No. 24-781

In the Supreme Court of the United States

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

v.

MATTHEW J. PLATKIN,
ATTORNEY GENERAL OF NEW JERSEY,
Respondent.

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

BRIEF FOR SAMARITAN'S PURSE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*

Samaritan's Purse is a nondenominational, evangelical Christian organization that provides spiritual and physical aid worldwide. It has first-hand experience with the type of investigatory demand that First Choice faces here. Since 2016, Samaritan's Purse has developed the capacity to deploy Emergency Field Hospitals at short notice to provide emergency medical relief in disaster-stricken areas where medical infrastructure is damaged, overwhelmed, or nonexistent. In that time, it has cared for tens of thousands of patients, providing critical medical care. At maximum capacity, the staff at an Emergency Field Hospital can treat more than 200 patients and perform 15 to 30 surgeries daily—functioning as a full hospital.[*]

Usually these deployments are in other countries. But in 2020, New York Gov. Andrew Cuomo issued orders to create at least 50% more hospital beds to prepare for a spike in COVID infections.[1] The Mount Sinai Health System invited Samaritan's Purse to help it achieve this increased capacity, with one official explaining: "With nearly half of all U.S. cases occurring in New York City, the hospitals are overrun

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[*] No counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, its members, or its counsel monetarily contributed to it.

[1] See *Coronavirus Field Hospital In Central Park Shutting Down On Monday*, CBS News (May 2, 2020), https://perma.cc/GCK6-Z5F8.

and in desperate need of added capacity."[2] In two days, Samaritan's Purse set up a field hospital in Central Park with 68 beds, 10 ICU rooms, and 10 ventilators to handle overflow from Mount Sinai.[3] Mount Sinai's Chief of Emergency Medicine said that its "partnership with Samaritan's Purse will allow us to expand inpatient and critical care capacity to meet this growing need," and "[w]e thank them and our governmental partners for joining us in this fight to stop this pandemic."[4] Samaritan's Purse would provide medical care for hundreds of patients before the spring 2020 COVID wave subsided.

For this requested help, though, Samaritan's Purse earned itself investigatory demands from hostile government officials. Samaritan's Purse is a Christian organization and holds a belief that "long has been held—and continues to be held—in good faith by reasonable and sincere people here and throughout the world": that marriage is between one man and one woman. *Obergefell* v. *Hodges*, 576 U.S. 644, 657 (2015). In treating patients, of course, Samaritan's Purse makes no "distinctions about an individual's religion,

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[2] H. Leah, *Step Inside Samaritan's Purse Field Hospital in NYC*, WRAL News (Apr. 9, 2020), https://perma.cc/U6G6-YUNA.

[3] See E. Feldman, *How a Nonprofit Built a Hospital in Central Park in a Matter of Days*, NY 1 (Mar. 27, 2025), https://perma.cc/KF5B-MGDY.

[4] Press Release, *Samaritan's Purse, in Collaboration with Mount Sinai Health System, Opens Emergency Field Hospital in New York's Central Park in Response to the Coronavirus Pandemic*, Mount Sinai Health System (Apr. 1, 2020), https://perma.cc/TAV7-HRXT.

race, sexual orientation, or economic status"[5]—it treats anyone in need, regardless of their faith or background. And its volunteers in New York put themselves "in a 100% COVID-positive zone, surrounded by infectious patients," treating them all.[6]

In the midst of caring for sick COVID patients that had nowhere else to go, Samaritan's Purse was subjected to demands for documents and other information from eight Democratic members of Congress, the New York City Commission on Human Rights, and other groups. On April 10, 2020—Good Friday, just days after the field hospital opened—the Commission served a "demand for production of documents" on Samaritan's Purse under § 8-114(b) of the Administrative Code of the City of New York. Setting a response deadline of one week, the Commission demanded copies of a wide range of internal policies, sensitive medical treatment information, and training materials. It also demanded that Samaritan's Purse respond to several interrogatories. Samaritan's Purse was forced to devote precious time and resources to responding to this ideological harassment. The Commission eventually closed the investigation, finding that Samaritan's Purse had not discriminated against any patients.

Given this experience, Samaritan's Purse has a significant interest in this case.

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[5] T. Fitzsimons, *Group Behind Central Park's COVID-19 Field Hospital*, NBC News (Mar. 31, 2020), https://perma.cc/X3WT-9M3A.

[6] Leah, *supra* note 2.

SUMMARY OF THE ARGUMENT

Government action that reasonably chills speech and association works an Article III injury. Often, government investigatory demands—especially into an organization's speech and supporters—will impose an objectively reasonable chill. This Court's precedents recognize that compelled disclosure to hostile government officials can inherently undermine speech and association. So a claimant faced with a government subpoena carrying the force of law that demands information about protected speech and association easily has an ongoing injury that satisfies Article III. That present injury stems from the government demand and is not contingent on further proceedings or the merits of the First Amendment claim.

This brief makes two points in support of reversal. First, compelled disclosure to the government can be inherently harmful to speech and association. These rights are at the core of the First Amendment, and they are undermined when the government uses its authority to compel disclosure of communications, internal processes, and supporters. Article III's injury requirement is satisfied if the government's action reasonably chills the claimant's speech or association.

Second, applying these principles here confirms that First Choice satisfies Article III's standing and ripeness requirements. Any government action *could* sufficiently chill speech or association, and the more coercive the government action, the more likely it is that the claimant will be able to show an objectively reasonable chill. Here, much like Samaritan's Purse, First Choice has been subjected to a government

subpoena carrying the force of law requiring it to divulge sensitive internal information—including about its donors—to hostile government officials. This Court routinely adjudicates First Amendment cases even before any statutory enforcement. First Choice has already seen New Jersey law enforced against it in the form of a subpoena, disobedience of which may subject First Choice to immediate contempt. Plus, New Jersey has already sought—and received—enforcement of the subpoena in state court. And though forced disclosure of supporters by default chills association, First Choice has both alleged and presented evidence that its speech and association have been chilled. Because these chills are objectively reasonable, First Choice has shown a present injury sufficient for standing and ripeness.

For these reasons, the Court should reverse.

ARGUMENT

I. Compelled disclosure works an injury when it reasonably chills speech and association.

Speech and association are core constitutional rights that can be chilled by compelled disclosure regimes. Because of the breathing room needed to protect these rights, a claimant has a cognizable injury if it can show that some government action has imposed an objectively reasonable chill on its speech or association.

A. Compelled disclosure can chill speech and association.

Speech and association are "indispensable liberties" fully protected by the First Amendment. *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 461 (1958). These rights are "closely allied" and "lie[] at the foundation of a free society." *Shelton* v. *Tucker*, 364 U.S. 479, 486 (1960). "This Court has 'long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others.'" *Americans for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 606 (2021) (quoting *Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984)). "Protected association furthers a wide variety of political, social, economic, educational, religious, and cultural ends, and is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority." *Ibid.* (cleaned up). Thus, freedom of association is "an indispensable means of preserving other individual liberties." *United States Jaycees*, 468 U.S. at 618.

"Government infringement of this freedom" can arise from "compelled disclosure of affiliation with groups engaged in advocacy," for such disclosure "may constitute as effective a restraint on freedom of association as other forms of governmental action." *Americans for Prosperity*, 594 U.S. at 606 (cleaned up). "Anonymity is a shield from the tyranny of the majority." *McIntyre* v. *Ohio Elections Comm'n*, 514 U.S. 334, 357 (1995). Especially "when the objective of the group or the group itself is unpopular at a given time or place, revelation of the identities of those who have joined themselves together or have affiliated with the group may provoke reprisals from those opposed to the group or its objectives." *Pollard* v. *Roberts*, 283 F. Supp. 248, 256 (E.D. Ark.), *aff'd*, 393 U.S. 14 (1968). "[T]he occurrence or apprehension of such reprisals tends to discourage the exercise of the rights which the Constitution protects." *Ibid.*; see *NAACP*, 357 U.S. at 462 ("Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.").

Further, "disclosure requirements can chill association even if there is no disclosure to the general public." *Americans for Prosperity*, 594 U.S. at 616 (cleaned up). Impermissible pressure on speech and association may be exerted "simply by disclosing . . . associational ties" to the government. *Ibid.* Thus, government-compelled disclosure related to speech and association can chill the exercise of those rights.

B. An objectively reasonable chill on speech or association from government action is a cognizable injury.

"[B]ecause First Amendment freedoms need breathing space to survive," "[t]he risk of a chilling effect" on speech or association "is enough" for an Article III injury. *Americans for Prosperity*, 594 U.S. at 618–19. It is well-settled that "governmental action may be subject to constitutional challenge even though it has only an indirect effect on the exercise of First Amendment rights." *Laird* v. *Tatum*, 408 U.S. 1, 12–13 (1972); see *Meese* v. *Keene*, 481 U.S. 465, 472 (1987) ("the governmental action need not have a direct effect on the exercise of First Amendment rights"). "After all, 'the threat of invoking legal sanctions and other means of coercion, persuasion, and intimidation' may cause self-censorship in violation of the First Amendment just as acutely as a direct bar on speech" or association. *Speech First, Inc.* v. *Sands*, 144 S. Ct. 675, 676 (2024) (Thomas, J., dissenting) (quoting *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 67 (1963)); see *Sorrell* v. *IMS Health Inc.*, 564 U.S. 552, 566 (2011) (The government "may no more silence unwanted speech by burdening its utterance than by censoring its content.").

This rule is consistent across the First Amendment. As this Court has long held, "indirect 'discouragements' [can] have the same coercive effect upon the exercise of First Amendment rights as imprisonment, fines, injunctions or taxes." *Am. Commc'ns Ass'n* v. *Douds*, 339 U.S. 382, 402 (1950). For that reason, the First Amendment generally "protects against indirect coercion or penalties," "not

just outright prohibitions." *Carson* v. *Makin*, 596 U.S. 767, 778 (2022) (cleaned up); see *Trinity Lutheran Church of Columbia, Inc.* v. *Comer*, 582 U.S. 449, 463 (2017) (same). Even a "*possible* deterrent effect" suffices, and "severe burdens" are unnecessary. *Americans for Prosperity*, 594 U.S. at 611, 616.

The "fundamental question" in cases alleging injury in the form of a chill on speech or association "is whether the challenged [action] 'objectively chills' protected expression." *Speech First, Inc.* v. *Cartwright*, 32 F.4th 1110, 1120 (CA11 2022) (Newsom, J.). Of course, "[a]llegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm." *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 418 (2013) (quoting *Laird*, 408 U.S. at 13–14). But a present or impending objective chill *is* an adequate Article III injury. Put another way, "a chilling effect on the exercise of a plaintiff's First Amendment rights may amount to a judicially cognizable injury in fact, as long as it arises from an objectively justified fear of real consequences." *Initiative & Referendum Inst.* v. *Walker*, 450 F.3d 1082, 1088 (CA10 2006) (en banc) (McConnell, J.) (cleaned up).

This Article III "question is *not* whether the alleged injury rises to the level of a constitutional violation. That is the issue on the merits." *Ibid.* (emphasis added). As this Court has explained, whether the government action "in fact constitutes an abridgement of the plaintiff's freedom of speech is . . . irrelevant to" Article III's jurisdictional requirements. *Meese*, 481 U.S. at 473. No matter if the claim might fail on the merits, a claimant with an objectively reasonable chill

on its speech and association should at least be able to assert its claim in federal court.

II. Government investigatory demands like this subpoena can objectively chill speech and association.

As shown above, in First Amendment cases, Article III's injury requirement is satisfied when government action imposes an objectively reasonable chill on speech or association. Any government action *could* give rise to a chill on speech or association, and that chill is more likely to be objectively reasonable as the government's action becomes more coercive. See *Pittman* v. *Cole*, 267 F.3d 1269, 1280 (CA11 2001) ("[I]f a party is to suffer an 'immediate and direct impact' from a challenged policy, a case is more likely to be considered ripe."); cf. *Ohio Forestry Ass'n, Inc.* v. *Sierra Club*, 523 U.S. 726, 733 (1998) (distinguishing government actions for ripeness purposes on whether they "command anyone to do anything or to refrain from doing anything"); *United States* v. *Los Angeles & S.L.R. Co.*, 273 U.S. 299, 309–10 (1927) (similar).

A government investigatory demand like the subpoenas received by First Choice and Samaritan's Purse are highly coercive: they have the force of law and typically demand disclosures on pain of contempt. Federal courts have jurisdiction to review even cases involving "threatened enforcement" of government action, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 165 (2014), and an issued subpoena is *actual* enforcement. This case is especially easy, since New Jersey has also sought—and received—enforcement via state court of its subpoena. Though compelled disclosure under such a subpoena, especially of an

organization's private donors, imposes a reasonable chill practically by default, First Choice has provided ample allegations and evidence of an objective chill to speech and association to prevail at the motion-to-dismiss and preliminary relief stages.

A. The subpoena compels disclosure and is thus a government action that readily chills speech and association.

Any government action may chill speech and association, and an important component underlying the reasonableness of a claimed chill is the coerciveness of the government action. Of course, even "informal sanctions" "may sufficiently inhibit" speech or association. *Bantam Books*, 372 U.S. at 67; see *Cartwright*, 32 F.4th at 1123. But here, First Choice has been subjected to a subpoena that "commanded" it "to produce" a breathtaking range of internal documents, communications, and personal donor information. Pet. 89a–110a. Despite the State's repeated efforts to downplay the force of its own subpoena, this subpoena "shall have the force of law." N.J. Stat. Ann. § 56:8-4. As the subpoena admonishes—and New Jersey law confirms—First Choice will be "liable for contempt of Court and such other penalties as are provided by law" absent compliance. Pet. 90a; see N.J. Stat. Ann. §§ 45:17A-33(g), 56:8-6 (providing for contempt, monetary penalties, and an injunction against business operations).

"[T]hreatened enforcement of a law" can "create[] an Article III injury" because of a reasonable chill on speech or association. *Susan B. Anthony List*, 573 U.S. at 158; see *id.* at 158–59 (collecting examples). "If a

reasonable threat of prosecution creates a[n] [Article III] controversy," it is impossible "to see how the actual filing of the administrative action threatening sanctions in this case does not." *Id.* at 165 (quoting *Ohio Civil Rights Comm'n* v. *Dayton Christian Schools, Inc.*, 477 U.S. 619, 625–26 n.1 (1986)). This Court has squarely held that "administrative action, like arrest or prosecution, may give rise to harm sufficient to justify pre-enforcement review." *Ibid.*

Thus, the Court has routinely adjudicated similar claims "after a subpoena or summons ha[s] already been served." *California Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 56 & n.25 (1974) (collecting cases). When "particular . . . inquiries and demands" implicate speech and association, "the courts are called upon to, and must, determine the permissibility of the challenged actions." *Gibson* v. *Fla. Legis. Investigation Comm.*, 372 U.S. 539, 545 (1963); cf. *NLRB* v. *Catholic Bishop of Chicago*, 440 U.S. 490, 502 (1979) (emphasizing that "[i]t is not only the conclusions that may be reached . . . which may impinge on rights guaranteed by the [First Amendment], but also the very process of inquiry leading to findings and conclusions").

Following these precedents here makes good sense. For all New Jersey's obfuscation, it has exercised the full weight of state authority to *order* First Choice to produce all manner of internal documents, on explicit pain of contempt and closure. "[T]here is no hypothetical harm or a threatened future enforcement action because the . . . investigation has already begun" and First Choice has been ordered to reveal

sensitive internal information. *Media Matters for Am.* v. *Paxton*, 138 F.4th 563, 582 (CADC 2025).

Put another way, this case can be viewed as an as-applied challenge to New Jersey law permitting the Attorney General to issue subpoenas like this. See *Pollard*, 283 F. Supp. at 255 (understanding a similar challenge this way). On that understanding too, enforcement of the challenged law has already occurred: New Jersey has relied on it to issue the allegedly unlawful subpoena, which commands a response on pain of contempt. See N.J. Stat. Ann. § 56:8-6. "There is no occasion in this case for speculation about prosecutorial discretion, or whether the law will be enforced against" First Choice, for it already has been. *Walker*, 450 F.3d at 1090.

A hypothetical proves the point. If New Jersey enacted a regulation with the same requirements as this subpoena—including forcing detailed disclosure of otherwise anonymous donors—standing and ripeness in a challenge to this regulation would be blindingly obvious, even before any enforcement. For instance, *Americans for Prosperity* and *Citizens United* v. *Federal Election Commission*, 558 U.S. 310, 366–71 (2010), both adjudicated challenges to donor disclosure regulations, without worry about standing or ripeness. See BIO 28 (New Jersey noting that ripeness in *Americans for Prosperity* "was uncontested" "for good reason"). From the view of the subpoena recipient, a subpoena with the force of law imposing identical disclosures requirements on the recipient is no less coercive than a general regulation. The main difference is that First Choice is already

subject to enforcement of the disclosure requirement, making its injury more apparent.

That the subpoena alone is enough to give rise to an Article III injury is also confirmed by the fact that this Court's precedents have found cognizable injuries from far less coercive government actions. For instance, the plaintiff in *Meese* "was deterred from exhibiting [his] films by a statutory characterization of the films as 'political propaganda.'" 481 U.S. at 473 (cleaned up). Relying on "an opinion poll" and "the views of an experienced political analyst," the plaintiff alleged that this classification would "harm his chances for reelection" and "adversely affect his reputation in the community." *Id.* at 473–74. The Court held that this was a "cognizable injury," even though there was no "direct effect on the exercise of his First Amendment rights" (and even though the claim failed on the merits). *Id.* at 473; see *id.* at 480.

The Court's decision in "*Meese* demonstrates that, in some cases, First Amendment plaintiffs can assert standing based on a chilling effect on speech even where the plaintiff is not subject to criminal prosecution, civil liability, regulatory requirements, or other direct effects." *Walker*, 450 F.3d at 1096 (cleaned up). Necessarily, a plaintiff subject to a subpoena—a direct command with the force of law carrying penalties—can assert a chilling effect.

Because this subpoena is government action likely to give rise to a reasonable chill, whether it has been followed by any enforcement action does not matter. As Judge McConnell has explained, in cases involving chilled speech and association, whether the government has taken further "formal enforcement

action[s]" is not dispositive: "We cannot ignore such harms just because there has been no need for the iron fist to slip its velvet glove." *Id.* at 1088. Self-censorship is "a harm that can be realized even without an actual prosecution." *Virginia* v. *Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988).

Yet here, New Jersey *has* "initiated enforcement proceedings" to punish First Choice for failing to respond to the subpoena. Pet. 38a. On top of that, the state courts have already agreed with New Jersey and ordered First Choice to respond to the subpoena. Pet. 158a. Any of these government actions—all *actual* enforcement—easily suffices to undergird a showing of an objectively reasonable chill for Article III purposes.

B. First Choice has shown a reasonable chill on speech and association.

The only remaining question is whether First Choice has adequately shown a reasonable chill from the State's actions. As just discussed, the coerciveness of New Jersey's actions make an objective chill a near-certainty. And because the district court dismissed the complaint, First Choice need only allege facts showing such a chill. See *Susan B. Anthony List*, 573 U.S. at 158; see also Pet. 4a. First Choice easily clears this hurdle. Indeed, First Choice has supplied evidentiary proof of this chill, making it likely to succeed on the merits of showing that the case is ripe.

Starting with the complaint, First Choice alleges that, due to the small size of its organization and the massive demands of the subpoena, complying with the subpoena would force staff members to reduce "communicati[ons] with essential supporters." Pet.

130a. What's more, "[d]isclosure of documents that identify First Choice's donors, as required by the [s]ubpoena, will likely result in a decrease in donations, as donors will be hesitant to associate with the Ministry out of fear of retaliation and public exposure." *Ibid.* And "[d]isclosure of the identities of First Choice's employees will likely cause" some to leave, further limiting First Choice's ability to communicate with women. *Ibid.* Last, "[d]isclosure of the nature of First Choice's relationships with other organizations, as the [s]ubpoena demands, will likely cause those associates to end their association with the Ministry out of fear of retaliation, public disclosure, and investigation into their own activities." Pet. 131a.

These allegations are taken as true, and the fear they express is objectively reasonable, for all the reasons explained above. That "the activities of" First Choice and its supporters could be "'chilled' by enforcement of this subpoena seems self-evident." *Whole Woman's Health* v. *Smith*, 896 F.3d 362, 373 (CA5 2018).

First Choice also provided evidence making it likely to succeed in proving a reasonable chill on its speech and association. Multiple donors stated that they "would have been less likely to donate to First Choice if we had known information about the donation might be disclosed to an official hostile to pro-life organizations." Pet. 177a. First Choice's director emphasized the importance of its donors' confidentiality and the likelihood "that divulging [their] information would harm our current relationships with these individuals and affiliates"

and limit speech and association with new supporters. Pet. 182a–84a.

Again, this actual chill is reasonable, so First Choice has shown it is likely to succeed—and thus entitled to preliminary relief—on its claims. The courts below erred in dismissing the complaint and denying preliminary relief.

C. New Jersey's contrary arguments lack merit.

The scattershot efforts by New Jersey and the decisions below to show that this case is unripe are unavailing.

First, New Jersey has insisted that "Petitioner will not need to produce documents in response or face any penalties unless the state court decides to enforce the subpoena." BIO 27. Putting aside that this already happened, see Pet. 158a, New Jersey's statement is inconsistent with state law, which says that First Choice is under an order carrying "the force of law" to produce those documents. N.J. Stat. Ann. § 56:8-4; contra Pet. 37a (the district court incorrectly stating that subpoena "does not yet carry the power of law").

True, First Choice cannot be subject to contempt without proceedings after the subpoena, but that only reinforces the point. "The word 'contempt' signifies a public offense. It refers to a contempt of Government; there is no such thing as a contempt of a litigant." *Dep't of Health* v. *Roselle*, 169 A.2d 153, 156 (N.J. 1961). Thus, contempt "consists of a defiance of governmental authority." *Ibid.*; see Contempt, *Black's Law Dictionary* (12th ed. 2024) ("disobedience of or disrespect of lawful authority"). New Jersey's

"statutory penalties [for disobeying this type of subpoena] are, by their very nature, retributive: a sanction for wrongful conduct." *Smith & Wesson Brands, Inc.* v. *Att'y Gen. of New Jersey*, 27 F.4th 886, 893 (CA3 2022) (cleaned up).

That First Choice could be liable for contempt for failing to comply with the subpoena confirms that the subpoena is itself an exercise of governmental authority mandating compliance. "It would be naive to credit the State's assertion that" this subpoena is "in the nature of mere legal advice" when it "plainly serve[s] as [an] instrument[] of regulation." *Bantam Books*, 372 U.S. at 68–69; cf. *Speech First, Inc.* v. *Whitten*, 145 S. Ct. 701, 703 (2025) (Thomas, J., dissenting from denial of certiorari) (explaining in this context that "courts must 'look through forms to the substance' of the government's 'informal sanctions'" (quoting *Bantam Books*, 372 U.S. at 67)).

The district court said that First Choice "only risks a potential injury" "*if*" the state court "threatens" it "with contempt." Pet. 38a–39a. But it is New Jersey law that "threatens" First Choice with contempt for failing to respond to the subpoena—and New Jersey is trying to enforce that law. Though the district court insisted that contempt may be imposed "only after the subpoenaed party violates a court order," Pet. 43a (emphasis omitted), that is not what New Jersey law says. The only statutory predicate for contempt is a failure to "obey any subpoena issued by the Attorney General." N.J. Stat. Ann. § 56:8-6; cf. Pet. 42a n.22 (the district court conceding that "it is possible for the Superior Court to threaten contempt at any point during the proceedings").

At any rate, while potential "[p]unishment is no doubt relevant to the objective-chill analysis, and may well be sufficient to prove the requisite chill," "it is not decisive" or "uniformly necessary." *Cartwright*, 32 F.4th at 1122. Receiving a subpoena is enough for a reasonable chill. Active enforcement of that subpoena is *easily* enough for a reasonable chill. Both exist here.

Along the same lines, that New Jersey might fail in its effort to persuade the state courts to hold First Choice in contempt or to enforce other sanctions is irrelevant. As this Court has explained in the analogous context of potential prosecutions, "we have not thought that the improbability of successful prosecution" matters. *Dombrowski* v. *Pfister*, 380 U.S. 479, 487 (1965). "The chilling effect upon the exercise of First Amendment rights may derive from the fact of the prosecution, unaffected by the prospects of its success or failure." *Ibid.*

So it is here. While "[i]t is true that the [state courts] may rule completely or partially in [First Choice's] favor," "it was equally true that the plaintiffs" in this Court's many cases involving potential enforcement of a statute limiting speech "may have prevailed had they in fact been prosecuted." *Ohio Civil Rights Comm'n*, 477 U.S. at 626 n.1. That fact is irrelevant. The chilling effects stem from the government subpoena with the force of law and are amplified by enforcement of that subpoena. Those harms are unaffected by the prospects of New Jersey's success in seeking punishment for First Choice's non-compliance with the subpoena. Recognizing the breathing space necessary for First Amendment rights, this Court has rightly "avoided making

vindication of freedom of expression await the outcome of protracted litigation." *Dombrowski*, 380 U.S. at 487.

Despite Judge Bibas's reliance on *Americans for Prosperity*, Pet. 3a, New Jersey calls that decision "easily distinguishable" on the ground that it involved "a binding legal requirement." BIO 28. But New Jersey does not explain how its subpoena expressly carrying "the force of law" (N.J. Stat. Ann. § 56:8-4) is anything but "a binding legal requirement." New Jersey says that "charities were required to comply" with the California requirement in *Americans for Prosperity*, BIO 28, but "[f]or many years" they were not—because California was not enforcing the regulation. *Americans for Prosperity*, 594 U.S. at 602–03. Even once California began enforcing the regulation, it merely "threatened to suspend the[] registrations and fine the[] directors and officers" of the petitioners there. *Id.* at 603.

In other words, *Americans for Prosperity* involved contingent enforcement, but that contingency has never been understood to bar the assertion of a properly supported Article III injury from *threatened* enforcement. Again, if anything this case is easier, because First Choice has been subjected to actual enforcement in the form of a subpoena with the force of law and contempt penalties for noncompliance—*plus* enforcement in court by New Jersey. "[I]n the typical cases," "there is serious question whether the challenged statute or ordinance will be enforced against the plaintiff in the future." *Walker*, 450 F.3d at 1089–90. Here, however, there is no question: New Jersey already issued and is enforcing the subpoena.

For its part, the Third Circuit below said that First Choice "can continue to assert its constitutional claims in state court." Pet. 4a; see *ibid.* (referring to negotiations "to narrow the subpoena's scope"). But again, any "improbability of successful" enforcement in state court is insignificant in the face of a reasonable chill from the subpoena itself, along with its enforcement. *Dombrowski*, 380 U.S. at 487.

In passing, the Third Circuit suggested that "[c]laims must" "be ripe, both to be encompassed within Article III and as a matter of prudence." Pet. 4a. The court did not separate its cursory analysis by Article III and prudential considerations, and New Jersey does not appear to rely on prudential ripeness. For good reason: "deem[ing] petitioners' claims nonjusticiable on grounds that are 'prudential,' rather than constitutional" "is in some tension with [this Court's] recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Susan B. Anthony List*, 573 U.S. at 167 (cleaned up). In any event, First Choice's injury is happening and "does not depend on any uncertain, contingent future events, and the courts would gain nothing by allowing the issues . . . to develop." *Walker*, 450 F.3d at 1098.

Last, New Jersey appears to ignore the allegations in First Choice's complaint with facts showing an objectively reasonable chill. The Third Circuit said only that "First Choice's current affidavits do not yet show enough of an injury." Pet. 4a. But the allegations of First Choice's complaint are what matter to dismissal, and those allegations are taken as true.

New Jersey's only answer to First Choice's affidavits is that the testifying donors contributed "via means *other* than those websites" in the subpoena. BIO 16–17; see BIO 27. But New Jersey has targeted most of First Choice's donors, Pet. 189a, and there is no reason to believe that donors acting through particular links would be situated differently from other donors. Plus, First Choice's director provided testimony about the chilling effect on *all* its donors—testimony ignored by New Jersey. Pet. 182a–84a.

The premise of *Americans for Prosperity* is that compelled disclosure of donors who would otherwise remain confidential typically works an injury. As this Court said, "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy" restrains freedom of association, and "[e]ach governmental demand for disclosure [of donors] brings with it an additional risk of chill." 594 U.S. at 606, 618. "It is irrelevant . . . that some donors might not mind—or might even prefer—the disclosure of their identities to the State," when the disclosure requirement reasonably chills speech and association by "indiscriminately sweeping up the information of" "donor[s] with reason to remain anonymous." *Id.* at 616–17. First Choice provided ample evidence showing a similar chill here.

* * *

In sum, "the harm asserted" by First Choice "has matured sufficiently to warrant judicial intervention." *Warth* v. *Seldin*, 422 U.S. 490, 499 n.10 (1975); see *Susan B. Anthony List*, 573 U.S. at 158 n.5 (emphasizing that "[t]he doctrines of standing and ripeness 'originate' from the same Article III

limitation"). First Choice has shown an objectively reasonable chill from New Jersey's subpoena, issued with the force of law and already enforced in court.

New Jersey's procedural machinations and inconsistent arguments about ripeness are largely efforts to mask the reality of this case. Much like New York's Human Rights Commission did with Samaritan's Purse, New Jersey issued a subpoena against an entity whose views it dislikes. New Jersey enlisted ideological allies like Planned Parenthood to terrorize pregnancy centers. See Pet. 194a (the State's attorneys praising Planned Parenthood's "partnership" in attacking pregnancy centers). For New Jersey to now disclaim that its subpoena has an objectively reasonable chilling effect beggars belief. "One might suspect that [wa]s the whole point." *Smith & Wesson*, 27 F.4th at 897 (CA3 2022) (Matey, J., concurring).

CONCLUSION

For these reasons, the Court should reverse.

Respectfully submitted,

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