24-781 FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC. V. DAVENPORT

DECISION BELOW: 2024 WL 5088105

LOWER COURT CASE NUMBER: 24-3124

QUESTION PRESENTED:

New Jersey's Attorney General served an investigatory subpoena on First Choice Women's Resource Centers, Inc., a faith-based pregnancy center, demanding that it turn over most of its donors' names. First Choice challenged the Subpoena under 42 U.S.C. 1983 in federal court, and the Attorney General filed a subsequent suit to enforce it in state court. The state court granted the Attorney General's motion to enforce the Subpoena but expressly did *not* decide First Choice's federal constitutional challenges. The Attorney General then moved in state court to sanction First Choice. Meanwhile, the district court held that First Choice's constitutional claims were not ripe in federal court.

The Third Circuit affirmed in a divided per curiam decision. Judge Bibas would have held the action ripe as indistinguishable from*. Americans for Prosperity Foundation v. Banta*, 594 U.S. 595, 618-19 (2021). But the majority concluded First Choice's claims were not yet ripe because First Choice could litigate its constitutional claims in state court. In doing so, the majority followed the rule of the Fifth Circuit and split from the Ninth Circuit. It did not address the likely loss of a federal forum once the state court rules on the federal constitutional issues.

The question presented is:

Where the subject of a state investigatory demand has established a reasonably objective chill of its First Amendment rights, is a federal court in a first-filed action deprived of jurisdiction because those rights must be adjudicated in state court?

CERT. GRANTED 6/16/2025