No. 24-781

IN THE

Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Petitioner,

v.

MATTHEW PLATKIN, ATTORNEY GENERAL OF NEW JERSEY,

Respondent.

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

BRIEF FOR HEARTBEAT INTERNATIONAL, INC. AND CARE NET, AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

Table of Contents

TABLE OF CITED AUTHORITIES

Page

CASES:

Cited Authorities

Page

STATUTES AND OTHER AUTHORITIES:

Page

INTERESTS OF *AMICI CURIAE*[1]

Amicus Care Net is a nonprofit association headquartered in Lansdowne, Virginia, serving approximately 1,200 affiliated pregnancy resource centers throughout North America. It provides a variety of resources to assist those centers in their work, including an annual national conference, live webinars, professional development training courses, brochures and email and telephone consultations with a team of trained staff and specialists.

Care Net also runs a national hotline serving women and men facing pregnancy decisions and offers free resources to the general public, including online courses, devotionals, eBooks and research. On a daily basis, it communicates with a large number of affiliates, by email and telephone, concerning a large number of issues, often of a confidential nature. Its focus is to help affiliated centers provide assistance to women who are open to giving their babies life, rather than abortion, providing such women with the personal, material, educational and spiritual resources necessary to care both for themselves and for their babies and families.

Amicus Heartbeat International Inc., headquartered in Columbus, Ohio, is a non-profit, interdenominational Christian organization whose mission is to serve

1. In accord with Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members or their counsel made a monetary contribution to its preparation or submission.

women and children through a network of life-affirming pregnancy help centers. Heartbeat serves 3,592 pregnancy help centers, maternity homes, and non- profit adoption agencies in over 97 countries, including 2,278 such affiliates in the United States.

Among its services, Heartbeat operates the Abortion Pill Rescue® Network, and particularly the "Abortion Pill Reversal Hotline," which answers an average of 200 calls a month. These calls typically are from women who regret their recent decision to ingest abortion-inducing drugs and are urgently seeking connection with a local medical provider who can start the clinically proven and scientifically supported abortion pill reversal process, which has saved more than seven thousand infant lives. Heartbeat also operates a 24/7 toll-free telephone and web-based help line, Option Line, which provides information and referrals to nearby pregnancy help organizations. In 2023, Option Line handled 395,176 contacts—including phone calls, e-mails, instant messages, and online chats in English and Spanish.

Amici's missions are to ensure that every woman feels loved and supported during her pregnancy and equipped with support, resources, and education.

All services provided by *Amici* comply with applicable legal and regulatory requirements. Medical services, when offered, are provided in accordance with medical standards, under the supervision and direction of a licensed physician (or advanced clinical provider as permitted by law).

SUMMARY OF ARGUMENT

Amici's brief focuses on a separate demand in the Attorney General's subpoena compelling production of private emails, texts and phone records between the Petitioner and the *Amici*. Both *Amici* are nationwide associations of pregnancy resource centers with nearly 4,800 affiliates between them, including Petitioner First Choice. The Attorney General's demand therefore reaches far beyond a single litigant.

That demand chills speech and association far beyond the borders of New Jersey. The subpoena's sweep does not merely burden groups within the Attorney General's statewide jurisdiction but also throws a pall on speech and expressive association nationwide. Moreover, the Attorney General's brazen demand to rummage through the *private communications* between the Petitioner and the listed *Amici* would alter how people actually speak and associate going forward, imposing additional real-world chilling effects. The attempt is all the more alarming, because the Attorney General offered no reason whatsoever for intruding on national associations' communications (other than implicitly that his targets are his perceived ideological opponents).

The government's baseless attempt to eavesdrop on and deter citizens' private communications strikes at the heart of why we have the First Amendment in the first place -- and is all the more reason why Petitioner's claims are ripe in federal court.

ARGUMENT

A. The New Jersey Attorney General targeted First-Amendment-protected communications of the listed *Amici* without even attempting to articulate a reason.

The New Jersey Attorney General's subpoena demanded production of *Amici's* internal communications that are protected by the First Amendment privilege -- a privilege held not only by Petitioner First Choice, but also by *Amici* Heartbeat International, Inc. and Care Net. The subpoena sought production of all documents related to Petitioner's relationships with these partner pro-life organizations.

The following are the pertinent paragraphs of the Attorney General's subpoena:

> 22. All Documents Concerning Heartbeat International, Inc. and/or the Abortion Pill Reversal Network, Including the "Abortion Pill Reversal Hotline" referenced in Your Communications with Clients.
>
> 23. All Documents Concerning Your affiliation with Care Net, Including Your Care Net Certificate of Compliance, Pregnancy Center Statistical Report, and training, marketing, and informational materials provided to You by Care Net.

Pet. App. 109a.

The New Jersey Attorney General's subpoena expansively defined "Document" to include "emails and any attachments, instant messages, text messages, phone records…." [2] Pet. App. 96a. The subpoena is not limited to communications from individuals with authority to speak for these associations but, rather, sweeps in even those communications of support personnel and volunteers.

The New Jersey Attorney General has not made any attempt whatsoever to legitimize such a broad snooping into the communications of these national associations. The subpoena failed to allege what, if any, potential violation of the law had occurred to justify a civil investigation even as to Petitioner First Choice, much less to the associated *Amici*.

Such a sweeping demand offends core First Amendment protections and is a bald affront to Constitutional liberties. *See Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595, 605, 607 (2021) ("compelled disclosure[s]" from protected associations require a "substantial relation

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2. 11. "Document" includes all writings, word processing documents, records saved as a .pdf, spreadsheets, charts, presentations, graphics/drawings, images, emails and any attachments, instant messages, text messages, phone records, websites, audio files, and any other Electronically Stored Information. Documents Include drafts, originals and non-identical duplicates. If a printout of an electronic record is a non-identical copy of the electronic version (for example, because the printout has a signature, handwritten notation, other mark, or attachment not included in the computer document), both the electronic version in which the Document was created and the non-identical original Document must be produced.

Pet. App. 96a.

between the disclosure requirement and a sufficiently important government interest"). It is particularly appalling since it shamelessly follows from the New Jersey Attorney General's political promises to persecute the regime's perceived ideological opponents. Pet. Br. 7-8.

B. The subpoena's demand for the private communications of out-of-state national associations has real-world chilling effects on First Amendment rights.

Amici Heartbeat International and Care Net are the nation's two largest networks of pregnancy resource centers, together serving more than 4,800 affiliated centers. It can be presumed the Attorney General knew what he was doing when he demanded their communications.

1. This is a continuation of blue-state lawfare against national pregnancy resource associations.

Due to their effectiveness, these national pregnancy resource associations have become targets for politicized pro-abortion activists seeking any opportunity to sideline them to any extent. New Jersey's activist attorney general is not the first blue-state politician to think of enlisting law enforcement's expansive powers to further his abortion agenda. In May, 2022, the State of Washington made the first move against an organization similar to *Amici*. *Obria Group Inc. v. Ferguson*, No. 3:23-CV-06093-TMC, 2025 WL 27691 (W.D. Wash. 2025). In September 2023, the California Attorney General Rob Bonta fired the opening shot in the ideological "lawfare" against *Amicus* Heartbeat

International and abortion pill reversal. *California v. Heartbeat International, et al.*, Case No. 23CV044940, Superior Court, Alameda County, California (Sept. 21, 2023). New York was not far behind, when in in April 2024, Attorney General Letitia James took up the mantle and launched her own witch-hunt against pregnancy help ministries. *See, Heartbeat International, et al. v. James / New York v. Heartbeat International, et al.*, Supreme Court, Monroe County, New York, No. E2024007242. All of these blue-state attorneys general are notorious for their lawfare campaigns against perceived political or ideological opponents, particularly pro-life entities. Now New Jersey's Attorney General comes trotting up behind to demonstrate to his own political base his ideological purity. *Amici* know well what is at stake here.

Similarly, politicians across the country are introducing laws that "harass caring people that simply want to help women make a different choice than abortion." Jor-El Godsey, By Accusing Pregnancy Centers of False Advertising, Pro-Abortion Politicians Prove They Can't Handle The Truth, *The Federalist* (Feb. 20, 2023), https://thefederalist.com/2023/02/20/by-accusing-pregnancy-centers-of-false-advertising-pro-abortion-politicians-prove-they-cant-handle-the-truth/. A United States senator called for Congress to "move more aggressively" in regulating pregnancy resource centers. Alison Kuznitz, U.S. Sen. Elizabeth Warren Wants to Crack Down on 'Deceptive' Crisis Pregnancy Centers in Massachusetts, Across the Country, *MassLive* (Jun. 29, 2022) https://www.masslive.com/politics/2022/06/us-sen-elizabeth-warren-wants-to-crack-down-on-deceptive-crisis-pregnancy-centers-in-massachusetts-across-the-country.html. The same senator then falsely accused life-affirming

pregnancy resource centers of "torturing" pregnant women and called on the federal government to "shut them down all around the country." Jessica Chasmar, Google to Crack Down on Search Results for Crisis Pregnancy Centers After Dem Pressure, *Fox Business* (Aug. 25, 2022), https://www.foxbusiness.com/politics/google-crack-down-search-results-crisis-pregnancy-centers-dem-pressure. Nearly two dozen members of Congress pressured Google to "crack down on search results for crisis pregnancy centers." *Id.* In Massachusetts, Governor Maura Healy launched a $1 million media campaign targeting pregnancy resource centers, using social media, radio, billboards and public transit ads. Press Release: Healey-Driscoll Administration Launches First-in-the-Nation Public Education Campaign on the Dangers of Anti-Abortion Centers, *Mass. Exec. Off. of Health & Human Servs.* (Jun 10, 2024), https://www.mass.gov/news/healey-driscoll-administration-launches-first-in-the-nation-public-education-campaign-on-the-dangers-of-anti-abortion-centers .

In the face of such political histrionics, however, women "who find and utilize these pregnancy help services overwhelmingly give pregnancy centers 99 percent satisfaction ratings for the care they receive, because it helps them through difficult times and puts them on a path toward success as parents." Godsey, *supra.*; *see* Moira Gaul, Fact Sheet: Pregnancy Centers–Serving Women and Saving Lives, *Charlotte Lozier Inst.* (July 2021), https://lozierinstitute.org/fact-sheet-pregnancy-centers-serving-women-and-saving-lives-2020/

New Jersey Attorney General Matthew Platkin has not tried to hide the ball on how much he dislikes pregnancy

resources centers, much less national and international associations that assist them. Pet. Br. 7-8. His subpoena in this case appears to be a continuation of his open political crusade against groups like the Petitioner and *Amici* who offer life-affirming options to women by supporting their choice to continue their pregnancies, rather than forcing them into abortions against their will.

2. The New Jersey Attorney General has provided no reason whatsoever for surveilling the communications of *Amici* national associations.

It is particularly notable that the New Jersey Attorney General has not articulated any reason whatsoever for needing Petitioner First Choice's communications with the *Amici* national pregnancy resource associations. The subpoena failed to allege any potential violation of the law in which *Amici* could have been involved. The Attorney General did not even identify a single complaint against the subpoena's target, Petitioner First Choice, much less against the listed *Amici*. Pet. Br. 9; *see Gibson v. Florida Legislative Investigation Committee,* 372 U.S. 539, 555 (1963) ("Committee has neither demonstrated nor pointed out any threat to the State by virtue of the existence of the N.A.A.C.P. or the pursuit of its activities…").

Apparently, the Attorney General just would like to know what *Amici* and its affiliates talk about. In other words, this is a bald-faced fishing expedition … proposing to troll unlawfully in First Amendment waters.

3. National pregnancy resource associations and their affiliates will speak less freely going forward if possible surveillance looms.

The prospect of compelled disclosure predictably chills everyday communications. It only stands to reason that associations such as *Amici* are endangered if *Amici's* daily emails, instant messages, text messages and phone records could be combed through by an openly hostile attorney general who has publicly vowed to harm pro-life pregnancy resource centers. The imminent threat of the exposure of private, confidential communications would change the way *Amici* communicate going forward.

Forced disclosure also would suppress candid counseling and internal deliberation. If private communications, perhaps expressing personal political and moral views, are ordered to be disclosed, *Amici's* leaders, counselors, employees and volunteers will have to be guarded in how they counsel and discuss issues with affiliates, knowing that an ideological state actor somewhere could later demand all such communications, perhaps to twist them for unknown purposes. *Amici's* personnel may be less willing to engage in such communications at all, knowing that off-the-cuff private thoughts and ideas may be disclosed. Thus, their First Amendment speech and expressive association will be chilled *a priori*.

The practical, real-world implications of a broad-based objective chill on *Amici's* First Amendment freedoms would play out on a daily basis. For instance, *Amici* routinely send emails to their affiliated pregnancy centers, including Petitioner First Choice. Some of these emails convey sensitive information, such as legal and medical

opinions developed by lawyers and medical professionals working with *Amici*. *Amici* would struggle to deliver such advice to their affiliates if they knew a surveilling assistant attorney general might at some point be monitoring the choice of words in each piece of advice.

Government scrutiny would distort the content of *Amici's* educational media as well. *Amici* maintain private webpages, limited to the use of affiliates. At times, *Amici's* emails to affiliates direct them to a page on *Amici's* private affiliate webpage where they can get more information about the topics at hand. That additional information can be in the form of a blog post, a video presentation or an invitation to a live event or a recording of a recent live event. At a minimum, the emailed descriptions of the additional information on each webpage event likely would be crafted differently, considering that the eyes of a hostile attorney general eventually may be monitoring them.

As to the webpage media presentations themselves, there would be nothing to keep ideological attorneys general from demanding access to them as well. Thus, all of these blogs and videos also would have to be tailored keeping in mind the government's political surveillance.

Topics about which *Amici* typically email their affiliates are wide ranging. They include discussions of post-abortion recovery and care, such as helping clients deal with grief and miscarriage. There are also medical issues related to assisting people with unplanned pregnancies, such as facts about the use of the chemical abortion pill and fetal development. Affiliates also receive advice on legal issues related to the operation of a pregnancy center.

Amici also send advice and information about such things as working with and serving fathers, helping male and female clients form and sustain healthy relationships and marriages, engaging with local churches, fundraising strategies, leadership development, prayer and effectively serving underserved and minority communities. Many of these topics seem relatively benign by any standards, but in today's toxic political climate, any of them potentially could be misconstrued and misrepresented by a hostile attorney general.

Even routine communications with affiliates, short of expert advice and official presentations, also could be warped by fear of potential government surveillance. If *Amici's* leaders, employees and volunteers know that even routine statements, emails and texts could be subject to disclosure pursuant to a subpoena, they would not be inclined to share their thoughts as freely. Most people do not want their candid thoughts and opinions to be scrutinized by others, and particularly not by adversaries wielding the power of the government.

Thus, the New Jersey Attorney General's demand for Petitioner First Choice's communications with *Amici* threatens more than a chill of First Amendment speech and expressive association. The effects of the subpoena arise to New Jersey's effectively tailoring associational communications themselves.

4. First Amendment harms shared with Petitioner First Choice.

In addition to the objective chill described above, many, if not most, of the harms articulated by Petitioner

First Choice apply to some extent to *Amici*. *See e.g.*, Pet. Br. 12. For instance, pregnancy resource centers like First Choice have been plagued by a pattern of violence and intimidation since Politico's publication of a leaked draft of *Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) in May, 2022. *See,* Pregnancy Center Attack Tracker, https://catholicvote.org/pregnancy-center-attack-tracker/. Less than a year after the *Dobbs* leak in May 2022, pregnancy resource centers had suffered more than 100 attacks. *See* Patty Knap, A New Low Pregnancy Center Board Member's Home Vandalized, *Pregnancy Help News* (Feb. 27, 2023), https://pregnancyhelpnews.com/a-new-low-pregnancy-center-board-member-s-home-vandalized.

While both *Amici* are well known in pro-life circles, they may not be so well known in the circles of pro-abortion activists. Nor do either *Amici* have any desire to become better known among them. The potential of partisan attorneys general twisting language found in unguarded emails or texts, not to mention the potential flagging of such statements in the attorney general's press releases, presents combustible reasons for violence-prone pro-abortion activists to turn up the heat against *Amici*.

The New Jersey Attorney General's offer to Petitioner not to publish subpoenaed information in fairness ought to cover *Amici* as well, but that is not guaranteed. Even if such an offer were to be made to *Amici*, a lack of confidence would be reasonable, given that "leaking" has become relatively routine for some particularly fervent activists within government, despite ethical constraints to the contrary, with the leaking of the *Dobbs* draft opinion as a case in point.

Just as Petitioner First Choice's ability in recruiting and retaining donors and personnel has been compromised, so also are *Amici*'s. An additional concern for *Amicis* is the effect on their ability to add and retain affiliates. If *Amici*'s internal information, including emails and texts, were to be allowed to circulate among politically hostile assistant attorneys general, it can be presumed that *Amici*'s own donors, personnel, and affiliates would wonder whether they could be next.

C. Objectively chilling effect on First Amendment speech and expressive association rights.

1. This Court's holding in *Americans for Prosperity* controls this case, and the Third Circuit simply refused to follow it.

Amici's exposure to extensive associational harms in the wake of New Jersey's partisan subpoena, as described above, should come as no surprise. They are the sorts of First Amendment harms this Court's relatively recent decision in *Americans for Prosperity Foundation,* 594 U.S. at 602, sought to avoid. That case is strikingly similar to the case before this Court. So similar, in fact, that it would be hard to dispute with a straight face Judge Bibas' cogent Third Circuit dissent below that he "would find First Choice's constitutional claims ripe because he believes that this case is *indistinguishable* from *Americans for Prosperity Foundation*..." *First Choice Women's Resource Centers, Inc. v. Attorney General of New Jersey*, No. 24-3124, 2024 WL 5088105, n.† (3d Cir. Dec. 12, 2024), cert. granted sub nom. *First Choice Women's Resource Centers v. Platkin*, No. 24-781, 2025 WL 1678987 (U.S. June 16, 2025) (emphasis added). Yet

despite this mirror image, the Third Circuit majority's holding strayed from *Americans for Prosperity.* And here we are.

In *Americans for Prosperity*, California's attorney general sought to enforce a state regulation requiring charities to disclose the names and addresses of their major donors, by way of Schedule B to IRS Form 990. 594 U.S. at 602. This Court held California's disclosure requirement to be facially unconstitutional, because it "imposes a widespread burden on donors' associational rights. And this burden cannot be justified on the ground that the regime is narrowly tailored to investigating charitable wrongdoing…." *Id.* at 611, 618. Moreover, this Court held, "When it comes to the freedom of association … [t]he risk of a chilling effect on association is enough" to prove a First Amendment violation. *Id.* at 618.

Americans for Prosperity ruled on the merits and found a First Amendment violation had occurred. This case, on the other hand, does not need to present as compelling evidence as a merits case, because Petitioner First Choice only needs to present sufficient evidence to demonstrate ripeness. *See Meese v. Keene*, 481 U.S. 465, 473 (1987) ("abridgement of the plaintiff's freedom of speech is, of course, irrelevant to the standing analysis"); *Warth v. Seldin*, 422 U.S. 490, 498 (1975) ("question of standing is whether the litigant is entitled to have the court decide the merits").

The point is that since in *Americans for Prosperity* this Court found that a violation of the Constitution actually had occurred – that state action facially *violated* expressive association rights – and since the case now

before this Court "is indistinguishable from *Americans for Prosperity*," how could it possibly be that this case is not ripe?

To avoid the obvious implications of such clear commonality with *Americans for Prosperity*, it would be reasonable to expect the Third Circuit to explain its reasoning at length. Instead, the circuit court delivered a four-paragraph decision, stating cryptically there was not shown "*enough* of an injury" and the state court can decide the federal constitutional question. *First Choice Women's Resource Centers,* 2024 WL 5088105 (emphasis added). That smacks of a tacit admission the circuit court simply refused to follow *Americans for Prosperity* and could not come forth with any cogent reasoning to justify its refusal.

2. Due to the baseless demand for *actual communications*, the First Amendment violation is even more compelling here than in *Americans for Prosperity.*

"[C]ompelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Americans for Prosperity*, 594 U.S. at 606–07. The repercussions would be severe to *Amici's* affiliate, Petitioner First Choice, from being forced to divulge the identities of its donors to an overtly hostile Attorney General. *See e.g.,* Pet. Br., pt. II.A.

Moreover, damage to First Amendment rights do not happen in isolation. There can be expected at least ripple effects on other parties' rights to free speech and expressive association, if not a cascade of such effects.

So it is here. In addition to the identity of Petitioner's donors, the New Jersey Attorney General also demanded all emails, instant messages, text messages and phone records between Petitioner and *Amici* national pregnancy resource associations.

Thus, one of the cascading First Amendment effects is that the Attorney General wants to monitor speech itself -- including the speech of the *Amici* national associations.

The right of association includes the right to associate privately and anonymously. *NAACP v. Alabama*, 357 U.S. 449, 462 (1958) ("vital relationship between freedom to associate and privacy in one's associations"); *Americans for Prosperity,* 594 U.S. at 606-07 (association requires privacy, quoting *NAACP*) and 619–20 (Thomas, J., concurring) ("right to assemble includes the right to associate anonymously"); *Watchtower Bible & Tract Society of New York, Inc. v. Village of Stratton*, 536 U.S. 150, 166–67 (2002) (association requires anonymity); *Talley v. California*, 362 U.S. 60, 64 (1960) (association requires anonymity).

How much less private and less anonymous can an association between people become than when government agents eavesdrop on a person's actual private and personal communications?

For "freedom of association" claims, the "risk of a chilling effect … is enough" to show the government's action is in violation of the First Amendment. *Americans for Prosperity*, 594 U.S. at 618. Since disclosure of a person's identity raises an objective chill on speech and association, how much more so the chilling effect of

knowing the state has access to your private conversations with which to try to build a case against you? Knowing that one's private conversations are in the hands of hostile government agents ought to be enough to cause, for any reasonable person, a "deterrent effect on the exercise of First Amendment rights" *Id*. at 607, citing *Buckley v. Valeo*, 424 U.S. 1, 65 (1976). With such knowledge, a reasonable person would be likely to change his or her way of speaking or associating in the future.

"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." *Id*. at 606, quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984). *Americans for Prosperity* was speaking of the urgency of protecting donor identities. It applies equally well to the importance of shielding that expression itself, as in the case of *Amici*.

3. Two circuit courts have thwarted similar government attempts to obtain ideological opponents' internal communications.

There have been two notable circuit court cases that addressed state demands for internal communications in circumstances like those presented here, and both circuits protected such communications from disclosure.

Concerning a controversial social issue in California, the Ninth Circuit slammed similar blatantly oppressive ideological tactics. In *Perry v. Schwarzenegger*, 591 F.3d 1147 (9th Cir. 2010), the court dealt with forced production of information remarkably similar to the demand in this

case for *Amici's* communications. The plaintiffs in *Perry* issued a request for production on an intervening party promoting "Proposition 8," which amended the California Constitution to state that marriage exists between a man and a woman only. *Id*. at 1152. The demand in *Perry* was for the production of internal campaign communications concerning strategy and advertising, particularly demanding all "communications referring to Proposition 8, between you and any third party…." *Id*. at 1152-53.

The *Perry* court had no hesitancy stating that it is "a self-evident conclusion that important First Amendment interests are implicated" by such a demand for private conversations. *See id.* at 1163. It is also "a reasonable inference that disclosure would have the practical effects of discouraging … association and inhibiting internal … communications that are essential to effective association and expression." *Id.* at 1163-64, citing *Dole v. Service Employees Union, AFL–CIO, Local 280,* 950 F.2d 1456, 1459–61 (9th Cir. 1991) (holding that union satisfied its *prima facie* burden by submitting the declarations of two members who said they would no longer participate in union membership meetings if the disclosure of the minutes of the meetings were permitted). The *Perry* court was so certain of the violation of First Amendment that it invoked the admittedly rarely used power of mandamus, ordering the trial court not to allow discovery. *Id.* at 1159.

The chilling effect of the conduct in *Perry* was not nearly as threatening as the government's thrust in this case. *Perry* involved a private party employing discovery requests to demand internal communications from ideological opponents. In this case, by comparison, it is the government demanding access to citizens' private conversations -- to be used in ways the state's top law

enforcement official had signaled would be contrary to the best interests of the speakers. It is hard to imagine chilling speech and association rights much more severely than that.

Perhaps even more on point, in *Federal Election Commission v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981), a hostile government agency issued a subpoena for an umbrella organization's discussions with its affiliated political committees. In that case, the FEC issued a subpoena investigating the activities of nine "draft-Ted Kennedy" organizations before the presidential election of 1980. *Id.* at 382. The government's "sweeping subpoena" demanded production of

> All documents and materials (including but not limited to minutes, notes, memoranda, or records of telephone conversations) relating to meetings, discussions, correspondence, or other internal communications whereby the MNPL or any of its committees or sub-units determined to support or oppose any individual in any way for nomination or election to the office of President in 1980.

Id. at 384.

The D.C. Circuit found that the situation "implicates the rigorously protected first amendment interest in privacy of political association," *id.* at 389-90, noting "[t]he highly sensitive character of the information sought…," *id.,* and "the fundamental first amendment interest in guarding constitutionally protected information from unlawful disclosure,…" *id.* at 396. (Ultimately, the court vacated the district court's enforcement order of

the subpoena on other grounds, that is, that these groups were not "political committees" subject to FEC regulation in the first place. *Id.* at 384.)

These were not hard cases to decide – not even in the 9th Circuit involving a wildly contentious social issue, nor in the D.C. Circuit involving a hot-button political issue. And both cases decided the merits, not just the less exacting issues of standing or ripeness.

CONCLUSION

These demands for sensitive, unguarded internal communications go to the heart of the First Amendment. The New Jersey Attorney General's demand in this case for such communications goes well beyond the pale.

The decision below should be reversed.

Respectfully submitted,

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