

# First Choice Women’s Resource Centers, Inc. v. Davenport

## Client Alerts

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On April 29, 2026, the US Supreme Court issued a unanimous opinion in *First Choice Women’s Resource Centers, Inc. v. Davenport*, No. 24-781, holding that a subpoena demanding information about a nonprofit’s donors injured the organization by burdening its First Amendment right to freedom of association. The Supreme Court held that the mere issuance of the subpoena, even though it had not yet been enforced by a court, injured First Choice for purposes of Article III standing. The Court reasoned that the subpoena burdened First Choice’s First Amendment right to freedom of association because its issuance would deter donors from associating with First Choice.

## Background

First Choice is a religious nonprofit that provides counseling and resources to pregnant women. After the New Jersey Attorney General voiced concerns that groups like First Choice prevent people from accessing reproductive healthcare, the Attorney General served a subpoena on the organization. Among other requests, the subpoena directed First Choice to disclose documents reflecting its donors’ names, phone numbers, addresses, and places of employment.

First Choice filed suit in federal court to prevent the subpoena’s enforcement, arguing the subpoena’s demand for donor information violated its First Amendment rights. The district court denied First Choice’s preliminary injunction and also granted the Attorney General’s motion to dismiss. The court found that because no court had compelled First Choice to disclose donor information under the subpoena, First Choice had yet to suffer an Article III injury-in-fact. A divided Third Circuit panel affirmed on the ground that First Choice had not suffered a sufficient injury for Article III standing.

## The Supreme Court’s Opinion

The Supreme Court reversed in a 9-0 opinion authored by Justice Gorsuch. The Court began by acknowledging that, under its precedent, “demands for private donor information ‘inevitabl[y]’ carry with them a ‘deterrent effect on the exercise of First Amendment rights.’”<sup>1</sup> And those demands “‘chill’ protected First Amendment associational rights even when [they] contemplate disclosure

only to government officials and not ‘the general public.’”<sup>2</sup> Based on this precedent and citing declarations submitted by First Choice that stated the subpoena made donors less likely to donate, the Supreme Court concluded that the subpoena burdened First Choice’s constitutional rights and thus First Choice had suffered an injury-in-fact.<sup>3</sup>

Notably, the Supreme Court rejected the Attorney General’s argument that First Choice must wait until after a court ordered enforcement of the subpoena.<sup>4</sup> Because the subpoena resulted in a “distinct” possibility that donor information would be disclosed, it discouraged association even prior to enforcement.<sup>5</sup>

## **Practical Advice**

*First Choice* carries several important lessons for organizations that are facing or could face scrutiny from state attorneys general or other regulators.

- **Subpoena recipients do not need to wait for court enforcement to object to a subpoena as burdening First Amendment rights.** *First Choice* clarifies that the burden to a subpoena recipient’s First Amendment rights may be felt as soon as the subpoena is issued. Recipients of subpoenas can therefore raise First Amendment challenges to those tools in their initial objections. And if those objections prove unsuccessful, recipients can file suit to prevent enforcement.
- **Subpoena recipients have a new source of leverage in negotiations with state attorneys general.** Because subpoena recipients do not need to wait for court enforcement to register their objections—including in a courtroom—recipients can use *First Choice* to negotiate with state attorneys general to narrow subpoenas and other requests for information, like civil investigative demands and document requests.
- **An attorney general’s promise not to disclose donor information publicly does not cure the constitutional injury.** If an attorney general offers confidentiality as a reason to comply with a subpoena that would otherwise burden a recipient’s First Amendment rights, that offer does not necessarily resolve the First Amendment problem, and the subpoena may still be challenged in court.
- **Donors to organizations that receive subpoenas for donor information may also have standing to challenge those subpoenas.** Because *First Choice* was brought by the organization that received the subpoena, and not the organization’s donors, *First Choice* focused on the injury to the organization. But language in the opinion, and in the Supreme Court’s precedents, suggests that subpoenas that seek information about donors also infringe on those donors’ First Amendment rights. The Court recognized that demands for an organization’s “private membership rolls burden[] the constitutional rights of the organization’s members.”<sup>6</sup> Thus we expect donors

and members of an organization can challenge subpoenas that would require those organizations to disclose their identity. Because the point of these suits would be to keep donors' identities confidential, donors would likely need to bring these suits anonymously.

## Footnotes

[1] *First Choice Women's Resources, Inc. v. Davenport*, No. 24-781., slip op. at 5 at 9 (quoting *Buckley v. Valeo*, 424 U.S. 1, 65 (1976) (per curiam)).

[2] *Id.* at 10 (quoting *Americans for Prosperity Foundation v. Bonta*, 594 U. S. 595, 616 (2021)).

[3] *Id.* at 11 (citing *TransUnion LLC v. Ramirez*, 595 U.S. 413, 425 (2021)).

[4] *Id.* at 15.

[5] *Id.*

[6] *Id.* at 8 (citing *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 463 (1958)); see also *NAACP*, 357 U.S. at 462–63 (“[C]ompelled disclosure of [the NAACP’s] Alabama membership is likely to affect adversely the ability of [the NAACP] and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate[.]”).

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