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.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Third Circuit

BRIEF OF AMICUS CURIAE PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statute:

Other Authorities:

INTEREST OF AMICUS CURIAE[1]

Since 1973, Pacific Legal Foundation (PLF), a nonprofit law firm, has defended constitutional values involving limited government, private property rights, and free enterprise. In securing redress for individuals threatened by burdensome laws, PLF has appeared many times before this Court, including in *Knick v. Township of Scott*, 588 U.S. 180 (2019)—a precedent relevant to this case. Thus, PLF has a special interest in the outcome here, both on its own behalf and on behalf of its clients. Depriving politically disfavored nonprofit organizations of a federal forum would be detrimental to PLF and its clients—in addition to contravening the settled construction of Section 1983. Individual donations give PLF the ability to fulfill its mission to protect countless individuals in need of representation. Therefore, PLF has a strong interest in ensuring free association and access to federal courts for First Amendment violations.

SUMMARY OF THE ARGUMENT

The Civil Rights Act of 1871 (hereafter "Section 1983") was enacted to guarantee "a federal forum for claims of unconstitutional treatment at the hands of state officials" without requiring "exhaustion of state remedies." *Heck v. Humphrey*, 512 U.S. 477, 480 (1994); 42 U.S.C. § 1983. The Third Circuit abandoned this bedrock principle when it affirmed the dismissal of First Choice's Section 1983 claim because

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[1] Pursuant to Supreme Court Rule 37.6, Amicus Curiae states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from Amicus Curiae, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

First Choice could "continue to assert its constitutional claims in state court." Pet. App. 4a.

The lower court's decision puts First Choice in the same Catch-22 that this Court rejected for takings claims in *Knick*, 588 U.S. at 206. Here, First Choice "cannot go to federal court without going to state court first; but if" First Choice "goes to state court and loses," its "claim will be barred in federal court." *Id.* at 184-85. This Court has rightly characterized such procedural gamesmanship as "an unjustifiable burden." *Id.* at 185.

Despite acknowledging that federal court review will "seldom" exist under this framework, Pet. App. 82a n.7, the district court proposed a "narrow" path through which litigants might bring Section 1983 claims. Pet. App. 54a-55a n.24. The court ruled that First Choice may satisfy standing and ripeness if it files suit after a state court enforces the subpoena under threat of contempt, but before actually holding First Choice in contempt. *Ibid.* Once again, the lower court's holding collides with this Court's precedents. It is fundamental that a party may seek relief under Section 1983 as soon as they are injured. *Knick*, 588 U.S. at 202. In the First Amendment context, that means the moment a party's protected associational rights are at *risk* of being chilled. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618 (2021) ("[T]he protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough[.]"). Even "informal . . . threat[s] of invoking legal sanctions" may constitute a sufficient First Amendment injury. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).

Here, "disclosure requirements"—like state investigatory subpoenas—"can chill association even if there is no disclosure to the general public." *Shelton v. Tucker*, 364 U.S. 479, 486 (1960); *see Talley v. California*, 362 U.S. 60, 65 (1960) ("[I]dentification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance."). That is because "compelled disclosure of affiliation . . . may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

Absent relief from this Court, state attorney generals would be free to target politically unpopular nonprofit organizations without fearing federal court review. This padlock on federal courthouse doors is at odds with Congress's intent in Section 1983 "to throw open the doors of the United States courts . . . [and] provide these individuals immediate access to the federal courts." *See Patsy v. Bd. of Regents of State of Fla.*, 457 U.S. 496, 504 (1982) (cleaned up). This Court should clarify that because federal courts *must* guard the people's constitutional rights, litigants may seek relief in federal court for *any* federal constitutional claim the moment they are injured.

ARGUMENT

Section 1983 empowers federal courts to act as the "guardians of the people's federal rights," shielding them from unconstitutional state actions. *See Mitchum v. Foster*, 407 U.S. 225, 242 (1972). Forcing litigants to wade through state court before they can access federal court defeats this goal. *See Knick*, 588 U.S. at 194 (citing *McNeese v. Bd. of Educ. for Cmty. Unit Sch. Dist. 187, Cahokia, Ill.*, 373 U.S. 668, 672

(1963)).[2] A long line of cases from this Court establishes the primacy of federal review of federal constitutional issues. *See Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 344-50 (1816) (defending primacy of federal review of constitutional issues to avoid state court bias and to ensure uniformity of decision making); *see also Felder v. Casey*, 487 U.S. 131, 141 (1988) (enacting Section 1983 in response to the influence of state politics on state courts); *see also Mitchum* 407 U.S. at 242 (detailing the passage of Section 1983 as a reaction to state courts' failure to protect federal rights during the Reconstruction Era). Given the well-settled interpretation of Section 1983, this Court should make explicit that the Third Circuit erred in exempting state investigations from federal court review because federal courts *must* exercise jurisdiction in Section 1983 claims.

1. *Knick* Held That State Litigation Is Not a Prerequisite to a Section 1983 Action and Put Takings Claims on Equal Footing with All Other Claims Grounded in the Bill of Rights

The settled rule is that "plaintiffs may bring constitutional claims under §1983 'without first bringing

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[2] Unlike federal courts, which have a duty to vindicate federal constitutional claims, "[t]he Constitution allows States to hear federal claims in their courts, but it does 'not impose a duty on state courts to do so.'" *Williams v. Reed*, 145 S. Ct. 465, 473 (2025) (Thomas, J., dissenting). Although this case is distinct from *Williams*, because here First Choice sought a federal forum rather than a state forum, the majority in *Williams* underscores this Court's prioritization of Section 1983 claims in its refusal to allow concerns about imposing judicial duties on the state court system to trip up Section 1983 claims with procedural snags.

any sort of state lawsuit, even when state court actions addressing the underlying behavior are available.'" *Knick*, 588 U.S. at 194 (quoting D. Dana & T. Merrill, *Property: Takings* 262 (2002)). For example, in *Knick*, the plaintiff filed a Section 1983 action after a town ordinance effected a taking of her property. *Id.* at 186-87. The federal district court required her to seek just compensation in state court before filing in federal court, applying the special exhaustion rule unique to takings claims from *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985) (hereafter "*Williamson County*"). *Ibid.* Ultimately, this Court overruled *Williamson County* and held that state court action is not a prerequisite to federal court review under Section 1983. *Knick*, 588 U.S. at 185.

In *Knick*, this Court repudiated the Catch-22 of *Williamson County*'s "preclusion trap": the plaintiff "cannot go to federal court without going to state court first; but if he goes to state court and loses, his [constitutional] claim will be barred in federal court[,]" under res judicata. *Knick*, 588 U.S. at 184-85. Worse, *Williamson County*'s rule singled out takings claims—and only takings claims—for second-class treatment among Section 1983 claims. *Id.* at 194. In that sense, *Williamson County*'s state court litigation requirement was itself an anomaly and—when it was argued—already on shaky ground. *Id.* at 203. Numerous justices had questioned the wisdom of the rule ultimately adopted in *Williamson County*, just four years before it was decided. *See First Eng. Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 315, 318 (1987) (quoting and citing *San Diego Gas & Elec. Co. v. City of San Diego*, 450

U.S. 621, 654 (1981) (Brennan, J., dissenting)) (arguing that the claimant need not seek compensation in state court before bringing a federal takings claim). Given the troubling implications of *Williamson County*, it is no surprise that this Court chose to reject the state litigation requirement as an "unjustifiable burden." *Knick*, 588 U.S. at 185.

The district court here, however, took *Williamson County*'s Catch-22 to new heights by exporting its discredited reasoning into the First Amendment context—an area that has historically recognized broad protections "[b]ecause First Amendment freedoms need breathing space to survive[.]" *NAACP v. Button*, 371 U.S. 415, 433 (1963). Even before *Williamson County* was overturned, no one thought that this preclusion trap applied outside of the Takings Clause, much less in the forgiving context of the First Amendment. *See Knick*, 588 U.S. at 185 ("The . . . preclusion trap should tip us off that the state-litigation requirement rests on a mistaken view of the Fifth Amendment."). And when overturning *Williamson County*, this Court clarified that the "general rule" providing for federal court review applies not just for takings claims but "for any other claim grounded in the Bill of Rights." *Id.* at 194.

Under the district court's rule, First Choice is subject to the same Catch-22 as the plaintiff in *Knick*. Namely, First Choice is prevented from ever bringing its claims in federal court because an adverse decision in state court will bar First Choice's First Amendment claim. Indeed, the district court acknowledged as much in its opinion: "functionally . . . [First Choice's claims] may seldom if ever be ripe for adjudication in federal court" because of "res judicata." Pet. App. 82a

n.7. Such a "preclusion trap" is unworkable and inconsistent with this Court's holding in *Knick*. *Knick*, 588 U.S. at 205.

Ironically, when *Knick* was argued, PLF cited the First Amendment to illustrate *Williamson County*'s second-class treatment of the Takings Clause compared to other Section 1983 claims. Reply Brief for Appellants, at 18 (contrasting the Takings Clause with the First Amendment: "federal courts often deal with local land use issues in First Amendment, Equal Protection and other constitutional cases. . . . There is no reason they cannot do so in takings cases.") (internal quotation marks omitted). But rather than following this Court's mandate in *Knick* to treat takings claims the same as any other claim grounded in the Bill of Rights, the Third Circuit flipped the problem, now giving the First Amendment second-class treatment.

It gets worse. Despite acknowledging the risk of slamming the courtroom doors shut, the district court incrementally raised the threshold for ripeness as the case progressed. The first time the case came before the district court, the court held that a subpoena must be enforced in state court before it may be challenged in federal court, following *Google, Inc. v. Hood*, 822 F.3d 212, 225 (5th Cir. 2016). Recognizing the existence of a circuit split, the district court chose to follow *Google* over the Ninth Circuit's rule in *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1178 n.3 (9th Cir. 2022), which allowed for litigants to challenge state subpoenas so long as the plaintiff alleged "objectively reasonable chilling of its speech." After the state court enforced the subpoena, the district court broke new ground and, for the first time, announced that Section 1983

actions would be ripe "only" after a state court required First Choice to respond under the "threat of contempt." Pet. App. 42a.

Neither *Google* nor *Twitter* ever suggested that a challenge to an *enforceable* subpoena was unripe. *Google*, 822 F.3d at 224 (holding only that a "*non-self-executing*" subpoena was not ripe for adjudication) (emphasis added). Indeed, both parties had already stipulated that the case was ripe after the state court enforced the subpoena. The district court's newfangled reasoning raised the bar for ripeness—with troubling consequences for underfunded nonprofit organizations facing a contempt order. Given the similarity between the exhaustion requirement in this case and that in *Knick*, the "error [should] have been clear." 588 U.S. at 194.

2. Prudential Considerations Such as Comity and Federalism Do Not Warrant the District Court's Deviation from the Mandates of Section 1983

Recognizing the tension between its opinion and *Knick*, the district court proposed a "narrow" and "small" window through which First Choice might bring its Section 1983 claim, relying on "principles of federalism and comity" to justify its decision. Pet. App. 54a–55a n.24. Specifically, the district court reasoned that "[t]he function of the ripeness doctrine . . . counsels abstention until such time as a dispute is sufficiently concrete to satisfy the constitutional and prudential requirements of the doctrine." Pet. App. 83a (internal citations omitted). As such, First Choice "may" bring its claim between the time a state court threatens First Choice with contempt and the time when contempt is actually imposed. *Ibid.* Thus, First

Choice is not "entirely prohibited" from bringing its claims in federal court. *Ibid.*

In holding that First Choice is not "entirely prohibited" from bringing its claims in federal court, the district court misconstrued this Court's decision in *Knick*. Entire prohibition from federal court review has never been the standard by which courts decide Section 1983 claims. In fact, this Court's precedents have consistently said the opposite: The "federal remedy is supplementary to the state remedy, and the latter need not be first sought . . . before the federal one is invoked." *Monroe v. Pape*, 365 U.S. 167, 183 (1961). The district court failed to apply the correct, applicable law. First Choice need not exhaust all metaphysical possibilities, however remote, to avail itself of federal court review. Indeed, it need not seek state court review at all under *Monroe*. Therefore, the entire prohibition standard has no foundation in this Court's jurisprudence.

Moreover, this Court has already rejected these "federalism and comity" arguments in *Knick*. *Knick*, 588 U.S. at 204 n.8 ("[S]ince the Civil Rights Act of 1871, part of 'judicial federalism' has been the availability of a federal cause of action when a local government violates the Constitution."). Instead, what seems to animate the district court's decision is not in fact ripeness—where prudential concerns about federalism and comity are irrelevant—but rather abstention cloaked in ripeness. But this Court has emphasized that abstention is a narrow doctrine as federal courts have a "virtually unflagging" obligation to exercise their jurisdiction. *Sprint Commc'n, Inc. v. Jacobs*, 571 U.S. 69, 77-78 (2013) ("Federal courts . . . have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not

given.") (cleaned up). Therefore, the holding below, which amounts to de facto abstention, shirks a prime duty of the federal courts.

Even assuming the district court's premise, its holding raises the very federalism and comity concerns that it seeks to avoid. The district court stressed that the Section 1983 claim must be brought in federal court before contempt is found and before the state court expressly considers the constitutional claims, due to res judicata. Pet. App. 54a-55a n.24. What happens if a claim is brought in federal court and the federal judge fails to act before First Choice's compliance deadline expires? The district court neglected to say. Nor did the district court ever explain how a party could face a "threat of contempt," without first defying—or at least ignoring—the state court's enforcement orders. Courts ordinarily do not threaten litigants with "imminent contempt" unless they defy—or at least ignore—a court order. Thomas R. Allen, Note, *Summary Proceedings in Direct Contempt Cases,* 15 Vand. L. Rev. 241, 242 (1961) (surveying the state courts' usage of their contempt power and defining criminal contempt as "the result of some active disrespect of the court" and civil contempt as "the passive failure to obey the court") (emphasis omitted).

Yet, as a practical matter, the district court's proposed solution will create a perverse incentive for litigants to do just that. Because federal court review will "seldom" exist under the district court's rule, litigants will need to sail even closer to defiance of state court orders to trigger a contempt threat. Pet. App. 82a n7. In this respect, the district court's proposed "solution" is not a viable solution at all. Even if some litigants choose not to pursue this strategy, incentiv-

izing defiance of state court orders raises the very federalism concerns that the district court seeks to avoid. It creates "needless friction with state policies," harms "cooperative judicial federalism," and hinders "harmonious relations between state and federal authority." *Knick*, 588 U.S. at 221 (Kagan, J., dissenting). The district court's rule therefore contravenes even the dissent's position in *Knick*, arguing for broad abstention of state-law issues. In short, the district court's "narrow" and "small" path is untenable and raises—rather than obviates—serious concerns about federalism and principles of comity.

3. Applying *Knick*, First Choice Satisfies Ripeness and Standing as Soon as Their Speech Is Chilled

A party may seek relief under Section 1983 as soon as they are injured. *Knick*, 588 U.S. at 202. Even the dissent in *Knick* agreed with that proposition. *See id.* at 212. The sole issue was when the injury arose under the Takings Clause. *Id.* at 181. This Court found that the constitutional injury occurred "at the time of the taking, regardless of post-taking remedies that may . . . [have been] available to the property owner." *Id.* at 190. Thus, the petitioner in *Knick* could bring her Section 1983 claim as soon as her property was taken.

This Court should apply the same reasoning to the First Amendment claim at issue here and reject the district court's state litigation requirements. Neither *Knick* nor the First Amendment exempts state subpoenas from the ordinary course of federal judicial review under Section 1983. *Ams. for Prosperity Found.*, 594 U.S. at 598 (quoting *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 968 (1984)) (holding that

"*every* demand that *might* deter association 'creates an unnecessary risk of chilling' in violation of the First Amendment." (emphasis added)). Furthermore, as mentioned above, this Court has already rejected "principles of federalism and comity" arguments in *Knick*. *See Knick*, 588 U.S. at 202 n.8. Thus, *Knick*'s general rule applies to state subpoenas, just as to every other state action.

There are especially compelling reasons to apply *Knick* in the First Amendment context. The First Amendment demands robust protections to "preserve[] political and cultural diversity" and to "shield[] dissident expression from suppression by the majority." *Ams. for Prosperity Found.*, 594 U.S. at 606 (quoting *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984)). Were the law otherwise, states would be free to engage in "[b]road and sweeping" inquiries to "discourage citizens from exercising rights protected by the Constitution." *Baird v. State Bar of Ariz.*, 401 U.S. 1, 6 (1971) (plurality opinion); *see also Bantam Books*, 372 U.S. at 66 ("[F]reedoms of expression in general . . . are vulnerable to gravely damaging yet barely visible encroachments."). Thus, just as "the taking itself violate[d] the Fifth Amendment," *Knick*, 588 U.S. at 181, the chilling of association violates the First Amendment. *Ams. for Prosperity Found.*, 594 U.S. at 618 ("When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals. The risk of a chilling effect on association is enough[.]").

To illustrate the breadth of this Court's First Amendment protections, consider *Bantam Books*. There, Rhode Island set up a commission to notify distributors when materials from publishers had been deemed inappropriate for minors. 372 U.S. at 61. The commission had no "power to apply formal legal sanctions" and the distributor could have ignored the commission's notice without violating the law. *Id.* at 66. Yet, this Court found that even "informal . . . threat[s] of invoking legal sanctions" created a ripe First Amendment claim. *See id.* at 67. It made no difference that the state had not prosecuted anyone for the possession or sale of these materials. *See ibid.* Even if these materials had not been seized or banned, the mere chilling of one's speech could sustain a First Amendment challenge. *Ibid.* A herculean effort therefore is not necessary to satisfy standing and ripeness requirements in the First Amendment context.

Here, First Choice should be permitted to bring its Section 1983 claim as soon as its associational rights are chilled. Because the chilling of association *is* the constitutional injury, the mere "*possible* deterrent effect" of mandating disclosures creates a viable First Amendment claim. *Ams. for Prosperity Found.*, 594 U.S. at 616 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 460-61) (prohibiting compelled disclosures under the First Amendment because "NAACP members faced a *risk* of reprisals if their affiliation with NAACP became known") (emphasis added). As such, First Choice need not wait until its First Amendment rights are frozen to avail itself of federal court review.

In fact, this Court has previously applied these broad First Amendment principles to circumstances much like the one here. In *Americans for Prosperity*

Foundation, 594 U.S. at 601, the California Attorney General demanded that the petitioners disclose the identities of their donors, or risk suspension of their nonprofit registration. This Court held that the First Amendment prohibited such compelled disclosures, emphasizing "the vital relationship between freedom to associate and privacy in one's associations." *Id.* at 606; *see NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 462 ("[P]rivacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs."); *see also Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960) (warning that associational rights must be "protected not only against heavy-handed frontal attack, but also from being stifled by more subtle governmental interference"). Specifically, because the petitioners—and their donors—had faced harassment, bomb threats, stalking, and physical violence in the past, this Court found the petitioners' fear of future retaliation "reasonably justified." *Ams. for Prosperity Found.*, 594 U.S. at 605.

Here, the district court's holding that standing and ripeness exist only when "compliance [to a state subpoena] is required under threat of contempt" contravenes this Court's precedents. Pet. App. 42a. Like the petitioners in *Americans for Prosperity Foundation*, First Choice pleaded sufficient facts to demonstrate a concrete First Amendment injury for purposes of standing and ripeness. First Choice documented a pattern of violence and intimidation against pregnancy centers, the suppressive effects of state subpoenas on donations, and the self-censorship that First Choice has had to impose to protect their staff from harm. Pet. App. 182a-83a. As such, the state subpoena in this case creates the same risk of chilling as

the mandatory donor disclosure requirements did in *Americans for Prosperity Foundation*. Accordingly, not only is there a "reasonably justified" fear of retaliation, but First Choice has shown actual chilling of their associational rights. Thus, First Choice satisfies standing and ripeness.

If the district court's ruling is allowed to stand, political actors—from both parties—would be free to target politically disfavored organizations, unchecked by federal court review. Even where actions are taken with the express intent of chilling these organizations' First Amendment rights, their Section 1983 claims will never have their day in federal court. Our Constitution promises the right to associate to advance "[e]ffective advocacy." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. at 460 ("Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association[.]"). Thus, access to federal courts must be enshrined to protect the constitutional rights of organizations that may lack the resources to risk contempt in state court. The vital role of the First Amendment in safeguarding "[e]ffective advocacy of both public and private points of view," warrants federal judicial review. *Ibid.*

CONCLUSION

Just as a takings plaintiff has an actionable claim in federal court as soon as their property is taken, a First Amendment plaintiff has an actionable claim as soon as their speech or associational rights are chilled. The Takings Clause is not a "poor relation" in the Bill of Rights, and neither is the First Amendment. *Knick*,

588 U.S. at 189. For the foregoing reasons, the judgment of the Third Circuit should be reversed.

Respectfully submitted,

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