No. 24-781

IN THE

Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Petitioner,

v.

MATTHEW PLATKIN, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF NEW JERSEY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF *AMICUS CURIAE* ANNUNCIATION HOUSE, INC. IN SUPPORT OF PETITIONER

ALLYSON N. HO
JAIME R. BARRIOS
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201

CHRISTINE A. BUDASOFF
Counsel of Record
ALEXANDER C. MEADE
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, NW
Washington, D.C. 20036
(202) 955-8500
cbudasoff@gibsondunn.com

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*[*]

Affiliated with the Catholic Diocese of El Paso, Annunciation House expresses the Catholic faith of its directors, supporters, and volunteers through the basic social services it provides to immigrants in need. Annunciation House practices the central tenet of Christianity: To love one another. Its mission is simply to serve the poor and welcome the stranger as the Bible teaches.

About a year and a half ago, with no warning, representatives from the Texas Attorney General's Office came to Annunciation House's door with a request to examine a broad swath of its business records. Annunciation House requested 30 days to respond, but the Attorney General's Office said that Annunciation House would only be given 24 hours to turn over the requested records.

When Annunciation House sought state-court relief from the request, the Texas Attorney General's Office filed a counterclaim accusing Annunciation House of engaging in human smuggling, among other things. The Attorney General's Office sought to revoke Annunciation House's corporate charter based on its refusal to comply immediately with the request to examine Annunciation House's business records.

Annunciation House respectfully submits this *amicus* brief in petitioner's support to underscore the importance of federal courts being open to pre-enforcement challenges to state investigatory demands—particularly where free exercise rights hang in the balance.

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[*] Pursuant to Supreme Court Rule 37.6, *amicus* represents that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amicus* or its counsel made a monetary contribution to the preparation or submission of this brief.

STATEMENT

I. ANNUNCIATION HOUSE PROVIDES SHELTER TO VULNERABLE IMMIGRANTS AND REFUGEES.

Annunciation House has lived its Gospel values in Texas for nearly half a century. See Annunciation House, *Little by Little: A Brief History*, https://t.ly/tBvw3. It "offers hospitality to migrants, immigrants, and refugees" through the lens of its Catholic faith and seeks "to be a voice for justice and compassion, especially on behalf of the most marginalized." Annunciation House, *About Annunciation House*, https://t.ly/ceQ3y. Over the last 50 years, Annunciation House has provided shelter for hundreds of thousands of refugees and immigrants. Brief of Appellee at 56, *Paxton* v. *Annunciation House, Inc.*, No. 24-0573 (Tex. Nov. 27, 2024), https://t.ly/3xSMS.

Like many other nonprofits, Annunciation House depends on volunteers to help carry out its mission. *Ibid.* Volunteers work daily with immigrants and refugees, providing food and shelter to a highly vulnerable population. *Id.* at 20. Annunciation House's volunteers form a close-knit community centered on fulfilling their religious mission by providing basic necessities to those most in need. *Ibid.*

II. THE STATE OF TEXAS ISSUES AN INVESTIGATORY SUBPOENA AGAINST ANNUNCIATION HOUSE REQUIRING IMMEDIATE COMPLIANCE.

In February 2024, without warning, representatives from the Texas Attorney General's Office showed up at Annunciation House's doorstep in El Paso to serve an investigative subpoena, also known as a "request to examine" under section 12.152 of the Texas Business Organizations Code. Brief of Appellee at 22, *Paxton*, No. 24-0573.

The subpoena demanded that Annunciation House immediately turn over thousands of documents—including those containing sensitive medical and personally identifiable information—concerning

all refugees and immigrants who took shelter under Annunciation House's roof within recent years. Jurisdictional Statement App. at 93, 149, *Paxton* v. *Annunciation House, Inc.*, No. 24-0573 (Tex. July 25, 2024), https://t.ly/Bzibc. The subpoena also required production of all documents related to Annunciation House's application for humanitarian relief funding. *Id.* at 149. For any documents that were arguably privileged, the subpoena required that Annunciation House provide a privilege log stating the grounds for privilege and identifying the names and addresses of the people who prepared, saw, or possessed the documents. *Id.* at 166–167. The subpoena threatened that failure to comply would result in criminal penalties and outright closure of Annunciation House. *Id.* at 93.

Annunciation House's director sought more time to comply with the subpoena, explaining that he would need to meet with Annunciation House's attorneys to evaluate the request. Brief of Appellee at 23, *Paxton*, No. 24-0573. The State responded by insisting that it had "full and unlimited and unrestricted" authority to inspect Annunciation House's records, and that Annunciation House was required by law to provide "immediate access" to its documents. Jurisdictional Statement App. at 150–151, *Paxton*, No. 24-0573.

The State rejected Annunciation House's request for an additional 30 days to comply and instead gave only 24 hours for Annunciation House to provide the documents, which numbered in the thousands. *Paxton* v. *Annunciation House, Inc.*, 2025 WL 1536224, at *1 (Tex. May 30, 2025). The State reiterated that if Annunciation House didn't turn over its records within 24 hours, the State would deem Annunciation House noncompliant. Jurisdictional Statement App. at 150–151, *Paxton*, No. 24-0573. The threat was existential. The request-to-examine statute purports to authorize the Texas Attorney General to subpoena any corporation's records, demand immediate compliance, and—if it fails to comply—terminate the

corporation's charter. See Tex. Bus. Orgs. Code §§ 12.152, 12.155.

III. ANNUNCIATION HOUSE SEEKS TO VINDICATE ITS FEDERAL RIGHTS IN STATE COURT.

Left with no other option, Annunciation House filed a temporary restraining order in state court the day after it received the subpoena. Brief of Appellee at 23, *Paxton*, No. 24-0573. Annunciation House asserted that the State's burdensome request, coupled with threats of both criminal sanctions and the termination of Annunciation House's charter, infringed on the charity's Due Process and First Amendment rights. Annunciation House also pointed out that the harm it faced from the subpoena was real and immediate—in particular, the loss of crucial long-term volunteers because of the State's aggressive tactics. *Id.* at 24. The court granted the relief requested the same day. *Id.* at 25.

Shortly after, the State moved for leave to file a counterclaim to revoke Annunciation House's charter and prevent it from operating in Texas. *Id.* at 24. In its proposed counterclaim, the State asserted that the purpose of its request to examine was to investigate whether Annunciation House illegally harbors undocumented immigrants. *Ibid.* The State also argued that Annunciation House's failure to comply with the State's investigatory demand justified revoking Annunciation House's charter. *Ibid.*

While that motion was pending, Annunciation House moved to quash the State's subpoena. *Id.* at 25. But the trial court denied the motion as moot because, now that Annunciation House had filed its lawsuit, the subpoena was superseded by state discovery rules. *Id.* at 25–26. The State didn't contest the court's order. In fact, it dropped its pursuit of the subpoena entirely. Jurisdictional Statement App. at 56, *Paxton*, No. 24-0573. Instead, the State focused its efforts on closing Annunciation House completely. *Id.* at 70–71.

Annunciation House moved for summary judgment. *Paxton*, 2025 WL 1536224, at *2. After briefing and hearing on all pending motions, the court denied the State's motion for leave to seek termination of Annunciation House's charter and granted summary judgment to Annunciation House. *Ibid.* The court concluded that the request-to-examine statute was facially unconstitutional because it didn't provide for pre-compliance review. Jurisdictional Statement App. at 5–6, *Paxton*, No. 24-0573 (citing *City of Los Angeles* v. *Patel*, 576 U.S. 409, 419 (2015)). The court further ruled that any future subpoenas issued to Annunciation House would be subject to the court's pre-compliance review. *Id.* at 6.

The State immediately noticed its intent to appeal—pursuing a direct appeal to the Texas Supreme Court. Notice of Appeal, *Paxton* v. *Annunciation House, Inc.*, No. 24-0573 (Tex. July 15, 2024), https://t.ly/Tl6mt. After briefing and argument, the Texas Supreme Court held that Texas's request to-examine statute isn't facially unconstitutional because its mandate of "immediate compliance" can theoretically be interpreted to "not exclude the opportunity for precompliance review before associated penalties attach." *Paxton*, 2025 WL 1536224, at *24.

The Texas Supreme Court didn't provide guidance on how much time is sufficient for meaningful pre-compliance review. And it didn't decide whether short-fuse deadlines—such as the Attorney General's 24-hour compliance deadline—adequately ensure pre-compliance review under the Fourth Amendment. See Motion for Rehearing at 2–4, *Paxton* v. *Annunciation House, Inc.*, No. 24-0573 (Tex. Aug. 15, 2025), https://t.ly/eq7ju. Annunciation House has since moved for rehearing, arguing that the Court's construction of the request-to-examine statue "cannot fix the Fourth Amendment problem." *Id.* at 2. That motion remains pending.

ARGUMENT

I. STATE INVESTIGATORY DEMANDS CAN IMPOSE PARTICULARLY ONEROUS BURDENS ON NONPROFITS LIKE ANNUNCIATION HOUSE.

As Annunciation House's experience shows, nonprofit organizations—which rely heavily on volunteers—bear the heaviest burdens when faced with short-fuse state investigatory demands. Unlike large, for-profit organizations, nonprofits often lack the resources to locate and provide relevant records—particularly in a very short timeframe—while still performing their mission-critical work. And they have even less time to discern their legal obligations before complying with such demands. The cost of compliance is high, and the cost of noncompliance is even higher. It's a lose-lose dilemma from which there is often no escape.

Indeed, the stakes can be existential—as in Annunciation House's case, where the State initially pushed for closure as a consequence of Annunciation House's inability to comply with the State's investigatory demands within 24 hours. Left unchecked, the process becomes the punishment. As the number of state investigatory demands rises, it becomes even more critical that the subjects of those demands can enforce their constitutional rights in an appropriate forum. A federal forum should be available in such cases.

Historically, federal courts have reviewed claims when parties have alleged onerous state action in violation of constitutional rights. For example, in *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958), the state attorney general sought to compel the NAACP to produce its membership lists through state-court process. *Id.* at 451. This Court held that compelling the NAACP to produce these lists would violate the NAACP members' First Amendment right to association. *Id.* at 466; see also *Gibson* v. *Fla. Legis. Investigation Comm.*, 372 U.S. 539, 557–558 (1963) (applying the same rule to legislative investigations of

groups that themselves are not engaged in subversive or illegal activities). Federal courts regularly ensure that state action implicating the First Amendment is narrowly tailored to achieve a compelling state interest.

Federal court protections are particularly important for religious nonprofits. By nature, their activities implicate multiple First Amendment rights—freedom of speech, association, and religion—so targeting these groups can entail multiple constitutional concerns. These groups often also act based on their religious beliefs, which often represent minority viewpoints within a given community or society at large. Groups like Annunciation House should have a federal forum to vindicate their rights when those rights are violated by state civil investigatory demands, as case law over the last century has shown is both necessary and required by the Constitution.

II. THE COURT SHOULD REVERSE THE THIRD CIRCUIT TO ENSURE THAT FEDERAL COURTS REMAIN AVAILABLE TO VINDICATE FEDERAL RIGHTS.

A. The Rule Applied Below Is Wrong.

Annunciation House has no means of vindicating its federal rights in federal court because the Fifth Circuit—like the Third Circuit in the decision below—holds that a State's investigatory demand can't be challenged in federal court unless a state court first enforces the demand. See *Google, Inc.* v. *Hood*, 822 F.3d 212, 225–226 (5th Cir. 2016). Under this rule, organizations like Annunciation House *must* go to state court to vindicate federal constitutional rights against a state actor—the federal courthouse doors are closed to them.

This rule contravenes this Court's precedents on standing and ripeness that require a credible threat of enforcement. See, e.g., *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 158–161 (2014). Indeed, this Court has made clear "that a plaintiff satisfies the

injury-in-fact requirement where he alleges 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" *Id.* at 159 (quoting *Babbitt* v. *Farm Workers,* 442 U.S. 289, 298 (1979)). That's precisely what Annunciation House faces now—and what many organizations face whenever they're forced to comply with what they perceive to be politically motivated civil investigatory demands under pain of criminal penalties.

For example, in *Steffel* v. *Thompson*, 415 U.S. 452 (1974), this Court held that a police officer's mere threat to arrest the petitioner for distributing fliers protesting the Vietnam War was sufficient to allow the petitioner to seek a declaratory judgment that the trespass statute—under which his arrest was threatened—was unconstitutional as applied to him. *Id.* at 459. It was "not necessary that petitioner first expose himself to actual arrest or prosecution to be entitled to challenge a statute that he claims deters the exercise of his constitutional rights." *Ibid.*

These precedents make clear that a categorical rule barring a pre-enforcement challenge to a civil investigatory demand in federal court is improper. In Annunciation House's situation, the issuance of a civil investigatory demand with threat of severe penalties, when paired with the plausible allegations of a First Amendment claim, should be sufficient to establish a credible threat of state law enforcement in contravention of a federal constitutional right.

To be sure, a civil investigatory demand doesn't always give rise to an Article III injury. But categorically prohibiting federal suit before state litigation when there's a credible claim of federal constitutional injury impermissibly ignores the injury altogether. Although there may be questions of prudential ripeness at play, there's no basis to adopt a rule that wholesale deprives a federal court of subject-matter jurisdiction to decide the case.

What's more, the Third Circuit's rule flouts the principle that "a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging." *Susan B. Anthony List*, 573 U.S. at 167 (cleaned up) (quoting *Lexmark Int'l, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 125–126 (2014)). Federal courts "have 'no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.'" *Sprint Commc'ns, Inc.* v. *Jacobs*, 571 U.S. 69, 77 (2013) (quoting *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821)). For over two centuries, this Court has adhered to the view that, "[w]ith whatever doubts, with whatever difficulties, a case may be attended," a federal court faced with credible threats of federal constitutional injury "must decide it." *Cohens*, 19 U.S. (6 Wheat.) at 404.

In *Sprint Communications, Inc.* v. *Jacobs*, this Court noted that "[p]arallel state-court proceedings do not detract from that obligation." *Id.* at 77 (citing *Colo. River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976)). Only in exceptional circumstances has the Court adopted a different rule and applied an abstention doctrine as in *Younger* v. *Harris*, 401 U.S. 37 (1971), for ongoing state criminal prosecutions. But no exceptional circumstances justify a departure from the general rule here.

In any event, abstention has strict boundaries. For example, the Court has only extended *Younger* abstention to civil proceedings that are "in aid of and closely related to [the State's] criminal statutes" because they're akin to criminal prosecutions. *Sprint Commc'ns Inc.*, 571 U.S. at 77–78 (alteration in original) (quoting *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 604 (1975)). So an existing abstention doctrine doesn't apply to state proceedings that come after a civil investigatory demand, and there's no basis to create a new abstention doctrine in these circumstances.

In a situation like the one Annunciation House faces, courts should apply traditional standing doctrine rather than categorically bar suit even as the

threat of harsh penalties looms large. There is no need for a different rule—much less a vague prudential standard—to apply merely because a civil investigatory demand is at issue.

When a party suffers an Article III injury from a constitutional violation, prudential ripeness can't categorically bar all pre-enforcement challenges. In all events, situations involving civil investigatory demands with enforceable, harsh penalties easily satisfy the "fitness" and "hardship" factors of prudential ripeness doctrine such that this Court "need not resolve the continuing vitality of the prudential ripeness doctrine in this case." *Susan B. Anthony List*, 573 U.S. at 167.

B. Reversal Is Required to Protect First Amendment Rights from Being Chilled.

All agree that state attorneys general have important roles to play in ensuring that everyone—nonprofits included—follow the law. But that state authority is subject to federal constitutional limits. See *W. Va. State Bd. of Educ.* v. *Barnette*, 319 U.S. 624, 637 (1943) (the Fourteenth Amendment "protects the citizen against the State itself and all of its creatures"). And state civil investigations driven by retaliatory motives can chill constitutionally protected speech and activity.

That chilling effect is itself "in direct contravention of the First Amendment's dictates." *Riley* v. *Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 794 (1988) (citing *Sec'y of State of Md.* v. *Joseph H. Munson Co.*, 467 U.S. 947, 969 (1984); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 279 (1964)). In *Riley* v. *National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781 (1998), the Court recognized the particular risk of chilling speech in the realm of charitable donations, especially with "small or unpopular" charities. *Id.* at 794. This harm extends to charities targeted by state attorneys general through civil investigatory demands.

An investigation of a nonprofit can impose significant legal costs, divert time from the organization's mission and activities, and damage its reputation. The chilling effect impacts not only the targeted nonprofit, but also the broader nonprofit community, as organizations may avoid lawful speech or actions out of fear that they will lead to investigatory scrutiny. So pre-enforcement review of state investigatory demands is critical to protecting the exercise of constitutional rights, including free exercise rights.

As the Court recognized in *Americans for Prosperity Foundation* v. *Bonta*, 594 U.S. 595 (2021), a state attorney general's authority to supervise and regulate charities and their records is constrained by the First Amendment right to free association. See *id.* at 600–602. In that case, two charities brought a First Amendment challenge in federal court after refusing to turn over donor information—which the state attorney general demanded as a condition for renewing their registration—and being threatened with fines and suspension. See *id.* at 602–603. This Court held that the disclosure requirement was facially unconstitutional because it created "an unnecessary risk of chilling" on donors "in violation of the First Amendment." *Id.* at 616. This Court made clear that "[e]very demand that might chill association therefore fails exacting scrutiny." *Id.* at 615.

So too here, for Annunciation House and petitioners. That the records requests came through civil investigatory demands rather than a registration requirement makes no difference. The credible threat of enforcement is the same, and the same rights are at stake. Indeed, the threat of chilled speech was also the constitutional harm at issue in the pre-enforcement challenge in *Susan B. Anthony List*, so a pre-enforcement challenge in federal court is an appropriate mechanism, in an appropriate forum, to vindicate First Amendment rights—even with respect to a civil investigatory demand. See 573 U.S. at 155.

That conclusion applies with even more force where targeting and harassment are at play. For example, in *Dombrowski* v. *Pfister*, 380 U.S. 479 (1965), this Court noted that some investigations can be conducted in bad faith to harass and that abstention in the face of a complaint with such allegations could "result in the denial of any effective safeguards against the loss of protected freedoms of expression[] and cannot be justified." *Id.* at 492; see also *id.* at 490–492. Even in *Younger*, this Court explicitly preserved the possibility of federal intervention with ongoing prosecutions where there is evidence of bad faith. 401 U.S. at 49. Particularly in those circumstances, the doors of federal courthouses should be open to vindicate the federal rights at stake.

C. Longstanding Principles of Federal Jurisdiction and Federalism Require Reversal.

The importance of a federal forum for federal questions is deeply embedded in our legal system. It underlies the federal-question component of subject-matter jurisdiction. U.S. Const. art. III, § 2. And it animates 42 U.S.C. § 1983 and this Court's decision in *Ex Parte Young*, 209 U.S. 123 (1908). That a party might be able to enforce its federal civil rights in state court doesn't undermine the importance of federal-court jurisdiction over claims implicating core federal rights, as the case law above shows.

In fact, this Court has held that "abstention cannot be ordered simply to give state courts the first opportunity to vindicate the federal claim." *Zwickler* v. *Koota*, 389 U.S. 241, 251 (1967); see also *id.* at 251 n.14 (noting that the Court has "frequently emphasized that abstention is not to be ordered unless the state statute is of an uncertain nature[] and is obviously susceptible [to] a limiting construction").

No federalism concerns militate against federal jurisdiction here. Unlike in certain habeas cases, where federal law requires that state prisoners must exhaust their remedies in state court before seeking

federal habeas relief to avoid unnecessary federal intervention into state proceedings, see 28 U.S.C. § 2254(b)(1), there's no risk of federal entanglement with respect to adjudicating the federal rights implicated by state investigatory demands. That's because the nonprofit is simply seeking to have a federal court enforce federal rights in the first instance. This Court should reverse the Third Circuit's decision and confirm that pre-enforcement challenges to non-self-executing civil investigatory demands are properly brought in federal court.

* * *

State attorneys general are increasingly deploying civil investigatory demands, which impose particularly onerous burdens on nonprofits that often rely on volunteers to accomplish their missions. Given the stakes involved—especially the chilling effect on free speech, free association, and free exercise rights—targeted organizations should be able to bring challenges to assert their federal constitutional rights in federal court based on the credible threat of enforcement against them, just as they can in virtually every other similar context.

CONCLUSION

The Court should reverse the judgment of the court of appeals.

Respectfully submitted,

ALLYSON N. HO
JAIME R. BARRIOS
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201

CHRISTINE A. BUDASOFF
Counsel of Record
ALEXANDER C. MEADE
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, NW
Washington, D.C. 20036
(202) 955-8500
cbudasoff@gibsondunn.com

Counsel for Amicus Curiae

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