No. 24-781

In the Supreme Court of the United States

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

v.

MATTHEW J. PLATKIN, ATTORNEY GENERAL
OF NEW JERSEY

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE IN SUPPORT OF PETITIONER

D. JOHN SAUER
Solicitor General
Counsel of Record
HARMEET K. DHILLON
Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
VIVEK SURI
Assistant to the
Solicitor General
ANDREW G. BRANIFF
CHRISTOPHER C. WANG
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether a federal suit challenging a subpoena issued by a state attorney general is justiciable if a state court has not yet issued an order directing the recipient to comply with the subpoena.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, and rules:

Statutes and rules—Continued: Page

Miscellaneous:

Miscellaneous—Continued: Page

In the Supreme Court of the United States

No. 24-781

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

v.

MATTHEW J. PLATKIN, ATTORNEY GENERAL OF NEW JERSEY

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether a federal challenge to a state subpoena is justiciable if a state court has not yet issued an order directing the recipient to comply. The United States has a substantial interest in the resolution of that question, which could affect judicial review of subpoenas issued by federal agencies. More broadly, the United States has a significant interest in the development of Article III standing and ripeness principles, which routinely affect suits involving the federal government. The United States also has a significant interest in protecting constitutional rights from state interference and in ensuring the proper application of 42 U.S.C. 1983.

INTRODUCTION

This Court has long held that when a regulated party faces a credible threat that the government will initiate judicial proceedings to enforce a government order, federal courts have Article III jurisdiction to entertain a pre-enforcement challenge to the order. Such a party has standing, and the suit is ripe, because the threat of judicial enforcement inflicts concrete and imminent injuries: the burdens of the enforcement litigation, as well as the prospect of being forced to comply with the challenged order. Because Article III permits courts to grant equitable relief to prevent impending future injuries, neither standing nor ripeness doctrine requires the regulated party to wait for the government to bring the enforcement suit, let alone for a court to resolve it. By contrast, a pre-enforcement suit does not satisfy Article III if the regulated party does not face a credible threat of enforcement—say, because the government has disavowed the intent to apply the statute to the party.

Those established Article III principles resolve this case. Respondent, the New Jersey Attorney General, issued a subpoena requiring petitioner, a faith-based pro-life pregnancy center, to identify its donors and disclose a wealth of other information. Petitioner's ensuing federal-court suit under 42 U.S.C. 1983 challenging the constitutionality of the subpoena satisfied Article III standing and ripeness requirements because petitioner faced a credible threat that respondent would enforce that subpoena against petitioner in the event of noncompliance. Indeed, this is a particularly straightforward instance of Article III jurisdiction because respondent went on to bring a state-court proceeding to enforce the subpoena.

The Third Circuit held that, because the state court has not yet ordered the enforcement of the subpoena, petitioner's federal suit is not ripe. That is incorrect. Article III does not require a regulated party to wait until the government files an enforcement action and then raise its constitutional challenge as a defense. Just as Article III permits pre-enforcement review of criminal laws, civil laws, agency rules, and agency orders, it likewise permits pre-enforcement review of subpoenas. To be sure, recipients generally lack a cause of action to obtain pre-enforcement review of *federal* subpoenas, because the Administrative Procedure Act, 5 U.S.C. 701 *et seq.* (APA), makes final agency action a prerequisite for judicial review. But Section 1983 provides a cause of action to parties challenging *state* subpoenas, and it has no built-in final agency action requirement.

The decision below would also create a preclusion trap for recipients of state subpoenas that would all but bar the doors to federal-court adjudication: Sue in federal court before a state court orders enforcement, and the suit is unripe; sue after, and the suit is precluded. Neither Article III nor this Court's precedents countenance that perverse result.

STATEMENT

1. Petitioner First Choice Women's Resource Centers, Inc., is a Christian, faith-based entity that has operated in New Jersey since 1985 and has been incorporated as a religious non-profit organization since 2007. See Pet. App. 115a-117a. It "serves women and men in unplanned pregnancies by providing counseling, medical services, and practical support." *Id.* at 115a. It believes that "life begins at conception," and "its expression of love and service to God requires that it work to protect and honor life in all stages of development." *Id.*

at 117a. Petitioner does not perform abortions or provide referrals for abortions; instead, it provides information about abortion and offers abortion-pill-reversal services. *Id.* at 116a.

In November 2023, respondent, the state attorney general, issued a subpoena to petitioner, as well as its "owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, attorneys * * * or any other individual or entity acting or purporting to act on its behalf." Pet. App. 91a; see *id.* at 89a-110a. The subpoena "commanded" (*id.* at 89a) petitioner to produce, within one month, a range of documents, including:

- Copies of petitioner's advertisements, along with all documents concerning the distribution of the advertisements and petitioner's criteria for determining the advertisements' target audiences. *Id.* at 100a-101a.
- All documents provided and videos shown to clients or donors, including videos concerning abortion procedures and all representations about client confidentiality and privacy. *Id.* at 101a-102a.
- All documents provided to personnel to guide interactions with clients and donors, including documents that "explain solicitation strategies" or instruct staff "on how to describe your charitable purpose." *Id.* at 108a (capitalization omitted).
- All documents identifying complaints or concerns from clients or donors. *Id.* at 107a.
- All documents in the last ten years substantiating 29 claims about abortion on one of petitioner's websites, such as "reported complications from the abortion pill have increased in the past several

years"; "[t]aking the abortion pill without seeing a doctor or having an ultrasound is never recommended"; and "[a]fter the abortion, the sense of relief may be replaced" by "depression, sadness, eating disorders, anxiety, [and] feelings of low self-esteem." *Id.* at 102a-105a.

- All documents in the last ten years substantiating ten claims about abortion on another of petitioner's websites, such as "the cost of a surgical abortion can be as high as $1500" and "[s]ome women experience a range of long-term psychological and emotional effects" after abortion. *Id.* at 106a.
- All documents concerning the development of content for petitioner's website. *Id.* at 107a.
- Documents sufficient to identify any professional licensees who render services for petitioner, as well as any personnel whom petitioner has used to provide ultrasound services. *Id.* at 107a-108a.
- Documents sufficient to identify donations made to petitioner. *Id.* at 110a.

The subpoena, which does not identify any alleged legal violations, generally invokes three state statutes: the New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1 *et seq.*, which prohibits deceptive commercial practices; the Charitable Registration and Investigation Act, *id.* §§ 45:17A-18 *et seq.*, which prohibits deceptive practices by charitable organizations; and the Professions and Occupations law, which regulates professional conduct, see *id.* §§ 45:1-1 *et seq.* Each statute empowers the state attorney general to investigate violations by issuing subpoenas. See *id.* §§ 45.1-18(h), 45:17A-33(c)(8), 56.8-4. If a recipient fails to produce the information sought, the attorney general may file an

enforcement suit in state superior court, which may then compel the recipient to comply with the subpoena. See *id.* §§ 45:1-19, 45:17A-33(g), 56:8-6.

The lower courts characterized the subpoena as "non-self-enforcing" or "non-self-executing," meaning that petitioner faces no penalty for refusal to comply until a state court orders enforcement. Pet. App. 3a, 37a. It is unclear that the lower courts correctly interpreted state law. The subpoena itself warns: "Failure to comply with this Subpoena may render you liable for contempt of court and such other penalties as are provided by law." *Id.* at 90a. And the relevant statutes authorize the state court to hold a person in contempt for failure to obey a "subpoena," not just a court order enforcing the subpoena. N.J. Stat. Ann. §§ 45:1-19, 45:17A-33(g), 56:8-6. Consistent with this Court's practice, however, we accept the lower courts' interpretation of state law for purposes of this case. See *Lamps Plus, Inc.* v. *Varela*, 587 U.S. 176, 182 (2019).

2. In December 2023, petitioner sued respondent in the U.S. District Court for the District of New Jersey. Pet. App. 111a-146a. Invoking 42 U.S.C. 1983, petitioner claimed that the subpoena violates the First, Fourth, and Fourteenth Amendments and sought injunctive and declaratory relief. Pet. App. 131a-146a. The court dismissed the complaint for lack of subject-matter jurisdiction, reasoning that petitioner's claims were not ripe because a state court had not yet issued an order enforcing the subpoena. *Id.* at 71a-84a.

Petitioner appealed to the Third Circuit. See Pet. App. 8a. While that appeal was pending, respondent brought an enforcement suit against petitioner in state superior court. See *ibid.* The court ordered petitioner to respond to the subpoena—*i.e.*, to produce the sought

documents or to raise specific objections. *Id.* at 62a. Petitioner produced some of the sought documents but objected to the demands for other documents. See *id.* at 65a. The state case remains pending, and the state court has not yet resolved petitioner's objections to the subpoena. See *id.* at 65a-66a.

3. After the state court ordered petitioner to respond, the Third Circuit dismissed the appeal pending before it as moot and remanded the case to district court. See Pet. App. 10a. On remand, petitioner argued that its claims had become ripe given the intervening state-court enforcement suit and the state-court order requiring petitioner to respond to the subpoena. See *id.* at 23a. But the district court rejected that argument and dismissed the case for lack of subject-matter jurisdiction. See *id.* at 6a-58a. It again determined that petitioner's challenge would become ripe only once the state court issues an order requiring petitioner to comply. See *id.* at 30a-49a.

The Third Circuit affirmed. Pet. App. 1a-5a. It concluded that this suit is not ripe, and that federal courts thus lack Article III jurisdiction, because petitioner "can continue to assert its constitutional claims in state court as that litigation unfolds; the parties have been ordered by the state court to negotiate to narrow the subpoena's scope; they have agreed to so negotiate; the Attorney General has conceded that he seeks donor information from only two websites; and First Choice's current affidavits do not yet show enough of an injury." *Id.* at 4a. The court believed that "the state court will adequately adjudicate First Choice's constitutional claims." *Id.* at 4a-5a.

Judge Bibas, who would have found that petitioner's claims are ripe, dissented. See *id.* at 3a n.†.

SUMMARY OF ARGUMENT

A. Article III standing and ripeness doctrines require a plaintiff to allege an actual or imminent injury, not a conjectural or hypothetical one. Under this Court's cases, a credible threat that the government will bring proceedings to enforce governmental action suffices to confer Article III jurisdiction over pre-enforcement challenges to that action. See, *e.g.*, *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149 (2014); *Ex parte Young*, 209 U.S. 123 (1908). Thus, standing and ripeness doctrines ordinarily do not require the recipient of a subpoena (or other regulated party) to wait to challenge the subpoena (or other order) until the government files an enforcement action. Certainly, those doctrines do not require the plaintiff to wait to bring a federal suit until a state court rules in the government's favor and concludes enforcement proceedings.

Those bedrock principles make this a simple case. Respondent issued a subpoena to petitioner that demanded compliance and threatened sanctions. That credible threat of judicial enforcement satisfied Article III standing and ripeness requirements; the burdens of defending against litigation and the risk of being forced to turn over the subpoenaed documents qualify as concrete injuries, and the threatened injuries were sufficiently imminent. Moreover, no possible doubt can remain now that respondent has made the threat of judicial enforcement a reality by suing petitioner in state court and seeking an order compelling it to comply with the subpoena. The courts below thus erred in refusing to entertain petitioner's Section 1983 suit challenging the constitutionality of respondent's subpoena.

B. Contrary to the court of appeals' analysis, it makes no difference whether the subpoena here is self-

enforcing or whether petitioner faces a penalty for refusal to comply until a state court orders enforcement. A plaintiff seeking preventive relief need not wait until the injury occurs; rather, it may sue if the injury is sufficiently imminent. Again, when a state official issues and threatens to enforce a subpoena, the recipient faces two imminent injuries: the prospect that the state official will file an enforcement suit (forcing the recipient to bear the burden of litigating the proceeding) and the prospect that the state court will grant enforcement (forcing the recipient to turn over the documents). Each injury satisfies Article III regardless of whether the subpoena is self-enforcing.

Respondent relies on a line of decisions holding that, when a *federal* agency issues a non-self-enforcing subpoena, the recipient generally may raise objections only in the enforcement proceeding. See, *e.g.*, *Reisman* v. *Caplin*, 375 U.S. 440 (1964). But those decisions do not rest on Article III. They instead reflect Congress's choice not to create a cause of action enabling recipients of federal subpoenas to challenge them before agencies seek enforcement. The APA authorizes judicial review of *final* agency action, but subpoenas are interlocutory rather than final. By contrast, plaintiffs may challenge state subpoenas under Section 1983, which creates a federal cause of action to challenge the denial of federal rights under color of state law.

C. The court of appeals also erred in declining to hear this case on the ground that the state court hearing the subpoena enforcement proceeding would adequately address petitioner's constitutional claims. Article III standing and ripeness turn on the imminence of the injury, not the perceived adequacy of the alternative state forum. And this Court's precedents establish that fed-

eral courts may not—as the court below effectively did—require litigants to exhaust state remedies before bringing federal constitutional claims. See, *e.g.*, *Patsy* v. *Board of Regents*, 457 U.S. 496, 516 (1982).

The court of appeals suggested, in addition, that petitioner could still sue in federal court after the state proceeding ends. But once the state court rules, its decision will likely have preclusive effect in any later federal suit. This Court's cases counsel against applying ripeness doctrine to create "preclusion trap[s]"—situations where a suit is unripe if filed before a state court acts and precluded if filed after. See, *e.g.*, *Knick* v. *Township of Scott*, 588 U.S. 180, 185 (2019).

D. The court of appeals provided three additional reasons to find this suit unripe, but none has merit. First, the court stated that petitioner's affidavits, which detail the subpoena's chilling effect on potential donors, fail to show an adequate injury. But a subpoena recipient satisfies Article III by showing a credible threat of enforcement; it need not make a further showing about the subpoena's effects on donors.

Second, the court observed that the parties are negotiating about whether to narrow the subpoena. But standing and ripeness turn on whether the plaintiff faces an actual or imminent injury, not on whether the parties might resolve their dispute through negotiation or settlement.

Finally, the court noted that respondent no longer seeks the identities of all of petitioner's donors, just those who gave money through two particular websites. But that point concerns only the extent, rather than the existence, of petitioner's injury.

ARGUMENT

A party has standing to challenge a subpoena, and such a challenge is ripe, if the party faces a credible threat that the government will bring proceedings to enforce the subpoena. Because petitioner satisfies that test, this suit is justiciable.

A. Petitioner Has Standing To Challenge The Subpoena, And Its Challenge Is Ripe

1. Article III empowers federal courts to exercise only "judicial Power," which extends only to "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. This suit involves two related doctrines that implement those limits: standing and ripeness. A plaintiff has standing to sue only if it faces an actual or imminent injury that was likely caused by the defendant and would likely be redressed by judicial relief. See *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 157-158 (2014) (*SBA List*). And a case is not ripe if it depends 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) (per curiam) (citation omitted). Here, standing and ripeness "'boil down to the same question'": whether petitioner's asserted injury is "actual or imminent, not 'conjectural' or 'hypothetical.'" *SBA List*, 573 U.S. at 157 n.5, 158 (citations omitted). Consistent with this Court's practice, we analyze that issue through the lens of standing. See *id.* at 157 n.5.

a. A party ordinarily has standing to challenge a law or order that regulates it, even if the government has not yet commenced an enforcement proceeding against the party, so long as the party faces a "credible threat of enforcement." *SBA List*, 573 U.S. at 159. A party facing such a credible threat need not wait until the government brings a criminal, civil, or administrative pro-

ceeding and then raise its legal objection as a defense. See *McLaughlin Chiropractic Assocs.* v. *McKesson Corp.*, 145 S. Ct. 2006, 2013-2015 (2025). A long line of cases establishes that parties may instead bring pre-enforcement suits seeking prospective relief against government officials who "threaten and are about to commence proceedings" against them. *Ex parte Young*, 209 U.S. 123, 156 (1908); see, *e.g.*, *Whole Woman's Health* v. *Jackson*, 595 U.S. 30, 45-48 (2021) (opinion of Gorsuch, J.); *SBA List*, 573 U.S. at 159; *Virginia* v. *American Booksellers Ass'n*, 484 U.S. 383, 392-393 (1988); *Babbitt* v. *United Farm Workers*, 442 U.S. 289, 297-305 (1979); *Terrace* v. *Thompson*, 263 U.S. 197, 214-215 (1923).

This Court has permitted pre-enforcement suits in many contexts. For example, it has entertained pre-enforcement challenges to criminal statutes, see *Holder* v. *Humanitarian Law Project*, 561 U.S. 1, 8 (2010); civil statutes, see *303 Creative LLC* v. *Elenis*, 600 U.S. 570, 580-581 (2023); agency rules, see *Abbott Laboratories* v. *Gardner*, 387 U.S. 136, 148-156 (1967); agency orders, see *Ohio Civil Rights Commission* v. *Dayton Christian Schools, Inc.*, 477 U.S. 619, 625 n.1 (1986); and school-board policies, see *Mahmoud* v. *Taylor*, 145 S. Ct. 2332, 2358 (2025). Article III even permits suits against *private* parties who threaten to bring civil enforcement proceedings. See *MedImmune, Inc.* v. *Genentech, Inc.*, 549 U.S. 118, 130 (2007).

That line of cases comports with historical practice, which offers "a meaningful guide to the types of cases that Article III empowers federal courts to consider." *TransUnion LLC* v. *Ramirez*, 594 U.S. 413, 424 (2021) (citation omitted). Traditionally, a court of equity could issue an anti-suit injunction to prevent an officer from

bringing a suit to enforce an unconstitutional law. See *Trump* v. *CASA, Inc.*, 145 S. Ct. 2540, 2554 n.9 (2025). By seeking such an injunction, "a potential defendant at law [could] become a plaintiff in equity and present a defense in an affirmative posture." John Harrison, *Ex parte Young*, 60 Stan. L. Rev. 989, 989 (2008). For example, if an agency threatened to enforce an unlawful rate schedule, the regulated party could ask a federal court to enjoin the enforcement suit. See *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U.S. 362, 388-393 (1894). Or if a state agency threatened to sue to collect an unconstitutional tax, the taxpayer could ask a federal court to enjoin the collection proceeding. See *Georgia Railroad & Banking Co.* v. *Redwine*, 342 U.S. 299, 304 (1952). Modern pre-enforcement suits descend from that practice.

The availability of pre-enforcement challenges also follows from the principle that Article III requires an "actual or *imminent*" injury. *SBA List*, 573 U.S. at 158 (emphasis added). A plaintiff "need not wait for the damage to occur before filing suit." *Mahmoud*, 145 S. Ct. at 2358. It need show only that "the threatened injury is certainly impending, or there is a substantial risk that the harm will occur." *Ibid.* (citation omitted).

When a state officer threatens to file an enforcement suit, the regulated party faces at least two imminent injuries. First, it faces a substantial risk that it will bear the burden of litigating the enforcement proceeding. *Ex parte Young*, this Court's canonical decision on pre-enforcement review, establishes that an officer's actual or threatened "commencement of a suit" to enforce a law is itself "an actionable injury," "equivalent" to "a trespass." 209 U.S. at 153. Second, the regulated party faces a substantial risk that, at the end of the proceed-

ing, the state court will issue an adverse order. The "prospect of issuance" of such an order, the Court has explained, satisfies Article III. *United Farm Workers*, 442 U.S. at 302 n.13.

SBA List, a case in which an advocacy group challenged a state law regulating political speech, illustrates those principles. See 573 U.S. at 152-157. Though the group had not yet engaged in the speech and state officials had not yet filed an enforcement proceeding, this Court held that group had standing because it had alleged a credible threat of enforcement. See *id.* at 161. The Court explained that an enforcement proceeding would injure the group by requiring it to spend "time and resources" on the litigation and by exposing it to "'the prospect of issuance'" of an adverse order. *Id.* at 165-166 (citation omitted). And because the risk of enforcement was "substantial"—the State had enforced the statute in the past and did not disavow enforcement in the future—the Court found that those injuries were sufficiently imminent to satisfy Article III. *Id.* at 164; see *id.* at 164-165.

b. Under those principles, petitioner had Article III standing when respondent issued the subpoena. At that moment, petitioner faced an imminent injury because respondent posed a credible threat of bringing an enforcement proceeding in state court if petitioner failed to produce the sought documents. That threat was substantial: New Jersey has enforced subpoenas in the past, see, *e.g.*, *Platkin* v. *Smith & Wesson Sales Co.*, 289 A.3d 481, 484 (N.J. Super. Ct. App. Div. 2023), and far from disavowing future enforcement, New Jersey expressly threatened petitioner with "contempt" sanctions and "other penalties" in the subpoena here. Pet. App. 90a. Respondent also caused petitioner's imminent injury by

issuing and threatening to enforce the subpoena. And an injunction or declaratory judgment preventing the enforcement of the subpoena would redress the injury by pretermitting the burdensome state-court enforcement proceeding and by avoiding the prospect of an adverse state-court order.

Petitioner's Article III standing is even clearer now that respondent has filed an enforcement suit in state court. This case now involves more than just imminent injury or threatened enforcement; it involves the actual injury caused by ongoing enforcement proceedings in state court. If a "reasonable threat" of an enforcement action "creates a ripe controversy," the "actual filing" of such an action surely does so as well. *Dayton Christian Schools*, 477 U.S. at 626 n.1.

"Courts should not 'make standing law more complicated than it needs to be.'" *Diamond Alternative Energy, LLC* v. *EPA*, 145 S. Ct. 2121, 2141 (2025) (citation omitted). If the plaintiff is "an object of the action" at issue, "there is ordinarily little question" that he has standing to challenge it. *Id.* at 2134 (citation omitted). Petitioner is the object of the subpoena and faces a credible threat of enforcement, so it has standing to challenge the subpoena in federal court.

2. This Court's cases have also recognized a distinct, non-jurisdictional ripeness doctrine under which the availability of a pre-enforcement challenge to administrative action depends on whether the issues are fit for review and whether deferring review would cause hardship to the parties. See *Abbott Laboratories*, 387 U.S. at 149. Though the doctrine is often called "prudential ripeness," that label is misleading. See *SBA List*, 573 U.S. at 167. A court typically may not dismiss a case within its jurisdiction "merely because 'prudence' dic-

tates." *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). The doctrine is better understood as a background equitable principle that has traditionally guided courts' remedial discretion over whether to issue injunctions or declaratory judgments. See *Abbott Laboratories*, 387 U.S. at 148 (framing the doctrine that way).

That doctrine is not at issue here. Though the court of appeals noted in passing that suits must be ripe "as a matter of prudence," Pet. App. 4a, it ultimately held that the district court lacked subject-matter jurisdiction, see *id.* at 5a, so its decision concerns only Article III ripeness. Respondent then relied solely on "Article III ripeness" in his brief in opposition to certiorari (at 1), forfeiting any prudential-ripeness argument. See Sup. Ct. R. 15.2; *Stolt-Nielsen S.A.* v. *AnimalFeeds International Corp.*, 559 U.S. 662, 670 n.2 (2010).

This case, in all events, satisfies that doctrine. This case is fit for judicial review because it raises legal issues: whether the First, Fourth, and Fourteenth Amendments allow respondent to demand the information he seeks. Those legal issues "will not be clarified by further factual development." *SBA List*, 573 U.S. at 167 (citation omitted). And postponing review would not clarify the contours of the dispute; it would merely enable the state court to resolve the suit first and potentially preclude petitioner's federal claims. See pp. 26-30, *infra*. Meanwhile, denying prompt judicial review would harm petitioners by forcing them to choose between complying with an allegedly unlawful subpoena and undergoing "costly [enforcement] proceedings" in state court. *SBA List*, 573 U.S. at 168; see *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U.S. 568,

581 (1985) (burden of appearing in proceedings is a form of hardship).

Underscoring that conclusion, New Jersey allows subpoena recipients to file pre-enforcement motions to quash the subpoenas. See Pet. App. 40a. So do many other States.* Because state courts do not necessarily apply the same case-or-controversy requirements as federal courts, state practice does not settle the Article III issue presented here. But it does undermine any prudential argument that pre-enforcement challenges to subpoenas are unfit for judicial review.

B. Petitioner's Standing Does Not Depend On Whether The Subpoena Is Self-Enforcing

The lower courts held that this case is not ripe because the subpoena is "non-self-enforcing" or "non-self-executing"—meaning that, until a state court enforces it, "a recipient can simply decline to respond" "with no legal consequences." Pet. App. 3a, 37a. Respondent similarly argues (Br. in Opp. 27) that, because petitioner "will not need to produce documents * * * or face any penalties unless the state court decides to enforce the subpoena," petitioner lacks an Article III injury.

---

* See, *e.g.*, *Benson* v. *People*, 703 P.2d 1274, 1277, 1280 (Colo. 1985) (en banc); *In re Hawkins*, 123 A.2d 113, 114 (Del. 1956); *In re KAHEA*, 497 P.3d 58, 62-63 (Haw. 2021); *State ex rel. Hager* v. *Carriers Insurance Co.*, 440 N.W.2d 386, 388 (Iowa 1989); *In re Atchison, Topeka & Santa Fe Railway Co.* v. *Lopez*, 531 P.2d 455, 460-461 (Kan. 1975); *Commonwealth ex rel. Hancock* v. *Pineur*, 533 S.W.2d 527, 527 (Ky. 1976); *Humphreys* v. *State ex rel. Guste*, 377 So. 2d 88, 90 (La. 1979); *Unnamed Attorney* v. *Attorney Grievance Commission*, 494 A.2d 940, 942 (Md. 1985); *Burlington Northern, Inc.* v. *Montana Department of Revenue*, 781 P.2d 1121, 1122-1123 (Mont. 1989), cert. denied, 494 U.S. 1028 (1990); *Vendall Marketing Corp.* v. *State*, 863 P.2d 1263, 1265 (Or. 1993) (en banc); *Evans* v. *State*, 963 P.2d 177, 179 (Utah 1998).

Other courts of appeals, too, have held that challenges to non-self-enforcing subpoenas are unripe, see *Google, Inc.* v. *Hood*, 822 F.3d 212, 224-226 (5th Cir. 2016), or that recipients of such subpoenas must show some additional injury over and above the threat of enforcement, see *Twitter, Inc.* v. *Paxton*, 56 F.4th 1170, 1173-1176 (9th Cir. 2022). That theory is incorrect.

1. The recipient of a non-self-enforcing subpoena has standing to contest it so long as the recipient faces a credible threat that state officials will bring enforcement proceedings. The recipient need not wait for state officials to commence the proceedings, much less for a state court to issue an order enforcing the subpoena.

Article III requires an actual *or imminent* injury. See p. 13, *supra*. A subpoena recipient faces an imminent injury: the burden of defending itself in an enforcement suit. As discussed above, the "threatened commencement of suits to enforce [a] statute" is an "injury." *Ex parte Young*, 209 U.S. at 158; see *Morales* v. *Trans World Airlines, Inc.*, 504 U.S. 374, 382 (1992) (on pre-enforcement review, the "prospect of [state] suit" supplies the necessary injury). That injury does not depend on how the enforcement proceeding ends; regardless of the outcome, the recipient must spend time and resources litigating it.

The subpoena recipient also faces a substantial risk that, at the end of the proceeding, the state court will issue an order enforcing the subpoena. The state court might, of course, rule in the recipient's favor, but that type of contingency does not defeat standing. For example, in *United Farm Workers*, this Court held that a union could bring a pre-enforcement suit challenging a state law regulating farm labor. See 442 U.S. at 297-305. Though no state court or agency had yet issued an

adverse ruling enforcing the statute, "the prospect of issuance of an administrative cease-and-desist order * * * or a court-ordered injunction" supported standing. *Id.* at 302 n.13; see *Clapper* v. *Amnesty International USA*, 568 U.S. 398, 414 n.5 (2013) (plaintiff need not necessarily show that its injury is "literally certain" to occur).

In this case, respondent has actually filed a suit to enforce the subpoena, forcing petitioner to shoulder the burden of litigating that case. Petitioner also faces the prospect that the state court may ultimately enforce the subpoena. Those harms are Article III injuries. To be sure, a plaintiff who seeks to challenge a self-enforcing government action faces an additional injury that may be absent here: the threat of incurring penalties could deter the plaintiff from engaging in protected conduct. See, *e.g.*, *American Booksellers*, 484 U.S. at 393. But even without that additional injury, petitioner satisfies Article III.

2. This Court's declaratory-judgment jurisprudence confirms that this suit is justiciable. A declaratory-judgment proceeding often allows a potential defendant to become a plaintiff and to raise a potential defense as an affirmative claim. For instance, if A threatens to sue B for infringing a patent, B may sue A for a declaration that the patent is invalid. See *MedImmune*, 549 U.S. at 121-122. In analyzing the justiciability of such suits, this Court has found it "immaterial" that "the positions of the parties in the conventional suit are reversed." *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941). Article III focuses on "the nature of the controversy, not the method of its presentation or the particular party who presents it." *Aetna Life Insurance Co.* v. *Haworth*, 300 U.S. 227, 244 (1937).

No one doubts that, if an agency issues a non-self-enforcing subpoena and the recipient refuses to comply, Article III would permit a federal court to adjudicate a subpoena-enforcement action brought by the agency. See, *e.g.*, *Oklahoma Press Publishing Co.* v. *Walling*, 327 U.S. 186, 189 (1946) (resolving a suit to enforce a federal agency's subpoena). That suggests that Article III likewise allows a federal court to hear the recipient's mirror-image declaratory-judgment action to prevent imminent enforcement. "[T]he character of the controversy and of the issue to be determined is essentially the same whether presented by the [agency] or the [recipient]." *Haworth*, 300 U.S. at 244. Justiciability does not turn on "the bare formality that the parties are transposed." *Surefoot LC* v. *Sure Foot Corp.*, 531 F.3d 1236, 1245 (10th Cir. 2008) (Gorsuch, J.).

3. The court of appeals' decision also conflicts with this Court's precedents concerning the ripeness of federal challenges to state administrative orders. This Court has explained that, where such an order remains subject to further *administrative* review, a federal suit challenging it may not yet be ripe. See *New Orleans Public Service, Inc.* v. *Council of the City of New Orleans*, 491 U.S. 350, 372 (1989) (*NOPSI*). But once the administrative process ends and the order is subject to state *judicial* review, the regulated party may challenge it in federal court. See *ibid.* "The rationale for this distinction is that until the administrative process is complete, it cannot be certain that the party will need judicial relief, but when the case becomes appropriate for judicial determination, he may choose whether he wishes to resort to a state or federal court for such relief." 17A Charles Alan Wright et al., *Federal Practice and Procedure* § 4233, at 181-182 (3d ed. 2007).

Although those decisions do not specifically address non-self-enforcing subpoenas, their reasoning suggests that this case is ripe. No state administrative process remains ongoing. Respondent has issued a subpoena, petitioner has objected to it, and a court must now judge whether it violates petitioner's federal rights. Nothing in Article III suggests that the decision may be made only by a state court.

4. Longstanding practice provides a final reason to reject the court of appeals' theory. Congress has enacted several statutes authorizing pre-enforcement judicial review of non-self-enforcing orders issued by federal agencies—yet, under the court of appeals' and respondent's theory, litigants would lack Article III standing to bring those suits. For instance:

- An order issued by the Federal Labor Relations Authority or the National Labor Relations Board generally is not self-enforcing; rather, the agency must seek enforcement in a court of appeals. See 5 U.S.C. 7123(b); 29 U.S.C. 160(e). But an aggrieved person may file a petition for review in a court of appeals before the agency seeks enforcement. See 5 U.S.C. 7123(a); 29 U.S.C. 160(f).
- Until 1959, orders issued by the Federal Trade Commission under the Clayton Act, 15 U.S.C. 12 *et seq.*, were not self-enforcing; rather, the agency had to seek enforcement in a court of appeals. See *FTC* v. *Jantzen, Inc.*, 386 U.S. 228, 230-231 (1967). But an aggrieved person could file a petition for review in a court of appeals before the agency sought enforcement. See *FTC* v. *Ruberoid Co.*, 343 U.S. 470, 479-480 (1952).

- When the Federal Communications Commission imposes a civil penalty, it may collect the penalty only after a de novo trial in district court. See 47 U.S.C. 503(b), 504(a). But before the agency seeks such a trial, an aggrieved party may file a petition for review in a court of appeals. See 28 U.S.C. 2342(1); 47 U.S.C. 402(a).

Courts likewise may consider suits challenging non-self-executing state action. In *Moody* v. *NetChoice, LLC*, 603 U.S. 707 (2023), for example, this Court considered a pre-enforcement First Amendment challenge to a Texas law that regulates social-media platforms. That law is not self-enforcing; a platform incurs no penalty until a state court orders enforcement and the platform violates the court order. See Resp. Br. at 10-11, *NetChoice* v. *Paxton* (No. 22-555). Yet the Court decided the merits without suggesting that the challengers had to wait until the state court required them to comply. See *NetChoice*, 603 U.S. at 723-744.

The same pattern can arise in suits between private parties. Under the Federal Arbitration Act, 9 U.S.C. 1 *et seq.*, an arbitration award becomes enforceable only once a court confirms it. See 9 U.S.C. 9; *CC/Devas (Mauritius) Ltd.* v. *Antrix Corp.*, 145 S. Ct. 1572, 1577 (2025). But before a party seeks confirmation, another party may ask a court to vacate the award. See 9 U.S.C. 10. In short, the court of appeals' theory—that Article III precludes pre-enforcement judicial review of non-self-enforcing orders or actions—conflicts with settled practice across a wide range of legal contexts.

5. Respondent invokes (Br. in Opp. 19-20) decisions concerning judicial review of non-self-enforcing *federal* subpoenas. But those decisions are inapposite because they do not rest on Article III.

Congress has granted many federal agencies the power to issue subpoenas, though not the power to enforce them unilaterally. See 2 Kristin E. Hickman & Richard J. Pierce, Jr., *Administrative Law Treatise* § 8.1, at 1116 (7th ed. 2024). Congress instead has generally required agencies to seek enforcement in court and has left recipients free to refuse compliance until courts order otherwise. See *id.* § 8.2, at 1125-1126. This Court has determined that, when agencies issue subpoenas under such statutes, the recipients generally may not raise pre-enforcement challenges. Instead, recipients usually must wait for the agencies to bring enforcement proceedings, then raise their objections as defenses. See *Reisman* v. *Caplin*, 375 U.S. 440, 446-450 (1964); *FTC* v. *Claire Furnace Co.*, 274 U.S. 160, 174 (1927).

That line of precedent is inapplicable here. *Reisman* and *Claire Furnace* do not rest on Article III; they do not even mention Article III, justiciability, standing, or ripeness. Rather, in each case, the Court ordered dismissal "for want of equity." *Reisman*, 375 U.S. at 443; *Claire Furnace*, 274 U.S. at 174. That term reflects a "decision on the merits." *Black's Law Dictionary* 556 (rev. 4th ed. 1968); see *Reinman* v. *City of Little Rock*, 237 U.S. 171, 178 (1915).

Specifically, *Reisman* and *Claire Furnace* indicate that parties will usually lack an equitable cause of action to bring a pre-enforcement challenge to a federal subpoena. Some federal statutes authorize pre-enforcement review of agency subpoenas, see, *e.g.*, 12 U.S.C. 3410(a), but most do not. And the APA authorizes judicial review of "final agency action," 5 U.S.C. 704, but subpoenas are interlocutory, not final—so the main vehicle for challenging unlawful federal agency action is unavailable to challenge federal subpoenas. The only

avenue for a pre-enforcement challenge to a federal subpoena thus usually will be a non-statutory equitable claim. See *Leedom* v. *Kyne*, 358 U.S. 184, 187-191 (1958).

But *Reisman* and *Claire Furnace* reflect the "basic doctrine of equity jurisprudence that courts of equity should not act when the moving party has an adequate remedy at law." *Morales*, 504 U.S. at 381 (citation and ellipsis omitted). In *Reisman*, the Court denied relief because the recipients had "an adequate remedy": the "comprehensive procedure provided by Congress" for subpoena enforcement, which ensured a "full opportunity for judicial review before any coercive sanctions [could] be imposed." 375 U.S. at 443, 449-450. And in *Claire Furnace*, the Court denied relief because the recipients had a "full opportunity to contest the legality" of the agency order in "any [enforcement] proceeding against them." 274 U.S. at 174.

This Court's decision in *SEC* v. *Jerry T. O'Brien, Inc.*, 467 U.S. 735 (1984), confirms that interpretation of *Reisman* and *Claire Furnace*. There, the Securities and Exchange Commission issued a subpoena that was "not self-enforcing"; the recipients faced no penalty for non-compliance until a court ordered enforcement. *Id.* at 741. The district court dismissed a pre-enforcement suit on the ground that the challengers would "have a full opportunity to assert their objections" "if and when the Commission instituted a subpoena enforcement action." *Id.* at 739. Yet this Court bypassed that issue and rejected the challenge on the merits. See *id.* at 741-751. Given a court's obligation to consider jurisdiction before the merits, the Court could have taken that step only if *Reisman* and *Claire Furnace* concerned the existence of a cause of action, not standing. See *Steel Co.* v. *Citizens for a Better Environment*, 523 U.S. 83, 94 (1998).

Reisman's and *Claire Furnace*'s rationale does not extend to suits contesting *state* subpoenas. Section 1983 provides a federal cause of action to plaintiffs who challenge the denial of their federal rights under color of state law. See *Medina* v. *Planned Parenthood South Atlantic*, 145 S. Ct. 2219, 2229 (2025). And "overlapping state remedies are generally irrelevant" to Section 1983's applicability. *Zinermon* v. *Burch*, 494 U.S. 113, 124 (1990); see *Patsy* v. *Board of Regents*, 457 U.S. 496, 516 (1982). Relatedly, an "adequate remedy at law exists, so as to deprive federal courts of equity jurisdiction," only if "it is available in the *federal* courts." *Petroleum Exploration* v. *Public Service Commission*, 304 U.S. 209, 217 (1938) (emphasis added). A recipient's ability to challenge a subpoena in a state enforcement proceeding accordingly does not detract from its ability to challenge the subpoena in a federal pre-enforcement suit under Section 1983.

Respondent sees "no reason" why a federal court should have the power to review "a state's non-self-enforcing subpoena" but not a "federal equivalent." Br. in Opp. 19 (citation omitted). But Congress had good reason to treat state and federal subpoenas differently. Deferring review of a state subpoena risks depriving the recipient of a federal forum. See pp. 26-28, *infra*. Deferring review of a federal subpoena does not; no matter whether the review occurs in a pre-enforcement suit brought by the recipient or an enforcement suit brought by the agency, a federal court will judge the subpoena's lawfulness. In any event, whatever the reason, Congress chose in Section 1983 to authorize suits challenging state action but not federal action. Congress also chose in the APA to establish a distinct body of rules for judicial review of federal agency action and

made finality a prerequisite for such challenges. A "preference for symmetry cannot trump an asymmetrical statute." *Michigan* v. *EPA*, 576 U.S. 743, 757 (2015) (citation omitted).

C. The Pending State Subpoena-Enforcement Proceeding Does Not Affect Petitioner's Standing

1. The court of appeals observed that petitioner "can continue to assert its constitutional claims in state court" and expressed confidence that "the state court will adequately adjudicate" those claims. Pet. App. 4a-5a. But that argument engrafts a misconceived exhaustion-type requirement onto ripeness doctrine, which is "peculiarly a question of timing," not a comparative inquiry into potential forums. See *Thomas*, 473 U.S. at 580 (citation omitted). Its "basic rationale is to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements." *Ibid.* (citation omitted). A federal suit's justiciability does not turn on the adequacy of an alternative state forum.

Taken to its logical conclusion, that rationale for dismissal would foreclose most pre-enforcement challenges. A regulated party generally may "assert its constitutional claims" as defenses in an enforcement proceeding, and the court conducting that proceeding generally can be expected to "adequately adjudicate" those defenses. Pet. App. 4a-5a; see *McLaughlin*, 145 S. Ct. at 2015. Yet, under this Court's longstanding doctrine, the regulated party need not wait until the enforcement proceeding to raise its claims. Article III allows "the pre-emptive assertion in equity of a defense that would otherwise have been available in the State's enforcement proceedings at law." *Virginia Office of Protection & Advocacy* v. *Stewart*, 563 U.S. 247, 262

(2011) (Kennedy, J., concurring). Subpoena enforcement is no exception to that rule.

The court of appeals' decision also contradicts the well-established principle that a party may "resort to a federal court" "without first exhausting" its remedies in state courts. *Lane* v. *Wilson*, 307 U.S. 268, 274 (1939). This Court has often reaffirmed that principle in the context of Section 1983, explaining that "exhaustion of state remedies is not a prerequisite to an action" under that statute. *Pakdel* v. *City & County of San Francisco*, 594 U.S. 474, 475 (2021) (per curiam) (citation and emphasis omitted); see, *e.g.*, *Patsy*, 457 U.S. at 516. Yet, contrary to those precedents, the decision below effectively requires petitioner to obtain a ruling from state court before it may sue in federal court.

In denying petitioner a federal forum, the court of appeals made a policy choice that Article III reserves to Congress alone. Some delegates to the Constitutional Convention, confident that "State Tribunals" would properly resolve federal cases, "could see no necessity" for lower federal courts. 2 *The Records of the Federal Convention of 1787*, at 45 (Max Farrand ed., 1911). Other delegates argued that "the Courts of the States can not be trusted with the administration of the National laws." *Id.* at 46. The Framers did not settle that debate in Article III. Instead, in the Madisonian Compromise, they left it to Congress to decide whether to create lower federal courts and which classes of cases those courts should hear. See *Haaland* v. *Brackeen*, 599 U.S. 255, 290-291 (2023).

Here, Congress has authorized "concurrent forums in the state and federal systems" for Section 1983 suits, "enabling the plaintiff to choose the forum in which to seek relief." *Haywood* v. *Drown*, 556 U.S. 729, 735

(2009) (citation omitted). Petitioner has chosen federal court. A federal court may not countermand that choice because it trusts state courts to "adequately adjudicate" petitioner's federal claims. Pet. App. 5a.

2. The court of appeals suggested that its decision would not deny a federal forum to petitioner because petitioner could raise its constitutional claims in "future federal litigation between these parties." Pet. App. 5a. That is mistaken. Under the full-faith-and-credit statute, a state court's decision ordinarily has preclusive effect in later federal suits, including suits under Section 1983. See *Allen* v. *McCurry*, 449 U.S. 90, 96-105 (1980); 28 U.S.C. 1738. The court of appeals' decision thus puts petitioner in a Catch-22: If petitioner sues in federal court before litigating the state case, its claim will be unripe, but if it sues in federal court after litigating the state case, its claim could be precluded.

The Third Circuit's decision in *Smith & Wesson Brands, Inc.* v. *Attorney General*, 105 F.4th 67 (2024), illustrates that problem. There, New Jersey's attorney general issued a subpoena to a firearms manufacturer, who then challenged the subpoena in federal court. See *id.* at 71. A state court, however, ordered enforcement while the federal suit was pending. See *id.* at 72. The Third Circuit held that the state decision precluded the firearms manufacturer's federal claims. See *id.* at 73.

This Court has long refused to interpret ripeness doctrine in a way that creates such preclusion traps. In *Railroad & Warehouse Commission* v. *Duluth Street Railway Co.*, 273 U.S. 625 (1927), for example, the Court held that a railroad seeking to challenge a state agency's ratemaking order in federal court did not need to wait until the completion of judicial review in state court. In an opinion by Justice Holmes, the Court noted

that if the state court affirmed the order, the matter would "become *res judicata*" and "a resort to the federal Court would be too late." *Id.* at 628. That result, the Court observed, would defeat the plaintiff's "right" to "entrust the final decision to the Courts of the United States rather than to those of the State." *Ibid.*

More recently, in *Knick* v. *Township of Scott*, 588 U.S. 180 (2019), this Court held that, when a State takes property without paying, the owner may raise a federal takings claim without first litigating a claim for just compensation under state law. The Court noted that a state-litigation requirement would mean that a takings plaintiff "cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court." *Id.* at 184-185. That "preclusion trap," the Court explained, "should tip us off that the state-litigation requirement rests on a mistaken view" of the law. *Id.* at 185. So too here.

3. Finally, concerns that a federal suit will overlap or interfere with the pending state proceeding do not justify the court of appeals' decision. Justiciability turns on the imminence of the plaintiff's injury, not on the possibility of disrupting parallel state proceedings. As far as Article III is concerned, "the pendency of an action in state court is no bar to proceedings concerning the same matter in the Federal court having jurisdiction." *McClellan* v. *Carland*, 217 U.S. 268, 282 (1910).

Indeed, "there is no doctrine that the availability or even the pendency of state judicial proceedings excludes the federal courts." *NOPSI*, 491 U.S. at 372. At most, *Younger* v. *Harris*, 401 U.S. 37 (1971), requires federal courts to abstain from exercising jurisdiction in certain narrow circumstances when federal proceedings would result in "undue interference" with pending state

proceedings. *Sprint Communications, Inc.* v. *Jacobs*, 571 U.S. 69, 72 (2013). Given federal courts' "virtually unflagging" duty to hear suits within their jurisdiction, this Court has limited that doctrine to certain "exceptional" types of cases. *Id.* at 77-78 (citations omitted). The district court determined that abstention is not warranted here, see Pet. App. 29a, and respondent has not challenged that holding on appeal or in this Court.

Outside the narrow confines of abstention doctrine, this Court has generally left it to Congress to decide whether to accommodate States' interests by limiting the authority of federal courts. Congress has enacted statutes limiting federal courts' power to stay state-court proceedings, see 28 U.S.C. 2283; to enjoin the collection of state taxes, see 28 U.S.C. 1341; to review state ratemaking orders, see 28 U.S.C. 1342; and to grant writs of habeas corpus to state prisoners, see 28 U.S.C. 2254. Congress could, if it wishes, enact a similar law limiting federal review of state subpoenas—but it has not done so as yet.

D. The Court Of Appeals' Remaining Justifications For Dismissing The Case Lack Merit

The court of appeals gave three case-specific reasons for dismissal: (1) petitioner's affidavits do not show "enough of an injury," (2) the state court ordered the parties "to negotiate to narrow the subpoena's scope," and (3) respondent "has conceded that he seeks donor information from only two websites." Pet. App. 4a. None of those rationales supports the judgment below.

1. Petitioner submitted affidavits in which its donors explained that disclosing their identities "will chill [their] desire in the future to affiliate with and support pro-life organizations, even privately, due to the risk that those protected relationships will be disclosed to

openly hostile law enforcement officers." Pet. App. 177a; see *id.* at 174a-178a. In finding this case unripe, the court of appeals stated that the affidavits "do not yet show enough of an injury." *Id.* at 4a.

That is incorrect. The critical question under Article III is whether the recipient of the subpoena faces a credible threat of enforcement, not whether the subpoena will have a chilling effect on third parties. A recipient who faces such a threat satisfies Article III's requirement of an actual or imminent injury. The recipient need not make a further showing about the subpoena's effect.

Conversely, if the recipient does not face a credible threat of enforcement, it cannot satisfy Article III by alleging that the unenforced subpoena will discourage its donors from associating with it. "[I]t is not enough that [the plaintiffs] feel inhibited or chilled by the abstract possibility of an enforcement action against them. Rather, they must show at least a credible threat of such an action." *Whole Woman's Health*, 595 U.S. at 48 (opinion of Gorsuch, J.) (brackets, citation, and internal quotation marks omitted). "[A]llegations of a subjective 'chill' are not an adequate substitute" for an objective threat. *Clapper*, 568 U.S. at 418 (citation omitted).

The subpoena's chilling effect is instead pertinent to the merits of one of petitioner's claims—specifically, the claim that the subpoena abridges its donors' freedom of association. See Pet. App. 72a n.1. That claim requires considering whether disclosing the donors' identities would pose an unjustified "risk of a chilling effect on association." *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595, 618 (2021). Thus, here, petitioner's donors have submitted affidavits explaining that the disclosure of their personal information "will chill" their

"desire in the future to affiliate with" petitioner. Pet. App. 177a. But petitioner need not establish a risk of a chilling effect to satisfy Article III, for "standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal." *FEC* v. *Ted Cruz for Senate*, 596 U.S. 289, 298 (2022) (citation omitted).

2. The court of appeals also emphasized that the state court ordered the parties to "negotiate to narrow the subpoena's scope" and that the parties "have agreed to so negotiate." Pet. App. 4a. But that fact has no bearing on justiciability.

Courts often order parties to attempt to resolve their disputes through negotiation. District courts may hold pretrial conferences to "facilitat[e] settlement," Fed. R. Civ. P. 16(a)(5), and courts of appeals may order parties to confer for the purpose of "simplifying the issues and discussing settlement," Fed. R. App. P. 33. Parties also routinely negotiate settlements on their own.

This Court has never suggested, however, that the plaintiff in a pre-enforcement challenge lacks standing or that the case is unripe simply because negotiations remain ongoing. Standing and ripeness turn on the imminence of the plaintiff's injury, not the status of the parties' negotiations. Of course, if the negotiations succeed and the parties resolve their dispute, the case may become moot. See *U.S. Bancorp Mortgage Corp.* v. *Bonner Mall Partnership*, 513 U.S. 18, 20-21 (1994). Before then, however, the status of the negotiations has no bearing on justiciability. In particular, parties often negotiate to narrow subpoenas, but the prospect of amicable resolution does not somehow divest courts of jurisdiction.

Courts have tools besides dismissal for ensuring that they do not waste judicial resources on matters that the

parties may soon resolve on their own. A court has the inherent power "to control the disposition of causes on its docket," including the power "to stay proceedings." *Landis* v. *North American Co.*, 299 U.S. 248, 254 (1936). A court may properly consider the status of the parties' negotiations in deciding whether or how to exercise that authority. But the district court here erred by dismissing the case outright.

3. Finally, the court of appeals observed that, after issuing the subpoena, respondent clarified that he sought the identities only of those donors who gave money through "two websites." Pet. App. 4a. But regardless of whether a subpoena seeks only some information or a lot, its threatened enforcement inflicts an Article III injury. Standing does not depend on the extent of the injury. See *Diamond Alternative Energy*, 145 S. Ct. at 2135. The subpoena's scope is, of course, pertinent to the merits; the First Amendment inquiry turns in part on whether the State's demand for information is properly tailored to the State's interest. See *Americans for Prosperity*, 594 U.S. at 611. But standing does not depend on the merits.

CONCLUSION

This Court should reverse the judgment of the court of appeals and remand the case for further proceedings.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
HARMEET K. DHILLON
Assistant Attorney General
SARAH M. HARRIS
Deputy Solicitor General
VIVEK SURI
Assistant to the Solicitor General
ANDREW G. BRANIFF
CHRISTOPHER C. WANG
Attorneys

AUGUST 2025