Debrief of the Supreme Court Oral Argument in *First Choice Women's Resource Centers, Inc. v. Platkin*

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Introduction and Summary of the Parties' Arguments

The Supreme Court heard oral argument in *First Choice Women's Resource Centers, Inc. v. Platkin* on December 2, 2025.[1] The case involves an overly broad investigatory subpoena the New Jersey Attorney General issued against First Choice Women's Resource Centers, Inc., a faith-based non-profit pregnancy center that serves women with material support and free, licensed medical care.[2] The subpoena, among other information and documents, required First Choice to disclose the identities of its donors.[3]

The subpoena contradicted a long line of caselaw that has recognized that compelled disclosure of group affiliation—including disclosure of donors' identities—can reasonably and objectively chill an organization's First Amendment rights.[4] In fact, the subpoena chilled First Choice's speech and association with current and future donors, making the donors reluctant to continue or begin financially supporting the small nonprofit.[5] Yet when First Choice sued in federal district court, the court held it did not have jurisdiction because the lawsuit was not ripe, meaning the pregnancy center had brought the case prematurely.[6]

The New Jersey Attorney General then filed an enforcement action in state court, and the litigation became procedurally messy. Upon remand from the Third Circuit, the district court again determined the federal case was unripe, which the Third Circuit affirmed under the prudential ripeness doctrine.[7]

The Supreme Court agreed to hear the case on the issue of: "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

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[1] No. 24-781 (Dec. 2, 2025).
[2] Brief for Petitioner at 8–9, *First Choice*, No. 24-781.
[3] *Id.*
[4] *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021); *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).
[5] Petition for a Writ of Certiorari Appendix at 177a, 180a–84a, *First Choice*, No. 24-781.
[6] *Id.* at 80a.
[7] *Id.* at 4a–5a.

because those rights must be adjudicated in state court?"[8] Thirty-nine amicus briefs supported First Choice, ranging from the United States, Members of Congress, and pro-life organizations to Second Amendment supporters, religious liberty proponents, reporters advocating for freedom of the press, and the American Civil Liberties Union.[9] In contrast, New Jersey only received three amicus briefs in support of its position.[10]

The oral argument centered around legal questions of jurisdiction and at what point the pregnancy center may bring its lawsuit in federal court to vindicate its fundamental rights of speech and association under the First Amendment. The pregnancy center argued that forcing it to litigate its First Amendment claim exclusively in state court until a disclosure order was issued "violates this Court's decision in *Knick [v. Township of Scott, Pennsylvania]*, contradicts the courts' virtually unflagging obligation to decide cases within their jurisdiction, and runs contrary to Section 1983."[11] First Choice advanced two theories of injury. First, New Jersey's demand for donor identities imposed an **associational chill**, deterring supporters from exercising their First Amendment rights. Second, the subpoena itself created a **credible pre-enforcement threat**, causing fear of sufficiently imminent enforcement. As First Choice contended, subpoena in Latin means "under penalty."[12] Further, the subpoena itself referenced contempt or business dissolution should First Choice choose not to comply. In fact, by the time this case was filed, the New Jersey Attorney General had already sought court enforcement and alleged First Choice violated three state laws by refusing to comply with the subpoena.

The United States participated in the oral argument as a friend of the court in support of the pregnancy center. The federal government focused on the credible threat of pre-enforcement theory, arguing that Article III standing should be recognized for a plaintiff who "faces a credible threat that the subpoena will be enforced against it."[13] In the Solicitor General's view, associational chill was a weaker theory because it relates more to the merits of a First Amendment injury claim rather than the issue of standing. The federal government requested the Court rely on the credible threat framework, emphasizing that subpoenas inherently carry enforcement consequences, regardless of whether they are self-executing.

New Jersey rejected both theories of standing, contending that First Choice cannot proceed in federal court because the administrative subpoena is non-self-executing, and therefore imposes no legal duty to comply unless a state court issues an enforcement order. New Jersey's advocate characterized the subpoena as a mere request and maintained that First Choice provided no evidence of actual donor chill. According to New Jersey, any alleged harm is speculative and contingent on potential future

[8] Petition for a Writ of Certiorari at i, *First Choice*, No. 24-781.
[9] *First Choice*, No. 24-781.
[10] *Id.*
[11] Transcript of Oral Argument at 4–5, *First Choice*, No. 24-781 (citing *Knick v. Twp. of Scott, Pa.* 588 U.S. 180 (2019)).
[12] *Id.* at 8.
[13] *Id.* at 29.

judicial action rather than arising from the subpoena itself. Although they acknowledged that standing may exist where a subpoena—combined with additional government conduct—establishes a concrete injury, they argued such circumstances are not present here. New Jersey further warned that adopting a credible pre-enforcement threat theory could open a "Pandora's box" of federal challenges to the tens of thousands of subpoenas issued by state and local authorities every year.

As the Supreme Court considers the parties' arguments, its decision will impact broader questions of abortion alternatives and public interest advocacy.

Questions the Justices Posed to the Parties

Chief Justice John G. Roberts, Jr.

Chief Justice Roberts questioned the pregnancy center about how it was "taking a step beyond our existing precedent . . . [in which] failure to comply would lead right away to legal penalties, as opposed to, here, [where] there's an additional step before [the pregnancy center is] going to be liable."[14] He asked the United States in "[h]ow many states are the subpoenas self-executing and how many of them aren't?"[15] Speaking to New Jersey, the Chief Justice described the requested donor information, which included "full names, phone numbers, addresses, present or last known place of employment," and queried whether "they have a credible chill concern."[16] He asked New Jersey about how "[o]ur precedents give protection to donor privacy in situations of charitable solicitation," and asked "would those apply here or not?"[17]

Justice Clarence Thomas

Justice Thomas noted to the pregnancy center that he has "never heard the term 'subpoena request'" and inquired whether "[it] view[s] this as a request?"[18] He asked the United States about which theory of injury—associational chill or credible pre-enforcement threat—the federal government preferred.[19] The Justice also directed the United States to identify the specific threat presented to the pregnancy center.[20] He questioned New Jersey over "the difference between this subpoena and a request."[21] The Justice substituted the word "request" for "subpoena", and read from the subpoena, "failure to comply with this request may render you liable for contempt of court."[22] He also questioned New Jersey about whether it had complaints against First Choice that "form the basis of [the state's] concern about the fundraising activities here."[23]

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[14] *Id.* at 8.
[15] *Id.* at 34.
[16] *Id.* at 60.
[17] *Id.* at 80.
[18] *Id.* at 7.
[19] *Id.* at 29–30.
[20] *Id.* at 30.
[21] *Id.* at 46.
[22] *Id.* at 48.
[23] *Id.* at 81.

Justice Samuel A. Alito, Jr.

Justice Alito asked the pregnancy center to characterize the procedural question in this case since it seemed to involve Article III standing, prudential ripeness, and Article III ripeness, to which the pregnancy center replied that it involves the Article III injury in fact.[24] He questioned the United States about the "threat at the time when the complaint was filed" and if "the degree of threat [should] be assessed based on what one would know at that time regarding whether it was self-executing or not self-executing."[25] The Justice asked New Jersey about the first time it "sa[id] on the record . . . this sort of subpoena [] is not self-executing."[26] Justice Alito clarified New Jersey's stance that the pregnancy center "ha[s] to litigate [] the matter in state court, and until a state court orders them to comply and, in doing so, rejects their First Amendment challenge to the subpoena, they cannot go to federal court."[27]

Justice Sonia Sotomayor

Justice Sotomayor indicated to the pregnancy center that she doesn't "understand how the burden of costs [of litigation] could ever be irreparable harm . . . where the cost is going to be incurred no matter what.[28] Rather, she believes the pregnancy center "ha[s] to rely on the chilling effect to [its] First Amendment rights," otherwise "every single case implicating [] an alleged constitutional violation . . . all of those subpoenas will end up in federal court."[29] After the United States proposed an alternate theory that a credible threat of enforcement plus a chill to First Amendment rights is enough for standing, Justice Sotomayor remarked that what the federal government was "basically saying is anyone with a constitutional challenge of any kind . . . has automatic standing to come to federal court."[30]

Justice Elena Kagan

Justice Kagan asked the pregnancy center to "explain . . . how [it] view[s] the difference between those two theories [of associational harm and pre-enforcement review] and the scope of each and why it is that [it] ha[s] emphasized one [the associational harm theory]."[31] The Justice questioned the United States about whether it "is actually in a different position from the states with respect to the pre-enforcement theory, that because of the [Administrative Procedure Act], the federal government would not be vulnerable to these kinds of actions."[32] In response to New Jersey's argument that donors do not have a reasonably objective chill, Justice Kagan noted that "an ordinary person, one of the funders for this organization or for any similar

[24] *Id*. at 23–24.
[25] *Id*. at 35.
[26] *Id*. at 53.
[27] *Id*. at 77.
[28] *Id*. at 18.
[29] *Id*.
[30] *Id*. at 34.
[31] *Id*. at 10.
[32] *Id*. at 36.

organization presented with this subpoena and then told but don't worry, it has to be stamped by a court, is not going to take that as very reassuring."[33]

Justice Neil M. Gorsuch

Justice Gorsuch requested the pregnancy center "to address . . . the state's argument that [the subpoena is] not self-executing."[34] He questioned the United States about why "the [federal] government didn't want to touch the chill theory" and "if the Court were to adopt the chill theory [] or reject it, would it [] have an effect on federal litigation."[35] Justice Gorsuch asked the United States about its theory that ultra vires review is available if the federal government issues an abusive subpoena.[36] The Justice noted that the statute "says the [Attorney General's] subpoenas have the force of law," and he "do[esn't] know how to read that other than it's pretty self-executing."[37] He remarked to New Jersey that its "bottom-line argument in response to [previous] questions, is that just the issuance of the subpoena cannot, no matter what the allegations are, be a basis for an objective chill."[38]

Justice Brett M. Kavanaugh

Justice Kavanaugh questioned the United States about its stance that ultra vires review is available for a recipient of an abusive subpoena by the federal government if the recipient does not have another cause of action, noting "we made clear that the ultra vires review is really close to nonexistent."[39] The Justice asked the United States for an example of an ultra vires lawsuit against the federal government.[40] He also posed a question to New Jersey about "[t]he ACLU's amicus brief [which] expresses concern about what they call suppression by subpoena and censorship by intimidation."[41]

Justice Amy Coney Barrett

Justice Barrett highlighted the characterization of the subpoena as non-self-executing and asked the pregnancy center if "a letter [would] have been sufficient then for ripeness under [its] theory."[42] Regarding the pre-enforcement challenge, she questioned First Choice about its theory that "the litigation expense counts as the injury, even . . . the likelihood that you will incur litigation expense."[43] The Justice asked the United States if the subpoena "really [is] non-self-executing or self-executing" as well as the "problems [the federal government] see[s] with the chill theory."[44] Justice Barrett asked New Jersey for examples of how, under the pregnancy center's pre-enforcement

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[33] *Id.* at 85.
[34] *Id.* at 21.
[35] *Id.* at 38.
[36] *Id.* at 38–41.
[37] *Id.* at 50.
[38] *Id.* at 72.
[39] *Id.* at 41.
[40] *Id.* at 42.
[41] *Id.* at 87–88.
[42] *Id.* at 15.
[43] *Id.* at 17.
[44] *Id.* at 31–32.

theory, the Court "would be throwing the door open wide and that there would be all manner of challenges in federal court to subpoenas issued in New Jersey."[45] She noted that "the attorney general had essentially . . . what your friends on the other side would say, declared war on pregnancy centers."[46] The Justice had New Jersey concede that "if there was a non-self-executing subpoena plus some other background . . . in the abstract that might be enough."[47]

Justice Ketanji Brown Jackson

Justice Jackson raised the ripeness issue, questioning the pregnancy center that "even if we agree that . . . your constitutional rights are arguably burdened, is it really occurring at the moment of receipt of the subpoena?"[48] She asked if "the credibility of that threat doesn't turn on . . . whether we think the court is actually going to [enforce the subpoena]."[49] Justice Jackson asked the United States about the "pre-enforcement theory and the aspect of injury that relates to the . . . possibility that you're going to be ordered to disclose, [and] why isn't that also bound up with the merits."[50] The Justice questioned New Jersey about "what would a self-executing subpoena look like versus what we have here."[51] She highlighted that cases first litigated in state court may arrive "at the point of enforcement by the state court that the party would have standing, but then we have the preclusion problem."[52]

What Comes Next

The Supreme Court will issue its decision by early summer 2026, and the oral argument strongly indicates that a majority of the Justices are inclined to rule in favor of First Choice. The central question that remains is **on what theory**. The credible pre-enforcement threat theory, advanced by both First Choice and the federal government, appears to be the focus of the Court's standing analysis. Justices across the ideological spectrum, including Roberts, Thomas, Alito, Gorsuch, Kavanaugh, Barrett, and Kagan, signaled discomfort with New Jersey's position that a "non-self-executing" subpoena demanding donor identities carries no legal repercussions until a state court later orders compliance.

As mentioned numerous times through the argument, subpoenas are commonly understood to function as legal orders. Multiple Justices voiced skepticism in response to New Jersey's attempt to characterize the administrative subpoenas as a mere "request" simply because it required an additional step before enforcement. The term "subpoena" itself is a Latin word that means "under penalty," clearly implying legal obligation. Therefore, when a reasonable organization is served with a document that references contempt or business dissolution—followed by assertions of statutory violations for

[45] *Id.* at 57.
[46] *Id.* at 73.
[47] *Id.* at 75–76.
[48] *Id.* at 12.
[49] *Id.* at 27.
[50] *Id.* at 43.
[51] *Id.* at 55–56.
[52] *Id.* at 93.

non-compliance—they would naturally regard that demand as a threat, regardless of administrative nuances. Justices Thomas, Gorsuch, Alito, and Kavanaugh repeatedly underscored this practical point, strengthening the case that the subpoena created a credible threat of enforcement when it was issued.

However, the Court also acknowledged New Jersey's concerns about opening a "Pandora's box" or pre-enforcement challenges, which may result in a narrower opinion emphasizing associational chill. Whatever doctrinal line the Court ultimately draws, the Justices seemed unwilling to adopt a rule that would force plaintiffs into the preclusion trap highlighted in *Knick*, given the Court's "virtually unflagging obligation to decide cases within their jurisdiction."[53]

New Jersey's justification for seeking donor information further revealed weaknesses in its positions. The state claimed First Choice's website was misleading, despite receiving no complaints of such, and sought to "evaluate whether any donors themselves might have been deceived . . . ."[54] First Choice countered that their website "is not in the least misleading."[55] In fact, it features pictures of "smiling faces of babies and their families," which would not suggest that the organization provides or refers for abortion.[56] Moreover, contacting donors is unnecessary to evaluate alleged fraud, as "the objective standard applies under the Consumer Fraud Act."[57] Therefore, New Jersey's insistence on obtaining donor identities suggests the subpoena was less about legitimate regulatory oversight and more suggestive of targeting pro-life associational activity that state officials disagree with. In fact, Justices Roberts, Thomas, and Barrett pressed New Jersey on why donor information was needed at all, reflecting concerns that compelled disclosure threatens fundamental First Amendment rights.

Given the pattern of questioning, the Court appears prepared to recognize First Choice's standing and send the case back to the lower courts to decide the merits of the constitutional claim. Several Justices, including Chief Justice Roberts and Justice Kagan, distinguished the jurisdictional question from the underlying constitutional inquiry, indicating they are unlikely to resolve the merits at this stage. Even Justices Sotomayor and Jackson, who were most skeptical of First Choice's position, did not dispute that, should standing exist, the merits question should be considered in the lower courts. The Court therefore appears poised to recognize the injury in fact, allowing the litigation to proceed and let the substantive constitutional issue be resolved another day.

Such a ruling would be a remarkable protection not only for pregnancy centers but other charitable organizations, the press, and public interest groups across the ideological spectrum. It would reaffirm that constitutional protections do not bend to

[53] *Id*. at 4–5.
[54] *Id*. at 80.
[55] *Id*. at 96.
[56] *Id*.
[57] *Id*.

viewpoint discrimination and organizations that face mission-motivated hostility retain the right to vindicate their fundamental freedoms in federal court.

Ultimately, this case highlights the essential role pregnancy centers play in communities nationwide. These facilities offer compassion, material support, and life-affirming options to women who feel they have nowhere else to turn. New Jersey's scrutiny of First Choice underscores both the importance of their work and the need to protect it. Based on the oral argument, the Supreme Court appears to recognize that pregnancy centers—and the donors who sustain them—are entitled to their day in federal court to vindicate their First Amendment rights. Ensuring these organizations can defend themselves in federal court is not merely a procedural victory; it is a safeguard for the good they accomplish every day.