

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 the Liberty Justice Center as
Amicus Curiae Supporting Petitioner**

August 28, 2025

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Question Presented

Where the subject of a state investigatory demand establishes a chill of its First Amendment rights, is a federal court deprived of jurisdiction because those rights must be adjudicated in state court?

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Interest of the Amicus Curiae

The Liberty Justice Center is a nonprofit, nonpartisan public-interest litigation firm which pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights. The Liberty Justice Center is interested in this case because a regime which requires full state court litigation prior to a 42 U.S.C. § 1983 claim proceeding in federal court impairs citizens' ability to protect their constitutional rights through the judicial system.¹

Summary of Argument

When state officials take actions that objectively chill First Amendment rights, individuals should not be required to exhaust state court remedies before seeking protection in federal court. Federal courts are charged with providing timely safeguards for constitutional freedoms, not relegating individuals to endure prolonged state proceedings before any federal remedy is available.

Congress enacted 42 U.S.C. § 1983 to ensure that individuals whose constitutional rights are threatened by state actors have immediate access to a federal forum, without being forced to endure the delays, burdens, or potential hostility of state court

¹ Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission. All parties received timely notice of Amicus's intent to file this brief.

proceedings. *See generally* William Baude, *Is Qualified Immunity Unlawful?*, 106 Calif. L. Rev. 45 (2018). This Court has repeatedly recognized that the very purpose of § 1983 is to provide a direct federal remedy for constitutional violations, precisely because state processes may be inadequate or themselves part of the constitutional injury. *See Monroe v. Pape*, 365 U.S. 167, 180–83 (1961); *Patsy v. Board of Regents*, 457 U.S. 496, 503–11 (1982).

The Third Circuit’s approach would force citizens to endure the very harm the First Amendment forbids—government-induced self-censorship—while waiting for state litigation to conclude. Such a rule would erode the practical value of both the First Amendment and 42 U.S.C. § 1983, which Congress designed to ensure prompt federal remedies for constitutional violations, especially when state procedures themselves may perpetuate the injury.

Government investigatory demands, even absent formal penalties, can inflict real and ongoing harm by deterring protected speech and association. The injury is not hypothetical or remote; it is immediate and concrete whenever individuals or organizations are compelled to alter their conduct in response to state threats. Federal jurisdiction cannot turn on the government’s choice of label—“investigatory” versus “enforcement”—nor can it depend on the completion of state court litigation.

If left standing, the decision below would allow state officials to sidestep federal judicial review simply by framing their actions as preliminary or investigatory, undermining the supremacy of federal law and leaving constitutional rights unprotected when they are most vulnerable. The Constitution and

§ 1983 require more: federal courts must be open to those whose rights are chilled, at the moment the injury occurs.

Argument

I. Section 1983 guarantees a federal forum for Constitutional claims without requiring exhaustion or full litigation in state court.

A. Section 1983 was enacted to provide a federal forum for vindicating constitutional rights, precisely because state processes may be inadequate or themselves part of the constitutional injury.

Congress's deliberate decision to provide a direct federal remedy for violations of constitutional rights by state actors, regardless of the availability or adequacy of state remedies is embodied in 42 U.S.C. § 1983. This Court has repeatedly recognized that the very purpose of § 1983 is to ensure that individuals whose federal rights are threatened or infringed receive immediate access to a federal forum, without being forced to rely on state courts or administrative processes that may be hostile, dilatory, or complicit in the deprivation.

In *Monroe v. Pape*, this Court explained that Congress enacted § 1983 in response to the widespread failure of state authorities to protect federal rights during Reconstruction. 365 U.S. 167, 180–83 (1961). The statute was intended to “afford a federal right in federal courts because, by reason of

prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies.” *Id.*, at 180. This Court emphasized that the federal remedy is supplementary to any remedy any State might have, and that “[i]t is no answer that the State has a law which if enforced would give relief.” *Id.* at 183.

Moreover, in *Patsy v. Board of Regents*, this Court reaffirmed that, “the very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people’s federal rights—to protect the people from unconstitutional action under color of state law, ‘whether that action be executive, legislative, or judicial.’” 457 U.S. 496, 503 (1982) (quoting *Ex parte Virginia*, 100 U.S. 339, 346 (1880)). This Court rejected the notion that plaintiffs must first seek relief from state agencies or courts, noting that such a requirement would frustrate the purpose of the civil rights statutes. *Id.* at 509–511.

The irrelevance of state remedies is not a mere technicality; it is a recognition that state processes may themselves be the source of constitutional injury or may be so intertwined with the challenged conduct that requiring exhaustion would render the federal remedy illusory.

This Court makes clear that federal courts must be available to hear constitutional claims. Any contrary rule would subvert the very purpose of § 1983 and leave individuals unprotected against ongoing constitutional violations by state actors.

B. The irrelevance of state court litigation is especially acute where the chill itself is the injury and delay or exhaustion would perpetuate the constitutional harm.

Requiring that plaintiffs fully litigate their claims in state court before seeking federal relief is fundamentally incompatible with the nature of First Amendment injuries. In cases involving a chilling effect on speech or association, the constitutional harm is not limited to the imposition of a final penalty or sanction but arises immediately when individuals are forced to self-censor or alter their conduct in response to government threats, investigations, or enforcement actions. The injury is ongoing and cumulative for as long as the chill persists. *See Elrod v. Burns*, 427 U.S. 347, 373–74 (1976).

Forcing plaintiffs to endure protracted state court proceedings before obtaining federal review would not only fail to remedy the constitutional violation but would actively exacerbate it. The delay inherent in state litigation prolongs the period during which individuals must choose between exercising their rights and risking adverse consequences or acquiescing in the face of government pressure. This Court has recognized that the mere existence of a credible threat of enforcement, or a government action that objectively chills protected activity, is sufficient to confer standing and trigger the need for immediate federal judicial intervention. *See Steffel v. Thompson*, 415 U.S. 452, 462–63 (1974); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158–61 (2014).

Insisting on state court litigation as a prerequisite to federal relief would transform the federal courts

from primary guardians of constitutional rights into mere appellate bodies, available only after state processes have run their course. This approach would invert the structure of federal civil rights enforcement and undermine the supremacy of federal law. The constitutional guarantee against government-induced chill is not satisfied by the possibility of eventual vindication in state court; it demands prompt and effective protection in a federal forum.

Accordingly, where the chill itself is the injury, any requirement of state court exhaustion or full litigation is not only unnecessary, but affirmatively harmful. Federal courts must be available to provide immediate relief from ongoing constitutional violations, consistent with the text, history, and purpose of § 1983 and the First Amendment.

II. State investigatory demands are not exempt from First Amendment principles.

A. This Court has never recognized investigatory demands as a special category requiring exhaustion or full state court litigation before federal review.

This Court's precedents have never articulated that investigatory demands, such as subpoenas, civil investigative demands, or other compulsory requests for information, are exempt from the general rule that federal courts are available to hear constitutional claims without requiring exhaustion or full litigation in state court. There is no exception for investigatory demands, nor has this Court suggested that such

demands must be fully contested in state proceedings before a federal forum is available.

To the contrary, this Court has repeatedly entertained and adjudicated constitutional challenges to state investigatory demands in federal court, without imposing any exhaustion requirement. In *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), this Court reviewed a federal challenge to a state court order compelling the NAACP to disclose its membership lists, recognizing that the compelled disclosure would chill the organization's First Amendment rights. This Court did not require the NAACP to exhaust state judicial remedies or to fully litigate the matter in state court before seeking federal relief. Instead, this Court intervened directly to protect the First Amendment associational rights at stake. *Id.* at 460–63.

Similarly, in *Bates v. City of Little Rock*, 361 U.S. 516 (1960), this Court addressed a federal constitutional challenge to municipal ordinances requiring disclosure of membership lists, again without any suggestion that exhaustion of state remedies was required. This Court's willingness to adjudicate such claims in federal court reflects the principle that investigatory demands, no less than direct enforcement actions, can inflict immediate and irreparable constitutional harm by chilling protected speech and association. *Id.* at 523–24.

This Court's decisions strongly suggest that the nature of the government action—whether investigatory or enforcement—does not alter the availability of a federal forum for the vindication of constitutional rights. The relevant inquiry is whether the plaintiff faces an objectively reasonable chill or

threat to First Amendment freedoms, not whether the state has labeled its conduct as “investigatory.” See *Steffel*, at 462–63; *Monroe*, 365 U.S. at 183.

To hold otherwise would invite states to circumvent federal judicial review of constitutional claims simply by characterizing their actions as investigatory rather than punitive or regulatory. Such a rule would undermine the supremacy of federal law and the core purpose of § 1983, which is to provide immediate and effective protection against all forms of unconstitutional state action. This Court has never recognized—and should not now create—a special category for investigatory demands that would require exhaustion or full state court litigation before federal review is available.

B. Investigatory demands, like subpoenas or civil investigative demands, can and do cause an objectively reasonable chill of First Amendment rights, triggering immediate federal jurisdiction.

This Court has repeatedly recognized that investigatory demands—such as subpoenas or compulsory disclosure requirements—can inflict an immediate and objectively reasonable chill on the exercise of First Amendment rights. The injury arises not from the ultimate enforcement of a penalty, but from the deterrent effect that such demands have on protected speech and association.

As this Court explained in *NAACP v. Alabama*, “[c]ompelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order” as other governmental action

which may, “dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.” 357 U.S. at 462–463. This Court recognized that the mere threat of disclosure, even before any penalty is imposed, “may constitute as effective a restraint on freedom of association as the forms of governmental action” in the past which this Court has condemned.” *Id.* at 462. Making this point more explicit, in *Bates v. City of Little Rock*, this Court emphasized that the deterrent effect of investigatory demands is itself a constitutional injury, sufficient to warrant federal judicial intervention. *Bates*, 361 U.S. at 523.

A credible threat of enforcement or an objectively reasonable chill—regardless of whether the government’s action is labeled investigatory or enforcement—is sufficient to confer standing and trigger federal jurisdiction. *See Steffell*, at 462–63 (“It is not necessary that petitioner expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights.”); *Susan B. Anthony List*, at 158–61 (a credible threat of enforcement creates a justiciable controversy).

Accordingly, investigatory demands that chill First Amendment rights are not merely preliminary or harmless steps in a process, but are themselves actionable constitutional injuries. Federal courts must be available to provide immediate relief from such chill, without requiring plaintiffs to endure the very harm the First Amendment was designed to prevent.

C. Allowing state investigatory demands to be fully litigated in state court before federal review would undermine the very purpose of federal constitutional protections and § 1983.

The procedural trap created by full state court litigation—where claim preclusion in state proceedings might bar subsequent federal review—runs counter to the very essence of federal constitutional protection.

This Court in *Knick v. Township of Scott*, 588 U.S. 194 (2019), underscored the risk of deferring federal claims until after state action, which would hollow the federal forum guarantee meant to shield citizens from ongoing constitutional violations. The *Knick* Court held that a Fifth Amendment takings claim under § 1983 does not necessitate a state-litigation requirement prior to bringing the claim in federal court. *Id.* at 205. This Court expressly wrote that the same logic would apply to a Fourth Amendment claim of excessive force, and by following the same reasoning, such a principle necessarily must apply to state investigatory demands. *See id.* at 191.

Even if state authorities modify their investigatory demands midway, such as by narrowing their scope, this voluntary adjustment does not negate the inherent risk of future harm, nor does it address the real-time injury suffered as a result of the initial chilling effect. As held in *Friends of the Earth v. Laidlaw Environmental Services*, 528 U.S. 167 (2000), voluntary cessation does not moot a claim if the threatened conduct may resume, leaving plaintiffs in a perpetual state of vulnerability.

D. The government cannot postpone federal judicial review of constitutional claims by labeling its actions as “investigatory” rather than “enforcement.”

Permitting state officials to postpone federal judicial scrutiny simply by characterizing their conduct as “investigatory” would subvert the core protections of the First Amendment and the remedial purpose of § 1983. This Court has never drawn a distinction between investigatory and enforcement actions for purposes of federal jurisdiction over constitutional claims. Instead, this Court has repeatedly recognized that the injury to First Amendment rights arises from the objective chill imposed by government action, regardless of the stage or label attached to that action. *See NAACP*, 357 U.S. at 462; *Bates*, 361 U.S. at 523.

If state officials could temporarily insulate their conduct from federal review merely by proceeding through investigatory demands, they would possess a powerful tool to suppress disfavored speech and association without facing meaningful judicial oversight throughout the potentially years long state court litigation. This would create a perverse incentive for government actors to use investigatory powers as a means of chilling constitutional rights, secure in the knowledge that federal courts would be unavailable until after the harm is complete or the state process is exhausted.

The availability of a federal forum cannot turn on the government’s choice of procedural mechanism. The relevant question is whether the plaintiff faces a cognizable harm, such as an objectively reasonable

chill or threat to First Amendment freedoms, not whether the state's conduct is labeled as investigatory or enforcement. *See Steffel*, 415 U.S. at 462–63; *Susan B. Anthony List*, 573 U.S. at 158–61.

To hold otherwise would undermine the supremacy of federal law and the essential function of § 1983 as a safeguard against all forms of unconstitutional state action. Federal courts must remain open to claims of First Amendment chill when the injury occurs, regardless of how the government chooses to describe its conduct.

Conclusion

The Third Circuit's decision, if left undisturbed, would fundamentally undermine the core purpose of 42 U.S.C. § 1983 and the First Amendment's protection against government-induced chill. The Constitution does not permit state officials to evade federal judicial review of constitutional claims by labeling their actions as “investigatory” and insisting that plaintiffs exhaust state remedies before seeking relief. Section 1983 was enacted to provide a direct federal remedy for constitutional violations, precisely because state processes may be inadequate or themselves part of the constitutional injury.

This Court should reaffirm that federal courts are the primary guardians of constitutional rights and that individuals need not endure protracted state litigation before seeking federal protection from ongoing constitutional violations. The judgment below should be reversed.

Respectfully submitted,

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