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,
Respondent.

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

AMICUS CURIAE BRIEF OF THE BUCKEYE INSTITUTE IN SUPPORT OF PETITIONER

David C. Tryon
Counsel of Record
Alex M. Certo
J. Simon Peter Mizner
THE BUCKEYE INSTITUTE
88 East Broad Street, Suite 1300
Columbus, OH 43215
(614) 224-4422
D.Tryon@BuckeyeInstitute.org

QUESTION PRESENTED

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?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF AMICUS CURIAE[1]

The Buckeye Institute was founded in 1989 as an independent research and educational institution—a think tank—to formulate and promote free-market policy in the states. The Buckeye Institute accomplishes its mission by performing timely and reliable research on key issues, compiling and synthesizing data, formulating free-market policies, and marketing those policy solutions for implementation in Ohio and replication across the country. The Buckeye Institute works to restrain governmental overreach at all levels of government. The Buckeye Institute files lawsuits and submits amicus briefs to fulfill its mission.

The Buckeye Institute is a nonpartisan, nonprofit, tax-exempt organization, as defined by I.R.C. section 501(c)(3). As such, it relies on support from individuals, corporations, and foundations that share a commitment to individual liberty, free enterprise, personal responsibility, and limited government. The Buckeye Institute vigorously defends the right of donors to associate with Buckeye anonymously if they so choose.

The Buckeye Institute has a substantial interest in the important question presented in this case, namely, whether a state may demand an unredacted list of all significant donors to a nonprofit organization. See *Buckeye Inst.* v. *Internal Revenue Serv.*, No. 2:22-CV-

[1] As required by Supreme Court Rule 37.6, no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae made any monetary contribution toward the preparation or submission of this brief.

4297, 2023 WL 7412043 (S.D. Ohio Nov. 9, 2023); Brief of Amicus Curiae The Buckeye Institute, *No on E, San Franciscans* v. *Chiu*, 145 S. Ct. 136 (2024) (No. 23-926); Brief of Amici Curiae The Buckeye Institute and 34 Public Policy Research Organizations and Advocacy Groups, *Americans for* Prosperity *Found.* v. *Bonta*, 594 U.S. 595 (2021) (Nos. 19-251, 19-255); Brief of State Policy Network and 24 State Public Policy Groups as Amici Curiae, *Indep. Inst.* v. *F.E.C.*, 580 U.S. 1157 (2017) (No. 16-743); Brief of Amici Curiae The Buckeye Institute for Public Policy Solutions, et al., *Delaware Strong Fams.* v. *Denn*, 136 S. Ct. 2376 (2016) (No. 15-1234); Brief of Amici Curiae The Buckeye Institute for Public Policy Solutions, et al., *Ctr. for Competitive Pol.* v. *Harris*, 577 U.S. 975 (2015) (No. 15-152). The Buckeye Institute has performed economic and policy analysis on important matters of public interest in states across the country. To potentially subject Buckeye's donors to disclosure in any state where it addresses these important matters would inflict significant and potentially irreparable harm to Buckeye and to its supporters' freedom to associate.

SUMMARY OF THE ARGUMENT

We live in a world of red-hot rhetoric, doxing, "cancellation," and even physical violence in retaliation for expressing an opinion. Even employees and donors of public interest organizations are subjected to attack. Worse yet, government officials have retaliated against those who oppose the officials' views or actions. Indeed, "[r]age rhetoric is the ultimate stress test for a system premised on free speech. It is a test that we have often failed as the rage of dissidents has produced rageful responses from the government. It is state rage." Jonathan Turley, *The Indispensable Right: Free Speech in the Age of Rage* 2 (Simon & Schuster 2024).

For example, in a recent high-profile case, the superintendent of the New York Department of Financial Services, Maria Vullo "allegedly pressured regulated entities to help her stifle the NRA's pro-gun advocacy by threatening enforcement actions against those entities that refused to disassociate from the NRA and other gun-promotion advocacy groups." *Nat'l Rifle Ass'n of Am.* v. *Vullo*, 602 U.S. 175, 180–81 (2024); see also *id.* at 188 (citing *Rosenberger* v. *Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 830 (1995)) ("explaining that governmental actions seeking to suppress a speaker's particular views are presumptively unconstitutional.").

In this case, New Jersey's Attorney General is using his official position as the state's highest law-enforcement official to take actions that will suppress speech that contradicts his personal beliefs about a hot-button issue.

The Court should stop such undemocratic actions. And it should allow an immediate federal remedy. Indeed, the Constitution preserves and protects inalienable rights and facilitates their protection independent from state remedies.

INTRODUCTION

When a man in a suit walks into your business and says, "This is a nice place you have here. Give me your customer list and no one gets hurt"—it constitutes a threat. The business owner might call the police or even the Attorney General for assistance. But what if the man in the suit is the Attorney General? In that case, your best recourse may be taking action under 42 U.S.C. § 1983, which provides a right to be heard in federal court. The Third Circuit, contrary to both the text and intention of § 1983, would allow such threats to hang ominously over the heads of the threatened parties until fully addressed by state courts. When such threats target the lifeblood of nonprofit organizations—donors—the threat is not only menacing but injurious.

Long before the Federalist and Anti-Federalist Papers were published under pseudonyms, many other pseudonymous pamphlets questioning British policies and practices circulated throughout the colonies. See Online Library of Liberty, *The Anonymous Pamphleteer 1775*, OLL, https://tinyurl.com/45t3nkbd (last visited Feb. 17, 2025). The Founders' ability to organize, associate, and speak anonymously was fundamental to the public acceptance and ratification of the Constitution and the Bill of Rights, and likely remained at the forefront of their minds when drafting the First

Amendment. See *Pseudonyms in American History*, Matt Rickard (Dec. 5, 2023), https://mattrickard.com/pseudonyms-in-american-history.

"The bottom line is that it is highly probable that the United States would not even exist without anonymous speech." Bradley Smith, Opinion, *What Hamilton teaches us about the importance of anonymous speech*, Wash. Post (Nov. 8, 2016), https://tinyurl.com/2pvdxub5. And the public, too, recognized the value of anonymous speech at the time of ratification. At one point, the *Massachusetts Centinel* announced that it would not publish Antifederalist essays unless the authors disclosed their names. *Pseudonyms and the Debate over the Constitution*, Center for the Study of the American Constitution (July 22, 2022), https://tinyurl.com/5t49f6z5. The *Centinel* "justified [its] failure to print Antifederalist pieces because none were submitted." *Id.* By requiring author disclosure, the *Centinel* limited Anti-Federalists' access to the press for fear of public persecution and alienation. Bostonians, a largely Federalist group, decried this decision, causing the *Centinel* to reverse course. *Id.*

From that auspicious beginning, we have become a society deluged with communication. People can communicate with the world anonymously via "X" (Twitter), Instagram, Facebook, TikTok, YouTube, WhatsApp, Snapchat, and countless other platforms. Anonymity on these platforms facilitates the public expression of different thoughts and provocative inquiries that may diverge from the prevailing culture, or even the accepted science of the day. This

ability to voice unpopular opinions is the essence of free speech. In the same way, anonymous donations to organizations facilitate the promulgation of ideas and speech with which those donors agree but may be otherwise unpopular.

ARGUMENT

I. The First Amendment protects citizens' rights to speak and associate without fear of government interference or retaliation.

"Free Speech is a human right. It is the free expression of thought that is the essence of being human. . . . It is the natural condition of humans to speak. . . . As such, it is not the creation of the Constitution, but rather embodied in that document." Turley, *supra*, at 23. Americans cherish the right to speak, and to speak anonymously. They protect that right jealously, "not to achieve the potential of the democratic system, but the fulfillment of one's own potential. Free speech remains one of humanity's most essential impulses, and the Constitution captured that essentiality in the First Amendment." *Id.* at 49–50.

Because free speech is an inherent human desire and a natural right, the Court has stated that "the purpose of the First Amendment [is] to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390 (1969) (citations omitted). A direct regulation on speech is not necessary for an action to be deemed chilling to First

Amendment interests as "compelled disclosure of political affiliations and activities" can impose the same burden on protected speech. *AFL-CIO* v. *FEC*, 333 F.3d 168, 175 (D.C. Cir. 2003).

And this Court has vigorously defended the right to politically associate without the fear of "suppression or impairment through harassment, humiliation, or exposure by government." *Bates* v. *Little Rock*, 361 U.S. 516 (1960) (Black, J, concurring). See also *McIntyre* v. *Ohio Elections Com'n*, 514 U.S. 334 (1995) (holding that Ohio's statutory prohibition against distribution of any anonymous campaign literature violated the First Amendment).

The Court has "long understood as implicit in the right to engage in activities protected by the First Amendment a corresponding right to associate with others." *Americans for Prosperity Found.* v. *Bonta*, 594 U.S. 595, 606 (2021) (quoting *Roberts* v. *United States Jaycees*, 468 U.S. 609, 622 (1984)). "Protected association furthers 'a wide variety of political, social, economic, educational, religious, and cultural ends,' and 'is especially important in preserving political and cultural diversity and in shielding dissident expression from suppression by the majority.'" See *id.* (quoting *Roberts*, 468 U.S. at 622). Forced disclosure of members' identities is akin to restricting the members' "'right to associate' with their preferred publisher 'for the purpose of speaking.'" See *TikTok Inc.* v. *Garland*, 145 S. Ct. 57, 73 (2025) (Sotomayor, J., concurring in part and concurring in the judgment) (quoting *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 68 (2006)).

II. The New Jersey Attorney General's subpoenas appear to be retaliation for the expression of opinions the Attorney General dislikes.

For centuries, government officials have attacked those who challenge the officials' views, which in turn has chilled fundamental speech and association rights. See, *e.g.*, *Entick* v. *Carrington*, 19 Howell's State Trials 1029 (1765); Frederick Lane, *American Privacy: The 400-Year History of Our Most Contested Right* 8 (Beacon Press 2009) (recounting a Boston physician's 1742 self-censorship because his letter may "fall into ill hands"). These government attacks have included demanding the production of communications and materials by groups holding views that are unpopular or controversial. But, because political speech is the core of the First Amendment, "no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." *W. Virginia State Bd. of Education* v. *Barnette*, 319 U.S. 624, 642 (1943).

By issuing subpoenas demanding sensitive information to which he is not entitled, the New Jersey Attorney General has violated the protections guaranteed by the Constitution.[2] The New Jersey

[2] Because of such abuses, courts regularly quash subpoenas issued to nonparties that have a tendency to chill the free exercise of association protected by the First Amendment. See, *e.g.*, *Pebble Ltd. Partnership* v. *EPA*, 310 F.R.D. 575, 582 (D. Ala. 2015); see also *Perry* v. *Schwarzenegger*, 591 F.3d 1126, 1131 (9th Cir. 2009); *Boe* v. *Marshall*, No. 2:22-CV-184-LCB, 2022 WL 14049505, at *3

Attorney General served a subpoena on a nonprofit organization that, even when viewed in the most favorable light, is justified only by a baseless assertion that some donors could maybe, possibly, just might have been confused about First Choice's services. No donor complained to the Attorney General. Yet the Attorney General seeks to use his investigatory authority to obtain sensitive donor information that he could not otherwise acquire because of First Amendment protections.

The issuance of this subpoena—even if it is ultimately quashed—severely chills First Amendment rights because individuals will now fear that their charitable contributions to organizations engaged in controversial issues will be subjected to government scrutiny and lead to possible retaliation. This fear alone, which ultimately hinders or inhibits the associational rights of citizens, is sufficient to demonstrate a violation of the First Amendment. The New Jersey Attorney General has a strong opinion on a sensitive social topic. He is entitled to that opinion. What he is not entitled to is the private donor information of an organization that disagrees with his viewpoint.

(M.D. Ala. Oct. 24, 2022). In this case, Petitioner seeks the separate relief provided by 42 U.S.C. § 1983.

III. Governments have chilled associational speech by targeting the private information of nonprofit organizations.

Even if the New Jersey Attorney General's subpoena was not retaliatory, it is still improper. His subpoena deters the exercise of constitutional rights because it silences and intimidates those who support a particular viewpoint. First Choice's donors, volunteers, and supporters will be exposed and vulnerable, potentially leading them to reduce or discontinue their engagement with the organization. See Declaration of Amiee Huebner, Pet'r's Br. App. 179a. Moreover, donors and volunteers have a well-founded basis for fearing potential harassment or retaliation, given the increasing hostility and threats directed at individuals and organizations engaged in contentious issues of public concern.

The chilling effect of the subpoena is not conjecture or hypothetical—the record below shows that it did chill speech and association. Pet'r's Br. App. 174a. Further, this Court has recognized that examples of "donors to certain causes [being] blacklisted, threatened, or otherwise targeted for retaliation" were a "cause for concern." *Citizens United* v. *Fed. Election Comm'n*, 558 U.S. 310, 370 (2010) (citing amicus briefs of the Institute for Justice and Alliance Defense Fund).

Public interest organizations of all stripes routinely take positions opposing either direct action by a state's attorney general or other governmental authority, see, *e.g.*, Brief of Amici Curiae The Buckeye Institute and 34 Public Policy Research Organizations and Advocacy Groups, *Americans for Prosperity*

Found. v. *Bonta*, 594 U.S. 595 (2021) (Nos. 19-251, 19-255), or opposing state laws that an attorney general's office is bound to uphold and defend, see, *e.g.*, Brief of American Civil Liberties Union, et al., *Lackey* v. *Stinnie*, 145 S. Ct. 659 (2025) (No. 23-621). Public interest organizations also often disagree with state attorney generals' interpretations of the law. Contrast, *e.g.*, Brief of 11 States as Amici Curiae, *Florida* v. *Dep't of Health & Human Servs.*, 567 U.S. 519 (2012) (No. 11-400) (arguing in favor of Medicaid expansion) with Brief of Amici Curiae Center for Constitutional Jurisprudence, et al., *Florida*, 567 U.S. 519 (2012) (No. 11-400) (taking opposite position). The chilling effect of requiring these same organizations to disclose their donors is thus "readily apparent." *In re First Nat'l Bank*, 701 F.2d 115, 118 (10th Cir. 1983) (finding obvious chilling effect where the IRS sought membership records of tax protester group).

An infamous example of pretextual governmental actions chilling speech is Alabama's attempts in the 1950s to deter the activities of the NAACP by demanding its full membership rolls. See generally *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958). Because "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs," the demand for donors' private information violates free speech and associational rights. *Id.* at 462. In both Alabama and New Jersey, government officials targeted public-interest groups advocating positions with which government officials disagreed. Such actions targeting groups because of disfavored speech are abhorrent to the First

Amendment's guarantees of freedom of speech and freedom of association.

More recently, this Court barred states from collecting unredacted copies of forms where nonprofits were required to divulge their top contributors—given the states' limited need for that information. *Bonta*, 594 U.S. 595. The Court noted that "[e]very demand that *might* chill association" is constitutionally suspect. *Id.* at 615 (emphasis added). "Even if there [is] no disclosure to the general public," *Shelton* v. *Tucker*, 364 U.S. 479, 486 (1960), the "unnecessary risk of chilling" nonetheless violates the First Amendment, *Sec'y of State of Md.* v. *Joseph H. Munson Co., Inc.*, 467 U.S. 947, 968 (1984).

The Buckeye Institute has experienced the chilling effect described by Petitioner firsthand. *Buckeye Inst.*, 2023 WL 7412043, at *1. In 2013, The Buckeye Institute actively and publicly opposed Ohio's expansion of the federal Medicaid program. See Mot. Summ. J. at 8–9, *Buckeye Inst.*, 2023 WL 7412043, https://tinyurl.com/3hrfe98y. Shortly after Ohio's General Assembly rejected the Medicaid expansion, the IRS's Cincinnati office informed Buckeye that it would be audited. *Id.* at 9. Fearing that the audit was politically motivated retaliation, Buckeye contributors expressed concern that they would be subjected to retaliatory audits if their names appeared on Buckeye's Schedule B or were otherwise disclosed to the IRS. *Id.* Buckeye supporters cited the then-unfolding story regarding the IRS's disparate, adverse treatment of conservative-leaning organizations applying for nonprofit status. *Id.* The controversy directly implicated the IRS's Cincinnati office, which

was auditing Buckeye. *Id.* (citing Gregory Korte, *Cincinnati IRS agents first raised Tea Party issues*, USA Today (June 11, 2013), https://tinyurl.com/3s7vndta). To avoid potential retribution based on their association with Buckeye, some individuals chose to give anonymously, but legally, through donor-advised funds, while at least one individual made an anonymous donation via cashier's check, thereby foregoing a donation receipt (as well as the tax deduction for his charitable contribution). *Id.* And some donors reduced their donations to avoid appearing on Buckeye's mandatory IRS Form 990, Schedule B filing of "substantial contributors." *Id.* The disclosure requirement chilled The Buckeye Institute's donors' freedom of association.

Wisconsin's "John Doe" investigations provide yet another troubling example of government-sanctioned harassment that individuals have faced based upon the views espoused by organizations they financially support. "Initially a probe into the activities of Governor Walker and his staff, the ['John Doe'] investigation expanded to reach nonprofits nationwide that made independent political expenditures in Wisconsin, including the League of American Voters, Americans for Prosperity, and the Republican Governors Association." Jon Riches, *The Victims of "Dark Money" Disclosure: How Government Reporting Requirements Suppress Speech and Limit Charitable Giving* 3 (2015), https://tinyurl.com/4pu8vfvj. The raids targeted individuals associated with those organizations, some of whom were awakened in the middle of the night by "a persistent pounding on the door," floodlights illuminating their homes, and police

with guns drawn. David French, *Wisconsin's Shame: 'I Thought It Was a Home Invasion'*, National Review (May 4, 2015), https://tinyurl.com/aktjc63y. These individuals were then forced to watch in silence as investigators rifled through their homes, seeking an astonishingly broad range of documents and information, all because they supported certain political advocacy organizations. *Id.* The Wisconsin Supreme Court eventually put an end to these unconstitutional investigations, concluding that they were based upon a legal theory "unsupported in either reason or law" and that the citizens investigated "were wholly innocent of any wrongdoing." *State ex rel. Two Unnamed Petitioners* v. *Peterson*, 866 N.W.2d 165, 211–12 (Wisc. 2015).

IV. Government disclosure of donor information endangers donors.

Some in our society have become increasingly intolerant of opposing viewpoints, even to the point of violence and murder. It would be naïve to fail to recognize the chilling impact these violent incidents will surely have on at least some donors and potential donors who worry that their names will become public and associated with an unpopular cause—whether on the right or the left.

"The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information," like that which the New Jersey Attorney General seeks, "to pre-empt citizens' exercise of their First Amendment rights." *Citizens United*, 558 U.S. at 482 (Thomas, J., dissenting) (emphasis deleted). Before the 2008 Presidential election, Accountable America, a "newly

formed nonprofit group," "planned to confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions." *Id.* (quoting Michael Luo, *Group Plans Campaign Against G.O.P. Donors*, N.Y. Times (Aug. 8, 2008), https://tinyurl.com/mw268mbs). The group's leader, "who described his effort as 'going for the jugular,' detailed the group's plan to send a warning letter alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including legal trouble, public exposure and watchdog groups digging through their lives." *Id.* at 482–83 (internal quotation marks omitted).

Disturbingly, attitudes in the United States are shifting toward tolerating political violence. One recent study found that 32.8% of respondents "considered violence to be usually or always justified to advance at least one of 17 specific political objectives, such as preventing discrimination based on race or ethnicity, stopping an election from being stolen, or stopping voter fraud or intimidation." *New study looks at attitudes towards political violence*, UC Davis Health (Oct. 5, 2023), https://tinyurl.com/46fnajdt. This social acceptance has, unfortunately, also fueled acts of actual political violence. See *The growing list of political violence in the U.S.*, PBS News (April 14, 2025), https://tinyurl.com/y4ss4y3b. Some examples demonstrate this frightening attitude.

An early example of this occurred in 2010 in California. After California published the names and addresses of individuals—now known as doxing—who had supported Proposition 8, a ballot initiative

amending California's constitution to define marriage as between one man and one woman, opponents of the measure "compiled this information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters." *Citizens United*, 558 U.S. at 481 (Thomas, J., dissenting); see also *Doe* v. *Reed*, 561 U.S. 186, 208 (2010) (Alito, J., concurring) (describing similar efforts in Washington). Some individuals who supported Proposition 8 eventually lost their jobs because of pressure on their employers; others faced death threats. See *Citizens United*, 558 U.S. at 481–82 (Thomas, J., dissenting).

In November 2011, protesters attacked and harassed attendees of a forum hosted by Americans for Prosperity Foundation, a think tank that advocates for economic freedom. Clare O'Connor, *Occupy The Koch Brothers: Violence, Injuries, and Arrests at DC Protest*, Forbes (Nov. 5, 2011), https://tinyurl.com/pks4v85x. Several people were hurt, including two elderly folks who were shoved down a set of stairs as they attempted to escape the escalating chaos. *Id.*

On August 15, 2012, Floyd Corkins shot a security guard at Family Research Council, intending "to kill as many people as possible" because he disagreed with the organization's conservative views on same-sex marriage. Carol Cratty & Michael Pearson, *DC shooter wanted to kill as many as possible, prosecutors say*, CNN (Feb. 7, 2013), https://tinyurl.com/nv4r2fj8. According to police investigators, Corkins planned to kill employees of other conservative organizations as well. *Id.*

And this violence has targeted all sides of the political divide. In 2022, pro-choice advocacy organization Planned Parenthood in Southern California was also firebombed. See The Associated Press, *A former Marine gets 9 years for firebombing a California Planned Parenthood clinic*, NPR (April 16, 2024), https://tinyurl.com/5abbmd22. On the flip side, in that same year, a pro-life advocacy organization in Madison, Wisconsin, was vandalized and lit on fire. See *Fire at Wisconsin anti-abortion office investigation as arson, police say*, CBS News (May 9, 2022), https://tinyurl.com/mrnvd6y6. .

A Texas Buddhist meditation center was destroyed by an arsonist in 2023. See *The Asian American Foundation (TAAF) Statement on Huyen Trang Buddhist Meditation Centre*, TAAF (Nov. 9, 2023), https://tinyurl.com/ye2dbme3. In 2024, the Center of the American Experiment was firebombed. See John Hinderaker, *They Firebombed My Office*, Powerline (Feb. 1, 2024), https://tinyurl.com/4hmyv8dr. In May 2025, a man detonated a car bomb outside a Southern California fertility clinic. See *Authorities say suspect in California fertility clinic car bombing left behind 'anti-pro-life' writings*, PBS (May 19, 2025), https://tinyurl.com/ycpyxnf8.

In March 2025, a website called "Dogequest" published the names, addresses, and phone numbers of Tesla owners. Ariel Zilber, *Doxing website that shows personal details of Tesla owners has Molotov cocktail as cursor: report*, N.Y. Post (Mar. 18, 2025), https://tinyurl.com/29kdrhmd. The website, protesting Elon Musk's DOGE efforts and presence within the Trump Administration, included an

interactive U.S. map to find Tesla owners and dealerships, as well as a Molotov cocktail cursor. *Id.* As if those ominous hints were not enough, the websites' operators "said that they will remove identifying information about Tesla drivers only if they provide proof that they sold their electric vehicles . . . ." *Id.*

The lingering background threat of political violence materialized into reality yet again when a man posing as a police officer targeted two Minnesota lawmakers in June 2025. The man killed one of the lawmakers and another victim. See Steve Karnowski et al., *The man suspected of shooting 2 Minnesota lawmakers is in custody after surrendering to the police*, AP (June 16, 2025), https://tinyurl.com/3fbb84v5.

The list of incidents like the above goes on and on, but car bombs and firebombs are not speculative—they are real and they intimidate citizens from voicing unpopular opinions or otherwise supporting organizations that espouse any controversial view. The "deterrent effect" that disclosure of membership and donor lists has on "the free enjoyment of the right to associate" is even more significant in today's Internet age than it was when the Court decided cases like *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449 (1958), *Shelton* v. *Tucker*, 364 U.S. 479 (1960), and *Talley* v. *California*, 362 U.S. 60 (1960). The Court must continue to safeguard First Amendment rights from retaliation.

V. Private information is not safe in the government's hands.

Governments are supposed to keep collected personal information private and secure, so theoretically First Choice's donors have nothing to fear, but reality has affirmed donors' fears. Indeed, government electronic systems are frighteningly vulnerable. "78 percent of public sector organizations are operating with significant security debt—flaws left unaddressed for more than a year. Moreover, 55 percent are burdened with 'critical' security debt, representing long-standing vulnerabilities with severe risk potential." *Public Sector Application Risk Accumulates as Security Debt Grows Across Government Systems*, Veracode (June 11, 2025), https://tinyurl.com/464b4ahp.

One would expect that the federal government, and especially the Internal Revenue Service, would have the greatest protection against improper disclosures, whether via inadvertent disclosure, hacks, or illegal leaks. Unfortunately, that is not so. And once private personal information is leaked, hacked, or disclosed, it is in the public domain forever. Consider just a few incidents:

- The IRS has admitted to at least 14 instances of illegal disclosures of Form 990 information since 2010. See Plaintiff's Motion for Summary Judgment Exhibit G, *Buckeye Inst.*, 2023 WL 7412043. In one case, the IRS unlawfully released an organization's unredacted Schedule B donor list to an individual posing as a journalist. See *Nat'l Org. for Marriage, Inc.* v. *United States*, 807 F.3d 592, 594–95 (4th Cir.

2015). The individual sent the information to one of the group's ideological opponents, which forwarded it to a media outlet—then both published it online. *Id.*

- In June 2021, the activist group ProPublica obtained a "trove" of taxpayer data held by the IRS, which it then published online. Jesse Eisinger, Jeff Ernsthausen & Paul Kiel, *The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax*, ProPublica (June 8, 2017), https://perma.cc/Q6GS-YZYR. The leaked information remains available today. See *id.*
- In September 2022, the IRS disclosed that it mistakenly posted private information from 990-T forms, affecting more than 120,000 taxpayers. See Letter from Anna Roth, Acting Assistant Secretary for Management, Treasury Dept. to Chairman Thompson, House Homeland Security Committee (Sept. 2, 2022), https://perma.cc/J7EY-XYBY; Isaac O'Bannon, *IRS Exposes Confidential Data on 120,000 Taxpayers on Open Website*, CPA Practice Advisor (Sep. 02, 2022), https://tinyurl.com/3pjzwxud
- In 2024, a federal contractor claiming to have "acted out of a sincere, if misguided, belief [that he] was serving the public interest," was convicted of illegally releasing President Trump's tax returns to a media outlet. *Ex-IRS contractor sentenced to 5 years in prison for leaking Trump's tax returns*, NPR (Jan. 30, 2024), https://tinyurl.com/yzt9w89f. In

> February 2025, the IRS admitted that the contractor had leaked 400,000 taxpayer returns. Bernie Becker, *IRS: Contractor leaked more than 400k returns*, Politico (Feb. 25, 2025), https://tinyurl.com/yt9mepj6.

These leaks should surprise no one, given that a 2014 Inspector General report concluded that "[u]ntil the IRS takes steps to improve its security program deficiencies and fully implement all security program components in compliance with [statutory standards for information security], taxpayer data could be vulnerable to inappropriate and undetected use, modification, or disclosure." Treasury Inspector General for Tax Administration, *Annual Assessment of the IRS's Information Technology Program for Fiscal Year 2021* 11 (2021), https://perma.cc/QAZ6-WNH2.

The IRS is not the only susceptible government agency. In May 2023, 237,000 U.S. Department of Transportation employees' personal data was hacked. Harrison Kelly, *Government Data Breach Examples & Lessons 2023: Preventing Data Loss & Leaks*, GovPilot, https://tinyurl.com/52vehsh8 (last visited Aug. 14, 2025). And just this month, the federal judiciary's electronic case filing system "had been compromised in a sweeping hack that was believed to have exposed sensitive court data in several states." *US federal courts say their systems were targeted by recent cyberattacks*, Reuters (Aug. 8, 2025), https://tinyurl.com/94ujd9xv. "The case management system - which carries sensitive information such as sealed indictments and arrest warrants - has long been a magnet for foreign spies." *US federal court filing system breached in sweeping hack, Politico*

reports, Reuters (Aug. 6, 2025), https://tinyurl.com/zwepxp2e. The recent attack comes despite the Administrative Office of the U.S. Courts saying in 2021 that "it was adding new security procedures to protect confidential or sealed records following an apparent [previous] compromise of the system." *Id.* The risks of disclosure or leaks by the government creates substantial chilling effects, because once donors' names and addresses become public:

> anyone with access to a computer [or smart phone] could compile a wealth of information about [them], including . . . the names of their spouses and neighbors, their telephone numbers, directions to their homes, pictures of their homes, information about their homes . . . , information about any motor vehicles they own, any court case in which they were parties, any information posted on a social networking site, and newspaper articles in which their names appeared (including such things as wedding announcements, obituaries, and articles in local papers about their children's school and athletic activities).

Doe, 561 U.S. at 208 (Alito, J., concurring). Not only does technology enable more opportunities to track and harass people physically, but online doxing and social media harassment are regrettably common. Modern technology "allows mass movements to arise instantaneously and virally." Nick Dranias, *In Defense of Private Civic Engagement: Why the Assault on*

"Dark Money" Threatens Free Speech—and How to Stop the Assault 16 (Apr. 2015), https://tinyurl.com/4j3znt5j. "Any individual or donor supporting virtually any cause is only a few clicks away from being discovered and targeted" for harassment or worse. *Id.*

Unfortunately, doxing and intimidation actions are not limited to well-known groups. As of 2024, an estimated 11 million Americans have been victims of doxing. Max Sheridan, *Doxxing Statistics in 2024: 11 Million Americans Have Been Victimized*, SafeHome (Aug. 8, 2024), https://tinyurl.com/wyt42v8t. The problem is real, and federal courts need to protect donors without the state exhaustion delays that the New Jersey Attorney General wants to impose on those whom he would expose.

VI. The Court should confirm that harassed organizations can turn first to the federal courts for relief.

Organizations subjected to unconstitutional demands like the subpoena in this case have two options, either comply—thereby destroying the trust and privacy of their donors—or file suit. To affirm the Third Circuit's determination that First Choice's claims are unripe because it "can continue to assert [its] constitutional claims in state court as that litigation unfolds," Pet'r's Br. App. 4a, would be both incorrect and potentially devastating to public interest litigation. Exhaustion of remedies at the state level "is *not* a prerequisite to an action under [42 U.S.C.] §1983." *Knick* v. *Twp. of Scott*, 588 U.S. 180, 184–85 (2019) (citations omitted). Accord *Williams* v. *Reed*, 145 S. Ct. 465 (2025). See also *id.* at 474 (Thomas, J.,

dissenting) ("Plaintiffs who do not exhaust state remedies are always free to bring their claims in a federal forum."). New Jersey's Attorney General is threatening the First Amendment rights of First Choice's donors through his subpoena. His subpoena constitutes a cognizable and imminent constitutional harm and is all that is required for standing under § 1983.

This case is not unlike the catch-22 in *Williams*. Under the Third Circuit's reasoning, First Choice cannot bring suit in federal court under § 1983 unless and until the Attorney General seeks to enforce its already issued subpoena and First Choice receives a final decision from the state court. In essence, the Third Circuit has said that to challenge a restriction on one's First Amendment rights under § 1983, one must wait for the chill to become a freeze. "That catch-22 prevents the claimants here from obtaining a merits resolution of their § 1983 claims in [federal] court and in effect immunizes state officials from those kinds of § 1983 suits for injunctive relief." *Id.* at 471.

In addition to the preclusion trap issues addressed by Petitioner, this issue presents a particular threat to public-interest and nonprofit organizations along with the litigation they pursue to further their causes. Section 1983 was enacted to provide "a federal forum for claims of unconstitutional treatment at the hands of state officials." *Heck* v. *Humphrey*, 512 U.S. 477, 480 (1994). These organizations rely upon supporters to fund their missions—including and especially through litigation. To allow the Third Circuit's determination that constitutional claims must be addressed by state courts to stand will endanger such suits.

It is no secret that litigation is expensive. George Khory, *How Much Do Lawyers Get Paid to Argue at SCOTUS*, FindLaw.com (Mar. 21, 2019), https://tinyurl.com/5dxp4dx8; see also Robert Barnes, *A priceless win at the Supreme Court? No, it has a price*, Wash. Post (July 25, 2011), https://tinyurl.com/4944tx9w. When assessing whether to bring a case, nonprofit organizations must be especially mindful of the costs associated with lengthy litigation. By requiring that certain issues first be litigated in state court before seeking review in the federal forum guaranteed by 42 U.S.C. § 1983, the Third Circuit has imposed a burden that will likely amount to millions of dollars in additional costs for public interest organizations. This burden is especially apparent in the context of the current case, as it creates a difficult and circular cycle for organizations that rely upon anonymous donations from supporters. If allowed to stand, the Third Circuit's rule requires organizations to defend unconstitutional attempts to access sensitive donor information in two different forums, while simultaneously chilling the speech of the very individuals who would otherwise fund that same lengthy litigation.

CONCLUSION

The primary purpose of the First Amendment is to protect the ability to speak without the fear of adverse action from the government because of that speech. By issuing a subpoena to obtain sensitive donor information without a legitimate interest, New Jersey is chilling the speech of not only the donors of First

Choice but of all Americans who wish to privately support causes of their choice.

Accordingly, the Court should protect the First Amendment rights of private donors and reverse the Third Circuit.

Respectfully submitted,

David C. Tryon
Counsel of Record
Alex M. Certo
J. Simon Peter Mizner
THE BUCKEYE INSTITUTE
88 East Broad Street, Suite 1300
Columbus, OH 43215
(614) 224-4422
D.Tryon@BuckeyeInstitute.org

August 27, 2025