First Choice Women's Resource Centers, Inc. v. Davenport: Vindicating Pregnancy Centers' First Amendment Rights in Federal Court

Carolyn McDonnell, M.A., J.D.*

The Supreme Court issued a unanimous 9-0 decision in *First Choice Women's Resource Centers, Inc. v. Davenport*, holding an overly broad subpoena against pro-life, religious pregnancy centers inflict a First Amendment injury that confers standing for the pregnancy centers to sue in federal court.[1] The decision is a great victory for First Choice, which may litigate its constitutional challenge to the subpoena once the case returns to the federal district court. Although the Supreme Court's opinion focuses on a narrow procedural question about standing, the decision is a powerful precedent for the freedom of association in public interest advocacy which will help safeguard the work of the pro-life movement and pregnancy centers.

Background of the Case

First Choice Women's Resource Centers, Inc. is an organization of five faith-based pregnancy centers in New Jersey that has served women and their families since 1985.[2] Since First Choice believes that "life begins at conception," the organization "does not provide abortions or refer clients to others for abortions."[3]

Following the Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization*,[4] New Jersey Attorney General Matthew Platkin created a "Reproductive Rights Strike Force," which published a "consumer alert" asserting pregnancy centers engaged in deceptive practices about abortion.[5] Although the consumer alert requested the public to file complaints with the New Jersey Division of Consumer Affairs about specific instances of alleged deceptive practices, "[n]either that division nor the Attorney General's office received any complaints from the public about First Choice."[6] Nevertheless, the Attorney General issued an overly broad subpoena that demanded, among other information and documents, the personal information about First Choice's donors.[7] Attorney General Platkin

* Litigation Counsel, Americans United for Life. Email: Carolyn.McDonnell@aul.org.
[1] 608 U.S. ___, slip op. at 22 (2026).
[2] *Id*. at 1.
[3] *Id*.
[4] 597 U.S. 215 (2022).
[5] *First Choice*, 608 U.S. ___, slip op. at 1–2.
[6] *Id*. at 2.
[7] *Id*. at 2–3.

later asserted the subpoena would enable state officials to contact donors to determine if the pregnancy centers "could mislead donors into thinking First Choice provides abortions."[8]

First Choice filed a lawsuit in federal district court under 42 U.S.C. § 1983, challenging the subpoena on First Amendment grounds.[9] Under Section 1983, "any person who, under color of state law, deprives another of his federal constitutional rights," may file a lawsuit in federal district court.[10] First Choice asserted that the subpoena infringed upon its First Amendment freedom of association, which protected the pregnancy centers' right to work with donors to further their pro-life mission. Since the subpoena required the pregnancy centers to hand over the donors' personal information to an Attorney General that is hostile to pro-life work, the demands deterred donors from associating with the pregnancy centers.[11]

Litigation then became a procedural mess. The federal district court determined the First Amendment injury was not ripe, meaning the case was brought in court too soon.[12] The Attorney General filed suit in state court to enforce the subpoena.[13] While the parties litigated the cases in federal and state courts, the First Amendment questions evaded judicial review.[14]

Finally, the federal district court dismissed First Choice's complaint, again holding "the group failed to state a justiciable claim as a matter of law."[15] Since the state court had not ordered production of the subpoenaed documents, the district court determined an injury did not yet exist, so First Choice "lacked Article III standing to challenge it in federal court."[16]

A Third Circuit panel affirmed the decision because, in its view, "First Choice had not established 'enough of an injury' to permit its case to proceed."[17] Judge Stephanos Bibas dissented, finding First Choice suffered an injury to its freedom to associate with its donors.[18]

The Supreme Court agreed to hear the case on the issue of: "whether [First Choice] may challenge the subpoena's constitutionality in federal court."[19] Americans United for Life filed an amicus brief in support of First Choice, arguing that the First Amendment injury is

---

[8] *Id*. at 3.
[9] *Id*.
[10] *Id*.
[11] *Id*. at 4.
[12] *Id*. at 4–5; *see also First Choice Women's Resource Ctrs., Inc. v. Platkin*, No. 23-23076 (MAS) (TJB), 2024 WL 150096 (D.N.J. Jan. 12, 2024).
[13] *First Choice*, 608 U.S. ___, slip op. at 3.
[14] *See* Petition for a Writ of Certiorari 10–14, *First Choice*, 608 U.S. ___ (No. 24-781).
[15] *First Choice*, 608 U.S. ___, slip op. at 4.
[16] *Id*. at 5; *see also First Choice Women's Resource Ctrs., Inc. v. Platkin*, No. 23-23076 (MAS) (TJB), 2024 WL 4756044 (D.N.J. Nov. 12, 2024).
[17] *First Choice*, 608 U.S. ___, slip op. at 5; *see also First Choice Women's Resource Ctrs., Inc. v. Att'y Gen. of N.J. (Third Circuit Opinion)*, No. 24-3124, 2024 WL 5088105 (3d Cir. Dec. 12, 2024).
[18] *First Choice*, 608 U.S. ___, slip op. at 5.
[19] *Id*. at 1; *see also First Choice Women's Resource Ctrs., Inc. v. Platkin*, 145 S. Ct. 2793 (2025) (Mem.).

ripe, the pregnancy centers have standing to bring their constitutional challenge in federal court, and no abstention doctrines apply to this case.[20] The Supreme Court heard oral argument on December 2, 2025,[21] and after deliberation, held First Choice has suffered a First Amendment injury that confers standing to challenge the subpoena in federal district court.

Supreme Court's Opinion

Associate Justice Neil M. Gorsuch authored the Court's unanimous opinion. After summarizing the factual and procedural background of the case, the decision begins by noting that "[w]e are not asked to decide the merits of First Choice's federal lawsuit, only whether it may proceed."[22] Meaning, the issue is whether First Choice has standing, which has "three elements: 'injury in fact, causation, and redressability.'"[23] The Court then further narrows the question to whether First Choice has met the "injury-in-fact element" of standing. Under the Court's precedent, a case meets the injury-in-fact element if there is "an injury that is concrete, particularized, and actual or imminent."[24] Since an injury in fact exists in "suits involving 'actual or imminent' injuries, a party need not always wait for the government to take coercive action against it before filing suit to challenge the government's conduct."[25] Accordingly, a party may file "a pre-enforcement suit seeking prospective relief against government officials so long as it faces 'a credible threat of enforcement.'"[26]

The decision subsequently addresses and agrees with First Choice's argument "that the Attorney General's subpoena itself—and specifically its demand for donor information—has caused it to suffer an actual and ongoing injury to its First Amendment rights by deterring donors from associating with it."[27]

The Court reviews First Amendment caselaw related to the freedom of association. Fundamentally, "[t]he First Amendment guarantees all Americans the rights to speak, worship, publish, assemble, and petition their government freely."[28] This includes the freedom to associate to further First Amendment advocacy. As the Court writes:

> Without such a right, no two men could safely share the same soapbox, no two women the same church. The government could reduce any assembly to a

---

[20] Brief *Amicus Curiae* of Americans United for Life in Support of Petitioner, *First Choice*, 608 U.S. ___ (No. 24-781).
[21] *See* Carolyn McDonnell & Brooke Paz, *Debrief of the Supreme Court Oral Argument in First Choice Women's Resource Centers, Inc. v. Platkin*, Ams. United for Life (Dec. 15, 2025), https://aul.org/2025/12/15/debrief-of-the-supreme-court-oral-argument-in-first-choice-womens-resource-centers-inc-v-platkin/.
[22] *First Choice*, 608 U.S. ___, slip op. at 5.
[23] *Id*. at 6 (quoting *Diamond Alt. Energy, LLC v. EPA*, 606 U.S. 100, 110–11 (2025)).
[24] *Id*. (quoting *Diamond Alt. Energy*, 606 U.S. at 111).
[25] *Id*.
[26] *Id*. (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 161, 164–67 (2014)).
[27] *Id*.
[28] *Id*.

> party of one, and the right to petition would amount to nothing more than the power to sign one's own name alone.[29]

As such, "government actions tending to 'curtai[l] the freedom to associate' warrant 'the closest scrutiny' under the First Amendment."[30]

The right to freely associate with others protects individuals from compelled disclosure of group affiliation. Precedent establishes that "'compelled disclosure of affiliation with groups engaged in advocacy' can 'constitute a[n] effective . . . restraint on freedom of association.'"[31] The Supreme Court discusses *NAACP v. Alabama* at length, in which the Alabama Attorney General John Patterson attempted to stop the NAACP's "efforts to promote integration in Alabama in the 1950s" by "demand[ing] the names and addresses of all NAACP members and agents in the State" to prove his assertion that "the NAACP was operating illegally."[32] The Supreme Court held the demand was an unlawful infringement upon the NAACP's freedom of association, because it would "[s]trip away the ability of individuals to work together free from governmental oversight and intrusion, and the freedom to associate may become no freedom at all—individuals deterred, groups diminished, and their protected advocacy suppressed."[33]

A long line of caselaw has reaffirmed the holding of *NAACP v. Alabama* that compelled disclosure of group affiliation may unconstitutionally burden the First Amendment right to freely associate with others in public advocacy.[34] Most recently, in *Americans for Prosperity v. Bonta*, the Court held that California Attorney General Rob Bonta's demand for "the names and addresses of anyone who donated more than $5,000 in a single year to either [plaintiff non-profit] . . . violated the First Amendment."[35] The Court determined that "[d]emands for private donor information . . . 'chill' protected First Amendment associational rights even when those demands contemplate disclosure only to government officials and not 'the general public.'"[36]

The Supreme Court then applies this caselaw to the present lawsuit, recognizing that "[a]gainst this backdrop, the question before us all but answers itself. First Choice has established a present injury to its First Amendment associational rights."[37] According to the Court, the subpoena uses mandatory language, directing First Choice that "'[it is] hereby commanded to produce' a variety of documents" and warned that First Choice would be liable for contempt of court if it failed to comply.[38]

---

[29] *Id*. at 7.
[30] *Id*. at 7 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460–61 (1958)).
[31] *Id*. (quoting *NAACP v. Alabama*, 357 U.S. at 462) (alterations in original).
[32] *Id*. at 7–8 (citing *NAACP v. Alabama*, 357 U.S. at 451–53).
[33] *Id*. at 8 (citing *NAACP v. Alabama*, 357 U.S. at 462).
[34] *Id*. at 9.
[35] *Id*. (citing *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 602–03 (2021)).
[36] *Id*. at 10 (quoting *Ams. for Prosperity Found.*, 594 U.S. at 616).
[37] *Id*.
[38] *Id*.

Since the appeal arose at the motion to dismiss stage, the Court uses a lenient standard that favors First Choice, "tak[ing] as given that we may treat all the complaint's well-pleaded allegations as true for purposes of our analysis."[39] First Choice's complaint alleges that the subpoena for donor records deters donor association with First Choice, which in turn hurts First Choice's ability to carry out its religious mission to serve pregnant women and their families.[40] Likewise, First Choice has two unrebutted declarations that show the First Amendment injury. In the first one, donors asserted they would have been less likely to donate to First Choice if they knew their names and contact information would be given to an Attorney General that is hostile to pro-life work. In the second declaration, First Choice's executive director contended the subpoena weakens the organization's ability to recruit new donors.[41] The Court recognizes that "[a]ll this is more than enough to establish injury in fact under our precedents."[42]

At this point, the Court repeats that "our cases have long recognized that demands for a charity's private member or donor information have just that effect [of an injury]."[43] Accordingly, "[a]cross contexts, we have said, courts may make 'commonsense inferences' when assessing Article III standing, including inferences about 'third party behavior.'"[44] Likewise, groups from across the political spectrum filed amicus briefs in support of the pregnancy centers because "even if a subpoena targeting First Amendment activity is never enforced in court," it will chill association with the organization and hurt the organization's cause.[45] Thus, "First Choice has established that the Attorney General's demand for private donor information injures the group's First Amendment associational rights."[46]

The Court notes that "[t]he Attorney General does not dispute much of this" First Amendment caselaw about standing to challenge compelled disclosure of group affiliation.[47] Regarding the guarantee of a federal forum in 42 U.S.C. § 1983, "Congress enacted that provision with the express goal of ensuring a federal forum to citizens who claim that state actors have violated their constitutional rights."[48] Although "certain 'abstention' doctrines supply narrow exceptions to that rule when state proceedings are ongoing . . . the lower courts did not find, and Mr. Platkin does not argue, that any of this Court's abstention doctrines apply to this case."[49]

---

[39] *Id*. at 11.
[40] *Id*.
[41] *Id*.
[42] *Id*.
[43] *Id*. at 12.
[44] *Id*. (citing *Diamond Alt. Energy*, 606 U.S. at 116).
[45] *Id*. (quoting Brief for Foundation for Individual Rights and Expression, American Civil Liberties Union, and American Civil Liberties Union of New Jersey as *Amici Curiae* 6, *First Choice*, 608 U.S. ___ (No. 24-781)).
[46] *Id*. at 13.
[47] *Id*.
[48] *Id*. at 14 (citations omitted).
[49] *Id*. (citing *Younger v. Harris*, 401 U.S. 37 (1971)).

Next the decision addresses the New Jersey Attorney General's three arguments. First, the Attorney General "contends that the subpoenas his office issues are 'non-self-executing' and subpoenas of that sort cannot 'objectively chill' First Amendment rights as a categorical matter."[50] Essentially this would mean that these types of subpoenas "impose no obligations of their own," only triggering a legal duty "when a court agrees to enforce the subpoena."[51] The Court rejects this argument, noting that the subpoena "commanded" private donor information and warned First Choice that it would be liable if it failed to comply with the subpoena.[52] As the Court writes, "[o]bjectively reasonable people interested both in their privacy and in associating with First Choice would 'not lightly disregard' such a distinct possibility of disclosure."[53]

The Court distinguishes the present case from two cases the Attorney General cited. Unlike *Laird v. Tatum*, where the alleged First Amendment associational injury was subjective and self-imposed, "[h]ere, by contrast, the Attorney General targeted First Choice for investigation."[54] Although the Court determined a plaintiff cannot sue for an alleged regulatory taking until the authorities commit to the position in *Pakdel v. City and County of San Francisco*, "setting aside the question of whether a Takings Clause rule might be properly transposed into the First Amendment context," in this case, "Mr. Platkin . . . 'committed to a position' when he issued his subpoena demanding donor records."[55]

The Supreme Court also addresses the district court's reliance upon *Reisman v. Caplin*, which concerned "efforts to enjoin non-self-executing federal administrative subpoenas before a court directed their enforcement."[56] In *Reisman*, the Court "read the governing statutes in question as preferring federal court review only after the government sought to compel production," but stressed "that the availability of federal court review on the back end provided the plaintiffs 'an adequate remedy at law,' which meant that their preemptive requests for injunctive relief were subject to dismissal 'for want of equity.'"[57] Here, the Supreme Court rejects the analogy to *Reisman*, because the *Reisman* "plaintiffs . . . did not allege a present injury from the subpoena itself, but complained only of future injuries they might face if a court enforced the subpoena" and "concerned equity practice, not Article III standing."[58] Likewise, caselaw has established that a litigant does not need to "exhaust available state court remedies before seeking to vindicate its federal constitutional rights in federal court under §1983."[59]

---

[50] *Id*.
[51] *Id*. at 15.
[52] *Id*.
[53] *Id*. (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 68 (1963)).
[54] *Id*. at 16 (citing *Laird v. Tatum*, 408 U.S. 1 (1972)).
[55] *Id*. at 17.
[56] *Id*. (citing *Reisman v. Caplin*, 375 U.S. 440, 444–46 (1964); *FTC v. Claire Furnace Co.*, 274 U.S. 160, 165–66, 173–74 (1927)).
[57] *Id*. (quoting *Reisman*, 375 U.S. at 443).
[58] *Id*. at 18 (citing *Reisman*, 375 U.S. at 442, 449–50).
[59] *Id*. (citing *Knick v. Twp. of Scott*, 588 U.S. 180, 185 (2019)).

Second, the Attorney General "claims that, even if non-self-executing subpoenas can 'objectively chill' First Amendment rights, the subpoena he issued to First Choice did not."[60] The Court notes the "subpoena sought information about those who donate to the group by almost any means, whether in person, over the phone, or online. But, the Attorney General stresses, the subpoena did not seek information about individuals who give through one website."[61] However, "[t]his argument misapprehends the Article III standing inquiry. A government that takes three limbs but spares the last imposes an injury all the same. So too here."[62] Accordingly, "[t]he question before us isn't how badly the Attorney General has burdened First Choice's associational rights; the question is whether he has burdened those rights at all. And by effectively restricting how First Choice may interact privately with its donors, the subpoena did just that."[63] Narrowing his demands likewise did not dissipate the injury.[64]

Third, the Attorney General contends that "even if his subpoena did 'objectively chill' First Choice's associational rights when he issued it, his later promise to refrain from making First Choice's donor information public effectively cured that chill."[65] The Court notes that "no such protective order presently exists," and even with one, there could be leaks that incite harassment against the donors.[66] "An official demand for private donor information is enough to discourage reasonable individuals from associating with a group. It is enough to discourage groups from expressing dissident views."[67] Justice Gorsuch then concludes the opinion by posing the question, "[j]ust ask yourself, would it have been an answer in *NAACP v. Alabama* if the State's Attorney General promised to keep the NAACP's membership rolls to himself?"[68]

Thus, the Court held that the subpoena inflicted an injury to First Choice's First Amendment rights, which confers standing for the pregnancy centers to challenge the subpoena in federal court. Accordingly, the Court reversed the Third Circuit's judgment and remanded the case for further proceedings.[69]

Legal and Pro-life Implications of the Decision

The *First Choice* decision ensures that the pregnancy centers can litigate their constitutional challenge to the subpoena in federal district court. Although the Supreme Court did not answer the question of whether the subpoena is constitutional under the First Amendment, the Court recognized that this case follows a long line of First Amendment

---

[60] *Id*. at 14.
[61] *Id*. at 19.
[62] *Id*.
[63] *Id*. at 19–20.
[64] *Id*. at 20.
[65] *Id*. at 14–15.
[66] *Id*. at 21.
[67] *Id*.
[68] *Id*. at 21–22.
[69] *Id*. at 22.

caselaw that held compelled disclosure of group affiliation may infringe upon the right to freely associate with others in public advocacy.[70] Accordingly, the district court will analyze this case in the context of that robust First Amendment caselaw, which makes it difficult for New Jersey to argue that the subpoena is constitutional even though it compels disclosure of group affiliation.

In recent years, the Supreme Court has reigned in its standing jurisprudence,[71] and this decision joins that body of law. The *First Choice* decision reaffirms that a case meets the injury-in-fact element if the injury "is concrete, particularized, and actual or imminent."[72] Accordingly, a party may bring a "pre-enforcement suit seeking prospective relief against government officials so long as it faces 'a credible threat of enforcement.'"[73] From a litigation strategy, First Choice successfully argued it suffered this injury based upon "allegations and declarations," "longstanding precedents in the area," and "reasonable inferences about third party behavior."[74]

The decision is silent about prudential ripeness doctrine, which is a judge-made doctrine in which federal courts "deem . . . claims nonjusticiable 'on grounds that are 'prudential,' rather than constitutional."[75] The Third Circuit's decision appeared to rely upon prudential ripeness doctrine when it determined First Choice did not have standing for discretionary, not constitutional, reasons.[76] Although First Choice raised the issue of prudential ripeness in its briefing, the Court did not discuss prudential ripeness doctrine in its decision.[77] Yet, by firmly contextualizing the ripeness question as a matter of Article III standing, the unanimous Court implicitly abandoned prudential ripeness doctrine without directly addressing it.

Finally, the case provides a great exposition of freedom of association under First Amendment caselaw. In doing so, the Supreme Court upholds freedom of association in First Amendment advocacy, even when state officials disagree with that advocacy. This is an important precedent not only for the pro-life movement, but for all groups that engage in public advocacy.

Conclusion

The *First Choice* decision joins the Supreme Court's jurisprudence on Article III standing and First Amendment freedom of association. The Court recognizes that First Choice meets the injury-in-fact element that enables it to challenge the overly broad subpoena in federal court. This decision is an essential first step for First Choice to challenge

---

[70] *Id*. at 10.
[71] *See*, *e.g.*, *FDA v. All. for Hippocratic Medicine*, 602 U.S. 367 (2024) (unanimous).
[72] *First Choice*, 608 U.S. ___, slip op. at 6 (citing *Diamond Alt. Energy*, 606 U.S. at 111).
[73] *Id*. (quoting *Susan B. Anthony List*, 573 U.S. at 161, 164–67).
[74] *Id*. at 13.
[75] *Susan B. Anthony List*, 573 U.S. at 167 (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–26 (2014)).
[76] *See Third Circuit Opinion*, No. 24-3124.
[77] *See* Brief for Petitioner 52–54, *First Choice*, 608 U.S. ___ (No. 24-781).

the constitutionality of the subpoena that demands the personal information of First Choice's donors. This outcome is a victory not only for First Choice, but also for pregnancy centers across the United States, which provide women life-affirming options and support in their pregnancy decisions.