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 *AMICUS CURIAE* OF AMERICANS UNITED FOR LIFE IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

Americans United for Life ("AUL") is a national pro-life legal advocacy organization. Founded in 1971, before the Supreme Court's decision in *Roe v. Wade*, 410 U.S. 113 (1973), AUL has committed over fifty years to protecting human life from conception to natural death. Supreme Court opinions have cited briefs and scholarship authored by AUL attorneys. *See*, *e.g.*, *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 271 (2022) (citing Clarke D. Forsythe, *Abuse of Discretion: The Inside Story of* Roe v. Wade 127, 141 (2012)). AUL is an expert on constitutional law and pro-life public policy, tracking and analyzing bioethics cases across the nation and publishing life-affirming model legislation, including legislation that supports pregnancy centers. *Life Litigation Reports*, Ams. United for Life, https://aul.org/topics/life-litigation-reports/ (last visited Aug. 25, 2025); *Pro-Life Model Legislation and Guides*, Ams. United for Life, https://aul.org/law-and-policy/ (last visited Aug. 25, 2025). AUL advocates on behalf of pregnancy centers to provide women life-affirming options and support in their pregnancy decisions.

SUMMARY OF ARGUMENT

This case presents fundamental questions about justiciability and a federal court's relinquishment of

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[1] No party's counsel authored this brief in whole or in part. No person other than *Amicus Curiae* and its counsel contributed any money intended to fund the preparation or submission of this brief.

jurisdiction so that a state court may first hear the case. The New Jersey Attorney General served an overly broad investigatory subpoena upon First Choice Women's Resource Centers, Inc. ("First Choice"), "a faith-based pregnancy resource center that serves women and men in unplanned pregnancies by providing counseling, medical services, and practical support." Pet.App.112a. The subpoena demanded, among other information and documents, the identities of First Choice's donors. Pet'r.Br.3.

The subpoena contradicted *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021), and *NAACP v. State of Alabama ex rel. Patterson*, 357 U.S. 449 (1958), in which the Supreme Court recognized that compelled disclosure of group affiliation can chill an organization's First Amendment rights. In fact, the subpoena chilled First Choice's speech and association with current and future donors, making the donors reluctant to continue or begin financially supporting the small nonprofit. Pet.App.177a, 180a–84a.

First Choice filed a lawsuit in federal court under 42 U.S.C. § 1983, challenging the subpoena on constitutional grounds, including claims of First Amendment retaliation. Pet.App.111a–147a. Yet the district court held the case was unripe because the subpoena was not self-enforcing, and thus, an injury would not exist until "the state court enforces the Subpoena." Pet.App.80a.

The New Jersey Attorney General then filed suit in state court to enforce the subpoena, and the concurrent cases devolved into a procedural quagmire. *See* Pet.10–14. Throughout this litigation, the First Amendment questions evaded judicial review by either the federal or state court. *Id.*

Despite the chill to First Choice's First Amendment rights, the lower federal courts declined jurisdiction. The federal district court, upon remand from the Third Circuit, again held the case was unripe until the state court "require[s] the subpoena recipient to respond to the subpoena under threat of contempt." Pet.App.42a. The Third Circuit affirmed, citing prudential considerations as to why the case was unripe. *See* Pet.App.4a–5a. The case subsequently arrived before this Court on this question: "Where the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, is a federal court in a first-filed action deprived of jurisdiction because those rights must be adjudicated in state court?" Pet.i.

Amicus' argument is three-fold: (I) unlike constitutional ripeness doctrine, which originates in the Cases-or-Controversies Clause, prudential ripeness is a judge-made doctrine that undermines the general rule that a federal court must resolve cases properly within its jurisdiction; (II) the Third Circuit erroneously decided this case under prudential ripeness considerations, not constitutional ripeness doctrine; and (III) prudential ripeness is better analyzed as abstention doctrine in this case,

but abstention doctrines do not prevent judicial review by a federal court. Accordingly, this case is constitutionally ripe, but prudential ripeness doctrine enabled the Third Circuit to abdicate jurisdiction to the state court and subvert this Court's First Amendment precedents on compelled disclosure of group affiliation.

Accordingly, *Amicus* urges the Court to reverse.

ARGUMENT

I. ARTICLE III RIPENESS STEMS FROM THE CONSTITUTION, WHEREAS PRUDENTIAL RIPENESS IS A JUDGE-MADE DOCTRINE THAT UNDERCUTS A FEDERAL COURT'S DUTY TO DECIDE ARTICLE III CASES.

Article III ripeness is a requirement under the Cases-or-Controversies Clause. The Constitution does not, however, mandate the judge-made doctrine of prudential ripeness, which conflicts with the requirement for federal courts to resolve cases properly within their jurisdiction.

A. Article III Ripeness Is a Constitutional Requirement of the Cases-or-Controversies Clause.

Article III of the Constitution recognizes that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution [and] the Laws of the United States . . . " as well as to enumerated "Controversies . . . ." U.S. Const. art. III, § 2. "The case or controversy requirement limits the

role of the Federal Judiciary in our system of separated powers," such that "federal courts [do not] operate as an open forum for citizens 'to press general complaints about the way in which government goes about its business.'" *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 378–79 (2024) (citation omitted). However, "[t]he [Judiciary], though limited as to its objects, is supreme with respect to those objects." *Cohens v. Virginia*, 19 U.S. 264, 381 (1821) (Marshall, C.J.). As such, the Judiciary has no authority to issue an advisory opinion outside the scope of its Article III power, *Food & Drug Admin.*, 602 U.S. at 378, but has "ample powers" over a case that is properly within its Article III jurisdiction, *Cohens*, 19 U.S. at 381–82.

Justiciability doctrines—including standing and ripeness—stem from the Cases-or-Controversies Clause. *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006). These doctrines ensure the separation of powers by "help[ing to] safeguard the Judiciary's proper—and properly limited—role in our constitutional system." *United States v. Texas*, 599 U.S. 670, 675–76 (2023). "But '[w]hile standing is primarily concerned with *who* is a proper party to litigate a particular matter, ripeness addresses *when* that litigation may occur.'" *Planned Parenthood Great Nw., Haw., Alaska, Ind., Ky. v. Labrador*, 122 F.4th 825, 839 (9th Cir. 2024) (citation omitted).

A plaintiff must have a "personal stake in the case—in other words, standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (citation modified).

Article III standing requires a plaintiff to "demonstrate (i) that she has suffered or likely will suffer an injury in fact, (ii) that the injury likely was caused or will be caused by the defendant, and (iii) that the injury likely would be redressed by the requested judicial relief." *Food & Drug Admin.*, 602 U.S. at 380. These three elements are the "irreducible constitutional minimum of standing," as well as "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

Like standing, ripeness "must exist before a court will decide a controversy," but it considers whether "[t]he state of a dispute . . . has reached, but has not passed, the point when the facts have developed sufficiently to permit an intelligent and useful decision to be made." *Ripeness*, *Black's Law Dictionary* (12th ed. 2024). Accordingly, "the case must be 'ripe'—not dependent on 'contingent future events that may not occur as anticipated, or indeed may not occur at all.'" *Trump v. New York*, 592 U.S. 125, 131 (2020) (citation omitted).

Article III ripeness is a temporal component of the first prong of standing: the injury in fact. Fundamentally, ripeness considers "the appropriate timing of judicial intervention." *Renne v. Geary*, 501 U.S. 312, 320 (1991). "Ripeness . . . easily could be seen as the time dimension[] of standing. [It] assumes that an asserted injury would be adequate; ripeness then asks whether an injury that has not yet happened is sufficiently likely to happen . . . ." 13B

Charles A. Wright et al., *Federal Practice and Procedure* § 3531.12 (3d ed. 2025). As such, courts often consider "the constitutional component of ripeness [a]s synonymous with the injury-in-fact prong of the standing inquiry." *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1173 (9th Cir. 2022) (citation omitted).

Thus, Article III ripeness doctrine stems from the Cases-or-Controversies Clause and relates to the injury-in-fact inquiry of standing doctrine.

B. Prudential Ripeness Is Untethered to the Constitution, and Conflicts with a Federal Court's "Virtually Unflagging Obligation" to Resolve Article III Cases.

Prudential ripeness is a judge-made doctrine that does not originate in Article III. Under this doctrine, federal courts "deem . . . claims nonjusticiable 'on grounds that are 'prudential,' rather than constitutional.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (citing *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–26 (2014)). In turn, "Article III and prudential ripeness are both 'concerned with whether a case has been brought prematurely, but they protect against prematureness in different ways and for different reasons.'" *N. Mill St., LLC v. City of Aspen*, 6 F.4th 1216, 1224–25 (10th Cir. 2021) (citation omitted).

The Supreme Court has established a two-part test for prudential ripeness. In *Abbott Laboratories v. Gardner*, the Court directed courts "to evaluate both the fitness of the issues for judicial decision and the

hardship to the parties of withholding court consideration." 387 U.S. 136, 149 (1967), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977). However, "[p]rudential considerations of ripeness are discretionary." *Thomas v. Anchorage Equal Rts. Comm'n*, 220 F.3d 1134, 1142 (9th Cir. 2000). As such, prudential ripeness is more subjective than constitutional ripeness, "involv[ing] the exercise of judgment, rather than the application of a black-letter rule." *Nat'l Park Hosp. Ass'n v. Dep't of Interior*, 538 U.S. 803, 814 (2003).

Although Article III ripeness and prudential ripeness originate from different sources, caselaw has considered both as aspects of ripeness doctrine. This Court has recognized that ripeness doctrine is "drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction." *Id.* at 808 (citation omitted). Lower courts have similarly considered ripeness doctrine to have both constitutional and prudential components. *See Twitter,* 56 F.4th at 1173; *accord Media Matters for Am. v. Paxton*, 138 F.4th 563, 579 (D.C. Cir. 2025).

Unlike constitutional ripeness, which aligns with and stems from the Cases-or-Controversies Clause, prudential ripeness doctrine conflicts with the general rule that federal courts should decide cases properly within their jurisdiction. "A court with jurisdiction has a 'virtually unflagging obligation' to hear and resolve questions properly before it." *Fed. Bureau of Investigation v. Fikre*, 601 U.S. 234, 240 (2024) (citation omitted). As Chief Justice John

Marshall recognized in *Cohens v. Virginia*, "[i]t is most true that this court will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction if it should." 19 U.S. at 404. Accordingly, prudential ripeness, in which a federal court has jurisdiction but declines to resolve the case, conflicts with the general rule that a federal court must decide cases properly within its jurisdiction.

Because Article III sets the "irreducible constitutional minimum" of justiciability, *Lujan*, 504 U.S. at 560, the Supreme Court has criticized the characterization of procedural questions as issues of "prudential" justiciability. In *Lexmark International, Inc. v. Static Control Components*, this Court recognized "Static Control's claim thus presents a case or controversy that is properly within federal courts' Article III jurisdiction, [yet] Lexmark urges that we should decline to adjudicate Static Control's claim on grounds that are 'prudential,' rather than constitutional." 572 U.S. at 125–26. Accordingly, the *Lexmark* Court rejected that the zone-of-interests test was a "prudential standing" issue, and, instead, portrayed it as a question of "whether Static Control has a cause of action under the statute." *Id.* at 128. The *Lexmark* Court likewise critiqued the prudential label for the general rule against third-party standing because "third-party standing is 'closely related to the question whether a person in the litigant's position will have a right of action on the claim' . . . ." *Id.* at 127 n.3 (citation omitted). However, the *Lexmark* Court did not decide the third-party standing issue because the case did not present it, *id.*, and even now,

the issue of whether to characterize the rule against third-party standing as prudential remains unresolved, *see June Med. Servs. LLC v. Russo*, 591 U.S. 299, 317 (2020) (plurality), *abrogated by Dobbs,* 597 U.S. at 286–87 & n.61; *June Med.*, 591 U.S. at 359–366 (Thomas, J., dissenting).

Prudential ripeness has not escaped this Court's reproof. In *Susan B. Anthony List v. Driehaus*, a unanimous Supreme Court recognized "that petitioners have alleged a sufficient Article III injury," yet the "respondents would have us deem petitioners' claims nonjusticiable 'on grounds that are "prudential," rather than constitutional.'" 573 U.S. at 167 (citation omitted). The *Driehaus* Court rejected the respondents' argument, determining "that request is in some tension with our recent reaffirmation of the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Id.* (citation modified). However, the *Driehaus* Court did "not resolve the continuing vitality of the prudential ripeness doctrine in this case because the 'fitness' and 'hardship' factors [of the prudential ripeness test were] easily satisfied." *Id*.

Thus, prudential ripeness is a judge-made doctrine which conflicts with a federal court's "virtually unflagging obligation" to decide Article III cases. The Supreme Court has criticized the characterization of procedural questions as issues of "prudential" justiciability but has not resolved how to characterize prudential ripeness doctrine. Whatever

the status of prudential ripeness doctrine, the Third Circuit cannot use it to disregard this Court's precedents that recognize the chilling effect compelled disclosure of group affiliation may have on First Amendment rights.

II. THE SUBPOENA CHILLED FIRST CHOICE'S FIRST AMENDMENT RIGHTS, BUT THE THIRD CIRCUIT DECLINED JURISDICTION UNDER PRUDENTIAL RIPENESS DOCTRINE.

The subpoena chilled First Choice's freedoms of speech and association, which made this case justiciable under Article III. However, the Third Circuit's decision relied upon prudential ripeness considerations to circumvent this Court's First Amendment caselaw on compelled disclosure of group affiliation.

A. The Subpoena Chilled First Choice's Freedoms of Speech and Association, Creating a Legally Cognizable Injury.

The First Amendment safeguards speakers from government retaliation against their protected speech. Under the First Amendment, "Congress shall make no law . . . abridging the freedom of speech . . . ." The Constitution incorporates this fundamental right through the Fourteenth Amendment's Due Process Clause against state interference. *NAACP*, 357 U.S. at 460. "The framers designed the Free Speech Clause of the First Amendment to protect the 'freedom to think as you will and to speak as you think.'" *303 Creative LLC v.*

Elenis, 600 U.S. 570, 584 (2023) (citation omitted). Accordingly, "as a general matter, the First Amendment prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact for having engaged in protected speech." *Hous. Cmty. Coll. Sys. v. Wilson,* 595 U.S. 468, 474 (2022) (citation modified).

The Supreme Court has recognized a fundamental right to associate with others within the First Amendment. As this Court described in *Roberts v. U.S. Jaycees*, "[a]n individual's freedom to speak . . . c[an]not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." 468 U.S. 609, 622 (1984). The right to associate closely relates to free speech and other First Amendment rights because "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association . . . ." *NAACP*, 357 U.S. at 460 (citations omitted). Accordingly, "the First Amendment [includes] a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends." *Roberts*, 468 U.S. at 622.

The First Amendment's protections extend to free speech and association about contentious topics, including abortion. *See Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 761, 779 (2018). As the Supreme Court recognized in *West Virginia State Board of Education v. Barnette*, the "freedom to differ

is not limited to things that do not matter much. That would be a mere shadow of freedom. The test of its substance is the right to differ as to things that touch the heart of the existing order." 319 U.S. 624, 642 (1943).

This Court has recognized that compelled disclosure of group affiliation may chill First Amendment activities and thus create an Article III injury. In *Americans for Prosperity Foundation v. Bonta*, the Supreme Court reviewed a California law requiring charitable organizations to disclose their major donors to the state Attorney General's Office. 594 U.S. at 600–01. The *Americans for Prosperity* Court recognized, "[w]hen 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." *Id.* at 618. Accordingly, "the risk of a chilling effect on association is enough, because First Amendment freedoms need breathing space to survive." *Id.* at 618–19 (citation modified).

In *NAACP v. State of Alabama ex rel. Patterson*, the Court reviewed the Alabama Attorney General's compelled disclosure of the NAACP's member lists. 357 U.S. at 451. The *NAACP* Court recognized that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action." *Id.* at 462. Since there is a "vital relationship between freedom to associate and

privacy in one's associations," *id.*, compelled disclosure of group affiliation creates an Article III injury when it has an actual chill or even just risks chilling one's First Amendment rights.

Here, the subpoena chilled First Choice's speech and association with current and future donors. "Because this case comes to us at the motion-to-dismiss stage, the Court assumes the truth of 'well-pleaded factual allegations' and 'reasonable inference[s]' therefrom." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 181 (2024) (citation omitted). As petitioner describes, "since many donors desire for their donations and communications with First Choice to remain confidential, the subpoena's threatened disclosure compromises First Choice's ability to recruit new donors, personnel, and affiliates, as well as its ability to retain current donors, personnel, and affiliates." Pet'r.Br.43 (citation modified). "First Choice donors also testified that they viewed the Attorney General's subpoena as an imminent threat to their association with First Choice." Pet'r.Br.44 (citing Pet.App.178a). The donors "affirmed that they would have been less likely to donate to First Choice if they had known information about the donation might be disclosed to an official hostile to pro-life organizations." Pet'r.Br.44 (citation modified). Even now, "[i]f [the donors'] personal information is disclosed . . . it will chill [their] desire in the future to affiliate with and support pro-life organizations." Pet.App.177a. Thus, the subpoena chilled First Choice's speech and association with donors.

The chill to First Choice's First Amendment rights produced a legally cognizable injury under Article III. The compelled disclosure of donors' identities is "concrete and particularized," showing an actual chilling of First Choice's freedoms of speech and association. *Lujan*, 504 U.S. at 560. This injury is "not 'conjectural' or 'hypothetical.'" *Id.* (citations omitted). Rather, the disclosure of donors' identities to a pro-abortion Attorney General has harmed First Choice's freedom to associate with current donors and to recruit new donors to advocate for pregnant women and their families. *See* Pet'r.Br.29–52. The compelled disclosure is virtually identical to the Article III injury in *Americans for Prosperity*, when the state compelled charitable organizations to disclose their major donors. *See* 594 U.S. at 600–02. In fact, Judge Stephanos Bibas dissented from the Third Circuit decision in this case, noting he "would [have found] First Choice's constitutional claims ripe because he believes that this case is indistinguishable from *Americans for Prosperity Foundation*." Pet.App.3a. Thus, the chill to First Choice's First Amendment rights created an Article III injury.

The lower courts erroneously focused on how the subpoena is not self-enforcing when they held that this case is not ripe. In a First Amendment retaliation lawsuit concerning a state investigatory demand, it is a red herring to focus exclusively upon whether the investigatory demand is self-enforcing. *See* Pet'r.Br.29–52. As the D.C. Circuit described in *Media Matters for America v. Paxton*, "[t]his case is not simply about a pre-enforcement challenge to a

non-self-executing [civil investigative demand] . . . ." 138 F.4th at 579. "Rather, the heart of [the] claim is that the actions taken by [the government] are justiciable and warrant relief because they involve concrete and felt acts of *retaliation* against [the speaker] for having exercised their protected rights of free speech." *Id*. at 570. As such, "the retaliatory framework is the appropriate one under which to evaluate [the plaintiff's] standing," and the court must review the "chilling effect on [the plaintiff's] speech or any other legally cognizable injury." *Twitter*, 56 F.4th at 1175. If the plaintiff "ha[s] satisfied the injury-in-fact requirement of standing [then she] may pursue injunctive relief for [her] First Amendment retaliation claim." *Media Matters*, 138 F.4th at 579.

Accordingly, the subpoena's chill to First Choice's First Amendment rights created an Article III injury and, thus, made this case constitutionally ripe.

B. The Third Circuit Relied upon Prudential Ripeness Doctrine to Circumvent First Amendment Caselaw.

The Third Circuit affirmed the district court's dismissal of this case under ripeness doctrine. The court recognized the dual aspects of constitutional and prudential ripeness, declaring that "claims must also be ripe, both to be encompassed within Article III and as a matter of prudence." Pet.App.4a (citing *Driehaus*, 573 U.S. at 157 n.5, 167). The Third Circuit then affirmed, determining that it "do[es] not think First Choice's claims are ripe." Pet.App.4a. The court

did not identify whether its holding was under constitutional ripeness or prudential ripeness doctrine. Yet each of the five ripeness considerations in the Third Circuit's decision was prudential, examining the "fitness of the issues for judicial decision" or the "hardship to the parties of withholding court consideration." *See Abbott Labs.*, 387 U.S. at 149.

1. The Third Circuit contended that "[First Choice] can continue to assert its constitutional claims in state court as that litigation unfolds." Pet.App.4a. This determination is part of the hardship factor, examining the burden on First Choice. The Supreme Court offered a similar analysis, albeit with a different outcome, in considering the hardship factor in *Driehaus*. 573 U.S. at 167–68. The *Driehaus* Court held that "denying prompt judicial review would impose a substantial hardship on petitioners, forcing them to choose between refraining from core political speech on the one hand, or engaging in that speech and risking costly Commission proceedings and criminal prosecution on the other." *Id*. Accordingly, the Third Circuit, like the *Driehaus* Court, considered whether delaying judicial review would impose a hardship upon the parties.

2. The Third Circuit determined that "the parties have been ordered by the state court to negotiate to narrow the subpoena's scope; they have agreed to so negotiate." Pet.App.4a. This conclusion evaluates the fitness of the legal issues. As this Court recognized in *Thomas v. Union Carbide Agricultural Products Co.*,

the fitness factor examines whether "[t]he issue presented in this case is purely legal, and will not be clarified by further factual development." 473 U.S. 568, 581 (1985). Just like the *Thomas* Court, the Third Court considered how factual developments, *i.e.*, potential narrowing of the subpoena's scope, may alter the legal issues in this case.

3. The court asserted that "the Attorney General has conceded that he seeks donor information from only two websites." Pet.App.4a. This consideration is part of the hardship factor and is akin to how the Supreme Court reviewed the hardship upon the petitioners in *Abbott Laboratories*. There, the Supreme Court determined that, to comply with a newly promulgated U.S. Food and Drug Administration regulations, manufacturers of prescription drugs had to "change all their labels, advertisements, and promotional materials; they must destroy stocks of printed matter; and they must invest heavily in new printing type and new supplies," or else risk "risk serious criminal and civil penalties for the unlawful distribution of 'misbranded' drugs." 387 U.S. at 152–53. In contrast, the Third Circuit determined that First Choice must produce donor information from *only* two websites, implying that it considered the size of the hardship upon the pregnancy center.

4. The Third Circuit then argued that "First Choice's current affidavits do not yet show enough of an injury." Pet.App.4a. This contention looked at the fitness of the legal issues for judicial review. Yet

Article III does not provide a sliding scale test for ripeness; either there is an Article III injury that is "actual or imminent" or there is not an Article III injury because such alleged injury is "'conjectural' or 'hypothetical.'" *Lujan*, 504 U.S. at 560 (citation omitted). As such, the Third Circuit's evaluation of whether there is "enough" of an alleged injury is outside the scope of the Article III ripeness test, and, thus, a prudential consideration of the fitness of the issues for judicial decision.

5. The court concluded that "[it] believe[s] that the state court will adequately adjudicate First Choice's constitutional claims, and [it] expect[s] that any future federal litigation between these parties would likewise adequately adjudicate them." Pet.App.4a–5a (citations omitted). In doing so, the court considered the hardship factor. As the Supreme Court discussed in *Reno v. Catholic Social Services, Inc.*, if the "impact of [a regulation] could not be said to be felt immediately by those subject to it in conducting their day-to-day affairs," then under the hardship factor, the case "would not be ripe before the regulation's application to the plaintiffs in some more acute fashion, since no irremediably adverse consequences flowed from requiring a later challenge." 509 U.S. 43, 57–58 (1993) (citation modified). Here, although it ignored the ongoing First Amendment injury, the Third Circuit determined that delaying judicial review would not prevent adequate adjudication of the constitutional claims as part of its analysis of the hardship factor.

Thus, the Third Circuit's decision applied prudential ripeness doctrine's fitness and hardship factors. Accordingly, the court's holding that this case was not ripe relied upon prudential ripeness, not constitutional ripeness doctrine. *See* Pet'r.Br.52–54 (arguing that this case is prudentially ripe).

The Third Circuit's prudential ripeness holding is problematic. The Supreme Court has recognized that compelled disclosure of group affiliation may chill one's First Amendment rights, *Ams. for Prosperity*, 594 U.S. at 618–19, and First Choice has properly alleged that the subpoena chilled its speech and association with donors, Pet.App.177a, 181a–84a. Yet, the Third Circuit sidestepped this Court's First Amendment caselaw by affirming the dismissal of a justiciable case on prudential grounds.

There are other flaws with the Third Circuit's prudential holding. It contravenes the general rule that a federal court should decide cases properly within its jurisdiction, *see supra* Section I(B), and clashes with 42 U.S.C. § 1983's guarantee of a federal forum for the deprivation of a right secured by the Constitution, Pet'r.Br.19–29. And the analysis inverts the Supremacy Clause, declaring that a First Amendment injury is "not yet . . . enough of an injury" to be ripe because the subpoena is not self-enforcing under state law, and, thus, cannot yet injure the petitioner. *See* U.S. Const. art. VI, cl. 2. Determining an injury to a First Amendment right exists only if state law says so "subvert[s] the very foundation of all written constitutions" and "controvert[s] the principle

that the constitution is to be considered, in court, as a paramount law." *Marbury v. Madison*, 5 U.S. 137, 178 (1803).

In sum, this case is justiciable, yet the Third Circuit declined jurisdiction on prudential ripeness grounds. The Third Circuit's decision bypassed Supreme Court caselaw on compelled disclosure of group affiliation and clashed with a federal court's "virtually unflagging obligation" to decide Article III cases.

III. Prudential Ripeness Is Essentially an Abstention Doctrine, But Abstention Doctrines Do Not Apply to this Case.

Prudential ripeness doctrine is virtually identical to an abstention doctrine in this case, permitting a federal court to relinquish jurisdiction so that a state court may first hear the case. As such, this case is better analyzed under abstention doctrines, but *Younger* and other abstention doctrines are inapplicable.

A. Prudential Ripeness is an Abstention Doctrine by Another Name.

This case has raised a prudential ripeness question, but this matter is better characterized as an abstention issue. The "prudential" label on justiciability questions often obscures the true procedural issue before a federal court. In *Lexmark*, for example, the Supreme Court considered whether the zone-of-interests test was "the appropriate analytical framework for determining a party's

standing to maintain an action for false advertising under the Lanham Act." 572 U.S. at 125. Although the Supreme Court recognized that "[t]he parties' briefs treat the question on which we granted certiorari as one of 'prudential standing,'" the Court immediately rejected the characterization of the legal issue as a matter of prudential standing because the "label [was] misleading." *Id.*

The *Lexmark* Court held that the "prudential standing" issue was better considered as a question of whether there was a cause of action. *Id.* at 128. The Cases-or-Controversies Clause sets the "irreducible constitutional minimum of standing" and the *Lexmark* plaintiff, Static Control, established that it had Article III standing. *Id.* at 125 (citation omitted). The parties' arguments about "prudential standing" involved statutory interpretation questions about whether Static Control may sue under the Lanham Act. *Id.* at 126–27. As such, the Court determined that "prudential standing is a misnomer as applied to the zone-of-interests analysis, which asks whether this particular class of persons has a right to sue under this substantive statute." *Id.* at 127 (citation modified). Thus, the proper characterization of the legal issue was "whether Static Control ha[d] a cause of action under the statute." *Id.* at 128.

Just like "Lexmark's arguments [about the cause of action issue] do not deserve the 'prudential' label" of justiciability, *id.* at 127, so too is "prudential ripeness" an incorrect label for the abstention issue in this case.

Abstention doctrines permit a federal court to decline jurisdiction in exceptional circumstances so that a state tribunal may hear the case first. In its basic form, an abstention doctrine is "[t]he principle that federal courts should not hear cases better heard in state courts." *Abstention Doctrine*, *Black's Law Dictionary* (12th ed. 2024). Accordingly, this doctrine permits "a District Court [to] decline to exercise or postpone the exercise of its jurisdiction." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976) (citation omitted). "Abstention doctrines are judicially created and self-imposed limitations on courts' adjudication of cases that are properly within their subject matter jurisdiction . . . and that satisfy the requirements of justiciability." 17A James W. Moore et al., *Moore's Federal Practice* § 122.03 (3d ed. 2025). Comity and federalism are key principles behind abstention doctrines. *Younger v. Harris*, 401 U.S. 37, 43–44 (1971). However, abstention doctrines apply only in "exceptional circumstances", since "a federal court's 'obligation' to hear and decide a case is 'virtually unflagging,'" and "[p]arallel state-court proceedings do not detract from that obligation." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77–78 (2013) (citing *Colo. River*, 424 U.S. at 817).

Abstention is intertwined with the prudential ripeness issue. As the district court recognized in this case, "the Article III ripeness concern hides in the cross-section between parallel proceedings and other prudential concerns like comity, abstention, and full faith and credit." Pet.App.35a. In fact, the district

court characterized "abstention . . . [as] a prudential ripeness doctrine." Pet.App.29a.

Prudential ripeness cases often include questions about abstention. In *Driehaus*, this Court considered, and rejected, an argument about *Younger* abstention, ultimately holding the case was ripe, including on prudential grounds. 573 U.S. at 166–68. Likewise, circuit courts in this case and *Google, Inc. v. Hood* both held that challenges to non-self-enforcing investigatory demands are unripe before certain enforcement actions in state court. Pet.App.5a; *Google*, 822 F.3d 212, 224–26 (5th Cir. 2016). At the same time, the district court in this case and Fifth Circuit in *Google* addressed and explicitly rejected arguments for the court to relinquish jurisdiction under *Younger* abstention. Pet.App.16a–18a, 29a; *Google,* 822 F.3d at 222–24.

Here, the Third Circuit declined jurisdiction based upon considerations of the state court litigation. The Third Circuit recognized the availability of a state court forum, determining that First Choice "can continue to assert its constitutional claims in state court" and "the state court will adequately adjudicate First Choice's constitutional claims." Pet.App.4a–5a. Likewise, the Third Circuit considered the status of the state court proceedings, recognizing the "parties have been ordered by the state court to negotiate to narrow the subpoena's scope; they have agreed to so negotiate." Pet.App.4a. Finally, the Third Circuit held that "First Choice's current affidavits do not yet show enough of an injury," Pet.App.4a, incorporating the

district court's rationale that an injury only occurs once state court proceedings have sufficiently progressed as to "require the subpoena recipient to respond to the subpoena under threat of contempt," Pet.App.42a. As such, the Third Circuit relinquished jurisdiction based upon considerations of state court review of this case.

Although the Third Circuit characterized its prudential holding as a matter of ripeness, Pet.App.4a, it was simply abstention doctrine by a different label. The Third Circuit abdicated jurisdiction because it viewed this case as one of the "certain instances in which the prospect of undue interference with state proceedings counsels against federal relief." *Sprint*, 571 U.S. at 72. In fact, the Third Circuit's rationale that "the state court will adequately adjudicate First Choice's constitutional claims" echoed this Court's discussion of abstention doctrine in *Middlesex County Ethics Committee v. Garden State Bar Association*, when the Supreme Court recognized that "[m]inimal respect for the state processes, of course, precludes any presumption that the state courts will not safeguard federal constitutional rights." 457 U.S. 423, 431 (1982) (emphasis omitted). The Third Circuit's relinquishment of jurisdiction thus fit the definition of abstention since it was fundamentally "a federal court's refusal to decide a case in deference to the States." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans* (*"NOPSI"*), 491 U.S. 350, 368 (1989).

Accordingly, the prudential ripeness label is a mischaracterization of the true procedural issue before this Court: abstention.

B. *Younger* Abstention Doctrine Is Inapplicable.

Younger abstention is unsuitable for this case. *See Younger*, 401 U.S. 37. In fact, both the district court in this case and Fifth Circuit in *Google* considered, and explicitly rejected, arguments to apply *Younger* abstention to non-self-enforcing subpoenas. *See* Pet.App.16a–18a, 29a; *Google*, 822 F.3d at 222–24. This doctrine applies to federal cases when there "is a parallel, pending state criminal proceeding, [and] federal courts must refrain from enjoining the state prosecution." *Sprint*, 571 U.S. at 72. Although *Younger* abstention initially applied to "state criminal prosecutions," the Supreme Court since expanded it "to civil enforcement proceedings, and even to civil proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." *NOPSI*, 491 U.S. at 368 (citations omitted).

Younger abstention is improper because there were no ongoing state court proceedings when First Choice filed its federal lawsuit. *Compare* Pet.App.111a–147a, *with* J.A.39–63. Accordingly, this case does not meet "[t]he first condition for the application of *Younger* abstention . . . that the state proceeding must be pending on the day the plaintiff sues in federal court—the so-called 'day-of-filing' rule." *Nimer v. Litchfield Twp. Bd. of Trs.*, 707 F.3d 699, 701 (6th Cir. 2013). Neither did this case involve

"an about-to-be-pending state . . . civil action involving important state interests" for the purposes of *Younger* abstention. *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 381 n.1 (1992). The Attorney General only filed the enforcement lawsuit in state court after the federal district court dismissed the federal case as unripe, holding that the case "would ripen only . . . if and when the state court enforces the Subpoena in its current form." *Compare* Pet.App.80a, *with* J.A. 39–63.

This case likewise does not fit within any of the *Younger* categories. "[T]he issuance of a non-self-executing administrative subpoena does not, without more, mandate *Younger* abstention." *Google*, 822 F.3d at 224. Nor do the civil enforcement proceedings to enforce the subpoena in state court satisfy the requirements of *Younger* abstention.

1. This case concerns a state investigatory demand that is "civil, not criminal in character." *Sprint*, 571 U.S. at 79; Pet.i. There are no ongoing criminal proceedings, *see* Pet'r.Br.13–17, so the first *Younger* category concerning "state criminal prosecutions" does not direct abstention in this case.

2. This case also does not present "civil enforcement proceedings" that meet the next *Younger* category. This category requires "instances of civil enforcement . . . concern[ing] state proceedings 'akin to a criminal prosecution' in 'important respects.'" *Sprint*, 571 U.S. at 79 (citation omitted). "Such enforcement actions are characteristically initiated to sanction the federal plaintiff, *i.e.*, the party

challenging the state action, for some wrongful act." *Id.* Accordingly, courts may consider whether "[i]nvestigations are commonly involved, often culminating in the filing of a formal complaint or charges;" the proceedings were "initiated by 'the State in its sovereign capacity;'" and the action was meant "to sanction [the federal plaintiff] for commission of a wrongful act." *Id.* at 79–80 (citation omitted).

Although the Attorney General initiated state court proceedings on behalf of the state, there is no allegation that First Choice violated a legal right or duty. In *Sprint Communications, Inc. v. Jacobs*, the Supreme Court indicated that state proceedings involving the possible violation of a legal right or duty fit the second *Younger* category, such as "state-initiated disciplinary proceedings against [a] lawyer for violation of state ethics rules" or "state-initiated administrative proceedings to enforce state civil rights laws." *Id.* at 79 (citations omitted). Here, "the Attorney General did not allege [First Choice] violated any substantive legal duty. . . . [H]e has not accused [First Choice] of violating the Consumer Fraud Act; he is investigating possible violations." *Smith & Wesson Brands, Inc. v. Att'y Gen. of N.J.*, 27 F.4th 886, 892 (3d Cir. 2022). The state court lawsuit concerns "a procedural rule related to the production of documents," not an alleged violation of a substantive legal right or duty that would "culminat[e] in the filing of a formal complaint or charges." *Id.* at 891–92 (citation omitted). And any alleged delay in responding to the subpoena due to federal court litigation "to adjudicate [First Choice's]

rights and obligations" is not "wrong" since "[f]ederal law authorizes just such a civil action." *Id.* at 892–93 (citing 42 U.S.C. § 1983). Accordingly, this case does not belong to the second *Younger* category.

3. This case does not fit the last *Younger* category: "proceedings involving certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions." Two Supreme Court cases exemplify the third *Younger* category.

First, in *Juidice v. Vail*, a state court had issued contempt orders against the federal plaintiffs, which they sought to enjoin as unconstitutional in federal court. 430 U.S. 327, 332 (1977). The Supreme Court applied *Younger* abstention since "[t]he contempt power lies at the core of the administration of a State's judicial system" and the federal plaintiffs "had an opportunity to present their federal claims in the state proceedings." *Id*. at 335, 337.

Second, in *Pennzoil Co. v. Texaco, Inc.*, the federal plaintiff sought to enjoin a state court "plaintiff who has prevailed in a trial in state court from executing the judgment in its favor pending appeal of that judgment to a state appellate court." 481 U.S. 1, 3 (1987). The state court "judgment . . . would exceed $11 billion" and to "suspend the execution of the judgment," the federal plaintiff would have had to post a bond that was "more than $13 billion." *Id.* at 4–5. The Supreme Court determined *Younger* abstention was appropriate because "th[e] exercise of the federal judicial power would disregard the comity between the States and the National Government."

Id. at 11 (citation omitted). The Court also identified it wanted "to avoid unwarranted determination of federal constitutional questions." *Id.*

This case is distinguishable from *Juidice* and *Pennzoil*. As the Third Circuit described of *Juidice* and *Pennzoil*, "the substantive outcome [of state court proceedings] had occurred; only enforcement remained, and the Supreme Court refused to impede that enforcement." *Smith & Wesson*, 27 F.4th at 894. Conversely, when First Choice filed its federal court lawsuit, "there was much more for the state court to do than merely implement a predetermined outcome." *Id.* "[State] courts still had to adjudicate [First Choice]'s constitutional arguments; and even if those arguments were resolved against [First Choice], the state courts still had to give the [organization] an opportunity to produce the required documents before holding it in contempt." *Id.* Accordingly, unlike *Juidice* and *Pennzoil*, this case does not have any "certainty of the state court's action." *Id.*

The threat of contempt proceedings by itself also does not trigger *Younger*'s third category. "If a *threat* of contempt were all that was required to trigger abstention, [federal courts] would have to abstain whenever there was a pending civil proceeding since the contempt power is generally available to enforce court orders." *Id.* at 895. Although the subpoena is under threat of contempt, there have not yet been contempt proceedings in this case. *See* Pet'r.Br.13–17. As such, this case does not fit the third *Younger* category.

Thus, *Younger* abstention is inapplicable because this lawsuit was filed before the state court enforcement action, and this case does not meet the *Younger* categories.

C. Other Abstention Doctrines Are Inapposite.

Pullman, *Burford*, *Thibodaux*, and *Colorado River* abstention doctrines do not support a federal court's relinquishment of jurisdiction in this case to a state court.

Pullman abstention is unsuitable for this case. *See R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496 (1941). Under *Pullman* abstention, "federal courts should abstain from decision when difficult and unsettled questions of state law must be resolved before a substantial federal constitutional question can be decided." *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984) (citation omitted). However, the Supreme Court has recognized that "federal courts need not abstain on Pullman grounds when a state statute is not 'fairly subject to an interpretation which will render unnecessary' adjudication of the federal constitutional question." *Id.* (citation omitted).

This case presents questions about the First Amendment and 42 U.S.C. § 1983, Pet.i, not "difficult and unsettled questions of state law," *Haw. Hous. Auth.*, 467 U.S. at 236. The Supreme Court recognized *Pullman* abstention in a case involving alleged racial discrimination in railroad employment, in which the federal constitutional questions could be avoided depending upon the resolution of the state law issues.

312 U.S. at 497–98. This case does not present that scenario. First Choice has raised its federal constitutional claims in the state court proceedings. Pet.11. The state trial court has preserved those questions, and, assuming a federal court does not resolve them first, the state court will eventually need to decide the federal constitutional questions to resolve the case. *See* Pet.App.157a, 162a. Thus, *Pullman* abstention is not applicable.

Burford abstention does not authorize a federal court to relinquish jurisdiction in this case. *See Burford v. Sun Oil Co.*, 319 U.S. 315 (1943). This doctrine applies "where the 'exercise of federal review of the [state-law] question in a case and in similar cases would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.'" *NOPSI*, 491 U.S. at 361 (citation omitted).

This case is distinguishable from *Burford v. Sun Oil Company*, where the Supreme Court, under diversity jurisdiction, examined a complex state regulatory system for the oil and gas industry in Texas. *Id.* at 317–324. Here, New Jersey does not have comprehensive administrative procedures exclusively for pregnancy centers. And unlike *Burford*, First Choice filed under federal question jurisdiction, focusing on First Amendment claims within a 42 U.S.C. § 1983 lawsuit, Pet.i, not "difficult questions of state law," *NOPSI*, 491 U.S. at 361. Accordingly, *Burford* abstention is not appropriate.

Thibodaux abstention is equally unsuitable for this case. *See La. Power & Light Co. v. City of Thibodaux*, 360 U.S. 25 (1959). This doctrine applies "when there are 'difficult questions of state law bearing on policy problems of substantial public import whose importance transcends the result in the case then at bar.'" *NOPSI*, 491 U.S. at 361 (citation omitted). The Supreme Court has placed *Thibodaux* doctrine under the mantle of *Burford* abstention, *id*., since both doctrines require "difficult questions of state law," *Colo. River*, 424 U.S. at 814. However, *Burford* abstention requires interference with a "coherent [state] policy," whereas *Thibodaux* abstention looks more generally at the impact on "policy problems." *Id*.

In contrast to the *Thibodaux* case, which raised novel questions about Louisiana's eminent domain law under diversity jurisdiction, 360 U.S. at 25–26, 30, First Choice invoked federal question jurisdiction involving the U.S. Constitution and 42 U.S.C. § 1983, not diversity jurisdiction over a question of state law. *See* Pet.App.114a. The fact that the subpoena is not self-enforcing under state law does not diminish the legal injury First Choice suffered to its First Amendment rights. *See supra* Section II(A). As such, this case concerns questions of First Amendment jurisprudence and the scope of 42 U.S.C. § 1983 lawsuits, *see* Pet'r.Br.19–52, not "difficult questions of state law," *Colo. River*, 424 U.S. at 814. *Thibodaux* abstention thus is improper.

Colorado River abstention does not apply to this case. *See Colo. River*, 424 U.S. 800. This doctrine triggers when there is "parallel state-court litigation," and "considerations of wise judicial administration, giving regard to conservation of judicial resources and comprehensive disposition of litigation" support dismissal of the federal court lawsuit. *Moses H. Cone Mem. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 15–16 (1983) (citation modified). Federal courts consider which "court first assum[ed] jurisdiction over [the] property" as well as the "the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, and the order in which jurisdiction was obtained by the concurrent forums." *Colo. River*, 424 U.S. at 818 (citations omitted). Although "[n]o one factor is necessarily determinative," *id.*, "the balance [must be] heavily weighted in favor of the exercise of jurisdiction." *Moses H.*, 460 U.S. at 16.

This case does not concern property, so the first factor is irrelevant. The second factor shows there is no inconvenience because of the federal forum. The federal defendant—the New Jersey Attorney General—resides and operates in the District of New Jersey. *See* Pet.App.114a–115a. The dispositive factor in *Colorado River* was the potential for piecemeal litigation, since that case dealt with water rights, and the "concern [over piecemeal litigation] is heightened with respect to water rights, the relationships among which are highly interdependent . . . and are best conducted in unified proceedings." *Colo. River*, 424 U.S. at 819 (citation omitted). However, this case does not concern water or even property rights, and a final

judgment in either the federal or state court would bar the other court under res judicata from reexamining the First Amendment issue. *See* Pet'r.Br.4. First Choice filed this case first in federal court, leaning the final factor in its favor. *See* Pet'r.Br.13. Thus, these factors weigh in favor of First Choice, and *Colorado River* abstention is unwarranted since "[o]nly the clearest of justifications will warrant dismissal." *Colo. River*, 424 U.S. at 819.

In sum, the Third Circuit's prudential ripeness holding was abstention by another name, but abstention doctrine is improper for this case.

CONCLUSION

The Third Circuit's reliance upon prudential ripeness doctrine to abstain from exercising jurisdiction was erroneous. For the reasons set forth above, *Amicus* urges the Court to reverse.

Respectfully submitted,

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