

No. 24-781

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IN THE  
**Supreme Court of the United States**

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FIRST CHOICE WOMEN'S  
RESOURCE CENTERS, INC.,

*Petitioner,*

*v.*

MATTHEW J. PLATKIN, ATTORNEY  
GENERAL OF NEW JERSEY,

*Respondent.*

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

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**BRIEF OF THE NEW JERSEY FAMILY  
POLICY CENTER AND PACIFIC JUSTICE  
INSTITUTE AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONER**

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KEVIN T. SNIDER  
Chief Counsel  
*Counsel of Record*  
PACIFIC JUSTICE INSTITUTE  
NORTHERN CALIFORNIA OFFICE  
P.O. Box 276600  
Sacramento, CA 95827  
(916) 857-6900  
ksnider@pji.org

*Attorney for Amici Curiae*



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## STATEMENT OF INTEREST<sup>1</sup>

The New Jersey Family Policy Center (“NJFPC”) is a nonprofit organization with a vision for New Jersey and our nation that honors God, promotes religious freedom, supports families, and cherishes life. NJFPC is a Christ-centered group and part of a national alliance of forty pro-family state organizations across the country. NJFPC’s interest in this case arises directly from its core principles, especially its belief that human life is sacred, all people are created in God’s image, and protecting life—including that of preborn babies—is essential.

The Pacific Justice Institute (“PJI”) is a nonprofit legal organization established under Section 501(c)(3) of the Internal Revenue Code. Since its founding in 1997, PJI has advised and represented thousands of individuals, businesses, and religious institutions in court and administrative proceedings, particularly regarding First Amendment rights. This includes those who, out of conscience, believe every person has great value. To support this stance, PJI has been involved in extensive litigation concerning the sanctity of life, including prominent cases related to end-of-life issues.

## SUMMARY OF THE ARGUMENT

The investigatory powers of state attorneys general are broad. Absent the availability of checks on that power

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1. No counsel for any party authored this brief in whole or in part. No person or entity other than *Amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief. Timely notice was given to all parties.

through the vehicle which 42 U.S.C. §1983 provides, those harmed by state misconduct will have no access to the federal courts and little or no remedy to vindicate a deprivation of constitutional rights. The district court's ruling that First Choice's constitutional claims are not ripe will only encourage politically motivated abuses of power by state attorneys general across the country. Petitioner's brief details how the New Jersey Office of the Attorney General ("NJ-OAG") has used its authority to intimidate and harass pregnancy resource centers. This brief will show that the NJ-OAG's unrestrained use of power goes beyond targeting pregnancy centers, reaching any of the politically disfavored.

## ARGUMENT

The separation of powers is a fundamental principle of American government and is codified in the New Jersey Constitution, which states that the "powers of the government shall be divided among three distinct branches, the legislative, executive, and judicial. No person or persons belonging to or constituting one branch shall exercise any of the powers properly belonging to either of the others, except as expressly provided in this Constitution." *N.J. Const. art. III, ¶ 1*. "Separation of powers is premised on the theory that government works best when each branch of government acts independently and within its designated sphere, and does not attempt to gain dominance over another branch." *Communications Workers of America AFL-CIO v. New Jersey Civil Service Com'n*, 234 N.J. 483, 508 (2018). It is a "self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Buckley v. Valeo*, 424 U.S. 1, 122 (1976).

In New Jersey, all executive power resides with the governor. See *N.J. Const. art. V, §1, ¶1*. The Attorney General “occupies a unique position in the executive branch.” *In re veto by Governor Christie of Minutes of New Jersey Racing Comm’n from June 29*, 429 N.J. Super. 277, 287 (App. Div. 2012). Its authority is constitutional and can only be increased, altered, or shortened by legislative enactment. *Id.*; see also *N.J. Const., art. V, § 4, ¶ 1*. Any other actions outside legislative authority can only be taken “as prescribed by the Governor.” See *N.J.S.A. 52:17B4*. Additionally, the New Jersey Uniform Ethics Code prohibits all state officers from knowingly acting in a way that might reasonably create the impression or suspicion among the public that such conduct breaches trust.<sup>2</sup> It also forbids state employees from using state time or resources for political activities. Despite these constitutional, legislative, and ethical rules, the NJ-OAG continues to act based on an unbridled, flawed, and constitutionally suspect interpretation of its authority.

Evidence of this first surfaced during the appointment proceedings of the current Attorney General, which suggested political considerations over merit and fidelity to the rule of law. A 2019 New Jersey Legislative Select Oversight Committee found that the governor’s nominee for Attorney General had previously taken actions showing a failure to perform duties fairly and impartially, a fundamental misunderstanding of the law, and an attempt to handle a sensitive political issue “from the shadows.” The Committee concluded that the nominee’s involvement in this earlier matter indicated more concern

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2. New Jersey Uniform Ethics Code, State Ethics Commission, April 2021.

with avoiding negative publicity than with following proper procedures and uncovering the truth. Additional troubling findings included that the testimony given was contradictory, evasive, misleading, and inconsistent, which harmed credibility.<sup>3</sup> Despite this negative assessment by the report, the appointee was nominated and confirmed.

Next, testimony from the appointee's confirmation hearing showed a hesitance to directly acknowledge the importance of the constitutional principle of separation of powers. The appointee was asked about previous advice given to the governor during the COVID-19 pandemic and whether the governor's use of executive orders violated the Constitution, the separation of powers doctrine, and whether issuing these policies fit with the legislature's role as the main policy-making body. Specifically, when asked if advising the governor to keep liquor stores open while shutting down churches violated the constitutional right to freedom of religion, the appointee refused to answer, saying that professional conduct rules prevented the disclosure of attorney-client communications. The appointee argued that this prevented an answer, yet during more than 100 COVID-19 press conferences throughout the pandemic, such information was clearly shared.<sup>4</sup>

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3. See *Report of the New Jersey Legislative Select Oversight Committee Concerning the Hiring of Albert J. Alvarez as Chief of Staff at the New Jersey Schools Development Authority*, June 5, 2019.

4. Senate Judiciary hearing, 2022-2023 Legislative Session (N.J. August 8, 2022), available at <http://njleg.state.nj.us/archived-media/2022/SJU-meeting-list/media-player?committee=SJU&agendaDate=2022-08-08-11:00:00&agendaType=M&av=A> (marker 0:40:20 to 0:45:26).

Most importantly, in April 2025, testimony presented to the New Jersey Senate Budget and Appropriations Committee confirmed that the NJ-OAG misunderstood its authority. The testimony established that the NJ-OAG considers two questions before exercising its power: Is there a legal violation, and are New Jersey residents being harmed?<sup>5</sup> The first question clearly defines the NJ-OAG's authority. However, it is the Attorney General's reliance on the second question that raises concerns.

The numerous partisan public statements issued by the NJ-OAG demonstrate how the office decides when and which citizens are “hurt.” Using the office as a politicized platform, the NJ-OAG has claimed that millions of citizens were “hurt” by this Court's *Dobbs* decision;<sup>6</sup> that citizens are “hurt” when gun control laws are not enforced;<sup>7</sup> and

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5. Senate Budget and Appropriations (Budget Hearings Only), 2024-2025 Legislative Session (statement of Attorney General Matthew Platkin), (N.J. April 3, 2025), <http://njleg.state.nj.us/archived-media/2024/SBAB-meeting-list/media-player?committee=SBAB&agendaDate=2025-04-03-10:00:00&agendaType=H&av=V> (marker 2:34:38 to 2:34:26).

6. See Press Release, NJ-OAG, *Statement from Acting Attorney General Matthew J. Platkin on the U.S. Supreme Court decision in Dobbs v. Jackson Women's Health Organization* (June 24, 2022), <http://www.njoag.gov/statement-from-acting-attorney-general-matthew-j-platkin-on-the-u-s-supreme-court-decision-in-dobbs-v-jackson-womens-health-organization/>.

7. See Press Release, NJ-OAG, *After Suing Trump Administration, AG Platkin Secures Representations from ATF and Country's Largest Purveyor of Forced Reset Triggers to Prevent Their Return and Sale in New Jersey and 15 Other Jurisdictions* (July 11, 2025), <http://www.njoag.gov/attorney-general-platkin-blocks-returns-and-sales-of-machine-gun-conversion-devices-in-new-jersey/>.

that children are “hurt” when locally elected Boards of Education implement policies requiring that parents be notified if their child shows signs of gender dysphoria.<sup>8</sup> Such public statements tend to create a reasonable impression that the NJ-OAG uses its authority to take a side on partisan political issues, rather than narrowly focusing on the rule of law and respect for the courts. One of the most egregious statements was made on June 23, 2022, when the NJ-OAG criticized this Court’s decision in *New York State Rifle & Pistol Association v. Bruen* and said,

The decision today ... is bad constitutional law and even worse for public safety. At a time when we are experiencing a nationwide epidemic of gun violence and all-too frequent reports of deadly mass shootings, this dangerous decision makes it harder to combat the proliferation of deadly weapons in our communities and our public spaces. Plain and simple, the majority’s decision disregards centuries of practice and recklessly enables violence.<sup>9</sup>

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8. See Press Release, NJ-OAG, *New Policies Enacted by Three Boards of Education Require Staff to Reveal Gender Identity of Transgender, Gender Non-Conforming, and Gender Non-Binary Students in Violation of the New Jersey Law Against Discrimination* (June 22, 2023), <http://www.njoag.gov/ag-platkin-dcr-announce-filing-of-civil-rights-complaints-and-applications-seeking-to-immediately-prohibit-implementation-of-lgbtq-parental-notification-policies/>.

9. See Press Release, NJ-OAG, *Statement from Acting Attorney General Matthew J. Platkin on the U.S. Supreme Court’s Decision in New York State Rifle & Pistol Association, Inc. v. Bruen* (June 23, 2022), <http://www.njoag.gov/statement-from-acting-attorney-general-matthew-j-platkin-on-the-u-s-supreme-courts-decision-in-new-york-state-rifle-pistol-association-inc-v-bruen/>.

During recent testimony before the Senate Budget and Appropriations Committee, the NJ-OAG was asked about its criticism of the *Bruen* decision. A senator accused the NJ-OAG of fear-mongering after it made statements suggesting that New Jersey would turn into the Wild West following *Bruen*. In response, the NJ-OAG testified that, based on empirical data, many longitudinal studies have shown—and it also makes intuitive sense—that when more people carry firearms, there is more gun violence. It was stated, “That is a fact.” The senator countered that in the six months after *Bruen*, 60,000 new carry permit applications were issued, compared to the 1,500 applications issued over nearly two and a half years prior to *Bruen*. The senator then asked, if shootings are decreasing yet almost 60,000 more people now have permits, how can the NJ-OAG claim that more guns lead to more violence? The senator also pointed out that gun permit fees in New Jersey are extremely high—some have increased by 1,000%—and that the process to obtain a permit is highly invasive, time-consuming, and must be renewed every two years. He asked if the NJ-OAG believes that only rich people with lots of time on their hands should be able to exercise their constitutional right to carry a firearm. Finally, the senator questioned whether it would be appropriate to impose a fee on someone’s constitutional right to vote or free speech. The NJ-OAG evaded each question by refusing to provide a direct answer.<sup>10</sup>

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10. Senate Budget and Appropriations (Budget Hearings Only), 2024-2025 Legislative Session (N.J. April 3, 2025) (statement of Attorney General Matthew Platkin), available at <http://njleg.state.nj.us/archived-media/2024/SBAB-meeting-list/media-player?committee=SBAB&agendaDate=2025-04-03-10:00:00&agendaType=H&av=V> (marker 1:58:40 to 1:51:57).

Less than a month after the *Bruen* decision, the NJ-OAG established an additional organizational unit to advance its ideological opposition to supporting the Second Amendment.<sup>11</sup> Specifically, the NJ-OAG created the Statewide Affirmative Firearms Enforcement Office (SAFE), a first-in-the-nation agency tasked with pursuing civil enforcement actions against firearm companies for allegedly compromising the health and safety of New Jersey residents.<sup>12</sup>

In addition to partisan public statements, another example of actions that undermine public trust is the NJ-OAG’s use of secretive and confidential investigative methods, mainly carried out by individuals and entities under its control. For instance, in June 2023, the NJ-OAG filed complaints with the Division of Civil Rights (“DCR”) challenging policies adopted by several Boards of Education (“BOEs”) in New Jersey regarding how schools handle students who express a desire to be transgender.<sup>13</sup>

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11. See NJ-OAG Administrative Executive Directive No. 2022-08, [http://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2022-8\\_Directive-Codifying-the-Statewide-Affirmative-Firearms-Enforcement-Office.pdf](http://www.nj.gov/oag/dcj/agguide/directives/ag-Directive-2022-8_Directive-Codifying-the-Statewide-Affirmative-Firearms-Enforcement-Office.pdf)

12. Statewide Affirmative Firearms Enforcement (SAFE) Office, <http://www.njoag.gov/about/divisions-and-offices/statewide-affirmative-firearms-enforcement-office-home/>.

13. See Press Release, NJ-OAG, *AG Platkin Announces Filing of Civil Rights Complaint and Application Seeking to Immediately Prohibit Implementation of Hanover Township Board of Education’s LGBTQ+ Parental Notification Policy* (May 17, 2023), <http://www.njoag.gov/ag-platkin-announces-filing-of-civil-rights-complaint-and-application-seeking-to-immediately-prohibit-implementation-of-hanover-township-board-of-educations-lgbtq-parental-notification-policy/>.

The NJ-OAG claimed that the policies' requirement for school staff to "out" these students to their parents violated the New Jersey Law Against Discrimination ("LAD") and could seriously threaten students' safety and mental health. In pursuing these issues, the NJ-OAG only sought injunctive relief in the Superior Court of New Jersey. This attracted significant media coverage and enabled the NJ-OAG to declare a "win" when the court issued a preliminary injunction.

Of interest, the NJ-OAG chose not to file the complaint itself in the Superior Court. Instead, it filed the complaint with the DCR, which is under its direct control and is not obligated to strictly follow New Jersey's rules of evidence or court procedures. Its investigatory files remain confidential and are exempt from public access under N.J.A.C. 13:4-13.1 and N.J.S.A. 47:1A-1 et seq. By filing with the DCR rather than the Superior Court, the NJ-OAG gained media attention and exploited the clear power imbalance between itself and the locally elected BOE members. Over two years later, no information about the DCR's investigation has been disclosed, and the public remains unaware of the status of these complaints.

Similar to the DCR, the New Jersey Office of Public Integrity and Accountability (OPIA) also operates under the supervision and authority of the NJ-OAG. However, unlike the NJDCR, there is no administrative code guidance for the specific operations of the OPIA. Instead, the NJ-OAG, in coordination with OPIA, developed its policies and procedures to conduct investigations. Many in the state government have been highly critical of the NJ-OAG's failure to address significant issues within OPIA, including not resolving cases in a timely manner,

withholding exculpatory evidence, and using the office to generate favorable headlines.<sup>14</sup> In 2024, the NJ-OAG and the OPIA accused prominent businessmen and a mayor of extortion and racketeering. In February 2025, a federal judge dismissed all indictments in the case, finding there was no evidence to support the charges.<sup>15</sup> It was alleged that the NJ-OAG used its power to target individuals it disagreed with politically, causing professional and financial damage to these individuals and tarnishing the office’s reputation.<sup>16</sup>

By defining its role and grounding its authority in protecting New Jersey residents from being “hurt” rather than solely relying on a duty to enforce laws passed by democratically elected legislators, the NJ-OAG’s interpretation of its powers naturally leads to the weaponization of the office. Ironically, those who are most likely to be “hurt” are those not politically aligned with the NJ-OAG—like prolife pregnancy resource centers. As the full power of NJ-OAG is wielded against political outsiders, the constitutional injury suffered is particularly acute when they are denied access to the federal courts.

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14. See *Assembly Resolution Adopting Articles of Impeachment in the Matter of Matthew Platkin*, February 27, 2025.

15. See *State of New Jersey v. Norcross, et als.*, Indictment No. 24-06-00111-S, Order Granting Motion to Dismiss Indictment by the Hon. Peter E. Warshaw, Jr., P.J.Cr.

16. See *Assembly Resolution Adopting Articles of Impeachment in the Matter of Matthew Platkin*, February 27, 2025.

Finally, when the NJ-OAG takes legal action without the approval of either the Governor or Legislature, but solely relies on a determination that citizens were “hurt,” it undermines transparency, accountability, and public trust in the State’s legal processes. This creates an environment of cynicism, which is further exacerbated when the NJ-OAG engages in legal maneuvers to deprive citizens of access to the federal courts to adjudicate constitutional claims.

## CONCLUSION

If this court permits the lower court’s decisions to stand, citizens of New Jersey will be left without a means to challenge politically motivated legal actions by the NJ-OAG. This is particularly troubling where the objective of the NJ-OAG is to chill First Amendment rights of the politically disfavored.

Respectfully submitted,

KEVIN T. SNIDER  
Chief Counsel  
*Counsel of Record*  
PACIFIC JUSTICE INSTITUTE  
NORTHERN CALIFORNIA OFFICE  
P.O. Box 276600  
Sacramento, CA 95827  
(916) 857-6900  
ksnider@pji.org

*Attorney for Amicus Curiae*