **CERTIFICATION OF GREGORY K. TURNER**

I, Gregory K. Turner, an employee of the State of New Jersey, certify as follows:

1. I am an Assistant Deputy of Enforcement of the Office of Consumer Protection ("OCP") within the Division of Consumer Affairs ("Division"). The Division operates under the direction of the Attorney

General within the Department of Law & Public Safety.

2. In my role as Assistant Deputy of Enforcement, I am primarily responsible for the management and oversight of OCP investigations, as well as coordination efforts of investigations with various other sections including the Charities Registration and Investigation Section ("CRI") and the Enforcement Bureau ("EB"). In this capacity, I have general oversight of the collection and preservation of evidence for OCP investigations, as well as oversight of the investigators and/or supervisors who conduct investigations on behalf of the Division.

3. The Division initiated a confidential investigation that included considering whether actions taken by First Choice Women's Resource Centers, Inc. and its staff ("First Choice") had violated various statutes and regulations. The Division's ongoing investigation has included—among other investigative steps—a review of First Choice's registration status with the Charities Registration & Investigation Unit and a review of publicly available information, including First Choice's own divergent representations across its multiple websites and social media accounts.

4. The Division's investigation revealed that First Choice maintains multiple websites, each of which contains different representations about its work. (See Exhibit 1, Exhibit 2, Exhibit 3)

5. Upon review of the websites, the Division's investigation revealed that there are discrepancies in how First Choice messages its mission and services

across its different platforms, based on the distinct audiences each website appears to be intended to reach. (See Exhibit 1, Exhibit 2, Exhibit 3). Additionally, First Choice makes numerous statements purporting to convey medical information, and states that it has medical personnel onsite to provide services. (See Exhibit 1, Exhibit 3)

6. Additional investigation by the Division revealed that First Choice represents in phone calls that it has nurses on staff and has doctors who oversee medical services.

7. That investigation further showed that when First Choice meets with clients at its facility, First Choice informs them that it has a doctor that oversees the facility, although it admits that it does not have a doctor onsite.

8. The Division's investigation also revealed that First Choice offers to conduct a pregnancy test and ultrasound, but does not provide information about the risks of abortion absent an agreement to submit to a pregnancy test.

9. The Division's investigation raised significant concerns about the information First Choice and its staff provide to potential clients, donors, and the public, about the services it offers and about the personnel who deliver those services.

10. Based on the Division's investigation thus far, the Division determined that a subpoena for documents was warranted to gather further information about First Choice's representations and practices.

11. To learn more, on November 15, 2023, the Division served an Administrative Subpoena Duces Tecum ("Subpoena") on First Choice at 82 Speedwell Avenue, Morristown, NJ 07960. Among other things, the Subpoena sought copies of First Choice solicitations and advertisements, documents substantiating the claims made therein, and identification of the medical personnel involved in the provision of its services. The subpoena set a December 15, 2023 deadline for First Choice to respond. (See Exhibit 4)

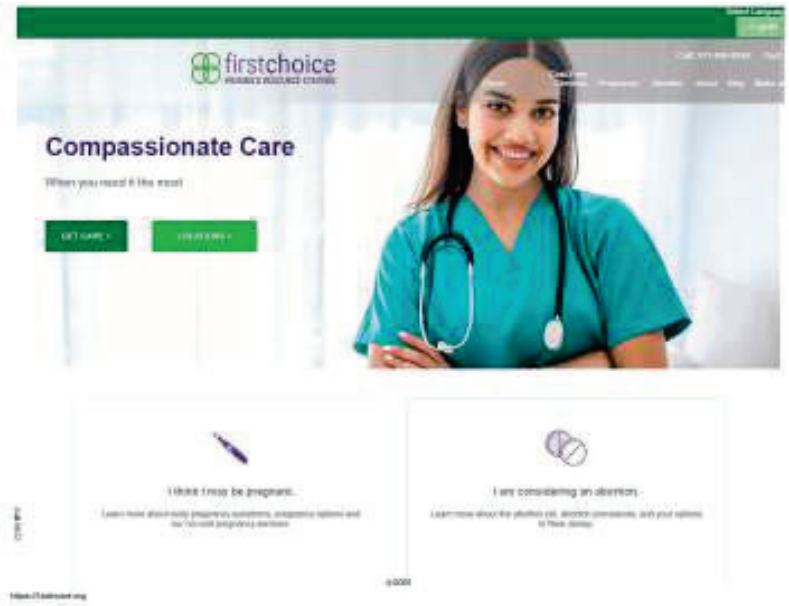
12. I have reviewed all documents submitted with this Certification and certify that all are true copies of the documents in possession with the Division.

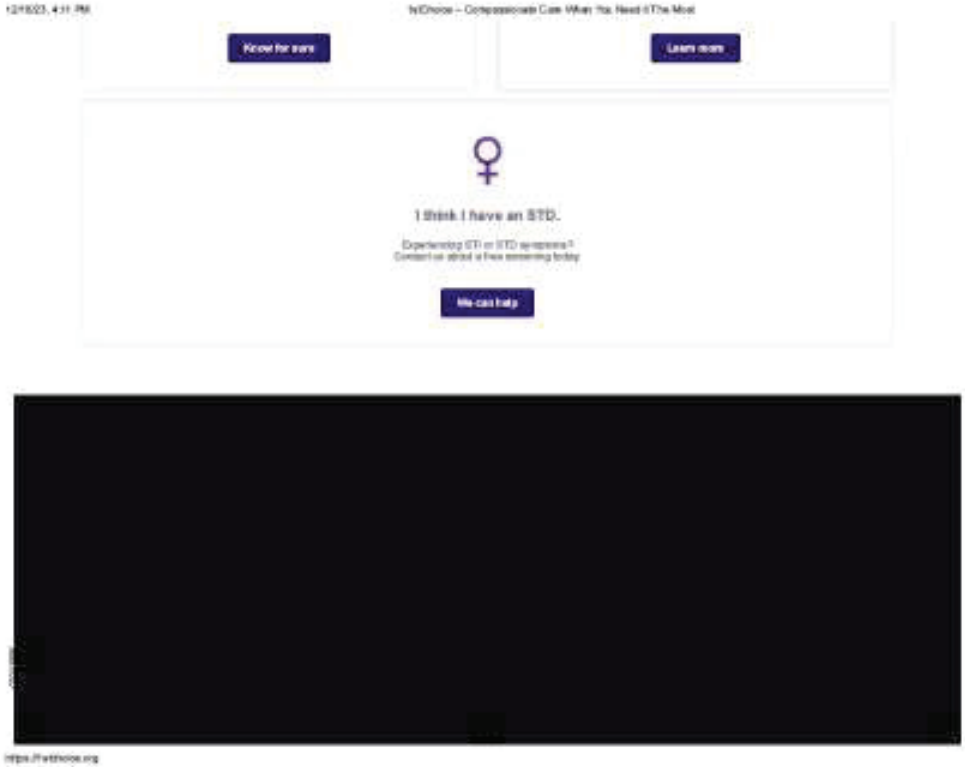
13. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Gregory K. Turner
Gregory K. Turner
Assistant Deputy of Enforcement

Dated: January 5, 2024

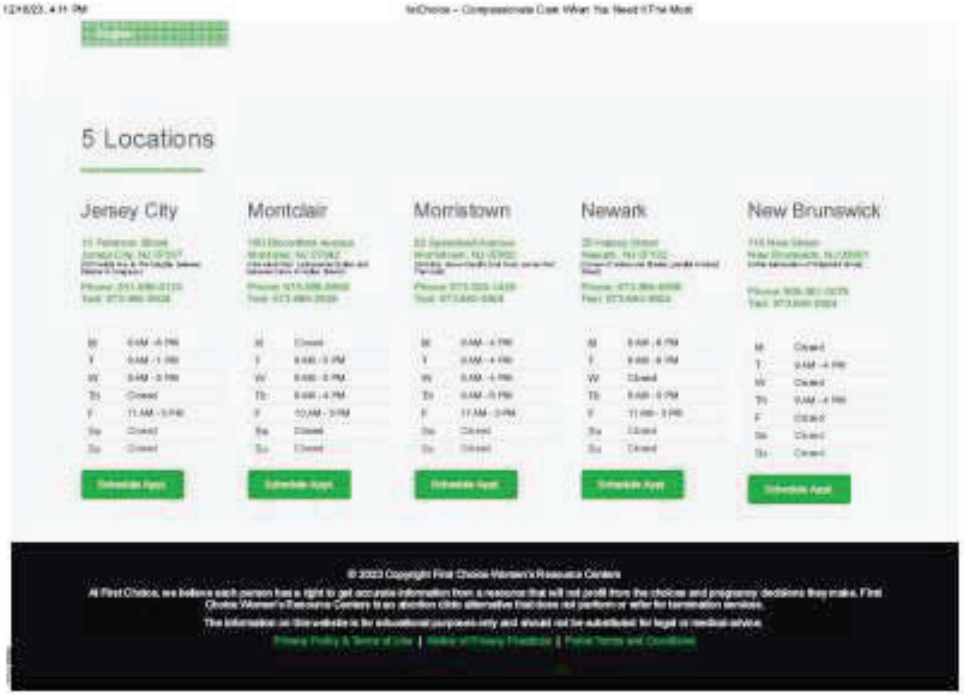
EXHIBIT 1

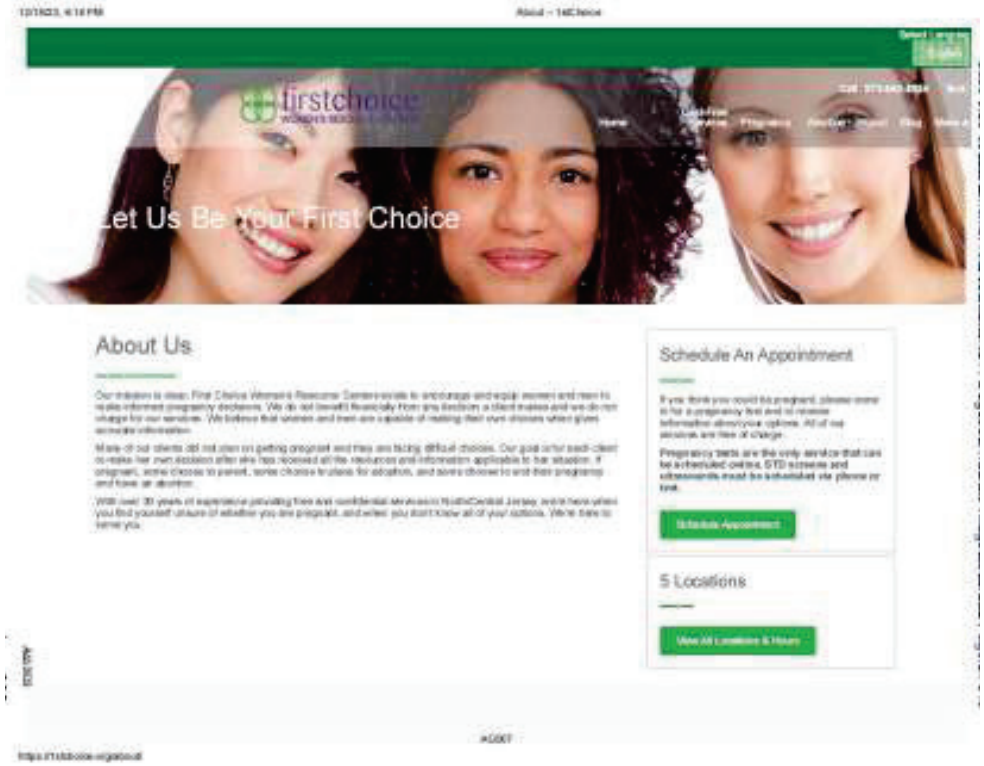

firstchoice
Compassionate Care
I think I may be pregnant.
I am considering an abortion.

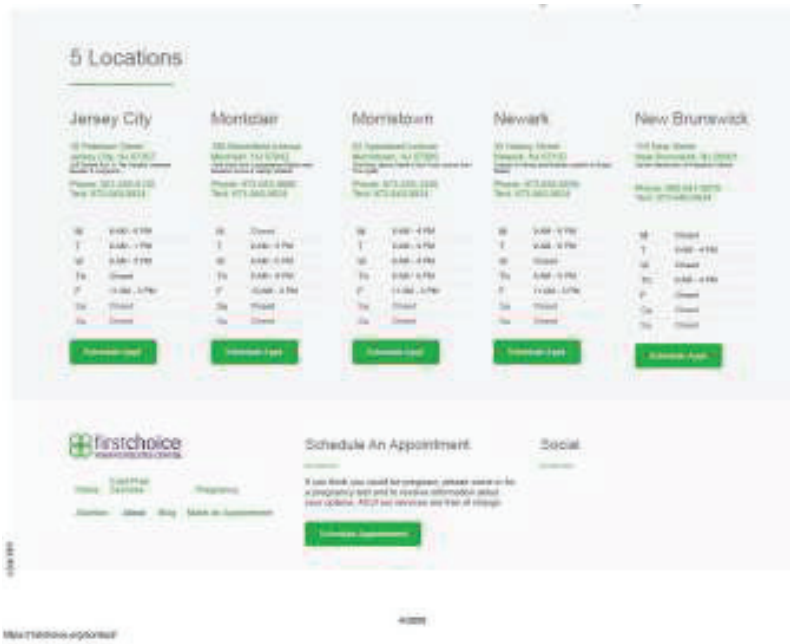

Know for sure
Learn more
I think I have an STD.
We can help


Get the information you need
from people who care.
Along with free pregnancy testing, STI testing, and verification services, we provide answers on:
firstchoice
For Women. For Choices. For You.


firstchoice
Do I Need an In-Person Appointment Before an Abortion?
How Do Morning-After Pills and 5-Day After Pills Work?
Google Reviews
Schedule An Appointment
Social
Translate Site


5 Locations
Jersey City
Montclair
Morristown
Newark
New Brunswick


firstchoice
Let Us Be Your First Choice
About Us
Schedule An Appointment
5 Locations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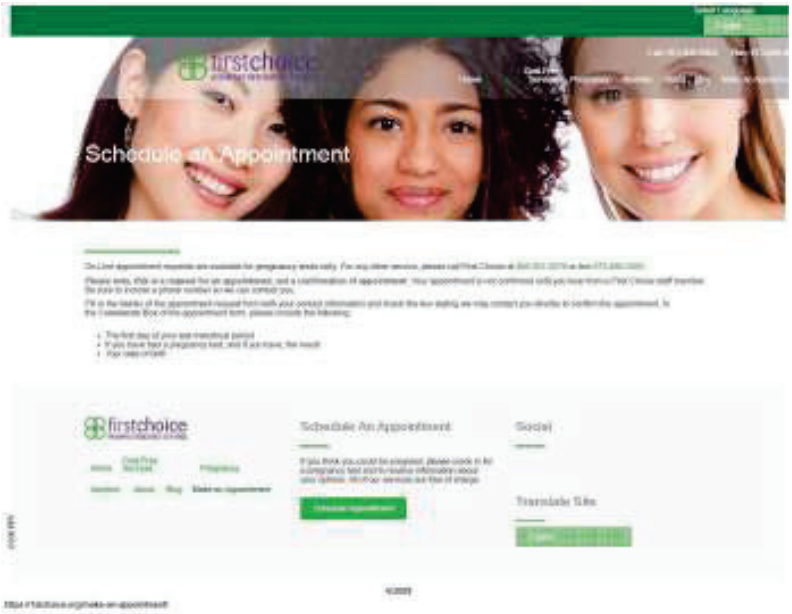
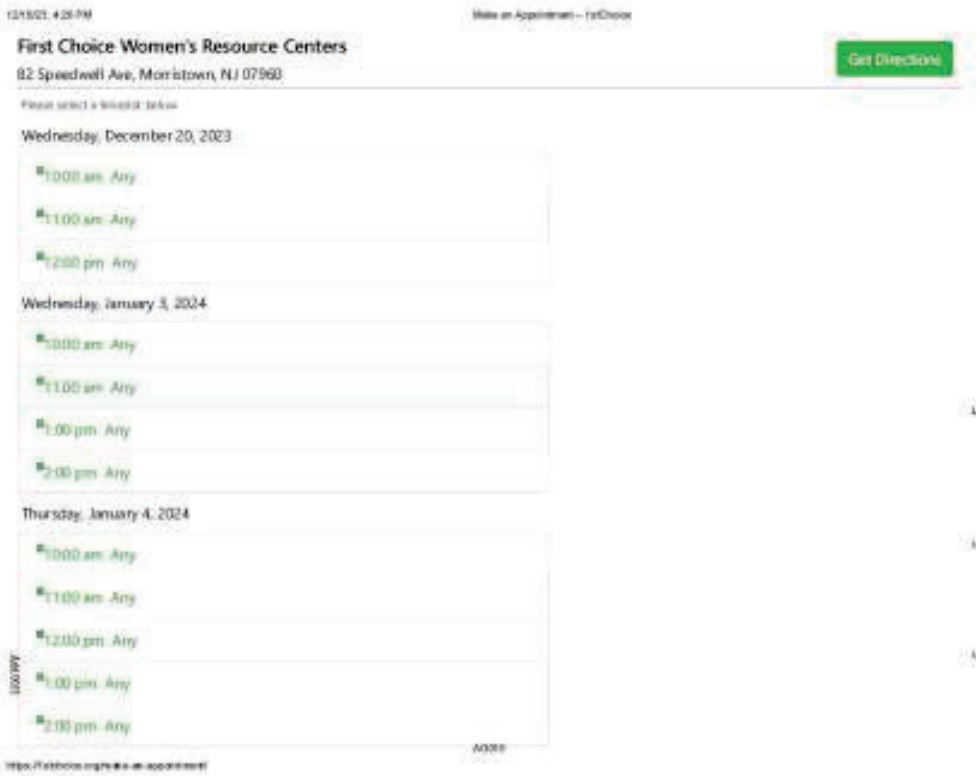
Jersey City
Montclair
Morristown
Newark
New Brunswick
firstchoice
Schedule An Appointment
Social


firstchoice
Schedule an Appointment
firstchoice
Schedule An Appointment
Social
Translate Site


First Choice Women's Resource Centers
82 Speedwell Ave, Morristown, NJ 07960
Get Directions
Wednesday, December 20, 2023
10:00 am Any
11:00 am Any
12:00 pm Any
Wednesday, January 3, 2024
10:00 am Any
11:00 am Any
1:00 pm Any
2:00 pm Any
Thursday, January 4, 2024
10:00 am Any
11:00 am Any
12:00 pm Any
1:00 pm Any
2:00 pm Any

3:00 pm Any

4:00 pm Any

Wednesday, January 10, 2024

10:00 am Any

11:00 am Any

12:00 pm Any

1:00 pm Any

2:00 pm Any

Thursday, January 11, 2024

10:00 am Any

11:00 am Any

12:00 pm Any

1:00 pm Any

2:00 pm Any

3:00 pm Any

4:00 pm Any

Wednesday, January 17, 2024

Please enter your contact information. * = Required.

First Name *

Last Name *

Email *

A valid email is required to confirm your appointment.

Mobile Phone *

digits only

Birth Date *

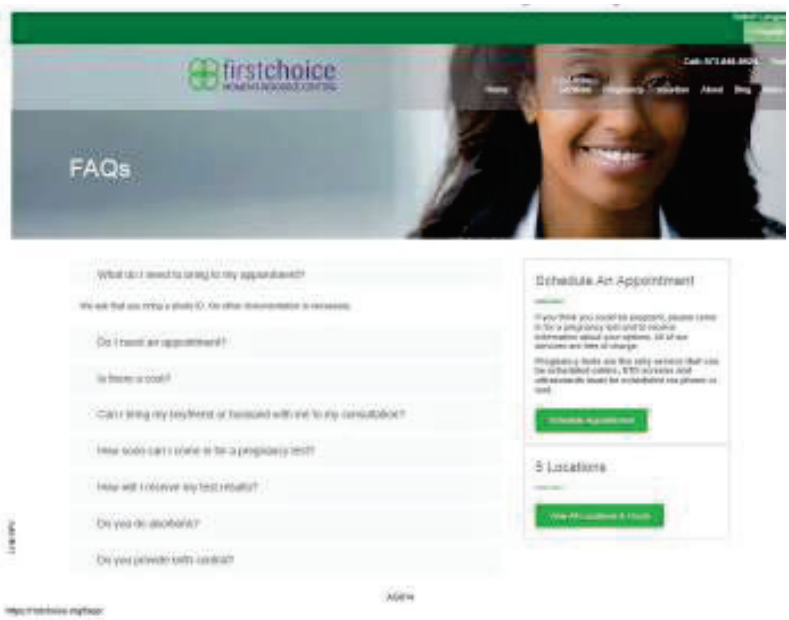
mm/dd/yyyy

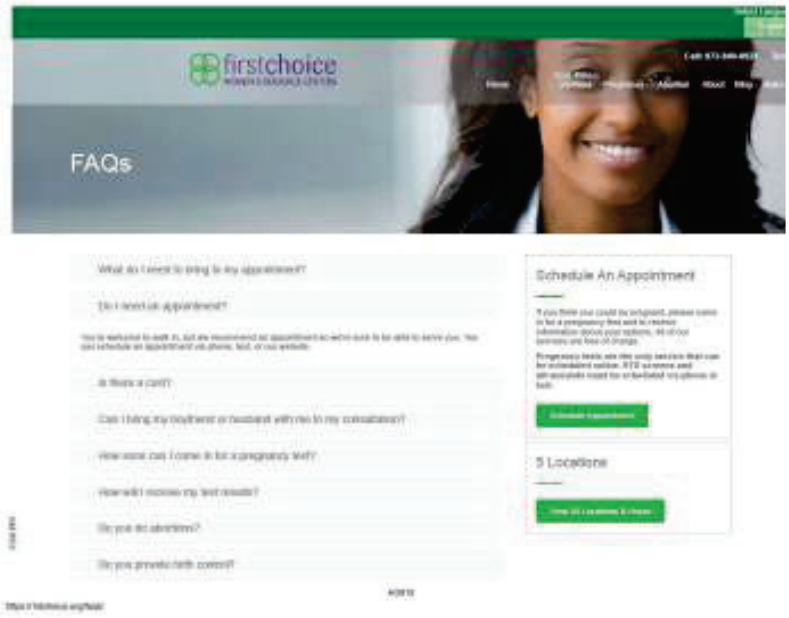
Comment *

please describe your needs.

It's okay to contact me

HWW


firstchoice
FAQs
Schedule An Appointment
5 Locations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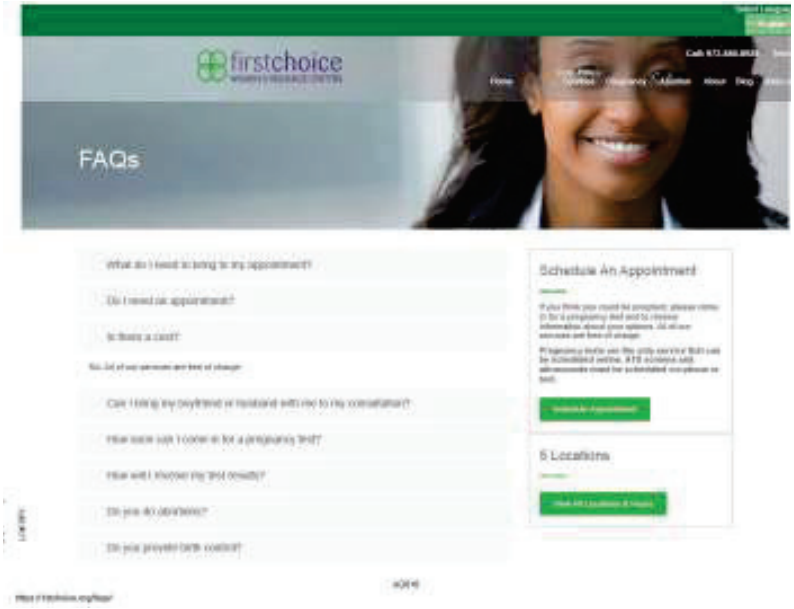
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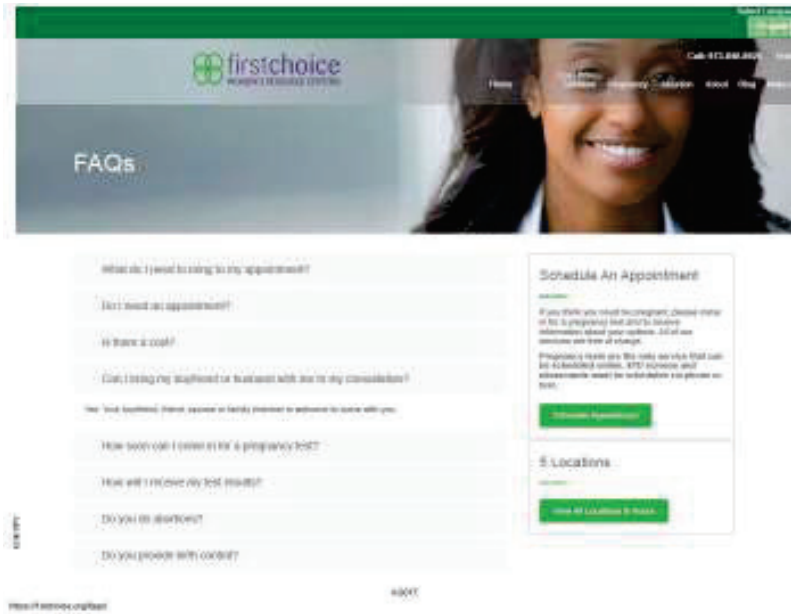
firstchoice
FAQs
Schedule An Appointment
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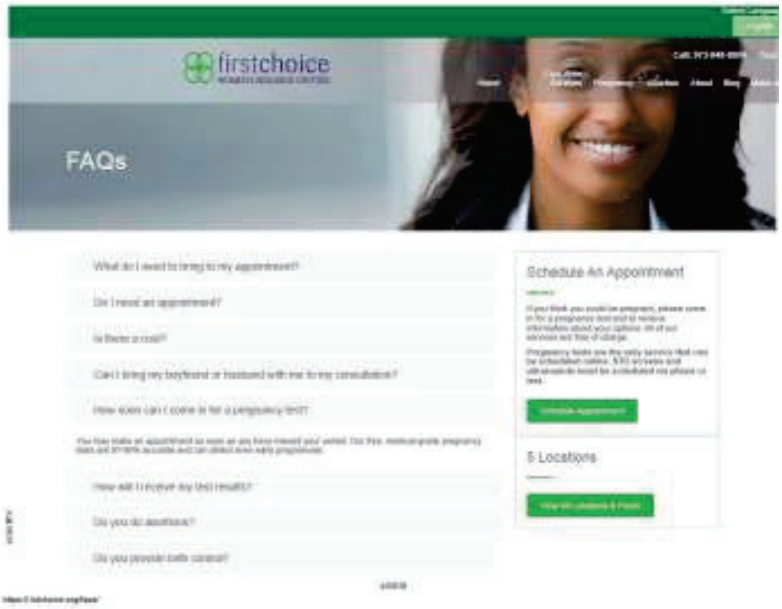
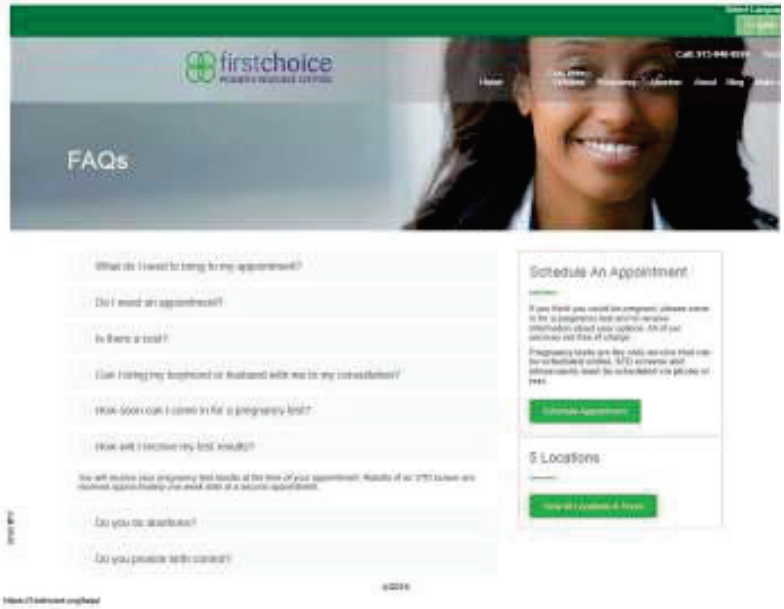

firstchoice
FAQs
What do I need to bring to my appointment?
Do I need an appointment?
Is there a cost?
Can I bring my boyfriend or husband with me to my consultation?
How soon can I come in for a pregnancy test?
How will I receive my test results?
Do you do abortions?
Do you provide birth control?
Schedule An Appointment
5 Locations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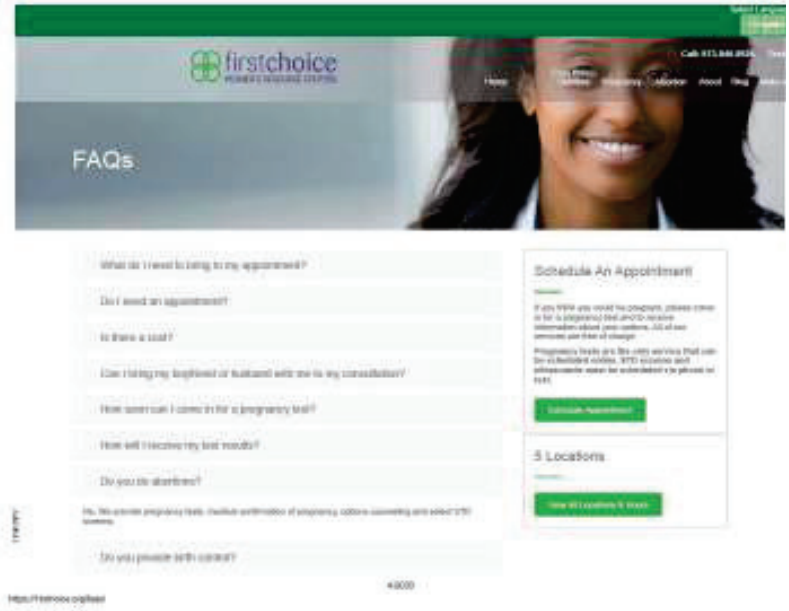
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FAQs
Schedule An Appointment
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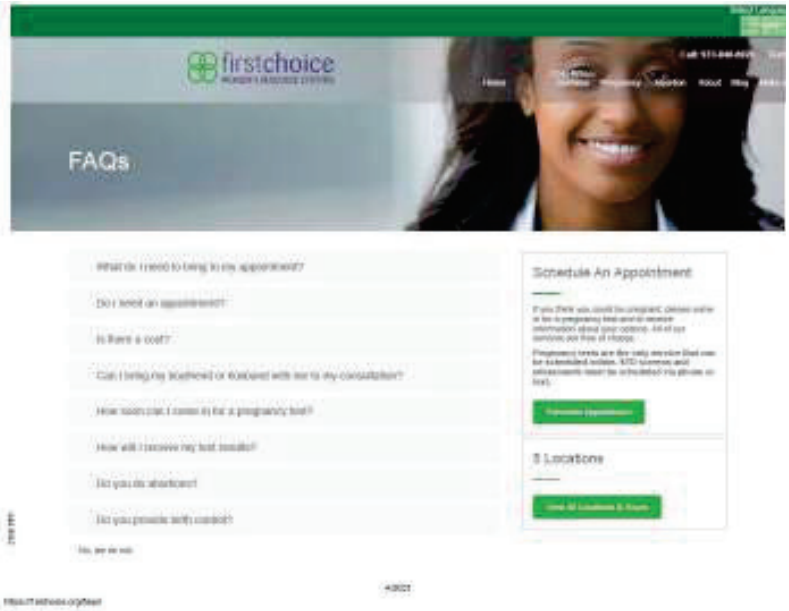
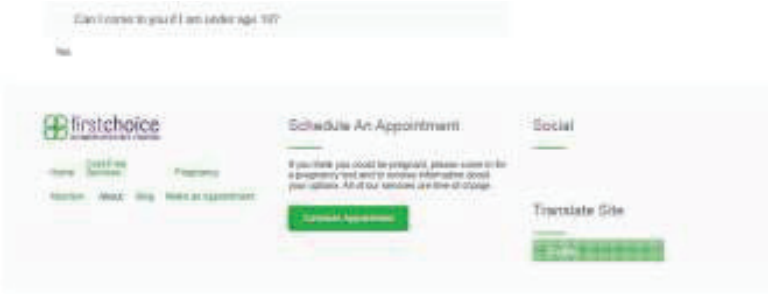

firstchoice
FAQs
Schedule An Appointment
5 Locations


firstchoice
Schedule An Appointment
Social
Translate Site


Give To First Choice
Give Now
Sign In
Christmas
GIVING
2023
Your Gift... Doubled!
Person's Name
First Name
Last Name

Company Name (optional)

Address

Address Line 1

Address Line 2

City

State

Country

United States

Zip Code

Phone Number (optional)

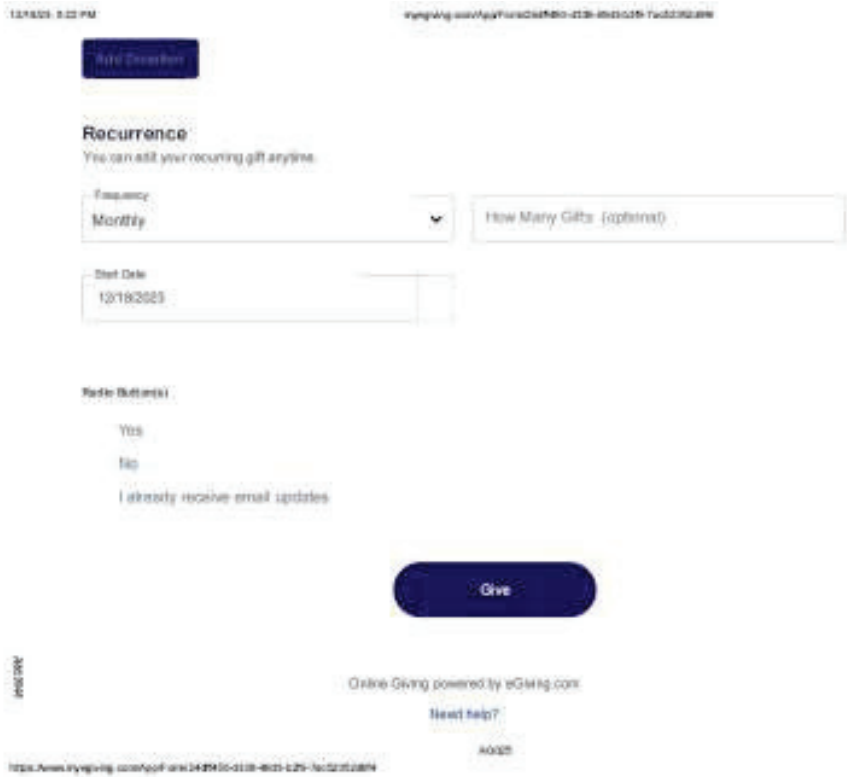
Choose a Designation

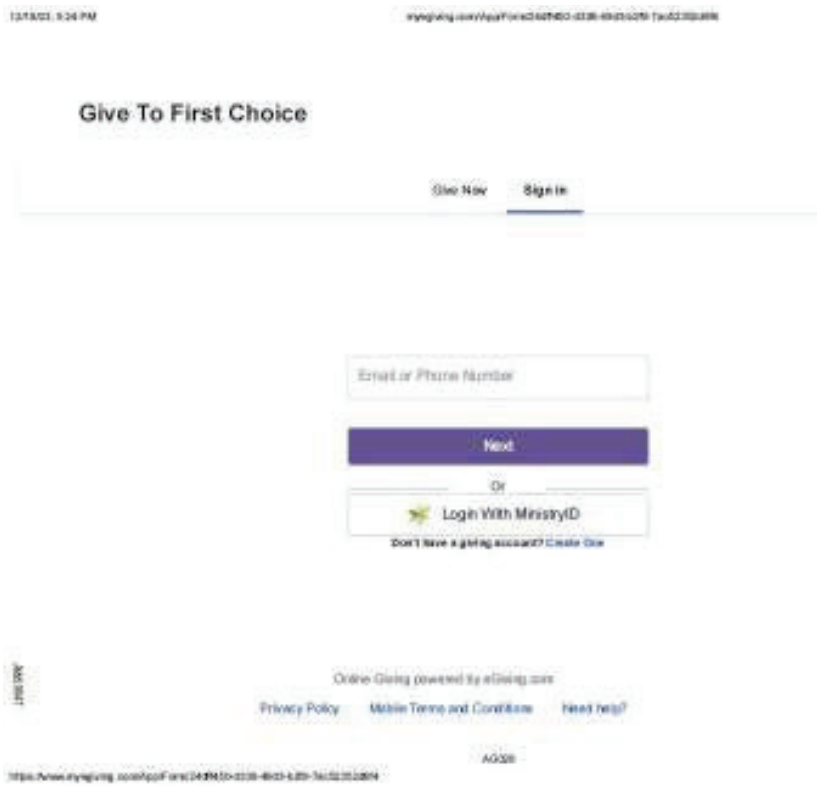
Recurring

One-time

Fund

Amount


Recurrence
You can edit your recurring gift anytime.
Frequency
Monthly
How Many Gifts (optional)
Start Date
12/18/2023
Radio Button(s)
Yes
No
I already receive email updates
Give
Online Giving powered by eGiving.com
Need help?


Give To First Choice
Give Now
Sign In
Email or Phone Number
Next
Or
Login With MinistryID
Online Giving powered by eGiving.com
Privacy Policy
Mobile Terms and Conditions
Need help?
AG08

Privacy Policy

Version Version 1.3 (Current) Effective May 22, 2023 Download

This Privacy Policy ("Policy") describes the Personal Information that Ministry Brands Holdings, LLC and our family of companies ("Ministry Brands", "we", "us", or "our") may collect and otherwise process through our websites, including, but not limited to, **ministrybrands.com**, other Ministry Brands affiliated websites, and affiliates whose websites and mobile applications link to this Policy (collectively, the "Sites"). For an overview of the Ministry Brands family of companies and the Sites governed by this Policy, please click **here**. This Policy is designed to help you understand how we collect, use, and safeguard the information we obtain through the Sites and to assist you in making informed decisions when using our Sites.

Please note that certain of our Sites, such as our background screening service Sites, may include additional privacy disclosures relevant to the Personal Information that we collect through those Sites. These disclosures will be provided when you interact with the relevant sections of those Sites.

Personal Information We Collect

"Personal Information" is information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household.

Information Collected From You

We may obtain Personal Information that you provide directly to us when you interact with the Sites (e.g., when you submit an inquiry or make a donation through the Sites). For example, when you submit an online contact form, you may provide your first and last name, email address, postal address, and telephone number. In addition, we may collect the following types of Personal Information on certain Sites:

- Communications, which may include information you provide to us in email, chat services, or through online forms, as well as information you provide when you use our messaging services.
- Payment information, such as details about the payment method (e.g., credit or debit card number), date and amount of transaction, and recipient. Our payment processors collect your payment card information and other information necessary to process the donation.
- Affiliations, such as information about the organizations you represent, donate to, or interact with, as well as how you interact with those organizations. This information may be combined with information we collect from our Clients.
- Generated content and interactions, which may include profiles, posts and comments, liking or viewing other users' content, and direct messages to other users.
- Photographs, videos, and audio recordings, such as audio or video recordings tied to certain content that you may upload, as well as information supporting the functionality of video and audio features such as video effects that allow you to overlay effects over objects or people displayed within the camera frame.
- Location data. You may tag your location in connection with certain content that you create via the Sites.

Note that information typed into an online form may be collected, even if the form is not submitted and/or payment is not processed.

Information Collected Automatically

We and our service providers may use certain online tools, such as cookies, web beacons, and other tracking technologies, to automatically collect information when you interact with the Sites. Our **Cookie Notice** addresses the information that may be collected automatically from visitors to our Sites.

Information Obtained Through Our Clients Use of Our Services

We may also collect Personal Information about you from organizations that use our Sites to provide their services, such as churches that livestream their services, charitable organizations that solicit donations, and ministries that manage congregant contact details (our "Clients"). Our Clients may provide authorized individuals access to our Sites and services, including Client employees, congregants, members, and other consumers. In this context, we may process your Personal Information at the direction of, and on behalf of, our Clients in our role as a service provider to those Clients. When you interact directly with Ministry Brands' platforms provided by our Clients, Personal Information is provided to both Ministry Brands and our Clients. Separately, Clients also may input Personal Information about you that was not provided directly through the Sites, including contact information, group membership, and attendance details.

This Policy does not cover the use of your Personal Information by our Clients. We do not control and are not responsible for the privacy practices of our Clients related to the Personal Information collected through our Sites. This Policy applies to the Personal Information collected by Ministry Brands. Individuals who interact with our Sites through our Clients should refer to that Client's privacy policy for information on how your Personal Information is collected, used and protected. Any inquiries related to your information and how it is processed, as well as Personal Information access, deletion, and modification requests should be directed to that Client.

Information Obtained Through Interactive Features and Third Party Integrations

We may engage vendors to provide certain interactive features on our Sites. Your use of these interactive features is voluntary, and we may retain the information that you submit through the features. For example, we may offer an interactive chat feature on our Sites to answer questions and for other customer service purposes. When you participate in the interactive chat, either with a virtual or live agent, the contents of the chat may be captured and kept as a transcript. By using these features, you understand that our vendors may process the information obtained through the feature to provide the service on our behalf.

You may disclose your own Personal Information on message boards, chats, profile pages, and other social networking features and services to which you are able to post information and materials. Please note that any information you post or disclose through these services may be available to visitors to the Sites and the general public, depending on the particular service and any privacy settings in place (such as through your profile).

We may offer third party integrations on our Sites. If you choose to connect a third party account to our system, you should refer to that party's privacy policy for information on how your Personal Information is collected, used and protected. One such integration is YouTube API Services, which may collect, store, use, process and share Personal Information as described in this Policy. The YouTube API Services also may serve content and store, access and collect Personal Information from your devices as described in this Policy and our **Cookie Notice**. For more information about the YouTube API Services, please refer to the **Google Privacy Policy**. In addition to exercising your choices as described in this Policy and our Cookie Notice, you can revoke access to your Personal Information collected and processed through the YouTube API Services using Google's security settings at **https://security.google.com/settings/security/permissions**.

Our apps use and transfer to any other app of information received from Google APIs will adhere to **Google API Services User Data Policy**, including the Limited Use requirements.

Please note that Ministry Brands is not responsible for the content or privacy practices of non-Ministry Brands websites to which the Sites may link.

How We Use Personal Information

We use the Personal Information we collect through the Sites to facilitate your user experiences, as well as to secure and improve the Sites.

- Provide access to, secure, and improve the Sites, which may include facilitating and personalizing your user experience; monitoring and analyzing trends, usage, and activities of Site visitors and users; delivering promotional content; improving the Sites; providing technical support; and preventing, identifying, and stopping suspected or actual fraudulent or illegal activity, or any activity that violates our policies.

- Provide services to our Clients, such as managing Client access to our Sites, fulfilling requests related to Client-held information, and otherwise providing requested services or products.
- Payment services, which may include processing online payment transactions, providing information about past payments, and generating receipts.
- Communications, such as using contact details to provide information about our products and services and our Clients, business partners, and affiliates' services, inviting you to participate in our events or surveys, or otherwise communicating with you. As permitted by applicable law, we may use your Personal Information to advertise and market our products and services to you.
- Fraud detection services, which may include using your Personal Information to detect and prevent fraud against us and our Clients, including to detect unauthorized log-ins.
- Compliance. We may use Personal Information to comply with applicable laws, regulations, or legal processes, industry standards, and Ministry Brands policies.

How We Disclose Personal Information

We may disclose Personal Information we obtain through the Sites to our subsidiaries, affiliates, and business partners, subject to applicable law and in accordance with contractual restrictions, as appropriate:

- Affiliates, such as disclosing information to third parties to inform you of special discounts or offers, provide products and services to you, or notify you about updates to products or services you have purchased or participated in.
- Clients, which may include Client representatives, and third parties authorized by our Clients, in accordance with the Clients' privacy policies and practices.
- Service providers or contractors, such as service providers to help us provide, analyze, and improve the Sites and to communicate, market, and advertise regarding the Sites. We authorize such service providers to use or disclose the Personal Information that we make available to them to perform services on our behalf and to comply with applicable legal requirements.
- Compliance with law, which may include disclosing your information to a third party if we believe that disclosure is reasonably necessary to comply with any applicable law, regulation, legal process or government request (including to meet national security or law enforcement requirements) or to enforce our agreements and policies.
- Safety and security, such as disclosing your information to a third party to protect the security or integrity of the Sites or our services and products, to protect ourselves, our Clients, or the public from harm or illegal activities; or to respond to an emergency which we believe in good faith requires us to disclose data to assist in preventing a death or serious bodily injury.
- Corporate transactions, we may share Personal Information with third parties in connection with a business transaction, such as a reorganization, merger, sale, joint venture, assignment, transfer, change of control, or other disposition of all or any portion of our business assets, including negotiations of the transaction.

Your Choices

If you have a registered account with one of our Sites, you can login to that account to edit your profile information. Please note that account updates to one Site may not update your accounts on other Sites.

You may opt out of receiving email marketing communications from us by clicking the unsubscribe link included in our emails or contacting us here. Please note that we may still send you transactional and administrative emails even if you opt out of marketing communications.

Based on where you live, you may have additional rights regarding the Personal Information we maintain about you. California residents can learn more about their rights and choices under California law in our California Privacy Notice here.

Security and Retention

We maintain organizational, technical, and administrative measures designed to protect Personal Information against unauthorized or illegal access, destruction, use, loss, modification, or disclosure. We make reasonable efforts to provide a level of security appropriate to the risk associated with the processing of Personal Information, however, no data transmission or storage system is guaranteed to be 100% secure in all circumstances.

We retain Personal Information as long as necessary to fulfill the purpose for which it was collected, subject to applicable law. We retain Personal Information to support fraud monitoring, detection, and prevention activities; comply with our tax, accounting, and financial reporting obligations; and comply with our legal and regulatory obligations. Our obligations may continue after we stop providing our services directly to you.

Children's Privacy

The Sites are not directed at children under the age of 16 and we do not knowingly collect information from children under the age of 16 through the Sites. If we become aware that we have received Personal Information from a person under the age of 16, we will delete it in accordance with applicable law.

California Residents

For additional information about your rights as a California resident or to exercise your California privacy rights, please visit our California Consumer Privacy Notice here.

Information for Users Outside the United States

If you are visiting the Sites from outside the United States, please be aware that information we obtain about you will be processed in the United States or in other jurisdictions. By using the Sites, you acknowledge your Personal Information may be transferred to and processed in jurisdictions outside your own as described in this Privacy Policy. Please be aware that the data protection laws and regulations that apply to your Personal Information transferred to the United States or other countries may be different from the laws in your country of residence.

Changes to This Policy

This Policy is subject to change at our discretion, which will be indicated by updates to the "Last Updated" date at the beginning of the Policy. Your continued use of the Sites after any update to this Policy will constitute your acceptance of the changes.

Contact Us

If you have any questions or complaints about this Privacy Policy or our privacy practices, please contact us here.

You may also contact us by email at privacy@ministybrands.com or by writing to Ministry Brands Privacy Officer at:

Ministry Brands

Attn: Legal Department

10133 Sherrill Blvd. Suite 120

Knoxville, TN 37932

SOBILEĂ=ERMSĂOFĂ-SEĂ

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)# **To cancel recurring payments through which you enroll via text message as part of the Program, reply EDIT to the text message received by you from us.ĂIf you do not cancel a recurring payment at least 1 day prior to the next scheduled payment, your payment shall automatically renew in accordance with the terms of your agreement with us.Ă**

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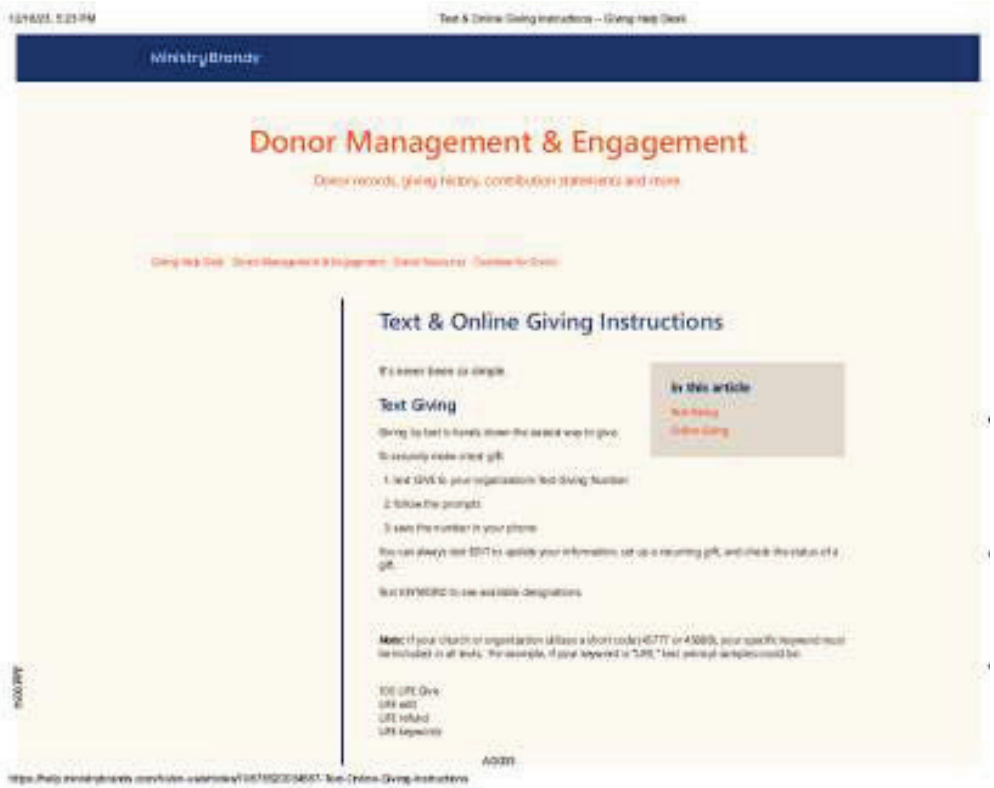
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To give online:

1. enter the desired gift criteria (amount, designation, frequency)
2. securely enter your payment information
3. click Give Now

It really is that simple.

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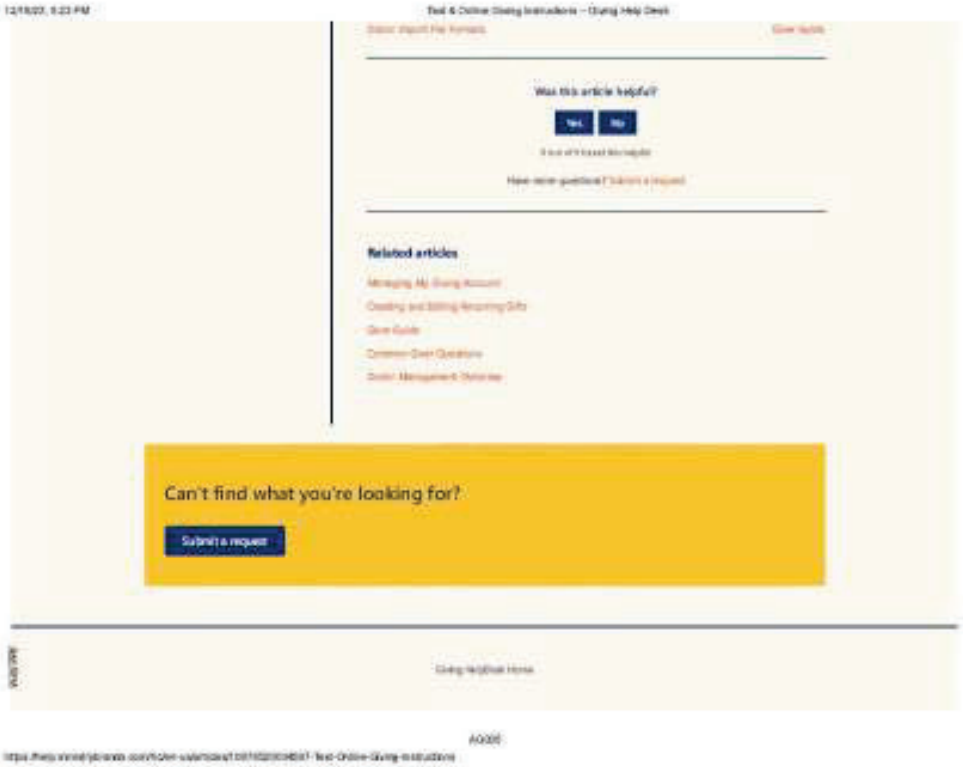
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5 Locations
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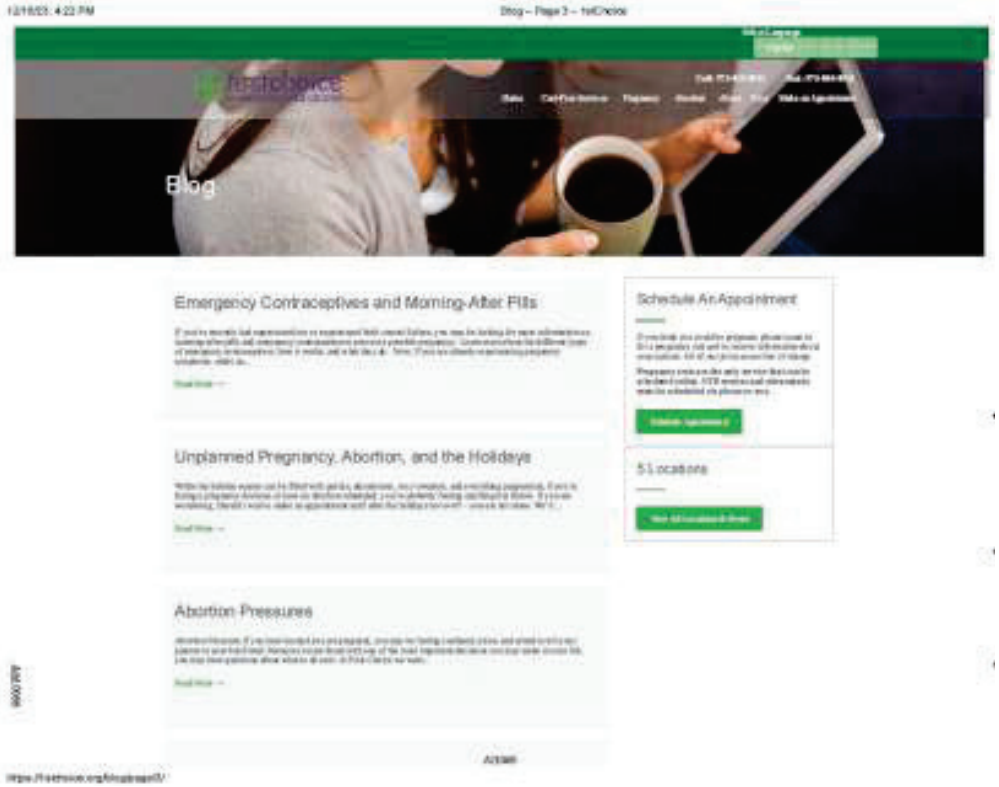
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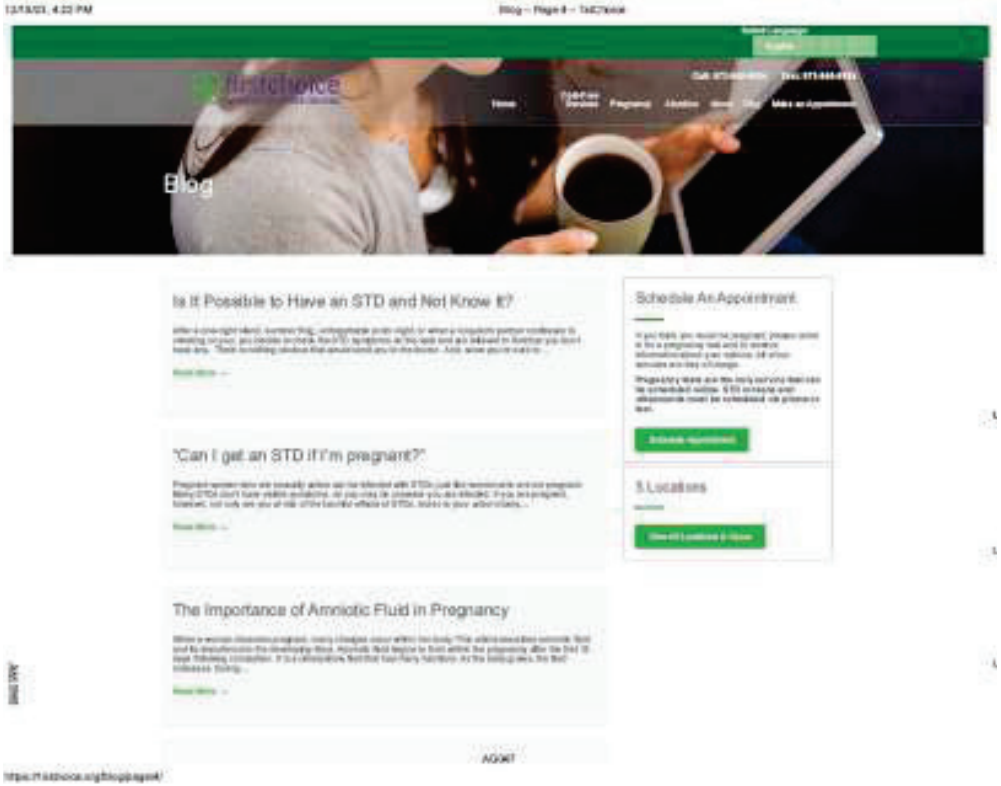
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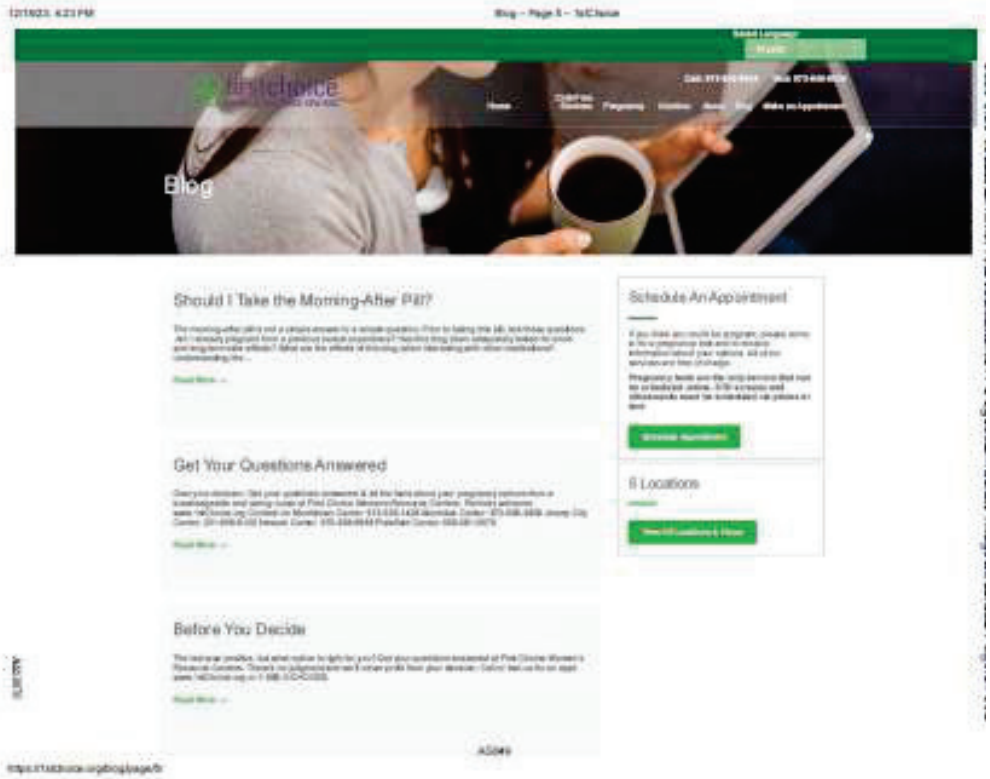
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Before You Decide
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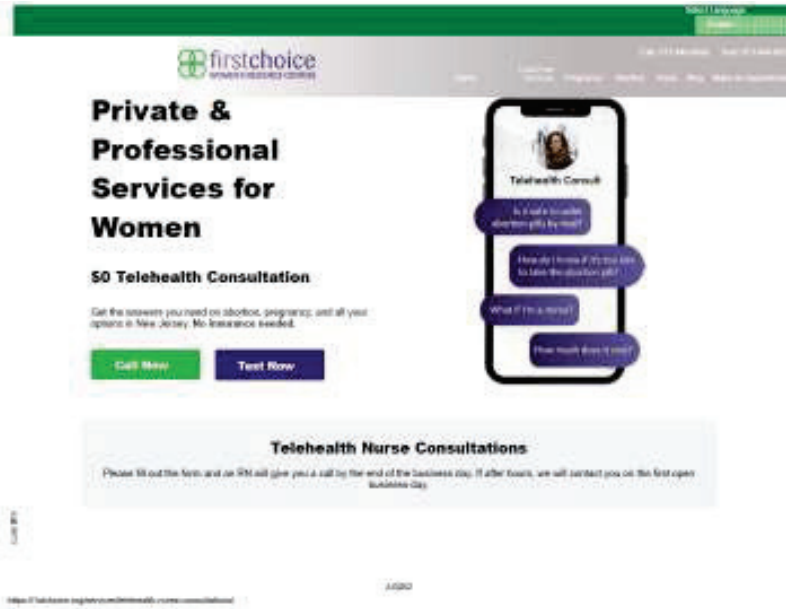
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Private & Professional Services for Women
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New Jersey Women's Centers

Need in-person care? We've got you covered.

Our centers provide no-cost pregnancy and STD services for anyone considering an abortion, including a free ultrasound confirmation. Find a center near you.

Find a location

Abortion Pill FAQs

Questions about at-home abortion? We can help.

Do I need an ultrasound before ordering abortion pills?

How do abortion pills work?

What if I'm more than 12 weeks pregnant?

Get Answers

Your Health & Safety Checklist

Start by booking a no-cost consultation.

Learn more about abortion pills, abortion procedures, and all the options available to you.

Confirm viability and how far along you are.

How far along you are can determine abortion types and cost. If the pregnancy is non-viable, the abortion pill should not be taken.

Get tested for STDs, and if positive, get treatment.

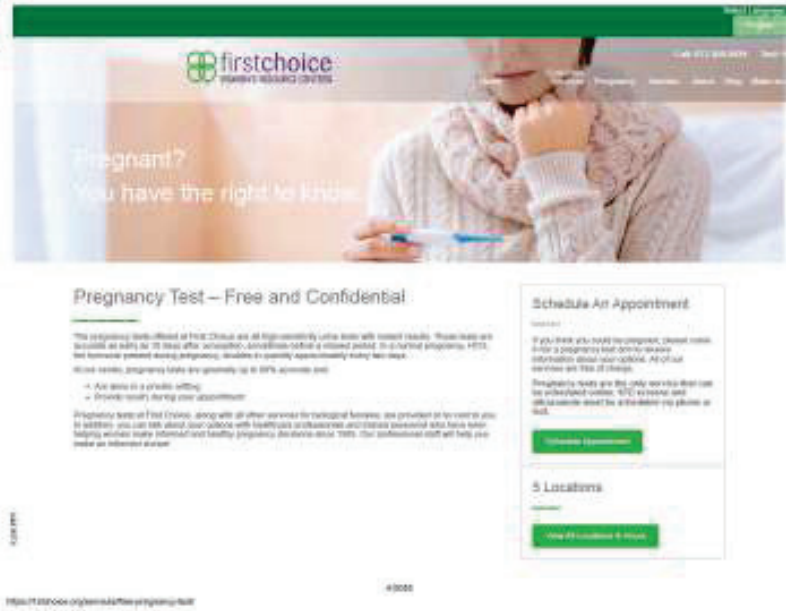
A sexually transmitted infection should be ruled out prior to an abortion procedure to reduce your risk of complications and infection.

About Us

We provide telehealth nurse consultations and in-person pregnancy confirmation appointments so you can get the answers you need to make an informed choice. First Choice does not provide or refer for abortion pills or procedures.

Women Supporting Women

"From the second I walked in until the second I left, I had a beyond wonderful and comfortable, memorable experience. They were EXTREMELY kind and nonjudgmental and helpful and informative. I never once felt like they were placing judgment on me or my situation."
- Amy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You have the right to know.
Pregnancy Test – Free and Confidential
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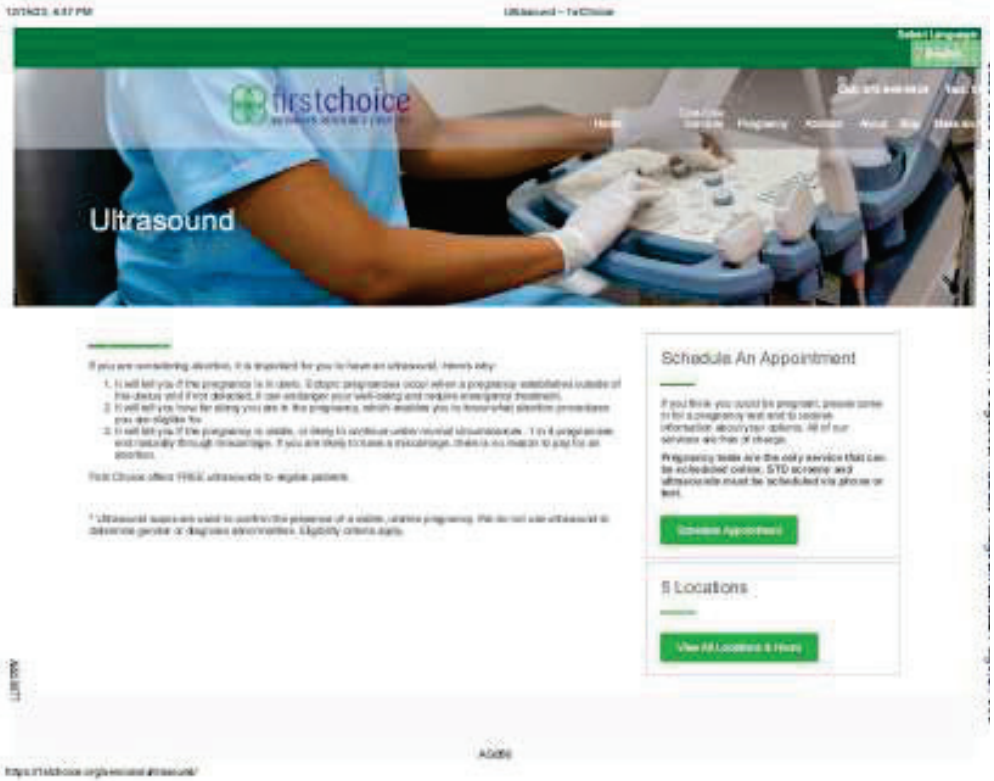
5 Locations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One of Your Options

Abortion Information

Planned parenthood is always going to be easier for you to manage than an unplanned pregnancy. But it doesn't mean you don't feel empowered and informed before or after your decision.

We're here to help you make an informed choice. First Choice isn't your typical women's clinic. We're a women's resource center, and all our services are free of charge and with no obligation.

If you are considering a pregnancy termination or abortion, First Choice is your best next step. There are 3 great reasons why.

- **HOW FAR ALONG YOU ARE DETERMINES COSTS AND TYPES:**
  A pregnancy test is not enough to make a decision about your situation. Pregnancy tests respond to a hormone, HCG, released in your body when you're pregnant. However, up to 1 in 4 pregnancies end in natural miscarriage. HCG levels may remain high in your body, meaning for a period of time you will still test positive, but you may not have a viable pregnancy.

  Ultrasound, not urine or blood tests, is the factual way to determine if you have a viable pregnancy. First Choice provides ultrasound services at no cost to you. Other organizations charge for this.

  Note: The abortion pill is only FDA approved up to 10 weeks after your LMP. We can meet you the day you need to make an informed choice.

- **ULTRASOUND SERVICES WITH NO STRINGS ATTACHED:**
  Many clients want to know how far along their pregnancy is before they make a decision. First Choice will provide the most accurate dating of your pregnancy via ultrasound with no obligation.

  Many other clinics charge for first ultrasound services or require you to make a decision about your pregnancy or abortion procedure beforehand. First Choice provides this free of charge to anyone considering abortion or wanting to know their options ahead of time.

- **MEET ONE ON ONE IN A PRIVATE ENVIRONMENT:**
  First Choice gives you the more private environment for your appointment. We schedule our appointments to avoid crowds in our waiting areas and give you the most privacy available. After your initial screening, you can

Schedule An Appointment

If you think you could be pregnant, please come in for a pregnancy test and to receive information about your options. All of our services are free of charge.

Pregnancy tests are the only service that can be scheduled online. STD screens and ultrasounds must be scheduled via phone or text.

Schedule Appointment

5 Locations

View All Locations & Hours

Have someone with you if this makes you more comfortable. It is your choice.

Other reasons why First Choice is your best next step:

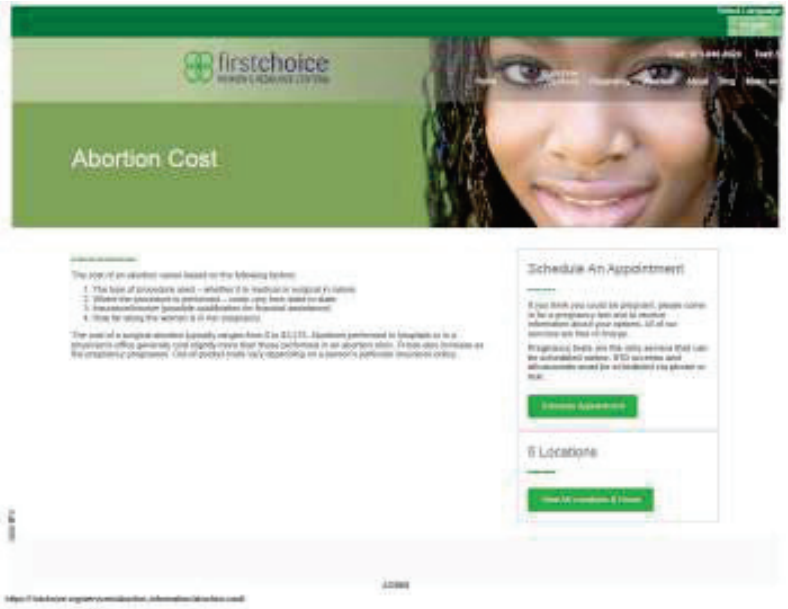
- We do not require parental consent.
- We do not require insurance. No insurance paperwork goes to your home.
- Abortion is legal in the state of New Jersey through the entire nine months of pregnancy. You can take the time to get the facts and make the best decision for you.

We are here to assist you with accurate medical information and important facts so you can make an informed decision. We are not an adoption agency, an abortion clinic or an obstetrical medical practice. We are specialists in pregnancy diagnosis and medical confirmation.

Because we do not profit from any choice you make, there is no pressure to purchase additional services.

Areas Served

Jersey City Montclair Morristown Newark Paterson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Abortion Cost
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6 Locations

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Abortion Pill

The abortion pill, is a common early abortion method in the United States.

Usage – This drug regimen is approved by the FDA (Food and Drug Administration) for use in women up to 10 weeks after the start of their last menstrual period.[1]

Action – The Abortion Pill is made up of 2 medications. The first medication, blocks progesterone. Progesterone is a hormone that is necessary for the pregnancy to survive. Without progesterone, the embryo dies. The second medication causes cramping, expelling the embryo and uterine contents.[2]

Side effects – Cramping and bleeding are expected. Bleeding may be like a heavy period. Bleeding can last 9 to 10 days and possibly up to 30 days. Other possible side effects include nausea, vomiting, diarrhea, fever, chills, weakness, dizziness, and headache.[3]

Complications – Possible complications include heavy bleeding requiring surgery to stop the bleeding, and serious infection. Before taking any medication, you should discuss the risks with your doctor and know what to do if complications arise.[4]

Follow-up – It is important to follow-up with your doctor 1 or 2 weeks after taking this medication regime to see if an abortion has occurred and to assess for complications.[5]

To learn more about pills for abortion and your pregnancy options, schedule a free and confidential appointment today.

1. Texas Women's Health. Inc. 2018. July. Plan B One-Step® Dosed. Retrieved October 30, 2018. from http://www.plandonestep.com/how-it-works.aspx
2. Lalonde, R. L. (2000). The abortifacient effect of the IUD: control of and the principle of the "as possible" effect. Contra Medicine, 18(1), 13-32.
3. WOMEN'S HEALTH NEW YORK. The Syas Project at NY Omega Gent College of Law. accessed June 21, 2014. http://www.syas.org/pages/0001-0001/0001-00_.htm
4. Plan B One-Step | Drug Summary | PDR net. (2014). Retrieved October 30, 2018. from http://www.pdr.net/drug-summary/plan-b-one-step?druglist=1&id=6142

Schedule An Appointment

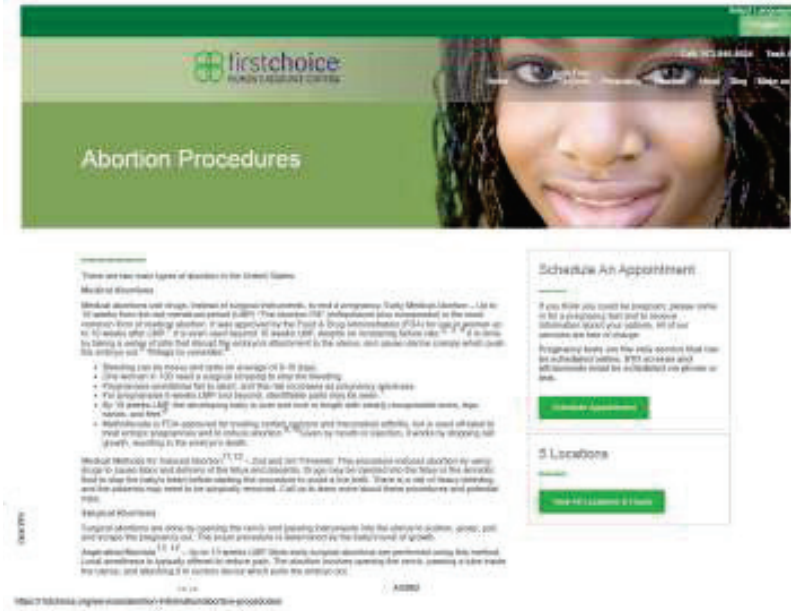
If you think you could be pregnant, please come in for a pregnancy test and to receive information about your options. All of our services are free of charge.

Pregnancy tests are the only service that can be scheduled online. STD screens and ultrasounds must be scheduled via phone or text.

Schedule Appointment

5 Locations

View All Locations & Hours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Abortion Procedures
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Dilation and Evacuation[7,8,9] (D&E) – 13 weeks LMP and up. Most second trimester abortions are performed using this method. Local anesthesia, oral, or intravenous pain medications and sedatives are commonly used. Besides the need to open the cervix much wider, the main difference between this procedure and a first trimester abortion is the use of forceps to grasp fetal parts and remove the baby in pieces. D&E is associated with a much higher risk of complications compared to a first trimester surgical abortion.

D&E After Viability[7,9-19] – 24 weeks LMP and up. This procedure typically takes 2-3 days and is associated with increased risks to the life and health of the mother. General anesthesia is usually recommended, if available. Drugs may be injected into the fetal or the amniotic fluid to stop the baby's heart before starting the procedure. The cervix is opened wide, the amniotic sac is broken, and forceps are used to dismember the fetus. The "Intact D&E" pulls the fetus out legs first, then crushes the skull in order to remove the fetus in one piece.

1. U.S. Food & Drug Administration. (2005, March 30). Mifepristone (mifeprex) information. Retrieved April 8, 2016 from http://www.fda.gov/Drugs/DrugSafety/PostMarketDrugSafetyInformationforPatientsandProviders/ucm113113.htm
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3. Chen, B. (2013). Mifepristone in combination with prostaglandins for termination of 13–19 weeks' gestation: a systematic review. European Journal of Obstetrics & Gynecology and Reproductive Biology, 166, 247-254.’’
4. Chen, M. J., & Creinin, M. D. (2015). Mifepristone with Buccal Misoprostol for Medical Abortion. Obstetrics & Gynecology, 126(1), 12-21. doi:10.1097/aog.0000000000’’
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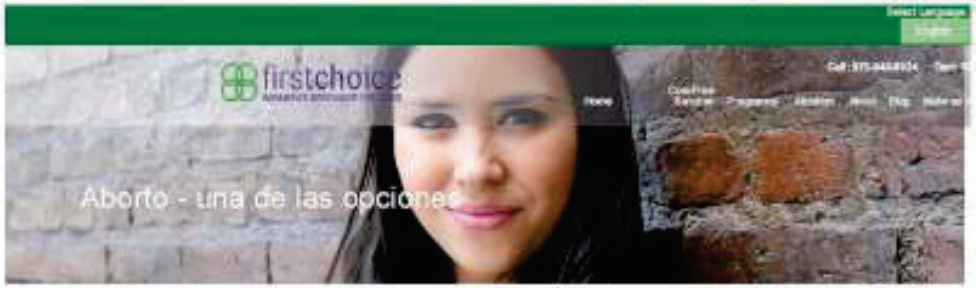
11. Hajagi, R., & Henderson, H. (2009). Medical Methods to Induce Abortion in the Second Trimester. In Management of unwanted and abnormal pregnancy: Comprehensive abortion care (pp. 176-90). Chichester, UK: Wiley-Blackwell.



Información de Aborto

La planificación familiar siempre es el mejor método para evitar tomar una decisión que un embarazo no deseado. Pero entonces, aquí para ayudarte a tomar una decisión informada, First Choice no ofrece ciertos tipos de mujeres. Somos un centro de recursos para mujeres, y todos nuestros servicios son gratuitos y sin compromiso.

¿Por qué First Choice es lugar de esta organización?

Si usted está considerando una interrupción del embarazo o aborto, First Choice es el siguiente paso lógico. Hay 3 razones principales porque:

- **Información gratis sobre el embarazo.**

Una prueba de embarazo no es suficiente para tomar una decisión acerca de su situación. Las pruebas de embarazo responden a una hormona, GCH, que se desprende de su cuerpo cuando queda embarazada. Sin embargo, de todos los embarazos, 1/3 terminan en aborto involuntario natural. Los niveles de GCH pueden permanecer alto en su cuerpo, lo que significa, que durante un período de tiempo todavía tendrá un resultado positivo, pero puede que no tenga un embarazo viable.

Ultrasonido, no prueba de orina o de sangre, es la manera más rápida para determinar si tiene un embarazo viable. First Choice ofrece servicios de ultrasonido sin costo alguno para usted. Otras organizaciones suelen cobrar por esto.

- **Averiguar que tan avanzado está sin ningún compromiso.**

Muchas clientes quieren saber que avanzado está su embarazo antes de tomar una decisión. First Choice proporciona la información más precisa de su embarazo a través de ultrasonido sin compromiso.

- **Usted será atendida en una a una en un ambiente privado.**

First Choice le da un ambiente más privado para su cita. Programaremos nuestras citas para evitar congestión de personas en nuestras salas de espera y darle la mayor privacidad posible. Después de la evaluación inicial, puedes tener a alguien con usted si así le hace sentir más cómoda. Es su elección.

Otras razones por las que First Choice es el siguiente paso mejor

- No requerimos el consentimiento paterno.

Agendar una Cita de Trabajo

Si usted que piensa estar embarazada, haga una cita para una prueba de embarazo y reciba información sobre sus opciones. Todos nuestros servicios son gratuitos.

La prueba de embarazo es la única cita que usted puede hacer por el Internet. Las pruebas de infección de transmisión sexual (STI), y los ultrasonidos, deben fijar por teléfono o mensaje de texto.

Programar una cita

5 Lugares

Ver todos los lugares y horarios

https://firstchoice.org/services/aborto-information/

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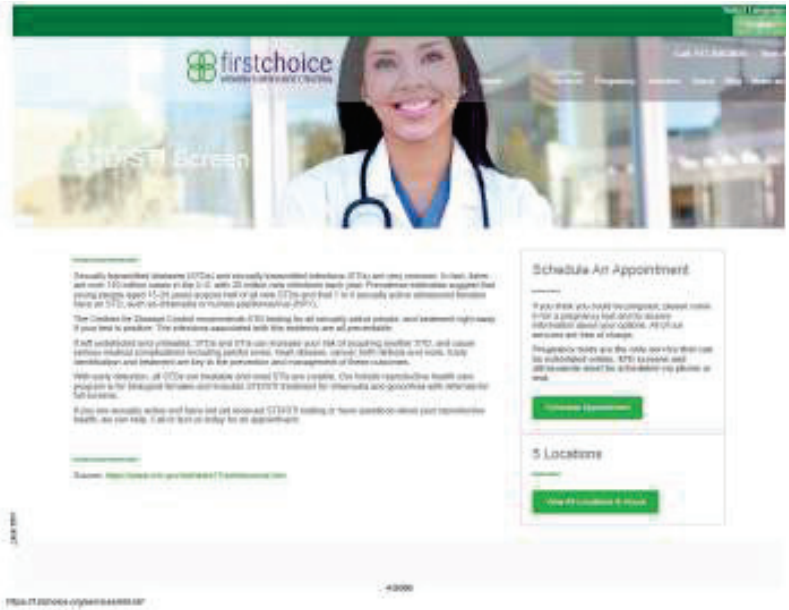
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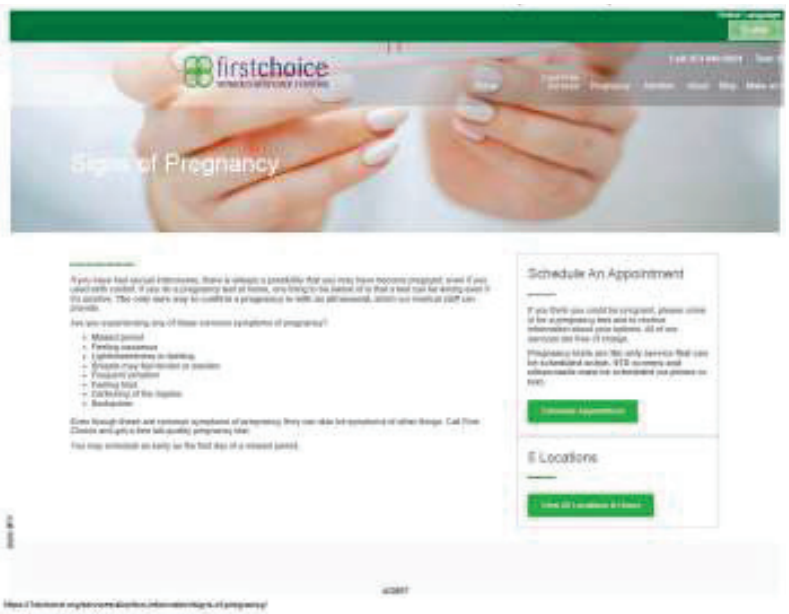
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Signs of Pregnancy
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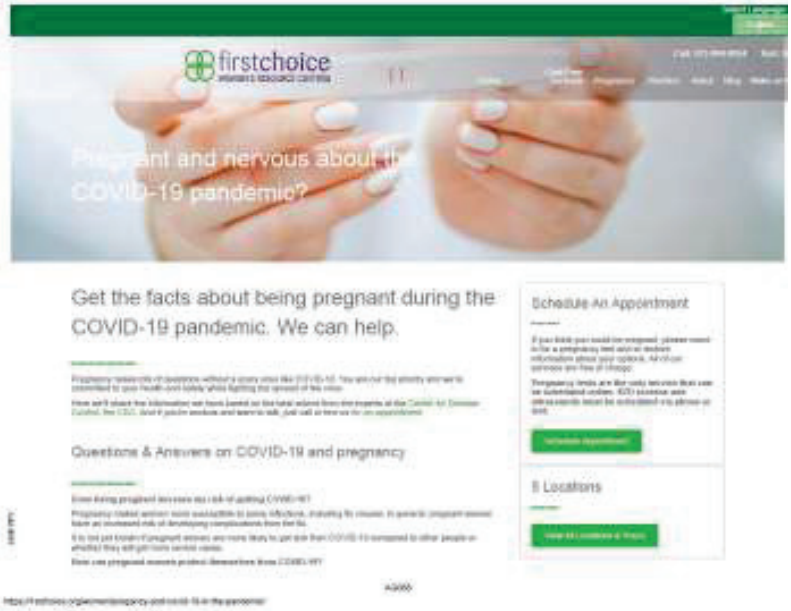
5 Locations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Pregnant and nervous about the COVID-19 pandemic?
Get the facts about being pregnant during the COVID-19 pandemic. We can help.
Questions & Answers on COVID-19 and pregnancy
Schedule An Appointment
5 Locations

Pregnant women should do the same things as the general public to avoid infection. You can help stop the spread of COVID-19 by taking these actions:

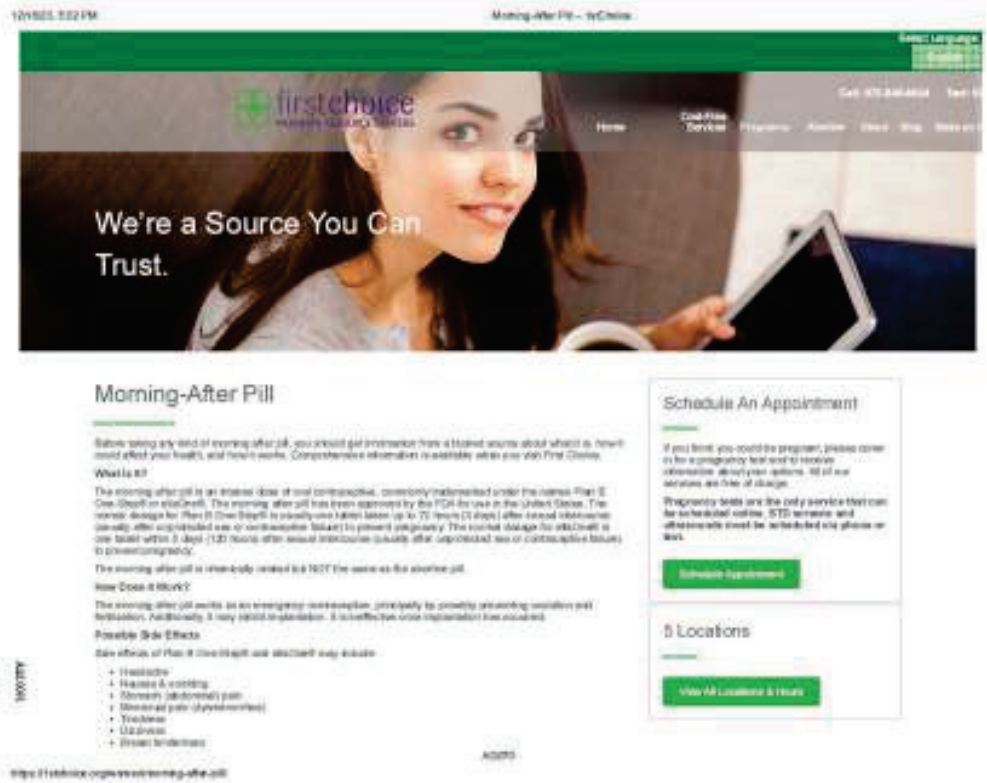
- Cover your cough (using your elbow is a good technique)
- Avoid people who are sick
- Clean your hands after using soap and water or alcohol-based hand sanitizer

Can COVID-19 be passed from a pregnant woman to the fetus or newborn?

We don't know for sure yet, but so far no infants born to mothers with COVID-19 have tested positive for the COVID-19 virus. In these cases, which are a small number, the virus was not found in samples of amniotic fluid or breast milk.

What should I do now if I'm feeling anxious?

This is an uncertain time for everyone, and it can make even normal parts of life feel scary. None of us make our best decisions when we're scared. Please call or text to make an appointment.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Home
We're a Source You Can Trust.
Morning-After Pill
What is it?
How Does it Work?
Possible Side Effects
Schedule An Appointment
5 Locations

- A period that is lighter, heavier, early, or late

How Do You Know It Works?

You will know it works when you get your next period.

"If you experience severe abdominal pain, you may have an ectopic (outside the uterus) pregnancy and should get immediate medical attention." -- Plan B One-Step®

"Plan B One-Step® and ella Check® cannot guarantee you will not get pregnant and it will not protect you against HIV/AIDS or any other sexually transmitted diseases or diseases.

NOTE: Pure Choice does not provide Morning-After Pills.

Sources:

Plan B One-Step® (2010). How to take it. Retrieved from http://www.planbonestep.com/taking_plan-b.aspx
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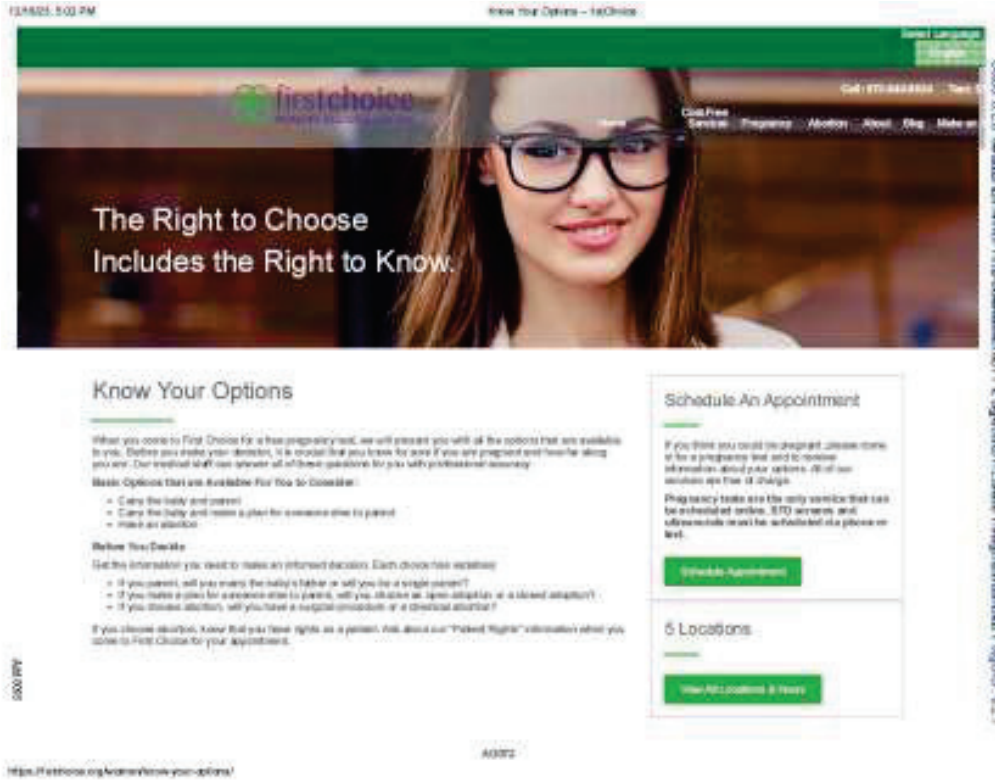
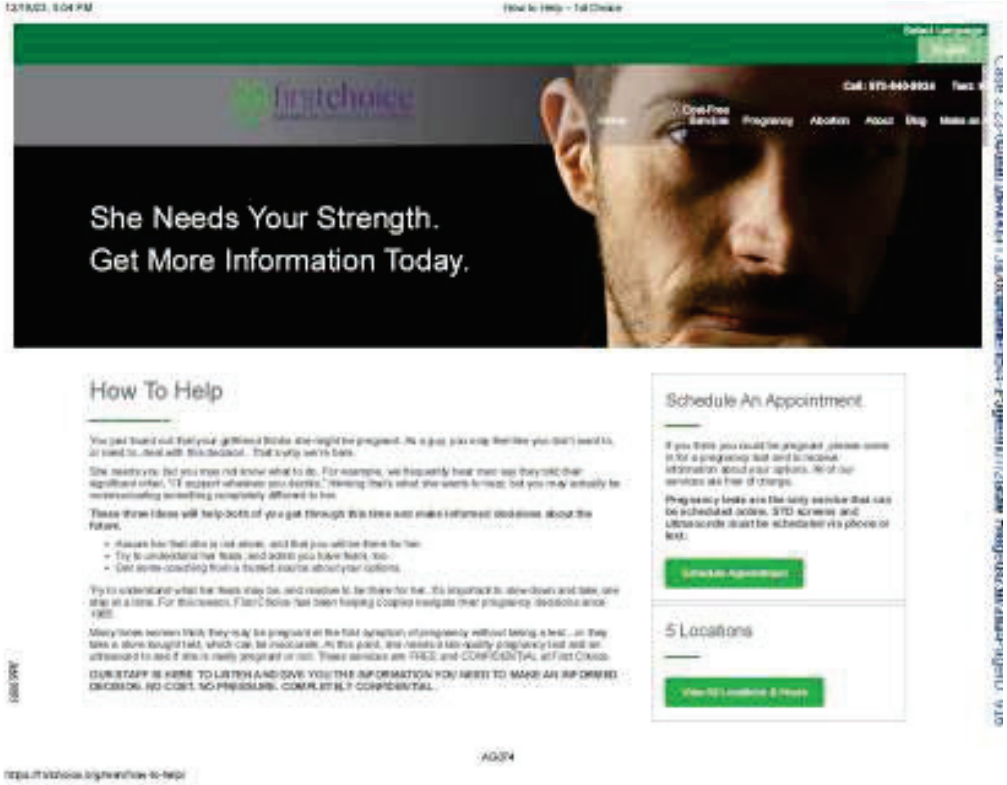
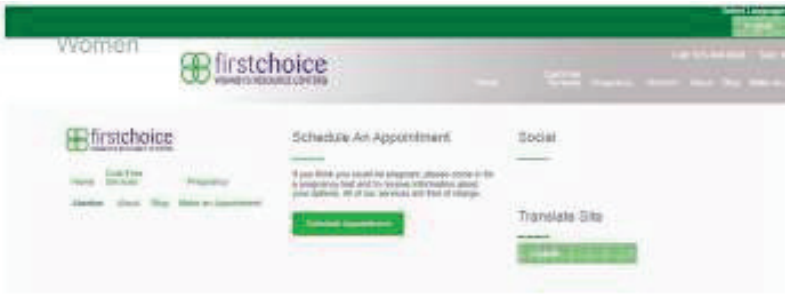
U.S. Food and Drug Administration. (2012). Highlights of prescribing information. WAT 30th Medical Communications. Retrieved from http://www.accessdata.fda.gov/drugsatfda_docs/label/2012/22474s032lbl.pdf


firstchoice
The Right to Choose
Includes the Right to Know.
Know Your Options
Schedule An Appointment
6 Locations


firstchoice
Schedule An Appointment
5 Locations


firstchoice
Pregnancy
Abortion
She Needs Your Strength.
Get More Information Today.
How To Help
Schedule An Appointment
5 Locations


Women
firstchoice
firstchoice
Schedule An Appointment
Social
Translate Site


firstchoice
Know All Of Your Options
Abortion Pill
Schedule An Appointment
5 Locations

- Abdominal pain or discomfort, or general malaise ("feeling sick," including nausea, nausea, vomiting or diarrhea, with or without fever) for more than 24 hours after taking the second pill.

Sources:
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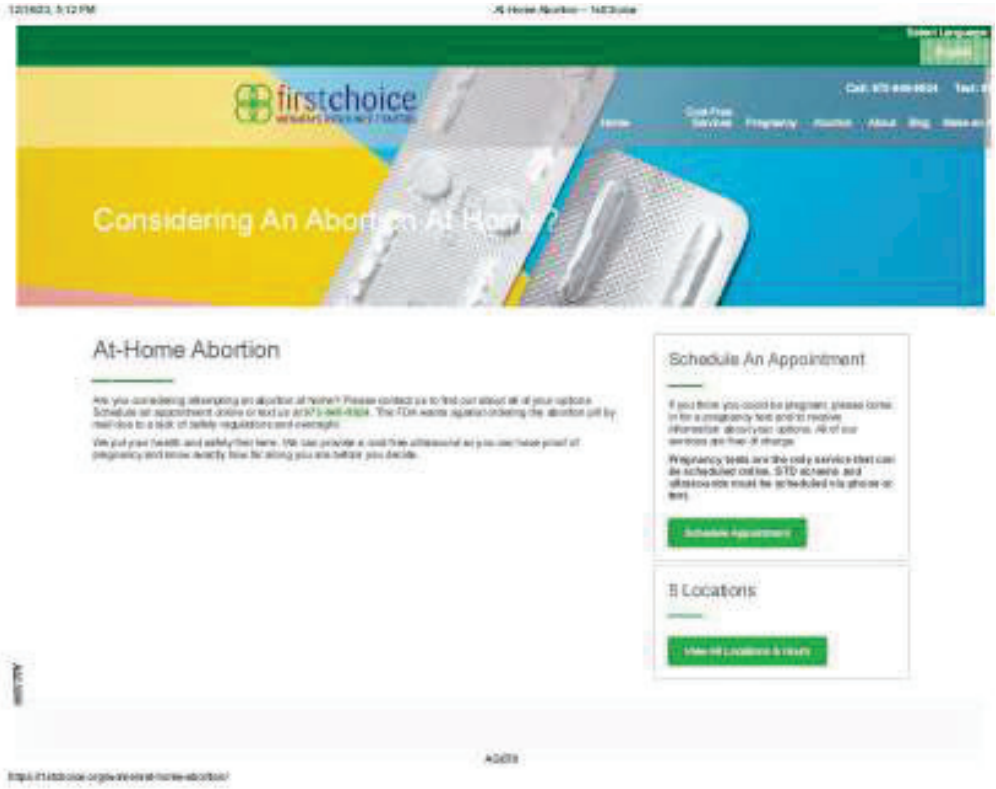
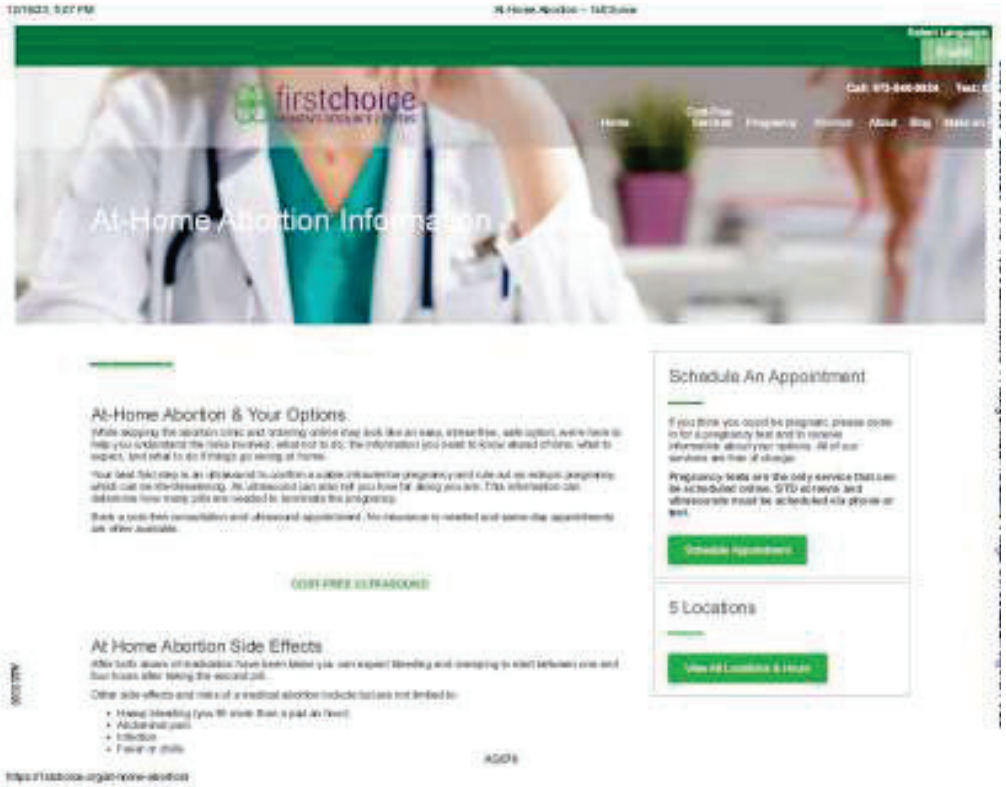

firstchoice
Considering An Abortion At Home?
At-Home Abortion
Schedule An Appointment
5 Locations


firstchoice
At-Home Abortion Information
At-Home Abortion & Your Options
At Home Abortion Side Effects
Schedule An Appointment
5 Locations

- Feeling dizzy or lightheaded
- Nausea, diarrhea and vomiting
- Allergic reactions to medications
- Incomplete abortion

Before an abortion, it's important to talk to a medical professional about your health history and what to do in the event of an allergic reaction to the medication, which can be fatal. To date, that have been limited the side effects, reported complications from the abortion pill have increased in the past several years.

If you have only taken the first dose of the abortion pill and change your mind, it is still your choice. Contact us immediately or if it's after hours, learn more about how to continue your pregnancy.

Abortion Pills By Mail

The abortion pill comes with a black box label, which is the highest level of caution assigned by the FDA. Taking the abortion pill without seeing a doctor or having an ultrasound is never recommended. The side effects range from unpleasant (cramping, bleeding, nausea, headache, fever) to life-threatening (sepsis, rupturing of the uterus, endangered future pregnancy, and more). Due to lack of regulations and unsafe medications, the FDA also issued a warning not to order pills by mail.

We put you and your safety first and we'll never recommend an unsafe option.

However, if you are already informed abtu, we can still provide you with an ultrasound to confirm how far along you are. This information can determine how many pills that are required to complete an abortion.

We believe women deserve to get services and services from a place that does not profit from their choice. **While we do not refer for or provide abortion services, we can give you the answers you need to make an informed choice.** Call us today to get started.

GET STARTED

References

- FDA's Abortion Pills
- Pregnancy Help News on Abortion Pill Pills
- Cleveland Clinic on Medical Abortion
- Pregnancy Help News on At-Home Abortion
- SIU on At-Home Abortion

firstchoice

Abortion Methods in New Jersey

About Us

Most Common Types of Abortion Methods

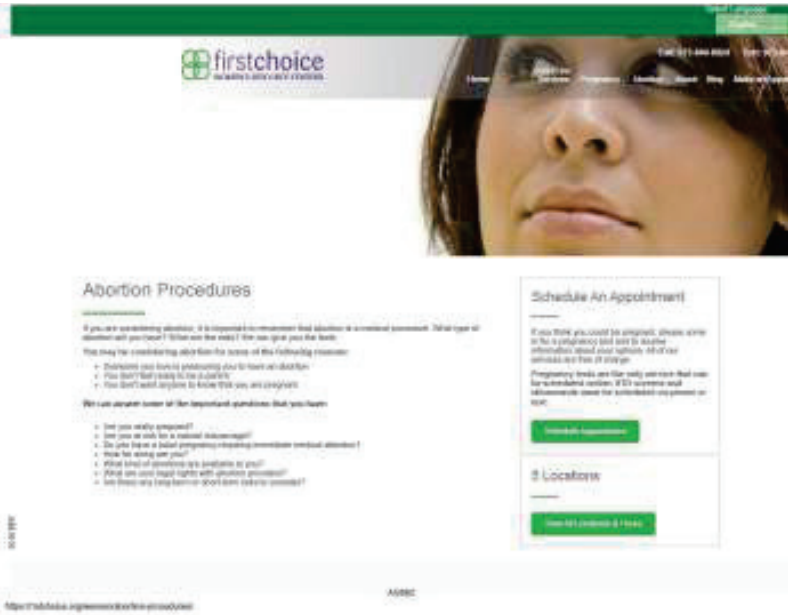
Medication Abortion | The Abortion Pill

Aspiration Abortion

Dilation and Evacuation

Schedule An Appointment

5 Locations


firstchoice
Abortion Procedures
Schedule An Appointment
8 Locations


firstchoice
Considering An Abortion At Home?
What Determines the Cost of an Abortion?

CONTINUE ULTRASOUND

How Much Does the Abortion Pill Cost?

The cost of a medication abortion is determined by several factors. Before you decide, your first step is to find out how far along you are.

A medication abortion or FDA approved up through 10 weeks after your last menstrual period. Online contraption calculators can estimate your due date but an ultrasound is needed to confirm a viable pregnancy. An ultrasound can also rule out an ectopic pregnancy or a naturally occurring miscarriage.

The cost can range from $200-$800 depending on the number of pills and the abortion clinic or provider. Not sure where to start? Confirm your pregnancy and learn more about the options and resources available to you before you decide.

CONTACT US

Things to Note: Taking the abortion pill can be life-threatening. Force pregnancy is not safe. It is estimated that a third of all pregnancies end naturally, either a abortion inducing drugs.

How Much Does an In-Clinic Abortion Procedure Cost?
Many factors determine the cost of a surgical abortion procedure, including but not limited to:

- How far along you are
- Single or multiple pregnancies
- Type of abortion procedure
- Health history and risks to the woman

A suction abortion, also known as vacuum aspiration, is typically performed between 5 and 12 weeks of pregnancy. A D&E is typically performed between 9-20 weeks although late-term abortions can also be performed via D&E.

The cost of an abortion can range between $200-$1,200 and is determined after an ultrasound is performed. We can provide this information and an ultrasound at no cost to you before you decide. We can also answer questions you may have about your health history, any potential risk factors, and learn more about what to expect during and after an abortion.

GET STARTED

We come to women desiring to get answers and services from a place that does not profit from their choices. While we do not refer for or provide abortion services, we can give you the answers you need to make an informed choice. Call us today to get started.

Schedule Appointment

5 Locations

View All Locations & Hours

AM 10:00

firstchoice

Need Support After Your Abortion?

After-Abortion Care

You may have made your choice willingly, without any being you or second thoughts. Or you might have felt pressured by other people that you care about and respect. Maybe you felt like it was your only option. In any case, you made a choice and you had no idea how that choice would affect you.

You're not alone. Women have found true freedom and healing from the pain of their abortions. It's time to choose again – to make a choice to heal. To become strong. To be restored. We know that this choice is for more easy. We are here to help.

We offer a confidential, non-judgmental environment in which you can talk and consider group support if you choose.

Although not all women and men who choose abortion experience problems afterward, many do. Immediately following an abortion, you may feel a sense of relief that the crisis is over. After the abortion, the series 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

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

At First Choice, we have trained facilitators who can help you work through issues that you think may be related to a past abortion. If you would like to develop some 12-step form. Call 973-859-0880 or text 973-859-0880 for more information.

Have you taken the first dose of the abortion pill and having second thoughts? Do you regret your decision and wish you could reverse the effects of the abortion pill? There is an effective protocol for reversing the abortion pill, called **ABORTION PILL REVERSAL**. 24-hour hotline: (877) 558-0333.

Schedule An Appointment

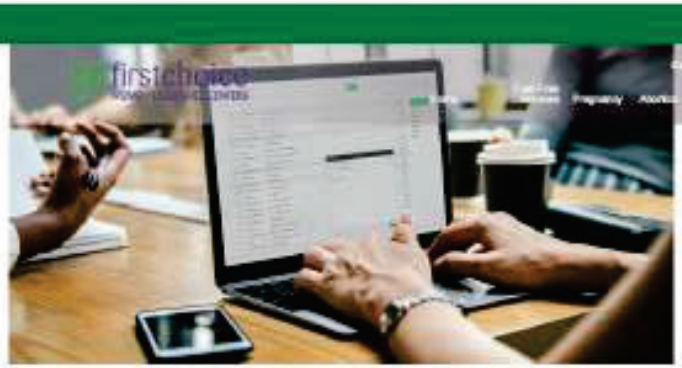
If you think you could be pregnant, please come in for a pregnancy test and or receive information about your options. All of our services are free of charge.

Pregnancy tests are the only service that can be scheduled online. STD screenings and ultrasounds must be scheduled via phone or text.

Schedule Appointment

5 Locations

View All Locations & Hours



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Under no circumstances, including but not limited to negligence, will we or any of our licensors or suppliers be liable for any special or consequential damages that result from the use of, or the inability to use, the materials on the sites, or any products or services provided pursuant to the sites, even if advised of the possibility of such damages. Applicable law may not allow the limitation or exclusion of liability or incidental or consequential damages, so the above limitation or exclusion may not apply to you. In no event shall the total liability to you by us or any of our licensors or suppliers for all damages, losses, and causes of action (whether in contract, tort, or otherwise) exceed the amount paid by you to us, if any, for accessing the sites.

Indemnification
You agree to defend, indemnify and hold our organization and all our affiliates, employees, directors, officers, agents, marketing or communication providers, and internet service providers harmless from any and all losses, liabilities, claims, expenses, and damage awards, including, but not limited to attorneys' fees, that arise from any claim, action, or demand, by your use of or in connection with submission, transmission, posting, broadcast, or other communication with or to the Sites.

Warranties
The reference materials and information contained in the Sites are intended only for your personal information. We make no representations or warranties about the other content or the information or other material accessed through the Sites. Information Obtained Through the Sites Does Not Constitute Medical, Legal, or Other Professional Advice
The information contained in these Sites or transmitted to you electronically in response to a message from you is not intended nor implied to constitute medical advice, diagnosis, or treatment. Always visit or speak to a qualified health service provider in person prior to starting any new treatment or with any questions you may have regarding a medical condition. These Sites do not directly or indirectly practice medicine or dispense medical advice as part of this service. In addition, nothing contained in these Sites is intended to be or constitutes legal advice, and users should always seek the advice of an appropriate attorney or other professional regarding individual questions or concerns of a legal or professional nature. We assume no liability for any diagnosis, treatment, decision made, or action taken in reliance upon information contained in these Sites or any other internet sites linked to it in any way.

Parental Permission
Some of the information available on the Sites contains the topic of sex and may not be appropriate for children. Further, the Sites are not directed to children under the age of 13 and we will not knowingly collect personally identifiable information from children under 13. We strongly recommend that parents participate in their children's exploration of the internet and any online services and use their browser's parental controls to limit the areas of the internet to which their children have access.

Unitarian Disclosure Statement
Our organization is recognized by the IRS as a ministry exempt from taxation under Section 501 (c)(3) of the Internal Revenue Service Code. Gifts are tax-deductible to the extent allowed by law. California: Our financial statement is available upon request. 100 percent of your gift may be deducted under Federal and State income tax laws. If you reside in California and have provided your personally identifiable information to us, you may request information once per calendar year about our disclosures of certain categories of your personally identifiable information to third parties for their direct marketing purposes. Such requests must be submitted to us in writing at the address below. Florida: A COPY OF THE OFFICIAL REGISTRATION AND FINANCIAL INFORMATION MAY BE OBTAINED FROM THE DIVISION OF CONSUMER SERVICES BY CALLING TOLL FREE WITHIN THE STATE, 1-800-435-7352. REGISTRATION DOES NOT IMPLY ENDORSEMENT, APPROVAL, OR RECOMMENDATION BY THE STATE. Georgia: Upon request, we will provide a list and fair description of the and its other programs, and a financial statement or summary. Maryland: A copy of the current financial statement is available upon request. For the cost of copies and postage, registration documents and other information are available from the Maryland Secretary of State. Minnesota: 100 percent of your gift may be deducted as a charitable contribution under Federal and state income tax laws. Mississippi: The official registration and financial information may be obtained from the Mississippi Secretary of State's office by calling 1-888-236-6167. Registration by the Secretary of State does not imply endorsement. New Jersey: INFORMATION FILED WITH THE ATTORNEY GENERAL CONCERNING THIS CHARITABLE SOLICITATION MAY BE OBTAINED FROM THE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY AT CALLING 973-504-6215. REGISTRATION DOES NOT IMPLY ENDORSEMENT. New York: Upon request, a copy of the last annual report filed with the Attorney General is available from us or New York State Attorney General's Charities Bureau, Attn.: FOI Officer, Department of State, 120 Broadway, New York, New York 10271. North Carolina: Financial information about us is available from the State Solicitation Licensing Branch at 1-888-830-4989. The license is not an endorsement by the state. Pennsylvania: Our official registration and financial information may be obtained from the Pennsylvania Department of State by calling toll-free within Pennsylvania, 1-800-732-0999. Registration does not imply endorsement. Virginia: A financial statement is available from the State Division of Consumer Affairs in the Department of Agriculture and Consumer Services upon request. Washington: The registration statement required by the Charitable Solicitation Act is on file with the Secretary of State. Additional information can be obtained by calling 1-800-332-4483. West Virginia: West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol, Charleston, West Virginia 25305. Registration does not imply endorsement.

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As required by Section 512(c)(3) of Title 17 of the United States Code, if you believe that any material on the Sites infringes your copyright, you must send a notice of claimed infringement to us at the following address:

AMBIT

Name of Agent Designated to Receive Notification of Claimed Infringement: Aimee Horan, Executive Director
Address: 61 Parkside St, Jersey City, NY 07307, Telephone Number: 201-659-6100 E-mail: aimee@1stchoice.org
To be effective, Section 512(c)(3)(A) of Title 17 of the United States Code required that your notification of claimed infringement be a written communication and that it include certain elements explained therein. Please check the statute for more details.

Privacy Policy

We are committed to protecting the privacy and security of the users of our Sites. This privacy policy will advise you about how we protect your personal information and about what choices you have concerning our use of such information. By using our Sites, you consent to the processing of your information as set forth in this Privacy Policy, now and as amended by us. To see the Notice of Privacy Practices, click here.

Personal Identifiable Information

We may request personal identification information from you in connection with your use of, or participation in, scheduling appointments, communications, membership registration, discussion groups, requests for information or suggestions, visitors' requests for free products or services or additional information (including we contact us), and in connection with other activities, services or transactions we make available on one of our sites. In all of these cases, we will collect personal identification information from you only if you voluntarily submit such information to us. We will never intentionally disclose any personal identification information about you as an individual user such as, for example, your full name, street address, telephone number, or email address to any third party without having received your permission. We do not sell or otherwise share your data with third parties. Though we make every effort to preserve user privacy, we may need to disclose personal information whenever we have a good faith belief that such action is necessary to comply with a current judicial proceeding, a court order or legal process. We may share with others aggregated demographic information not linked to any personally identifiable.

To Whom We Disclose Your Information

We may disclose the information we collect from or about you:
to our affiliates, to service providers who work on our behalf, as required by law, when required to protect our rights or your safety or the safety of others, or to detect, prevent, or respond to abuse of our Sites.
In addition, we may share de-identified information, such as reports on user demographics and traffic patterns, with third parties, including researchers. Chat Rooms, Message Boards, and Public Forums
Please keep in mind that whenever you voluntarily disclose personal information online – for example on message boards, through email, or in chat areas – that information can be collected and used by others. In short, by posting personal information online that is publicly accessible, you may receive unsolicited messages from other parties in return.

Security

These Sites take every precaution to protect users' information. When users submit sensitive information via the Sites, we take great effort to ensure that information is protected both online and offline. When our registration/order pages prompt that from users users to enter sensitive information (such as credit card number), that information is encrypted and is protected with the best encryption software we are aware of in the industry – SSL.

While we use SSL encryption to protect sensitive information online, we also aggressively protect user information offline. Only ministry employees who need the information to perform a specific job (for example, our billing clerk or a customer service representative) is granted access to personally identifiable information. Finally, the servers that store personally identifiable information are in a secure environment.

We and our service providers may automatically collect certain technical information from your computer or mobile device over time and across different websites when you use the Sites using cookies or similar technologies, such as your Internet Protocol address, your browser type, your operating system, the pages you view on the Sites, etc. This information allows us and our service providers to recognize you and personalize your experience if you return to the Sites, to improve the Sites and the services we provide, and to provide you with advertisements targeted to your interests.

Your Choices

If you do not want the Sites to collect information through the use of cookies, you can set your web browser to reject cookies from the Sites. If you wish to review or correct the contact information we have on file for you or inform us how you wish your contact information to be used, please contact our staff using the contact information below. When you contact us or otherwise submit content on the Sites, if you desire to remain anonymous, you should not tell us your name or the names of your friends or any other individuals. To fully protect your privacy, do not provide any information that you think may identify you to others.

Notification of Changes

If we change our policies, we will post those changes to this statement, the home page, and/or other places we deem appropriate so our users are always aware of what information we collect, how we use it, and under what circumstances, if any, we disclose it.

Miscellaneous

The Terms of Use and Privacy Policy set forth in the Sites is governed and interpreted under the laws of the United States of America and the State of Vermont, without giving effect to the conflicts of laws provisions. If any portion is deemed unlawful, void, or unenforceable, that part will be deemed severable, and will not affect the validity and enforceability of any remaining provisions. We can, at our sole discretion, replace or amend such provisions with another provision. This sets forth the entire understanding and agreement between us with respect to the Sites and any materials, communications, transmissions, or posting to the Sites. We reserve the right to revise the policy at any time by updating this posting. You agree to be bound by any such revisions, and you should periodically read and review same.

Contact us

If you have any questions about this document, please contact us using the contact information on this website.
This Terms of Use & Privacy Policy was last updated on April 17, 2018.

firstchoice

Pregnancy Abortion

PRIVACY POLICY
Privacy Officer Name and Contact Information: Aimee Hulen, Executive Director, aimee@1stchoice.org
Effective Date of Notice: April 17, 2019

NOTICE OF PRIVACY PRACTICES
This notice describes how medical information about you may be used and disclosed and how you can get access to this information. Please review it carefully.

Your Rights
You have the right to:
- Get a copy of your paper or electronic medical record
- Correct your paper or electronic medical record
- Request confidential communication
- Ask us to limit the information we share
- Get a list of those with whom we've shared your information
- Get a copy of this privacy notice
- Choose someone to act for you
- File a complaint if you believe your privacy rights have been violated

Your Choices
You have some choices in the way that we use and share information as we:
Market our services and sell your information
Raise funds

Our Uses and Disclosures
We may use and share your information as we:
- Treat you
- Run our organization
- Help with public health and safety issues
- Do research
- Comply with the law

- Address workers' compensation, law enforcement, and other government requests.
- Respond to lawsuits and legal actions.

Your Rights
When it comes to your health information, you have certain rights. This section explains your rights and some of our responsibilities to help you.

Get an electronic or paper copy of your medical record.
You can ask to see or get an electronic or paper copy of your medical record and other health information we have about you. Ask us how to do this. We will provide a copy or a summary of your health information, usually within 30 days of your request.

Ask us to correct your medical record
You can ask us to correct health information about you that you think is incorrect or incomplete. Ask us how to do this.
We may say "no" to your request, but we'll tell you why in writing within 60 days.

Request confidential communications
You can ask us to contact you in a specific way (for example, home or office phone) or to send mail to a different address.
We will say "yes" to all reasonable requests.

Ask us to limit what we use or share
You can ask us not to use or share certain health information for treatment, payment, or our operations. We are not required to agree to your request, and we may say "no" if it would affect your care.

Get a list of those with whom we've shared information
You can ask for a list (accounting) of the times we've shared your health information for six years prior to the date you ask, who we shared it with, and why.

Get a copy of this privacy notice
You can ask for a paper copy of this notice at any time, even if you have agreed to receive the notice electronically. We will provide you with a paper copy promptly.

Choose someone to act for you
If you have given someone medical power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your health information.
We will make sure the person has this authority and can act for you before we take any action.

File a complaint if you feel your rights are violated
You can complain if you feel we have violated your rights by contacting us.
You can file a complaint with the U.S. Department of Health and Human Services Office for Civil Rights by sending a letter to 200 Independence Avenue, S.W., Washington, D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/ocr/privacy/hipaa/complaints/.
We will not retaliate against you for filing a complaint.

Your Choices
For certain health information, you can tell us your choices about what we share. If you have a clear preference for how we share your information in the situations described below, talk to us. Tell us what you want us to do, and we will follow your instructions.
In these cases, you have both the right and choice to tell us to:

- Share information with your family, close friends, or others involved in your care
- Share information in a disaster relief situation
- If you are not able to tell us your preference, for example if you are unconscious, we may share your information if we believe it is in your best interest. We may also share your information when needed to lessen a serious and imminent threat to health or safety.
- In these cases, we never share your information unless you give us written permission:

Marketing purposes

- Sale of your information
- Most sharing of psychotherapy notes

In the case of fundraising:
We may contact you for fundraising efforts, but you can tell us not to contact you again.

Our Uses and Disclosures
How do we typically use or share your health information?
We use or share your health information in the following ways.

Treat you
We use your health information and share it with other professionals who are treating you.

- Example: A doctor treating you for an injury asks another doctor about your overall health condition.

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Run our organization
- We use and share your health information to run our practice, improve your care, and contact you when necessary.

- Example: We use health information about you to manage your treatment and services.

Advertising & Promotion
For advertising and promotion, we may use your story and photo and images with all identifying information removed or de-identified to protect your privacy. www.nhs.gov/nhsforyou/find-understanding-hospital-information.htm

Help with public health and safety issues
We can share health information about you for certain situations such as:

Preventing disease
- Helping with product recalls
- Reporting adverse reactions to medications
- Reporting suspected abuse, neglect, or domestic violence
- Preventing or reducing a serious threat to anyone's health or safety

Do research
We can use or share your information for health research.

Comply with the law
We will share information about you if state or federal laws require it, including with the Department of Health and Human Services if it wants to see that we're complying with federal privacy laws.
Address workers' compensation, law enforcement, and other government requests

We can use or share health information about you:
- For workers' compensation claims
- For law enforcement purposes or with a law enforcement official
- With health oversight agencies for activities authorized by law
- For special government functions such as military, national security, and presidential protective services

Respond to lawsuits and legal actions
We can share health information about you in response to a court or administrative order, or in response to a subpoena.

Our Responsibilities:
- We are required by law to maintain the privacy and security of your protected health information.
- We will let you know promptly if a breach occurs that may have compromised the privacy or security of your information.
- We must follow the duties and privacy practices described in this notice and give you a copy of it.
- We will not use or share your information other than as described here unless you tell us we can in writing. If you tell us we can, you may change your mind at any time. Let us know in writing if you change your mind.
- For more information: www.hhs.gov/ocr/privacy/hipaa/understanding/consumers/index.html

Changes to the Terms of this Notice
We can change the terms of this notice, and the changes will apply to all information we have about us. The new notice will be available upon request, in our office, and on our website.

AM 0:23

First Choice Women's Resource Centers (FCWRC)
Portal Terms and Conditions
(Last updated: July 17, 2023)

Please read the terms and conditions (Terms and Conditions) entirely and carefully before using the Portal Application (Portal). These Terms and Conditions are subject to change without prior written notice at any time, at Pregnancy Center's sole discretion. These Terms and Conditions outline our practices regarding the Portal and our sensitivity to your right to privacy. We reserve the right and discretion to revoke access at any time for any reason.

YOUR PORTAL RECORD

FCWRC is pleased to offer you a Portal. It is an online service that provides you with convenient access to portions of your medical record. It also offers a secure method of online communication with the FCWRC team for such activities as secure image and document exchange, direct appointment scheduling, and secure online messaging.

The ability to sign in and access the Portal requires multiple layers of verifiable personal Information as authentication as well as confirmation of a unique six-digit security code received by text which provides an additional layer of security.

RESPONSE TO SECURE MESSAGING

We will use our best effort to provide a timely response to electronic inquiries. In some cases, the staff may not be available immediately to respond.

Emergency situations requiring immediate attention should not be submitted electronically. For all urgent medical matters, contact your physician's office by phone, go to an emergency room, or dial 911.

SECURITY AND CONFIDENTIALITY

As a Portal user, your role in maintaining the security of your medical information is:

- Keeping your login credentials confidential (never share them with anyone).

- Keeping your personal mobile device secure.

You hereby assume full responsibility for your use of the Portal and full liability for actions that occur from end user access and use of the Portal. You agree that FCWRC shall be held harmless against any and all damages or claims you may have related to your access and use of the Portal including (but not limited to) unauthorized access and the disclosure and use of information. You agree your sole and exclusive remedy in the event of such damages or claims is to cease using the Portal.

We afford the same degree of confidentiality to medical information stored in your Portal as is given to medical information stored by FCWRC in any other medium. We are committed to protecting the confidentiality of your medical information. We limit team members' access and ability to enter or view information based upon their role in your care. Firewalls, passwords, encryption, and audit trails are further used to safeguard your information.

CONDITIONS OF USE

- You shall use the Portal in a lawful and respectful manner. You must not use the Portal to harass, threaten, defame, or infringe the rights of any other person or entity.
- You shall not use the Portal to transmit or store any content that is illegal, harmful, offensive, or inappropriate as determined in the sole discretion of FCWRC. You shall not use the Portal to send unsolicited or unauthorized messages, advertisements or other solicitations.
- You shall not attempt to access, modify, or interfere with the Portal or its data in any unauthorized way. You shall not use any software or device that may compromise the security or functionality of the Portal.
- You acknowledge that the Portal is provided "as is" and "as available" without any warranties or guarantees of any kind. FCWRC does not warrant that the Portal will be error-free, uninterrupted, or compatible with your device or network. FCWRC does not warrant that the Portal will meet your expectations or requirements.
- You acknowledge that the Portal may contain sensitive and confidential information about your health and medical condition. You agree to use

the Portal at your own risk and discretion. You agree to comply with all applicable laws and regulations regarding the privacy and security of your personal information.

- You acknowledge that FCWRC may collect, use, and disclose your personal information in accordance with its privacy policy. You consent to FCWRC's privacy policy by using the Portal.
- You acknowledge that FCWRC may modify, suspend, or terminate the Portal or change these Terms and Conditions at any time without notice. Your continued use of the Portal after such changes constitutes your acceptance of the new Terms and Conditions.
- You acknowledge that these Terms and Conditions constitute the entire agreement between you and FCWRC regarding your use of the Portal. If any provision of these Terms and Conditions is found to be invalid or unenforceable, the remaining provisions will remain in full force and effect.

USE OF PORTAL

By accessing and using the Portal, you hereby acknowledge your acceptance of these Terms and Conditions, and confirm that you have read, understood, and agree to be bound by the Terms and Conditions.

EXHIBIT 2

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STATEMENT OF FAITH

1. We believe the Bible to be the inspired, the only infallible, authoritative Word of God.

2. We believe that there is one God, eternally existent in three persons: Father, Son, and Holy Spirit.

3. We believe in the deity of our Lord Jesus Christ, in His virgin birth, in His sinless life, in His miracles, in His vicarious and atoning death through His shed blood, in His bodily resurrection, in His ascension to the right hand of the Father, and in His personal return in power and glory.

4. We believe that for the salvation of the lost and sinful, regeneration by the Holy Spirit is absolutely essential and that this salvation is received through faith in Jesus Christ as Savior and Lord and not as a result of good works.

5. We believe in the present ministry of the Holy Spirit by whose indwelling the Christian is enabled to live a godly life and to perform good works.

6. We believe in the resurrection of both the saved and the lost, they that are saved unto the resurrection of life, and they that are lost unto the resurrection of damnation.

7. We believe in the spiritual unity of believers in our Lord Jesus Christ.

8. We believe that God wonderfully and immutably creates each person as male or female and that Christian marriage is the uniting of one man and one woman in a single, exclusive union, as delineated in Scripture.

To preserve the integrity of First Choice Women's Resource Centers it is imperative that all persons employed by First Choice, or who serve as volunteers, agree to abide by this Statement of Faith.

STATEMENT OF PRINCIPLE

1. First Choice Women's Resource Centers are an outreach ministry of Jesus Christ through His church. Therefore, First Choice Women's Resource Centers, embodied in its volunteers, are committed to presenting the gospel of our Lord to women with crisis pregnancies - both in word and deed. Commensurate with this purpose, those who labor as First Choice Women's Resource Centers' board members, staff, and volunteers are expected to know Christ as their Savior and Lord.

2. We seek to follow the example of Jesus Christ in His identification with the poor, the afflicted, the oppressed, the marginalized; in His special concern for children; in His respect for the dignity bestowed by God on women equally with men; in His challenge to unjust attitudes and systems; in His call to share resources with each other; in His love for all people without discrimination or conditions; in His offer of new life through faith in Him. We believe that God is the author and creator of all life, and that we are created in His likeness and image. As such, we believe and affirm that all life has inherent value, worth, and dignity because it is created by God. On the basis of this inherent value, we seek to protect and care for life in all stages of God's creation, from conception to natural death.

3. First Choice Women's Resource Centers believes and affirms that life begins at conception, at which time the full genetic blueprint for life is in place. Accordingly, we believe that our expression of love and service to God requires that we work to protect and honor life in all stages of creation. We are therefore committed to providing clients with accurate and complete information about both prenatal development and abortion.

4. First Choice Women's Resource Centers are committed to integrity in dealing with clients, earning their trust, providing promised information and services, and eschewing any form of deception in its corporate advertising or individual conversations.

5. First Choice Women's Resource Centers are committed to assisting women to carry to term by providing emotional support and practical assistance. Through the provision of God's people and the community at large, women may face the future with hope and plan constructively for themselves and their babies.

6. First Choice Women's Resource Centers do not discriminate in providing services because of the race, creed, color, national origin, age, or marital status of its clients.

7. First Choice Women's Resource Centers do not recommend, provide, or refer for abortion or abortifacients.

8. First Choice Women's Resource Centers offer assistance free of charge at all times.

9. First Choice Women's Resource Centers are committed to creating an awareness with the local community of the needs of pregnant women and of the fact that abortion only compounds human need rather than resolving it.

10. First Choice Women's Resource Centers do not recommend, provide, or refer single women for contraceptives. (Married women seeking contraceptive information should be urged to seek counsel, along with their husbands, from their pastor and physician.)

11. First Choice Women's Resource Centers recognize the validity of adoption as one alternative to abortion, but is not biased toward adoption when compared to the other life-saving alternatives. Centers are independent of adoption agencies, relating to them in the same manner as to other helpful referral sources. First Choice Women's Resource Centers receive no payments of any kind from these agencies, do not enter into contractual relationships with the agencies, and do not share combined office space. Adoption agencies are not established under the auspices of centers. First Choice Women's Resource Centers neither initiate nor facilitate independent adoptions, though they may refer for independent adoptions in states where it is legal.

Do you agree with these two statements?

- Yes
- No

AGREE

Do you have any questions about these two statements?

Applicant's Certification and Agreement

I certify that the facts set forth in this volunteer application are true and complete to the best of my knowledge, and I authorize First Choice Women's Resource Centers to verify their accuracy and to obtain reference information concerning my character and capabilities. I release First Choice and any person or entity providing such reference information from any and all liability relating to the provision of such information. If I become a volunteer at First Choice, I agree to fully adhere to its policies and rules, including those rules relating to maintaining client confidentiality. I recognize that, as a volunteer, I will serve in a different role than the employees at First Choice, and I am not seeking nor expecting to receive any compensation or other benefits in return for any volunteer services which I may provide for this ministry. I certify that I have read and am in full agreement with First Choice's Statement of Faith and Statement of Principle.

Signature

Sign here

Date

MM/DD/YYYY

Verification

Volunteer Agreement

1. Recognizing that First Choice Women's Resource Centers, Inc. is an evangelical ministry, I openly acknowledge my personal faith in Jesus Christ as my Lord and Savior. I have read the Statement of Faith and am in complete agreement with all statements in it.

2. I believe in the sanctity of human life as taught in the Bible and, therefore, reject abortion as an acceptable option for any woman facing a crisis pregnancy.

3. I am a member or regular attender in good standing in a local, Bible-believing church.

4. I commit myself to sexual purity/marital fidelity during my time of service at First Choice Women's Resource Centers.

5. I accept the responsibility to act as advocate on behalf of the women under my care: to give accurate information, emotional support, and spiritual guidance. All information on First Choice Women's Resource Centers' clients will be kept confidential even after I am no longer a volunteer for First Choice Women's Resource Centers.

6. Understanding the vital role volunteers play in the work of First Choice, I do commit myself to faithfully serve for a minimum of six months. Additionally, I will attend volunteer staff meetings/advanced trainings.

7. I have read the job description for my intended position and to the best of my ability, will seek to carry out the values and responsibilities communicated herein.

firstchoice
WOMEN'S RESOURCE CENTERS

Staff & Volunteer Dress Code

"And I want women to get in there with the men in humility before God, not primping before a mirror or chasing the latest fashions but doing something beautiful for God and becoming beautiful doing it."
I Timothy 2:9-10 (MSG)

With multiple centers, staff and volunteers, the intent of our dress code is to promote a consistent appearance to our clients and to the public First Choice's ministry. Often people think that those in the non-profit or Christian world are not as professional as those in other professions or businesses. Not only does this conflict with the excellence we seek in providing services to our clients, it undermines the higher calling we have as representatives of Christ.

While we should always be clean, neat and professional, we also want to keep in mind that we need to be approachable. Whether we're counseling a teenage girl or sharing Straight Talk in a classroom, we want to avoid being intimidating. In establishing the following guidelines, we hope to appear more credible, professional and approachable.

1. Female staff may wear:
   - Skirts
   - Blouses
   - Sweaters
   - Dresses
   - Nice Pants (no jeans)

   Male Staff may wear:
   - Sweaters
   - Slacks
   - Polo Shirts
   - Khakis

   Medical Staff ONLY may wear:
   - Scrubs - If not wearing scrubs, a lab coat should be worn over professional attire (as listed above).

2. Please take care to not wear revealing attire (i.e. very short skirts, plunging necklines).

3. Please do not wear pro-life jewelry or buttons. This can create a barrier between counselors and clients and we would rather establish a relationship before belief systems or philosophies are explored. Wearing a cross is fine, but it is best to avoid wearing other Christian jewelry.

Give Today!

Give Now Sign In

You can serve women and babies today!

When Sharon called us, she was scared. She was 17 years old and had just found out she was pregnant. Her goals and dreams were shattered and she didn't know what to do.

Since 1985, pro-life donors like you have been saved lives and served women considering abortion in New Jersey, the state with the 3rd highest abortion rate in the nation.

Through 5 locations, First Choice provides services that protect the unborn by empowering women. Over 9,000 women, babies and students are served each year, some in their local school through the Real Talk sexual risk [illegible]!

https://www.givegiving.com/giftthroughfirstchoicenj

avoidance program and others by coming to First Choice centers in Jersey City, Montclair, Morristown, Newark and New Brunswick.

Our ability to provide high-quality, personal care such as one-on-one counseling, medical services, and practical support at no cost is because of you! We receive no government funding.

Your gift today will provide ultrasounds, one-on-one counseling and practical support to women who are considering abortion in New Jersey.

Your donation is tax-deductible. Thank you for helping to save a life today!

ECFA

*****

Person's Name

First Name | Last Name

Company Name (optional)

Address

EXHIBIT 3

Pregnant? You Have Choices.

If you are considering abortion or are uncertain about your pregnancy choices, we are here to help. Our friendly staff is ready to discuss your pregnancy choices. We can schedule a consultation today where you can discover all your options and match you with a telehealth or convenient clinic local where you can connect with our trained staff. All at no charge to you.

You do not have to make your decision alone. Call/text or chat for your FREE Abortion Information Consultation with one of our Registered Nurses. Your well-being and privacy is our top priority.

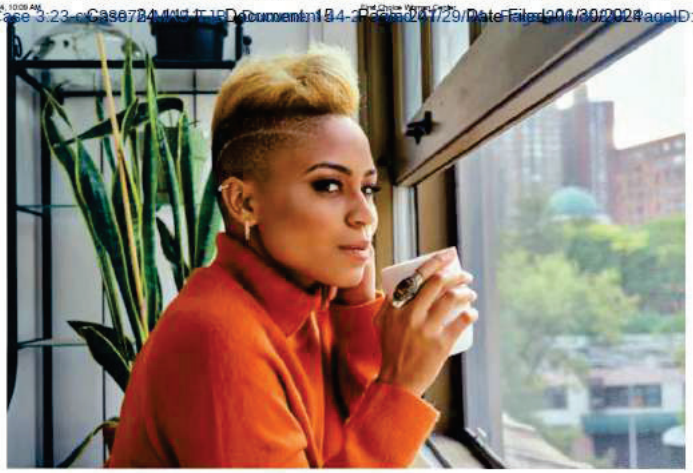
100% Confidential
All Services Are Completely Free

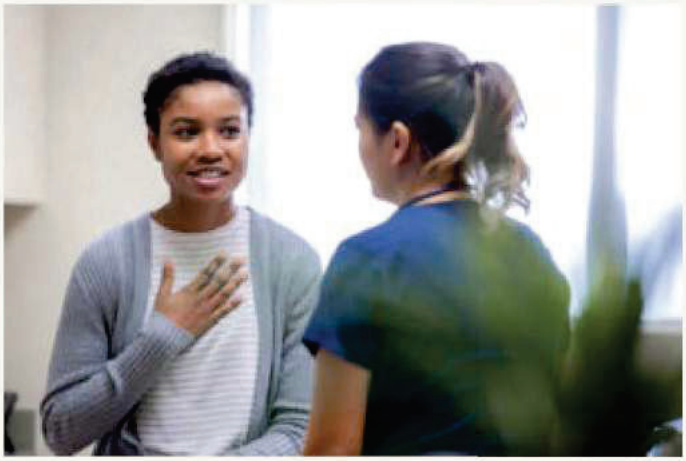
I Think I'm Pregnant

We understand that an unplanned pregnancy can be a difficult situation. We are here to help and provide you with answers.

Schedule your free consultation today. Call or chat with a licensed medical professional.

No insurance required. 100% Confidential. No age restrictions.





What Are My Choices?

Learn about your pregnancy choices today. Our service providers are here to help you and inform you on all your pregnancy choices. Text us now to just chat or ask a question or schedule a free service.

No fees, No charges, No pressure.

Text 973-821-3276

Services We Offer

All of our services are provided at no cost to you. That's right, Free. Free pregnancy test, Free pregnancy consultation, Free ultrasounds, and more. Stop by one of our convenient locations near you or request an appointment today.

Request An Appointment

How do I know If I am pregnant or not?

Pregnancy can occur anytime after unprotected sex or if you experienced a birth control mishap. The best and most effective way to determine pregnancy is by taking a lab-quality pregnancy test followed up by an ultrasound. Here are some signs that you might be pregnant:

- Slight bleeding or spotting (often called "implantation bleeding")
- Nausea and vomiting (often called "morning sickness")
- Changes in appetite, cravings or food aversions
- Missed/Late Period
- Sore tender or swollen breasts
- Fatigue and tiredness
- Mood swings
- Frequent urination
- Headaches

"If you noticed any of these symptoms, make an appointment now so we can help."

Request An Appointment

Be Informed

Know Your Choices – You probably have many questions and we are here to support you through this process. If you are considering an abortion, the abortion pill or other pregnancy termination options please contact us for an abortion information consultation. Our trained staff can provide you with all the information you need to make an informed decision.

Call, text or request your appointment online to get the help you need.
We look forward to assisting you!

Call Text

Available

Monday - Friday
9am - 5pm

Contact

Phone [illegible]


Locations

We Are Here For You

We exist solely to help support you and educate you on your pregnancy choices. Everything we do is provided at no cost to you. With multiple locations to serve you, we offer a wide variety of FREE services to meet your needs. Our goal is to equip and empower men and women to make an informed pregnancy decision. With each pregnancy you have a choice and the decisions you make during this time can be challenging. We are here to help. No age restrictions and no insurance required – making an appointment could not be easier. Our Care facilities and Clinics are located throughout the metro area and we will help find the one nearest you. All of our appointments are private and 100% confidential. Our caring staff will help guide you, discuss pregnancy options and give you all the information you need to make an informed choice.

Our Free Services

- Pregnancy Tests
- Abortion Information Consultation
- Options Consultations
- Ultrasounds
- Pre-Abortion Ultrasounds*
- OB-GYN Direct Referrals
- Community Resource Referrals
- Post-Abortion Support

*A Medical Professional will determine if ultrasound will be provided.

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Dedicated to Excellence:

Choices our community is a collection of pregnancy center locations working together for the same goal. We are devoted to taking care of you holistically and are dedicated to the highest standard of medical care in a comforting, supportive atmosphere. Thousands of women and men rely on us each year and we strive to provide the best service to you at a location that is close and convenient for you, so you don't have to travel far to get the help you need.

We know that you may be facing a life-changing choice and our staff are here to help walk you through your options. Our staff are highly trained and dedicated to meeting your health care needs. We are here to offer you a safe place to ask questions and get answers.

Easy Online Scheduling

Book Your Appointment Online

Book Now

All Services are Free

No Cost To You

We understand that an unplanned pregnancy can leave you with a lot of questions. Whether your pregnancy was planned or unplanned, it can be overwhelming and even scary. You do not have to face all the questions alone. We are here to guide and assist you in making an informed decision regarding your next steps.

Below you will find a list of our pregnancy-related services, all at no cost to you. We have no financial interest in your decision. Providing all our services at no cost to you allows us to ensure we have your best interest at heart.

***No insurance required *No age restrictions *100% Confidential.**

Call to Book

Pregnancy Testing

We offer free and confidential pregnancy testing to women facing an unplanned pregnancy. Our pregnancy testing is lab-quality and is administered by medical professionals.

Learn More

Choices Consultation

If you are facing an unplanned pregnancy, you have choices to consider. Please contact us to discover yours.

Learn More

Ultrasounds

We offer free ultrasounds*. That's right No cost to you. An ultrasound is an imaging procedure that can confirm a positive pregnancy, determine gestational age, and confirm viability.

Learn More

Abortion Info Consultation

We offer free and confidential Abortion Information Consultation to women facing an unplanned pregnancy.

Learn More

OB-GYN Direct Referrals

If your pregnancy requires further care we offer free direct referrals to an ob-gyn in your area.

Learn More

Post-Abortion Support

We offer post-abortion support to women who have had an abortion and who are struggling with their decision.

*A Medical Professional will determine if ultrasound will be provided.

Be Informed
Know Your Choices

Call, text or request your appointment online to get the help you need.
We look forward to assisting you!

Call | Text

Available

Monday - Friday
9am - 5pm

Contact

Phone: 973-921-3926

Locations

Zip Code | Find a Location

Terms of Service | Privacy Policy | Sitemap

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Free Ultrasound

Come In For A Free Pregnancy Test And Free Ultrasound If Needed

If you've missed your period, and wonder if you are pregnant, we can help. If you need to explore your options. We can help.

Come in for a FREE, discreet, and confidential pregnancy test and/or ultrasound if needed and empower your pregnancy decisions.

What is an ultrasound?

Diagnostic ultrasound, also called sonography or diagnostic medical sonography, is an imaging method that uses high-frequency sound waves to produce images of structures within your body. A pregnancy ultrasound is an imaging procedure that uses soundwaves to project a visual of your pregnancy onto a screen. It is a non-surgical procedure and it requires no recovery time after your appointment. An ultrasound can give a view of the uterus and ovaries during a pregnancy and determine gestational age. Depending on how early in your pregnancy you receive an ultrasound, different types of ultrasounds may be necessary to get a good ultrasound image. Diagnostic ultrasounds are safe and have no known risks and require no recovery time.

Do I Need An Ultrasound?

If you have had a positive pregnancy test, you may need an ultrasound. It is often the most important next step you can take as you plan your pregnancy options. An ultrasound will confirm your pregnancy, confirm gestational age, confirm pregnancy viability and rule out an ectopic pregnancy. If the pregnancy is located outside of the uterus, it is considered an ectopic pregnancy. Ectopic pregnancies cannot be safely carried to term and can be life-threatening. During your ultrasound, your sonographer will also try to determine how far along the pregnancy is and if there is a detectable heartbeat. If no heartbeat can be detected, then it is still very early in the pregnancy and often times, a miscarriage may follow. According to studies, one in four pregnancies end in a natural miscarriage. An ultrasound to determine the viability of your pregnancy is important in helping you determine next steps.

We're Here For You

An unplanned pregnancy can be scary. You are not alone, we've got you covered. With all the services you need provided for FREE, including pregnancy tests and consultations, we hope to make this an empowering experience for you. Our trained client consultants and in-house medical professionals are ready to assist you. Call or text or use the form to book your free abortion information consultation. Your safety and privacy are our priority.

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

My Next Step

After an ultrasound, it is time to start considering your options. We are here to discuss all your options without judgment. We offer up-to-date information about parenting, adoption, and abortion. Our staff is here to answer any questions you may have to help you make an educated and informed decision when it comes to your unplanned pregnancy.

Call, text, or request your appointment online to get the help you need.
We look forward to assisting you!

Call Text

Available

Monday - Friday
9am - 5pm

Contact

Phone: 973-821-3276

Locations

Zip Code

Find a Location

Think You Might Be Pregnant?

Come In For A Free Pregnancy Test And Explore Your Options.

If you think you may be pregnant, it is normal to feel overwhelmed and have many questions. You might be feeling confused and unsure of what to do – especially if this is an unplanned pregnancy. You are not alone. We are here to help you navigate through this. An unplanned pregnancy does not need to be a crisis and its important to know that you have options. We offer free lab-quality pregnancy testing to women facing unplanned pregnancies. If you think you're pregnant, come in today for a free test and discuss your options! If you are considering abortion as an option, or uncertain about your pregnancy options, the first thing to do is get tested and confirm your pregnancy.

Request An Appointment

When should I take a pregnancy test?

Anytime after a missed period, you can take a pregnancy test. However, the earlier in pregnancy you take the test, the higher the likelihood of a false-negative result.

We provide medical-quality pregnancy tests that is extremely accurate. During pregnancy, a woman's body produces a hormone called HCG which is found in the urine. Our tests, which are 99% accurate, can detect this pregnancy hormone as early as 7 days after conception or 21 to 28 days after the first day of your last period.

If your period is irregular, call us and we can help you determine how soon you should get tested.

When scheduling your free pregnancy test appointment with us you will want to plan for 30 – 45 minutes. Our tests are administered in private rooms with a trained advocate or nurse. You can come alone or with someone, whatever will make you feel most comfortable.

Zip Code | Find Your Location

How Do I Schedule My Pregnancy Test?

Scheduling your pregnancy test is fast and easy, just fill out this form and we will respond quickly to any of your pregancy questions or concerns.

Symptoms of Pregnancy

If you are experiencing any of these symptoms, contact us anytime

Slight bleeding or spotting (often called "implantation bleeding")
Nausea and vomiting (often called "morning sickness")
Sore, tender, or swollen breasts
Fatigue and tiredness
Changes in appetite
Mood swings
Headaches

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Not Sure If You Should Come In?

If you are concerned, don't wait. By coming in, you are empowering yourself and guaranteeing the most accurate results. We don't only provide the pregnancy test; we can give you further verification of the of your pregnancy and offer resources and counseling so you can make an informed choice. We see many women, some who are scared and just want to know for sure, others might be 5 days late for their period but still have a negative test, and still others, are bleeding but have a positive test. Be proactive, take charge, so you can have an early response.

Be Informed
Know Your Options

Call, text or request your appointment online to get the help you need.
We look forward to assisting you!

Call Text

Available

Monday - Friday
9am - 5pm

Contact

Phone: 973-821-3276

Locations

Zip Code | Find a Location

Locations in North East New Jersey metropolitan area which includes New Brunswick, Morristown, Newark, Montclair and Jersey City. We specialize in pre-termination evaluations. Our locations provide the care you need so you can make the best decision for yourself. We do not perform or refer women for elective abortions.

Terms of Service | Privacy Policy | Sitemap

All of our services are completely FREE,
At No Cost to you!

What's The Catch?

Why are all of our services free? Because you are priceless and we have a passion to help you! You do not have to make your decision alone, our trained Client Consultants and in-house Medical Professionals are ready to assist you.

Your well-being is first priority. Call, text or request an appointment online for your FREE Abortion Information Consultation.

- It's 100% Confidential
- All Services Are Completely Free
- Caring & Supportive Staff
- Medically Trained & Certified
- No Insurance Required
- No Age Restrictions
- Non Judgmental

Request An Appointment

Making an informed decision should not be a financial burden. We can help at every step along the way.

Schedule Your Appointment Today

- Easy Online Booking.
- Our Staff Is Ready To Assist You.
- Multiple Locations With One Near You.

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Discover Your Pregnancy Options

Still Have Questions?

If you are looking to get more information about abortion, adoption or other pregnancy options, or just have questions, our in-center care consultants are ready to assist you. Our Pregnancy clinics are here for you and are ready to meet with you and help you understand your options.

Call 973-821-3276

Text 973-821-3276

Request An Appointment

Abortion & Your Options

Accurate Information. Informed Decisions.

An unplanned pregnancy is often life-changing. It can bring about many unexpected feelings of anxiety, stress, or fear of the future. You may be considering abortion as an option. Before you decide, it is important to remember that abortion is a medical procedure and, like any other medical procedure, you should consult a medical professional beforehand. We are a network of clinics providing the best care and most up-to-date information on your pregnancy and pregnancy options and have multiple locations to serve you. We are dedicated to providing you with everything you need to make an informed decision about abortion, at no cost to you. We will help you confirm your pregnancy with a lab-grade pregnancy test, an ultrasound if needed, and a free consultation to discuss your options. And the best part is that everything we do is at no cost to you.

We know there is a lot to juggle in life and weighing your options carefully is vitally important in this process. It is important to determine the viability of your pregnancy before paying a high cost for an abortion. Our staff can guide you through this process and get the tests you need to know the facts about your pregnancy. Knowing the gestational age, and viability of your pregnancy will determine if a medical abortion is even an option.

According to studies, one in four pregnancies end in a natural miscarriage. An ultrasound can help verify your pregnancy. In some pregnancies, a fertilized egg does not implant in your uterus but rather in a fallopian tube (an ectopic pregnancy) where the embryo could continue to grow and cause the tube to burst. Although this is rare, it can be fatal. Neither a surgical nor medical abortion will resolve an ectopic pregnancy – it would require emergent medical care.

Zip Code | Find Your Location

Types Of Abortion

Surgical Abortions

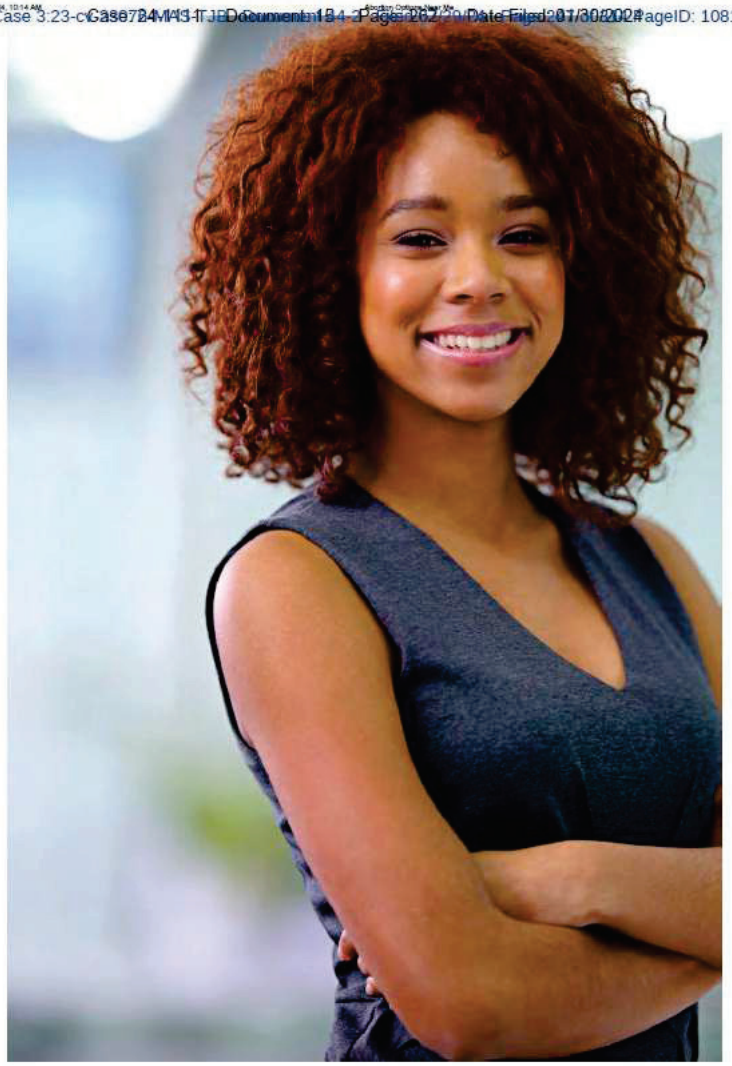
A surgical abortion is a medical procedure that ends your pregnancy. If a woman is 10 or more weeks into her pregnancy and is not eligible for the abortion pill, or in the event of a medication abortion failure, an a surgical abortion may be performed.

There are 2 types of surgical abortions:

uterus so the embryo and placenta can be removed through a suction tube. Pain medication is generally given to numb the cervix as well as a sedative to help you relax while the uterus is emptied.

D&E abortions are typically performed at 13 weeks or after and forceps are used to remove the fetus in small parts prior to suction because the fetus is larger.A sedative may be given to help you relax while the uterus is emptied.

Abortion Cost
According to Planned Parenthood, the cost of a surgical abortion can be as high as $1,500 for a first trimester abortion and even more after the first trimester.



Abortion Side Effects

Common side effects from a surgical abortion may include:

- Cramping
- Vomiting
- Feelings of faintness
- Excessive bleeding and blood clots
- Sweating
- Fever and more

The Abortion Pill (Chemical/ Medication Abortion)

The abortion pill can be taken up to 70 days after a woman's last menstrual period and may require an abortion procedure if the medication abortion is incomplete. While the effectiveness of the abortion pill is high, the rate decreases each week after pregnancy and in some cases, a woman may still need a surgical abortion. If you are considering a medication abortion, we can confirm your pregnancy and provide answers on the abortion pill and all your pregnancy options.

We're Here For You

An unplanned pregnancy can be scary. You are not alone, we've got you covered. With all the services you need provided for FREE, including pregnancy tests and consultations, we hope to make this an empowering experience for you. Our trained client consultants and in-house medical professionals are ready to assist you. Call or text or use the form to book your free abortion information consultation. Your safety and privacy are our priority.

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Know Your Risks

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)

Some women experience a range of long-term adverse psychological and emotional effects. Some people may also be more at risk for guilt and/or depression-like symptoms if their decision to abort conflicts with their spiritual beliefs.

Be Informed
Know Your Options

Call, text or request your appointment online to get the help you need. We look forward to assisting you!

Call | Text

Available

Monday - Friday
9am - 5pm

Contact

Phone: 973-821-3276

Locations

Zip Code | Find a Location

Locations in North East New Jersey metropolitan area which includes New Brunswick, Morristown, Newark, Montclair and Jersey City. We specialize in pre-termination evaluations. Our locations provide the care you need so you can make the best decision for yourself. We do not perform or refer women for elective abortions.

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Considering The Abortion Pill?

Are you considering the abortion pill or a medical abortion as a result of an unexpected pregnancy? A medical abortion is a type of abortion that is brought about by taking two different medication, or abortion pills, that will terminate a pregnancy. If you have an established pregnancy, this abortion process will end the pregnancy over the course of a few days. The first pill is usually administered at an abortion clinic or an abortion center like Planned Parenthood. The second pill is taken at home over the course of the following days. Bleeding and discharge will occur at home generally within 24 – 48 hours after taking the first pill. The drugs used for a medical abortion are not the same as the morning-after pill or plan b. The alternative to the abortion pill is surgical abortion.

Before taking the abortion pill, you should understand what it is, know the risks, understand how it works, what will happen to your body and what it could mean to your health. We are here to answer all of your questions and help you make an informed decision. Our team and clinic staff will be happy to discuss with you the different types of abortion and what to expect with each any abortion procedures—both medical and surgical. Before you consider if abortion is the right decision for you it is important confirm your pregnancy and determine gestational age as well as viability. This will help you understand your options based on how far along you are in your pregnancy. Before contacting Planned Parenthood and paying for services, determining if you pregnancy is viable is an important first step. An abortion pill or Surgical abortion would not even be needed if your pregnancy is not progressing. According to WebMD as many as 50% of all pregnancies end in a miscarriage, so it is important to schedule your appointment now to know so we can help you understand your options.

Medication Abortion

Important: The Abortion Pill is available up to 70 days (10 weeks) from the first day of your last period (LMP)

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. If everything does not pass from your uterus, an infection may occur. If this happens, the abortion clinic might ask you to consent to a surgical abortion if the abortion pill process is incomplete. It is also important to know potential complications or symptoms that need immediate attention. Fevers, excessive discharge and throwing up are just some of the signs that you may need immediate help or medical attention. Call us today to find out more and be informed.

Call 973-821-3276 or Text 973-821-3276

Schedule Your Ultrasound

Abortion Pill Information

Call us today to get the answers to all of your abortion pill questions. If you have anything you would like to discuss or if any following questions relate to your situation, contact us today.

- Is my pregnancy at a stage where I can seek a medical abortion?
- How long does it take for the first abortion pill to work?
- What if I take the first abortion pill and change my mind?
- What will happen to my body after I take the medication to start a medical abortion?
- What are the most common side effects of a medical abortion?
- Are there any serious complications that I should be aware of?
- What is the success rate for medical abortions?
- What if the abortion pill doesn't work?
- What is the cost of an abortion pill and what if I can't afford it?
- Can I get the abortion pill at home?
- Is a medical abortion painful?

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Abortion Information and Free Consultation

If you think you're pregnant, you have options!

Do you have any of these symptoms of pregnancy?

- Slight bleeding or spotting (often called "implantation bleeding")
- Nausea and vomiting (often called "morning sickness")
- Sore, tender, or swollen breasts
- Fatigue and tiredness
- Changes in appetite
- Mood swings
- Headaches

Pregnancy Options Consultation

Our trained Client Consultants and in-house Medical Professionals are ready to assist you. Call or text to book your free abortion information consultation. Your safety and privacy are our priority

Request An Appointment

Weighing Your Options

We Are Here For You

If you are facing an unplanned pregnancy, you may be considering an abortion and need immediate abortion information and abortion facts. You will want to know the risks associated with an abortion as well as what an abortion might cost. Knowing that an abortion is a medical procedure is kye and, like any other medical procedure, you should consult a medical professional beforehand. We are here for you to provide you with the best care and support in a safe and confidential setting where you can get accurate and up-to-date information about abortion. We want you to make an informed decision about your unplanned pregnancy.

Weighing your options before hand is important in as you consider your options. You will want to confirm your pregnancy with a lab grade pregnancy test and if needed a free ultrasound. An ultrasound can provide accurate information about the viability of your pregnancy, gestational age. Before you call Planned Parenthood or schedule an abortion is important know what is going on with your pregnancy. It would not make sense to pay the high cost for an abortion if there is no cardiac activity (heartbeat) or ongoing fetal development. We will provide accurate information about your pregnancy in order to gives you the information you need to determine if a medical or surgical abortion is even an option.

We Are Here For You.

An unplanned pregnancy [illegible] alone. We've got you covered. With all the services you need provided for FREE, we hope to make this an empowering experience [illegible] trained Client Consultants and in-house Medical Professionals are ready to assist you. Call, text, or request your [illegible] abortion [illegible] consultation online. Your safety and privacy are our priority.

Call 973-821-3276

Free Appointments
Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Available

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9am - 5pm

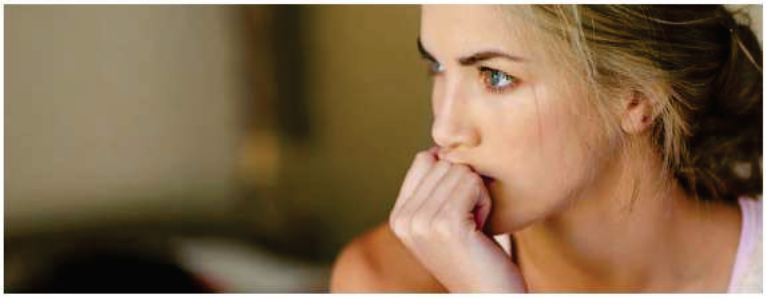
Contact

Phone: 973-821-3276

Locations

Zip Code

Find a Location



Below you will find answers to our most Frequently Asked Questions.
Alternatively, you can call, text or request your own FREE pre-screening abortion information consultation and ultrasound if needed.

Zip Code | Find Your Location

Frequently Asked Questions

Have you missed a period?
What are the signs of pregnancy?
What do I need to do next?
How can you calculate how far along you are?

We've compiled a list of questions and answers to help you make an educated and informed decision. You are not alone, we are here to help!

1.) What are the symptoms of pregnancy?

Symptoms of pregnancy can vary from women to women. The signs of pregnancy can be different for each woman. But the most significant symptom is a missed menstrual cycle.

2.) What is a normal Menstrual Cycle?

The Menstrual Cycle for most women is around 28 days. But each woman's cycle is different and if you believe you have missed a period the next thing to do is take a pregnancy test.

Free Appointments
Book Now

Full Name

Email

Phone

How Can We Help?

Submit

3.) When does ovulation occur?

Ovulation is when an egg becomes ripe and is released from the ovary. This usually occurs on or around 14 days after the first day of the most recent menstruation. Chances of impregnation are significant if intercourse takes place during ovulation.

4.) What are other symptoms of pregnancy besides a missed period?

OTHER SYMPTOMS MAY INCLUDE:

- Sore and swollen breasts
- Nausea and vomiting
- Fatigue
- Appetite changes
- Slight bleeding or spotting (might occur when the fertilized egg implants onto the uterine wall)
- Mood swings
- Headaches
- Backaches
- Frequent urination

5.) When should I take a pregnancy test?

Normally, you would want to wait for 1 week after you missed your period. As a pregnancy develops your body produces more HCG and this hormone needs to be detectable before you get a positive test. Our medical-grade free pregnancy test can confirm if you are pregnant.

Schedule A Free Test

6.) How does the abortion pill work?

The abortion pill is used as part of a procedure known as medical abortion or medication abortion. The Abortion Pill is actually made up of 2 different medications taken separately. It is important to know all the facts before taking the abortion pill. Some pregnancies are not viable and will end in a miscarriage and some pregnancies are too far along for a medical abortion. Getting an ultrasound to determine viability is an important next step if you are considering the abortion pill. . The abortion pill can only be taken at the beginning of a pregnancy which requires a woman to be no more than ten weeks gestation. The abortion pill or medical abortion requires several doctor visits and does have certain risks that we can discuss at your appointment.

7.) What is a medical abortion?

Medical abortion is a series of drugs, taken at different times, that causes the termination of a pregnancy.

8.) What abortion options are there?
Generally, there are 2 types of abortion methods; Medical & Surgical.

Medical Abortion: In a medical abortion, the abortion pill is used to end or terminate a pregnancy. It is actually a series of drugs taken at different times that causes the termination of a pregnancy. No anesthesia is used in medical abortion. The cost of a medical abortion differs depending on the abortion Pill Provider. The abortion pill can only be taken at the beginning of a pregnancy which requires a woman to be no more than ten weeks gestation. 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.

Surgical Abortion: Suction abortion (also called vacuum aspiration) is the most common type of in-clinic abortion. It uses suction to empty your uterus. It's usually used 14-16 weeks after your last period.

Dilation and Evacuation (D&E) is another kind of in-clinic abortion procedure. It uses suction and medical tools to empty your uterus. You can get a D&E later in a pregnancy than aspiration abortion — usually if it has been 16 weeks or longer since your last period.

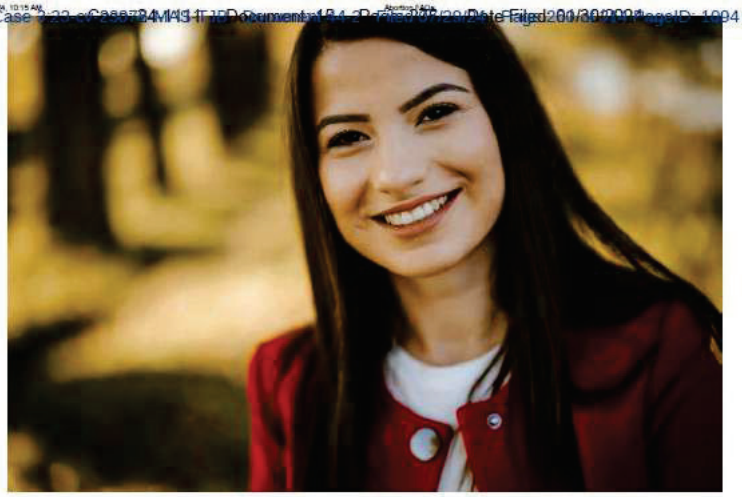
***If you think you may be pregnant call us today for a FREE consultation.**

9.) How much does an abortion cost?

According to the Kaiser foundation, the cost of abortion differs widely across the country and from provider to provider. Ranging from $500 to over $1,200, the cost of an abortion is often affected by how far along someone is in their pregnancy and the type of abortion procedure being done. We can discuss all the various abortion options, abortion risks, abortion costs, and abortion information at your free Options consultation.

These are some of the additional factors that affect abortion costs:

- Cost of lab grade pregnancy test
- Cost of ultrasound
- Gestational age of pregnancy
- Type of abortion performed
- Use of anesthesia
- Where the procedure is performed
- Special shots for women with negative blood type



10.) What are our prices?

All of our services are free and confidential. We specialize in pre-termination evaluation. We do not perform or refer women for elective abortions. Our network of clinics provides the care you need so you can make the best decision for yourself.

11.) Do you perform abortions?

We do not perform abortions or provide abortion referrals at our clinics. However, we provide accurate and trustworthy information about abortion procedures and risks. We strive to provide you with all the necessary information that you will need to make an educated decision about your pregnancy that will make you feel comfortable in the long run. We will also answer any of your questions. It is important to make sure you have trustworthy information to help make your decision. All the information that we provide is given in a non-judgmental setting, so you can rest assured that the decision is yours alone to make. We are here to help you in any way that we can. Contact us if you would like our assistance.

Still Need More Information?

If you are looking to get more information about abortion and other pregnancy options, or just have questions, our in-center care consultants are ready to assist you.

Remember all of our services are completely free.
Call, text or request an appointment today.

Call Text

Pregnant?

Find out if you are really pregnant with a FREE pregnancy test.

Whether it was planned or a surprise, pregnancy can be really scary. But don't worry, we are here for you. Come on in for a FREE, discreet pregnancy test. No judgement and 100% confidential.

Request An Appointment

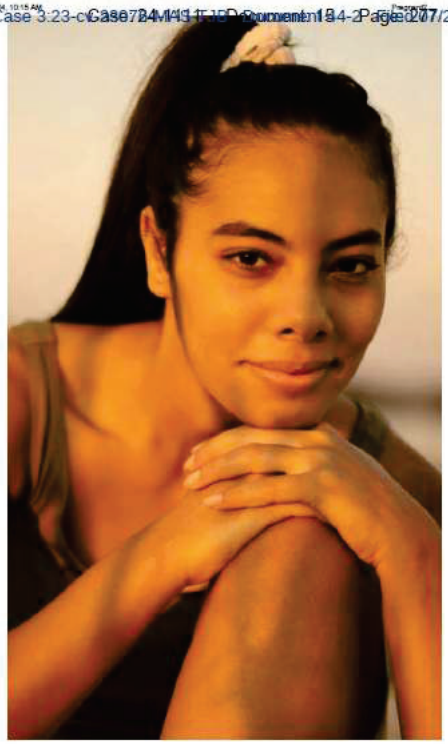
What are the early signs of pregnancy?

When should you take a pregnancy test? Figuring out if you are pregnant based on the early signs of pregnancy is not always easy. There are many pregnancy symptoms, and it is possible to have a few symptoms, many, or none at all at first.

Do you currently have symptoms of pregnancy? It doesn't always mean you are pregnant. Sometimes, taking certain types of contraceptives with hormones can cause side effects that may be similar to pregnancy symptoms. It's important to know the early signs, but ultimately, you will want to get a pregnancy test and consult with a professional.

Here are some questions to ask if you think you might be pregnant:

- Swollen, sore, or tender breasts?
- Frequent urination?
- unexplained tiredness?
- A sudden need to take naps?
- Digestive changes?
- indigestion?
- heartburn?
- constipation and/or bloating?
- Mood swings for no reason?
- Sudden nausea or sick to your stomach, often occurring in the morning?
- Missed period?



We're Here For You

An unplanned pregnancy can be scary. You are not alone, we've got you covered. With all the services you need provided for FREE, including pregnancy tests and consultations, we hope to make this an empowering experience for you. Our trained client consultants and in-house medical professionals are ready to assist you. Call 973-821-3276 or Text 973-821-3276 or use the form to book your free abortion information consultation. Your safety and privacy are our priority.

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

How Soon Can You Tell If You Are Pregnant?

If you suspect you are pregnant, your nerves may be wanting to find out NOW. Pregnancy tests are the first way to tell if you are pregnant. Many women experience signs and symptoms of pregnancy even before they miss their period. An early detection pregnancy test may be able to tell you five days before your missed period.

False Positives and False Negatives

Pregnancy tests measure HCG, a pregnancy hormone. We usually do not see false positives, because if there is HCG in your urine, you are pregnant. However, false negatives can happen. Being on birth control, taking the test too early, taking an expired test, miscalculating your ovulation, etc. can all be reasons for a false negative. What about that faint line? Call us for information if you are wondering. Our counselors are ready to help.

There is a Free Pregnancy Test Nearby

The cost of pregnancy tests is ridiculous, let us help. If you've missed your period, it's a good idea to take a pregnancy test. Don't panic. The best pregnancy test is an accurate one, so let our women's health clinic assist you. We are here to provide you with a free, discreet pregnancy test and answer any questions or concerns you may have. 100% confidential.

Unsure You Should Come in?

If you are concerned, don't wait. By coming in, you are empowering yourself and guaranteeing the most accurate results. We don't only provide the pregnancy test; we can give you further verification of the viability of your pregnancy and offer resources and counseling so you can make an informed choice. We see many women, some who are scared and just want to know for sure. Others might be 5 days late for their period but still have a negative test, or be bleeding but have a positive test. Be proactive, take charge, so you can have an early response.

Request An Appointment

Verify Your Pregnancy At Any Time
Call: 973-821-3276

Planned or Unplanned, Know your options, without the PLANNED PARENTHOOD Costs!

All of our services are free. We offer many of the services that Planned Parenthood offers, without the Planned Parenthood price tag.

No Insurance Is Necessary.
No Age Requirement.
No Parental Notification.

- Free Pregnancy Test
- Free Ultrasound
- Free Abortion Information Consultation & Abortion Information

***100% Confidential and Discreet**
*** No Judgement * No Pressure**

Free Appointments
Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Know Your Options

The abortion options available to you at Planned Parenthood depend on many factors. Understanding your choices and pregnancy termination methods will empower you to make the right choice for yourself! Here are the steps to follow before you call Planned Parenthood.

Call
Verify Your Pregnancy

Text
Confirm Viability

Schedule
Discover Your Options

At an abortion clinic, the abortion options available depend on many factors. Understanding your choices and pregnancy termination methods, if any, that you would like to consider will empower you to make the right choice for yourself. Our caring staff will discuss with you everything you need to know about the medical or surgical abortion procedure. No judgment and no pressure.

If you are looking to schedule your appointment at Planned Parenthood, come see us first for a free consultation so you do not feel pressured to spend money! The cost of an abortion will depend on the type of abortion procedure. Our counselors can discuss all your options with you and give you the support you need to make the right decision for yourself. No pressure. No judgment. 100% confidential.

Be Informed
Know Your Options

Call, text or request your appointment online to get the help you need.
We look forward to assisting you!

Call Text

Pregnancy Options

What Are My Pregnancy Options?

We want to equip you with all the information you need to make an informed decision about your next steps. A positive pregnancy test, whether planned or unplanned can be overwhelming. It can often be a stressful time filled with questions about what to do next.

Here are some next steps...

1. Take Your Time. Breathe.

As soon as you are ready to talk, we are here for you with multiple services to help you start planning your next steps. The most important thing to do is to take care of yourself and know that you are not alone.

Learn More

2. Verify Your Pregnancy

Before even thinking about your future plans, you need an accurate lab-quality pregnancy test to inform you if you are actually pregnant. Call to schedule your free pregnancy test.

Learn More

3. Confirm Your Pregnancy

After getting a positive pregnancy test, it may be required that you get a pregnancy ultrasound to show if your pregnancy is viable and would naturally make it to it's full term.

Learn More

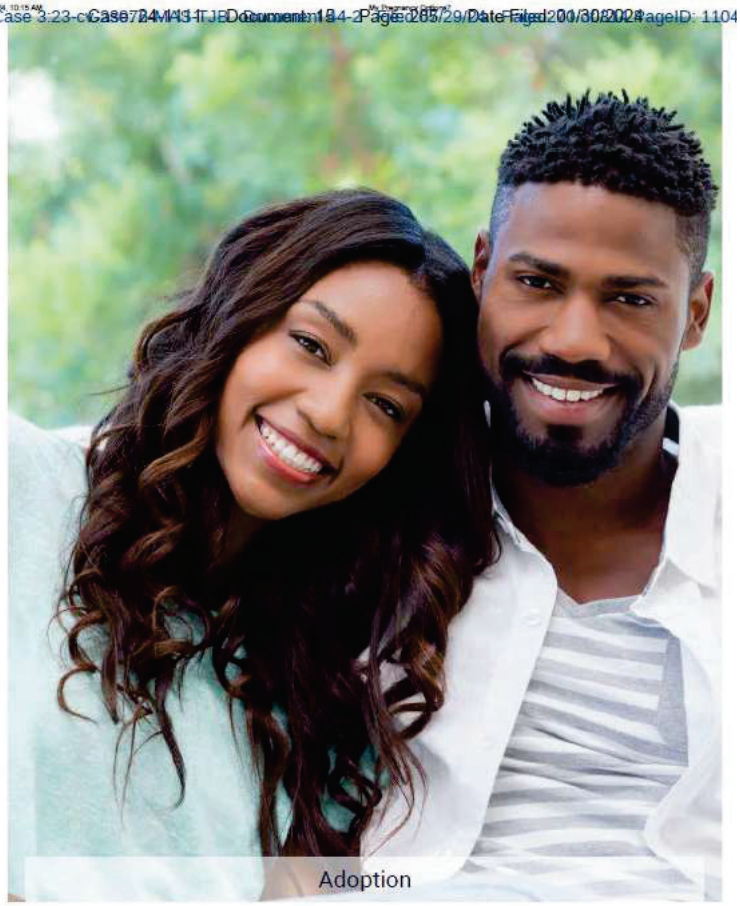
4. Setup Your Options Consultation

At this point, you will have the information about your pregnancy to start considering your options. We can help you weigh your possibilities and make your choice.

Contact Us
973-821-3276

You Have A Choice!

If you are experiencing an unplanned pregnancy or are feeling uncertain about your current positive pregnancy test, know that you have a choice. We can discuss the 3 primary choices you have.



Giving birth and placing your child with another family is a viable option for many women and today there are many forms of adoption. Get answers to questions regarding the adoption process.

Find out all the facts regarding abortion including the costs, risks, and types of abortion.

Parenting

Is parenting right for you? Talk to our trained advocates and be informed of all the resources available to assist you.

Our staff is here to walk beside you and provide you with accurate information in a non-judgmental setting where you can make your best choice. Call today to get answers now. All of our services are free. Unlike Planned Parenthood, we do not charge for any services, there are no age restrictions and no insurance is required.

Make An Informed Choice

The best thing you can do for your health is to get answers to the following important questions:

- Am I really pregnant?
- Is my pregnancy viable?
- Do I have an ectopic pregnancy? What is that?
- What if I am unsure about what to do?
- What abortion procedure could I have?

Being fully informed before any medical or surgical procedure is critical for your health and well-being. We know it's a big decision and we want to support you.

Free Appointments

Book Now

Full Name

Email

Phone

How Can We Help?

Submit

Symptoms of Pregnancy

If you are unsure you are pregnant come in today to the center nearest you for a free pregnancy test. there are no age restrictions and no insurance is required.

Not sure if you should come in? Are you experiencing any of these signs of pregnancy?

- **Missed Period**

  If a week or more has passed without the start of an expected menstrual cycle, consider getting a pregnancy test. Irregular menstrual cycles can be confusing and testing early can help.

- **Swollen or tender breasts**

  If you are pregnant, hormonal changes early in your pregnancy can make your breasts sensitive and sore. The discomfort will likely decrease after a few weeks as your body adjusts to hormonal changes but sore or tender breasts can be an early sign of pregnancy.

- **Nausea, stomach pain and/or vomiting**

  Often called morning sickness, nausea can happen at any time. Normally it can start as early as one to two months after you become pregnant. Pregnancy hormones can play a role in nausea but not all women experience this symptom.

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https://firstchoicewomancenter.com/know-your-pregnancy-options

- **Feeling tired or needing naps**

  Changes in progesterone may play role in fatigue and feelings of tiredness early in a pregnancy. If you suddenly feel the need for a nap or feel sluggish throughout the day for no reason, this may be an early sign of pregnancy.

- **Mood Swings**

  Mood swings are very common and often the result of dramatic changes in hormone levels throughout the body.

- **Bloating**

  Bloating is also very common and related to hormone levels that are rapidly changing.

- **Constipation**

  Pregnancy can cause your digestive tract to slow down and thus lead to constipation.

Most all of these symptoms of pregnancy aren't unique to pregnancy. You may be sick, about to get your period, or have a reaction to food or the environment. If, however, you think you could be pregnant, contact us at any time to discuss your symptoms and your options.

Call Now 973-821-3276

Available

Monday - Friday
9am - 5pm

Contact

Phone: 973-821-3276

Locations

Zip Code | Find a Location

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Find A Location

Your closest location is listed below.

Are you sure you want to visit this site?

Available

Monday - Friday
9am - 5pm

Contact

Phone: 973-821-3276

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Zip Code

Find a Location

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Find A Location

Your closest location is listed below.

Selected Location:
10 Paterson Street
Jersey City, NJ 07307

New York, 10007 — Change Location

Date & Time
Wednesday, January 3, 2024 at 12:00pm for Abortion Information Consultation

Change Date & Time

First Name*

First Name

Last Name*

Last Name

Phone Number

Phone number with area code

Email

Email address

Date of Birth*

Date of Birth (MM/DD/YYYY)*

What was the first day of your last menstrual period?*

First day of Last Period (MM/DD/YYYY)*

Did you receive a positive test yet?
☐ **Yes, I have received a positive pregnancy test**

☐ **It's Ok to Contact Me**

You will be contacted to verify the appointment time. Our network locations will do their best to honor your requested date and time. In rare instances, a representative may be required to reschedule with you.

Book Appointment Request

Find A Location

Your closest location is listed below.

Go back

Enter zipcode or use your current location

10007 | Use Current Location

5 locations found within 75.0 miles.

3.2 miles

10 Paterson Street
Jersey City, NJ 07307

Select this Location

8.8 miles

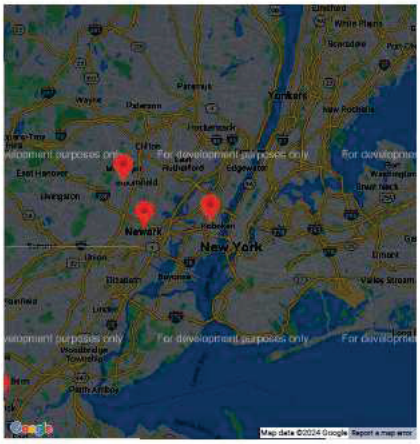
35 Halsey Street
Newark, NJ 07102

Select this Location

12.5 miles

180 Bloomfield Avenue
Montclair, NJ 07042

Select this Location



Find A Location

Your closest location is listed below.

Go back

Enter zipcode or use your current location

10007 | Use Current Location

5 locations found within 75.0 miles.

12.5 miles

180 Bloomfield Avenue
Montclair, NJ 07042

Select this Location

25.5 miles

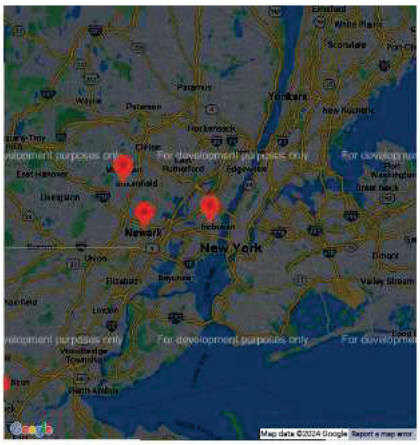
82 Speedwell Avenue
Morristown, NJ 07960

Select this Location

27.7 miles

116 New Street
New Brunswick, NJ 08901

Select this Location



Terms of Service & Privacy Policy

NOTICE OF PRIVACY PRACTICES

This notice describes how medical information about you may be used and disclosed and how you can get access to this information. Please review it carefully.

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Limitation of Liability

UNDER NO CIRCUMSTANCES, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WILL WE OR ANY OF OUR LICENSORS OR SUPPLIERS BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THE MATERIALS ON THE SITES, OR ANY PRODUCTS OR SERVICES PROVIDED PURSUANT TO THE SITES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. APPLICABLE LAW MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY OR INCIDENTAL OR CON SE QU EN TIA L DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. IN NO EVENT SHALL THE TOTAL LIABILITY TO YOU BY US OR ANY OF OUR LICENSORS, NETWORK CARE PROVIDERS, OR SUPPLIERS FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT, TORT, OR OTHERWISE) EXCEED THE AMOUNT PAID BY YOU TO US, IF ANY, FOR ACCESSING THE SITES.

No Personal Advice

The information contained in or made available through the Sites (including but not limited to information contained on message boards, in text files, chats, or other methods of communication) cannot replace or substitute for the services of trained professionals in any field, including, but not limited to, financial, medical, psychological or legal matters. In particular, you should regularly consult a doctor in all matters relating to physical or mental health, particularly concerning any symptoms that may require diagnosis or medical attention. We and our licensors, Network Care Providers, and suppliers make no representations or warranties concerning any treatment, action, or application of medication or preparation by any person following the information offered or provided within or through the Sites. Neither we nor our partners, or any of their affiliates, will be liable for any direct, indirect, consequential, special, exemplary or other damages that may result, including but not limited to economic loss, injury, illness or death.

Parental Permission

Some of the information available on the Sites concerns the topic of sex and may not be appropriate for children. Further, the Sites are not directed to children under the age of 13 and we will not knowingly collect personally identifiable information from children under 13. WE STRONGLY RECOMMEND THAT PARENTS PARTICIPATE IN THEIR CHILDREN'S EXPLORATION OF THE INTERNET AND ANY ONLINE SERVICES AND USE THEIR BROWSER'S PARENTAL CONTROLS TO LIMIT THE AREAS OF THE INTERNET TO WHICH THEIR CHILDREN HAVE ACCESS.

Privacy Policy

Our privacy policy will advise you about how we use and disclose your personal information, and about what choices you have concerning our use and disclosure of such information. Please review our Privacy Policy page for full details.

Personal Identification Information

State laws may restrict our use and disclosure of personally identifiable information (PII) we receive from you in connection with your use of, or participation in, the Sites, membership registration, discussion groups, requests for suggestions, visitors' requests for free products or services or additional information (including via email to us), and in connection with other activities, services or resources we make available on any of our sites. Please consult our Privacy Policy regarding our collection, use and disclosure of PII.

Call Text

Privacy Policy

NOTICE OF PRIVACY PRACTICES

This notice describes how medical information about you may be used and disclosed—and how you can get access to this information. Please review it carefully.

Your Rights

You have the right to:

- Get a copy of your paper or electronic medical record
- Correct your paper or electronic medical record
- Request confidential communication
- Ask us to limit the information we share
- Get a list of those with whom we've shared your information
- Get a copy of this privacy notice
- Choose someone to act for you
- File a complaint if you believe your privacy rights have been violated

Your Choices

You have some choices in the way that we use and share information as we:

- Discuss your needs with family and friends
- Provide disaster relief
- Provide mental health care
- Market our services and utilize your information through third party services
- Raise funds

Our Uses and Disclosures

We may use and share your information as we:

- Help you
- Run our organization
- Help with public health and safety issues
- Perform research
- Respond to organ and tissue donation requests
- Work with a medical examiner or funeral director
- Comply with the law, including addressing workers' compensation, law enforcement, and other government requests
- Respond to lawsuits and legal actions

Your Rights

When it comes to your health information, you have certain rights. This section explains your rights and some of our responsibilities to help you.

- You can ask to see or get an electronic or paper copy of your medical record and other health information we have about you. Ask us how to do this.

- We will provide a copy or a summary of your health information, usually within 30 days of your request. We may charge a reasonable, cost-based fee.

Ask us to correct your medical record

- You can ask us to correct health information about you that you think is incorrect or incomplete. Ask us how to do this.
- We may say "no" to your request, but we'll tell you why in writing within 60 days.

Request confidential communications

- You can ask us to contact you in a specific way (for example, home or office phone) or to send mail to a different address.
- We will say "yes" to all reasonable requests.

Ask us to limit what we use or share

- You can ask us not to use or share certain health information for treatment, payment, or our operations. We are not required to agree to your request, and we may say "no" if it would affect your care.

Get a list of those with whom we've shared information

- You can ask for a list (accounting) of the times we've shared your health information for six years prior to the date you ask, who we shared it with, and why.
- We will include all the disclosures except for those about treatment, payment, and health care operations, and certain other disclosures (such as any you asked us to make). We'll provide one accounting a year for free but will charge a reasonable, cost-based fee if you ask for another one within 12 months.

Get a copy of this privacy notice

You can ask for a paper copy of this notice at any time, even if you have agreed to receive the notice electronically. We will provide you with a paper copy promptly.

Choose someone to act for you

- If you have given someone medical power of attorney or if someone is your legal guardian, that person can exercise your rights and make choices about your health information.
- We will make sure the person has this authority and can act for you before we take any action.

File a complaint if you feel your rights are violated

- You can complain if you feel we have violated your rights by contacting us.
- You can file a complaint with the U.S. Department of Health and Human Services Office for Civil Rights by sending a letter to 200 Independence Avenue, S.W., Washington, D.C. 20201, calling 1-877-696-6775, or visiting www.hhs.gov/hipaa/filing-a-complaint/index.html.
- We will not retaliate against you for filing a complaint.

Your Choices

For certain health information, you can tell us your choices about what we share. If you have a clear preference for how we share your information in the situations described below, talk to us. Tell us what you want us to do, and we will follow your instructions. In these cases, you have both the right and choice to tell us to:

- Share information with your family, close friends, or others involved in your care
- Share information in a disaster relief situation
- Include your information in a hospital directory

If you are not able to tell us your preference, for example if you are unconscious, we may share your information if we believe it is in your best interest. We may also share your information when needed to lessen a serious and imminent threat to health or safety.

In these cases, we never share your information unless you give us written permission:

- Marketing purposes
- Sale of your information
- Most sharing of psychotherapy notes

Our Uses and Disclosures

How do we typically use or share your health information?

We use or share your health information in the following ways:

Help you with treatment

We use your health information and share it with other professionals who are treating you. *Example: A doctor treating you for an injury asks another doctor about your overall health condition.*

Run our organization

We use and share your health information to run our practice, improve your care, and contact you when necessary. *Example: We use health information about you to manage your treatment and services.*

How else can we use or share your health information?

We are allowed or required to share your information in other ways - usually in ways that contribute to the public good, such as public health and research. We have to meet many conditions in the law before we can share your information for these purposes. For more information, see HHS.

Help with public health and safety issues

We can share health information about you for certain situations such as:

- Preventing disease
- Helping with product recalls
- Reporting adverse reactions to medications
- Reporting suspected abuse, neglect, or domestic violence
- Preventing or reducing a serious threat to anyone's health or safety

Do research

We can use or share your information for health research.

Comply with the law

We will share information about you if state or federal laws require it, including with the Department of Health and Human Services if it wants to see that we're complying with federal privacy law.

Respond to organ and tissue donation requests

We can share health information about you with organ procurement organizations.

Work with a medical examiner or funeral director

We can share health information with a coroner, medical examiner, or funeral director when an individual dies.

Address workers' compensation, law enforcement, and other government requests

We can use or share health information about you:

- For workers' compensation claims
- For law enforcement purposes or with a law enforcement official
- With health oversight agencies for activities authorized by law
- For special government functions such as military, national security, and presidential protective services

Respond to lawsuits and legal actions

We can share health information about you in response to a court or administrative order, or in response to a subpoena. We cannot agree to limit uses/disclosures that are required by law.

Our Responsibilities:

- We are required by law to maintain the privacy and security of your protected health information.

- We will let you know promptly if a breach occurs that may have compromised the privacy or security of your information.
- We must follow the duties and privacy practices described in this notice and give you a copy of it upon request.
- We will not use or share your information other than as described here unless you tell us we can in writing. If you tell us we can, you may change your mind at any time. Let us know in writing if you change your mind.

Our Commitment to Safeguard Your Protected Health Information:

Because we are a medical clinic that does not engage in any transactions that invoke coverage of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the privacy practices described in this notice are voluntarily undertaken in order to safeguard your protected health information (PHI). Nothing in this notice should be construed as creating any contractual or legal rights for the recipient of our free services or other parties.

For more information on our responsibilities from HHS.

Additional Notices

We can share personal and health information about you with our Network Health Provider(s) and other providers you designate, including by electronic disclosure.

To the extent permitted by applicable laws, Virtual Care Services reserves the right to directly or through third parties de-identify personal and health information about you and to exploit such de-identified information for any purpose.

Virtual Care Services voluntarily complies with HIPAA privacy and security requirements as a best practice model for use and disclosure of Client information. Virtual Care Service is neither a Covered Entity nor Business Associate under HIPAA and is not legally obligated to comply with HIPAA privacy or security requirements.

State Notices & Disclosures

- California Residents, please review our Notice of Privacy Practices.
- Colorado Residents, special rights may apply. Contact us for details.
- Virginia Residents, special rights may apply. Contact us for details.
- Texas Residents, all virtual services comply with the Texas Health and Safety Code §181.101.

Changes to the Terms of this Notice

We can change the terms of this notice, and the changes will apply to all information we have about you. The new notice will be available upon request, in our office, and on our website.

Privacy Official: If you have any questions or concerns about our privacy practices, please contact us using the information provided below.

Effective Date: This notice goes into effect on March 4, 2023.

Call Text

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Home > Whois Lookup > FirstChoiceWomanCenter.com

Whois Record for FirstChoice...nCenter.com

– Domain Profile

Registrar	NAMECHEAP INC NameCheap, Inc. IANA ID: 1068 URL: http://www.namecheap.com Whois Server: whois.namecheap.com abuse@namecheap.com tel:+1.9854014545
Registrar Status	clientTransferProhibited
Dates	1,511 days old Created on 2019-11-14 Expires on 2024-11-14 Updated on 2023-10-15
Name Servers	DNS1.REGISTRAR-SERVERS.COM (has 8,981,919 domains) DNS2.REGISTRAR-SERVERS.COM (has 8,981,919 domains)
IP Address	162.159.136.54 - 16,028 other sites hosted on this server
IP Location	- California - San Francisco - Cloudflare Inc.
ASN	AS13335 CLOUDFLARENET, US (registered Jul 14, 2010)
Domain Status	Registered And No Website
IP History	3 changes on 3 unique IP addresses over 5 years
Registrar History	2 registrars
Hosting History	2 changes on 3 unique name servers over 5 years

Whois Record (last updated on 2024-01-03)

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Domain Name: firstchoicewomancenter.com
Registry Domain ID: 2455110811_DOMAIN_COM-VRSN
Registrar WHOIS Server: whois.namecheap.com
Registrar URL: http://www.namecheap.com
Updated Date: 2023-10-15T06:17:49.41Z
Creation Date: 2019-11-14T14:41:57.00Z
Registrar Registration Expiration Date: 2024-11-14T14:41:57.00Z
Registrar: NAMECHEAP INC
Registrar IANA ID: 1068
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A0278 A0279

https://whois.domaintools.com/firstchoicewomancenter.com

Registrar Abuse Contact Email: [redacted]
Registrar Abuse Contact Phone: +1.8054014545
Reseller: NAMECHEAP INC
Domain Status: clientTransferProhibited https://icann.org/epp#clientTransferProhibite
d
Registry Registrant ID:
Registrant Name: Redacted for Privacy
Registrant Organization: Privacy service provided by Withheld for Privacy ehf
Registrant Street: Kalkofnsvegur 2
Registrant City: Reykjavik
Registrant State/Province: Capital Region
Registrant Postal Code: 101
Registrant Country: IS
Registrant Phone: +354.4212434
Registrant Phone Ext:
Registrant Fax:
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Registrant Email: [redacted]
Registry Admin ID:
Admin Name: Redacted for Privacy
Admin Organization: Privacy service provided by Withheld for Privacy ehf
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Admin City: Reykjavik
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Tech Street: Kalkofnsvegur 2
Tech City: Reykjavik
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Tech Phone: +354.4212434
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Tech Email: [redacted]
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Name Server: dns2.registrar-servers.com
DNSSEC: unsigned
URL of the ICANN WHOIS Data Problem Reporting System: http://wdprs.internic.net/
For more information on WHOIS status codes, please visit https://icann.org/epp