No. 24-781

In the Supreme Court of the United States

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,

Petitioner,

v.

MATTHEW PLATKIN,
ATTORNEY GENERAL OF NEW JERSEY,

Respondent.

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

BRIEF OF AMICUS CURIAE FEDERATION OF STATE MEDICAL BOARDS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICUS CURIAE[1]

Amicus Curiae Federation of State Medical Boards ("FSMB") is a non-profit organization whose members are the medical boards of each state and territory of the United States. Each member board is a state agency responsible for regulating the practice of medicine in the public interest.

In carrying out their statutory duty to protect patients and the public, FSMB's member boards issue subpoenas to gather information in connection with investigations and disciplinary actions. Their ability to conduct investigations into care that may violate state law and to regulate physician practices in the public interest would be substantially hampered if a subpoena recipient were allowed to allege a federal constitutional claim that would enable it to bypass well-established state court procedures relating to the modification or quashing of a subpoena. Providing a mechanism to seek immediate relief in federal court simply upon an allegation that the issuance, not the enforcement, of a subpoena is unconstitutional would frustrate the ability of medical boards to obtain information necessary to determine whether an action that is being investigated violates state law and applicable regulations. Moreover, allowing

[1] Pursuant to Supreme Court Rule 37.6, counsel for Amicus Curiae states that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than Amicus Curiae, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

immediate constitutional review in federal court of a subpoena issued by a state medical board would create inefficiencies and expense for that board by having the federal court adjudicate constitutional issues while the state court resolves all other issues raised by the subpoena.

SUMMARY OF THE ARGUMENT

The traditional procedure for challenging a subpoena issued by a state agency is well-established and has proven to be procedurally efficient and protective of federal constitutional rights. Specifically, recipients of a subpoena may work cooperatively with the issuing agency to narrow the scope of the subpoena and to address any constitutional concerns. Alternatively, they may seek relief in state court, either in connection with a motion by the agency to enforce the subpoena or by a motion to quash or limit the subpoena. State courts are fully capable of adjudicating the propriety and scope of the subpoena, including any constitutional concerns, in one proceeding.

This Court should not upend these long-established procedures by allowing a subpoena recipient to preempt state court review of a subpoena upon the assertion that the issuance of a subpoena for information amounts to a constitutional violation. Federal court review of a state agency subpoena prior to enforcement of the subpoena by the state court would hinder state boards of medicine and other state agencies from taking prompt action to investigate potentially harmful or illegal behavior and from

acting swiftly to protect the public. It would demean state courts, which have traditionally been regarded as co-equal guardians of federal constitutional rights. And it would create an inefficient two-track system for adjudicating the propriety of subpoenas issued by state agencies, which would unnecessarily delay state agency enforcement actions for violations of state law.

A federal court should not pass judgment on alleged constitutional issues in a subpoena issued by a state agency unless and until a state court has rejected the constitutional claims and ordered the recipient to comply with the subpoena. Until then, abstention under *Younger v. Harris*, 401 U.S. 37 (1971) and/or *Colorado River Water Conservation Dist. v. U.S.*, 424 U.S. 800 (1976) is appropriate. Nor does abstention preclude subsequent federal court review of constitutional challenges to subpoenas.

Under this Court's jurisprudence, state courts are equally duty-bound and capable of protecting federal constitutional rights as federal courts. To allow a subpoena recipient to bypass initial state court review when a constitutional issue is asserted would undermine this bedrock principle. This Court should affirm the judgment of the Third Circuit and require recipients of state agency subpoenas to litigate their constitutional and other objections in state court before invoking the jurisdiction of the federal courts.

ARGUMENT

I. CHALLENGES TO STATE AGENCY SUBPOENAS, INCLUDING CONSTITUTIONAL CHALLENGES, MUST FIRST BE ADJUDICATED IN STATE COURT.

The long-accepted procedure for enforcing or challenging a subpoena issued by a state agency such as a state board of medicine is to seek relief in state court. *See First Choice Women's Res. Ctrs., Inc. v. Platkin*, No. 23-23076 (MAS) (TJB), 2024 WL 4756044, at *11-13 (D.N.J. Nov. 12, 2024) (describing the New Jersey subpoena enforcement process and noting that Petitioner's seeking immediate federal court review is an "extraordinary and novel maneuver" that breaks with tradition). There is no sound reason to undercut that procedure by transferring initial review of constitutional claims arising from the issuance of state agency subpoenas from state courts to federal courts. *See Silverman v. Berkson*, 661 A.2d 1266, 1274 (N.J. 1995) ("Federal courts enforcing administrative subpoenas are strictly limited by their jurisdictional grants. On the other hand, the Legislature has given our courts plenary jurisdiction to enforce the agency's subpoena.").

State agencies such as FSMB member medical boards have a statutory obligation to protect the public from illegal or unethical conduct. Among the duties of state boards of medicine are the prevention of the unlicensed practice of medicine, the investigation of complaints regarding physician mistreatment of patients and other misconduct, and

the issuance of subpoenas for documents and testimony in connection with investigations and disciplinary proceedings. *See* Federation of State Medical Boards, *Guidelines for the Structure and Function of a State Medical & Osteopathic Board*, 12-13 (Apr. 2024).[2] State medical board proceedings are judicial proceedings. *E.g.*, *Zahl v. Harper*, 282 F.3d 204, 209 (3d Cir. 2002); *Leonard v. Ala. State Bd. of Pharmacy*, 591 F. Supp. 3d 1155, 1171 (M.D. Ala. 2022).

Allowing subpoena recipients to sidestep state court subpoena review proceedings would delay and divert state boards of medicine from carrying out their mission to protect patients and public health. Take, for example, a situation in which an individual, who may or may not be a licensed physician, is using what the board believes to be illegal or unproven methods to treat a condition or disease. A medical board would begin its investigation into the methods in question by issuing a subpoena for relevant records of the subpoena recipient and for studies substantiating the efficacy of those methods, as well as other information relevant to the matter being investigated.

In such a case, and especially if the individual is aware that the conduct in question likely violates law or the standard of care, it is foreseeable that, to

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[2] *Available at:* https://www.fsmb.org/siteassets/advocacy/policies/guidelines-for-structure-function-of-state-medical-and-osteopathic-board-2024.pdf (last visited Oct. 16, 2025).

obstruct the investigation, the subpoena recipient would assert that the subpoena raises constitutional issues. The recipient would then demand that the constitutional issues first be adjudicated in federal court. But a diversion of the proceeding to federal court would delay the board's receipt of the requested information and thereby impede the board's ability to enforce state law and to prevent continued practices that are likely to be harming patients.

Similarly, consider a situation where a medical board has received a complaint that a physician has abused a patient. The board would issue a subpoena designed to obtain relevant information about the incident in question and about whether there have been similar incidents with other patients. Prompt action to avoid any further abuse of patients would be required. The physician should not be able to delay compliance with the subpoena simply by alleging a constitutional violation requiring federal court adjudication.

These scenarios are not merely hypothetical. In fact, physicians subject to disciplinary proceedings often bring constitutional claims in federal court to put off state disciplinary proceedings. Two very recent federal court decisions are illustrative. *See Stockton v. Brown*, --- F.4th ----, 2025 WL 2656631, at *17 (9th Cir. Sept. 17, 2025) (affirming dismissal of constitutional claims by physicians charged with unprofessional conduct as well as those who have not yet been charged for spreading misinformation regarding COVID-19 vaccines and alternative

treatments); *Conklin v. Or. Med. Bd.*, No. 25-cv-01173-AR, 2025 WL 2588967, at *9-10 (D. Or. Sept. 8, 2025) (denying physician's request, based on alleged constitutional violations, for preliminary injunction staying disciplinary action and reactivating his suspended license). A ruling permitting federal courts to adjudicate constitutional issues in the first instance only encourages this behavior.

Federal court intervention in state subpoena proceedings is also unnecessary because, as this Court has long recognized, there is no basis to presume that state courts are less duty-bound or adept at protecting federal constitutional rights than federal courts. *See*, *e.g.*, *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) ("[W]e have consistently held that state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States."); *Rose v. Lundy*, 455 U.S. 509, 518 (1982) ("Under our federal system, the federal and state courts [are] equally bound to guard and protect rights secured by the Constitution.'") (quoting *Ex parte Royall*, 117 U.S. 241, 251 (1886)); *Stone v. Powell*, 428 U.S. 465, 493 n.35 (1976) ("State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."). Allowing subpoena recipients to bypass state courts when they assert constitutional issues diminishes state courts and treats them as inferior arbitrators of federal constitutional rights.

The Washington appellate court's recent

decision in *Wilkinson v. Wash. Med. Comm'n*, --- P.3d ----, 2025 WL 2652817 (Wash. Ct. App. Sept. 16, 2025) exemplifies how constitutional rights are adequately protected in state court proceedings. There, the state medical board disciplined a physician for negligently treating patients suffering from COVID-19 and for publishing statements on his clinic's blog asserting that the pandemic is a "scam," that testing and use of masks is "useless," and that COVID-19 vaccines are "dangerous." *Id.* at *2, 10-11. On appeal, the appellate court affirmed sanctions relating to patient care but reversed sanctions arising from the physician's blog posts. In its fulsome analysis of First Amendment issues, the court vindicated the physician's free speech rights and explained why that speech could not be punished, even if it contained falsehoods and advocated for treatments not generally accepted by the medical community. *Id.* at *17-24. Thus, as *Wilkinson* demonstrates, federal courts need not serve as courts of first resort for constitutional claims.

There is no benefit to diverting constitutional issues to federal court upon the issuance, rather than the enforcement, of a subpoena when state courts are fully capable of adjudicating all issues raised by the subpoena, both constitutional and non-constitutional. Further, state court rulings on non-constitutional issues concerning the scope of a subpoena and the relevance of the requested information may well moot constitutional concerns. Litigating the propriety of a state agency subpoena in two different courts needlessly increases costs and undermines the parties' ability to work out their issues without the

need for judicial intervention. By contrast, a state court proceeding enables disputes concerning the propriety of a subpoena, its scope, and any constitutional issues to be raised and adjudicated in a single forum. Such centralization allows for the timely resolution of disputes and an efficient use of judicial and party resources.

It should also be noted that Petitioner's position that compliance with an investigative subpoena creates a reasonable fear that the subpoenaed information will be disclosed to the public is unfounded. State law generally provides strong protection for such information. For example, New Jersey law explicitly states that "any information provided to the division or a board concerning the conduct of a health care professional … shall be treated as confidential pending final disposition of the inquiry or investigation, except for that information required to be shared with the Attorney General, Department of Health and Senior Services or any other government agency." N.J. Rev. Stat. § 45:1-36 (2024). Additionally, if an investigation concludes there was no violation of state law, then the information obtained "shall remain confidential[.]" *Id.* The law of other jurisdictions is equally protective. *See*, *e.g.*, N.C. Gen. Stat. § 90-16 (2019).

In short, federal court review of state agency subpoenas prior to enforcement of those subpoenas has three significant disadvantages. First, it hinders state agencies from taking prompt action to protect the public by diverting their resources to federal court

litigation. Second, it demeans state courts by presuming that they are incapable of properly adjudicating federal constitutional issues. Third, it creates an inefficient two-track system for resolving disputes.

II. A FEDERAL COURT SHOULD NOT ADJUDICATE CONSTITUTIONAL ISSUES ARISING FROM A STATE AGENCY SUBPOENA UNLESS AND UNTIL A STATE COURT HAS ENFORCED THE SUBPOENA.

Younger v. Harris, *supra*, and subsequent precedent demand deference to state courts in civil enforcement proceedings, including in cases in which federal constitutional rights are asserted. *See Sprint Comm'ns, Inc. v. Jacobs*, 571 U.S. 69, 78 (2013); *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 435 (1982) ("So long as the constitutional claims of respondents can be determined in the state proceedings and so long as there is no showing of bad faith, harassment, or some other extraordinary circumstance that would make abstention inappropriate, the federal courts should abstain."); *Younger*, 401 U.S. at 51 ("Moreover, the existence of a 'chilling effect,' even in the area of First Amendment rights, has never been considered a sufficient basis, in and of itself, for prohibiting state action.").

Courts have relied on *Younger* in abstaining from hearing challenges to state medical board proceedings. *See*, *e.g.*, *Buckwalter v. Nevada Bd. of Med. Examiners*, 678 F.3d 737, 747-48 (9th Cir. 2012) (affirming dismissal of claims arising from ex parte

emergency proceeding suspending physician's authority to prescribe medication); *Amanatullah v. Colo. Bd. of Med. Examiners*, 187 F.3d 1160, 1164-65 (10th Cir. 1999) (affirming dismissal of § 1983 action arising from administrative proceeding revoking physician's license to practice medicine). As these decisions recognize, where constitutional challenges are initially rejected, they may nonetheless be pursued through state appellate processes. *Buckwalter*, 678 F.3d at 748; *Amanatullah*, 187 F.3d at 1164.

Even when *Younger* abstention does not apply, *Colorado River* abstention counsels that federal courts should stay their hand. A state court ruling quashing a subpoena, narrowing its scope to moot constitutional issues, or otherwise vindicating a recipient's constitutional claims would eliminate any need for federal court intervention. *See Colorado River*, 424 U.S. at 817, 819 (federal courts can abstain from exercising jurisdiction over parallel state court litigation where doing so would result in "conservation of judicial resources" and "comprehensive disposition of litigation" while "avoiding piecemeal litigation"); *see also Railroad Comm'n of Tex. v. Pullman Co.*, 312 U.S. 496, 500 (1941) ("The reign of law is hardly promoted if an unnecessary ruling of a federal court is thus supplanted by a controlling decision of a state court. The resources of equity are equal to an adjustment that will avoid the waste of a tentative decision as well as the friction of a premature constitutional adjudication.").

Contrary to what Petitioner argues, abstention would not create a preclusion "trap." There is no basis to presume that a state court would rule against a subpoena recipient on its constitutional claims. Any insinuation that state courts are hostile to federal constitutional rights or incapable of protecting them is unsupported and runs counter to this Court's precedent. To the contrary, if the state court ultimately rules in favor of the recipient, as the Washington appellate court did in *Wilkinson*, then there is no need to seek relief from a federal court. Or, in circumstances where a state court narrows the scope of the subpoena to moot constitutional issues or parties reach the same result by agreement, federal court intervention would be wholly unnecessary. Consistent with principles of judicial economy, only after a state court rejects constitutional claims and requires enforcement of a subpoena would it be proper for a recipient to seek relief in federal court.

Petitioner relies on *Knick v. Township of Scott*, 588 U.S. 180 (2019) and *Smith & Wesson Brands, Inc.* v. *Attorney Gen. of N.J.,* 105 F.4th 67 (3d Cir. 2024) to argue that federal courts should have primacy in addressing constitutional issues raised by state agency subpoenas. But neither case supports displacing state courts' traditional role in adjudicating the propriety of a subpoena issued by a state agency.

Knick does not even arise in the context of enforcing a state agency subpoena—with its long-

standing tradition of resolution by state courts rather than federal courts. Rather, the Court in that case overturned a state litigation requirement for pursuing a federal takings claim under § 1983 because "[t]he Fifth Amendment right to full compensation arises at the time of the taking[.]" *Id.*, 588 U.S. at 190. *Knick* did not dispense with the Article III requirement that a plaintiff must suffer an injury to access a federal forum.

Notably, the mere issuance of a state agency subpoena does not create such an injury. Rather, as the Third Circuit recognized, until a state court ruling enforces the subpoena, the recipient does not suffer any injury that would justify the assertion of federal court jurisdiction. *First Choice Women's Res. Ctrs., Inc. v. Platkin*, No. 24-3124, 2024 WL 5088105, at *1 (3d Cir. Dec. 12, 2024) (holding that Petitioner's claims had not ripened where the parties had been ordered by the state court to negotiate and narrow the scope of the subpoena and parties were in the process of doing so).

For similar reasons, this Court's decision in *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021), which the dissent below relied upon, does not control the outcome here. Like *Knick*, *Bonta* did not involve a state agency subpoena. Rather, that case concerned an automatic donor disclosure requirement that was not subject to the traditional procedure for initial review in state court before any requested information had to be disclosed.

As for *Smith & Wesson*, the procedural history

of that case demonstrates precisely why the Court should reject a two-track system for resolving subpoenas issued by a state agency. There, Smith & Wesson attempted to circumvent the state court by first filing a constitutional challenge to the New Jersey Attorney General's subpoena in federal court. *Id.*, 105 F.4th at 71. Two months later, when the Attorney General sought to enforce the subpoena in state court, Smith and Wesson raised "carbon-copy" issues in opposition. *Id.* at 72. The state trial court rejected those arguments and issued its judgment first. *Id.* The federal district court then twice dismissed Smith & Wesson's federal complaint, first under *Younger*, and second, after the Third Circuit vacated the first dismissal, on claim preclusion grounds. *Id.* By the time the second dismissal reached the Third Circuit for consideration, the state appellate court had affirmed the trial court's decision, which the Third Circuit held had preclusive effect. *Id.* at 74-78.

As the Third Circuit recognized, Smith & Wesson had a "full and fair opportunity to litigate its claims in state court," which it did. *Id.* at 79. Further, the state trial and appellate courts were able to issue decisions before the federal trial and appellate courts could. Nonetheless, by opting to litigate identical issues in both the state and federal courts, Smith & Wesson consumed significant party and judicial resources, only to reach the same result. The duplicative trial and appellate proceedings in *Smith & Wesson* should be the outlier, not the norm.

CONCLUSION

For the reasons set forth above, this Court should affirm the judgment of the Third Circuit.

Respectfully submitted,

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