

No. 24-781

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IN THE  
**Supreme Court of the United States**

FIRST CHOICE WOMEN'S RESOURCE CENTERS, INC.,  
*Petitioner,*

v.

MATTHEW PLATKIN, IN HIS OFFICIAL CAPACITY AS  
ATTORNEY GENERAL OF NEW JERSEY,  
*Respondent.*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Third Circuit**

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**BRIEF OF *AMICUS CURIAE*  
ANNUNCIATION HOUSE, INC.  
IN SUPPORT OF PETITIONER**

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## TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities .....	ii
Interest of <i>Amicus Curiae</i> .....	1
Statement.....	2
I. Annunciation House Provides Shelter to Vulnerable Immigrants and Refugees. ....	2
II. The State of Texas Issues an Investigatory Subpoena Against Annunciation House Requiring Immediate Compliance.....	3
III. Annunciation House Seeks to Vindicate Its Federal Rights in State Court.....	4
Argument .....	6
I. State Investigatory Demands Can Impose Particularly Onerous Burdens on Nonprofits Like Annunciation House. ....	6
II. The Court’s Review Is Needed to Ensure That Federal Courts Remain Available to Vindicate Federal Rights. ....	7
Conclusion .....	10

## TABLE OF AUTHORITIES

Page(s)

### Cases

<i>City of Los Angeles v. Patel</i> , 576 U.S. 409 (2015).....	6
<i>Google, Inc. v. Hood</i> , 822 F.3d 212 (5th Cir. 2016).....	7
<i>Lexmark Int’l, Inc. v. Static Control Components, Inc.</i> , 572 U.S. 118 (2014).....	8
<i>Susan B. Anthony List v. Driehaus</i> , 573 U.S. 149 (2014).....	7, 8
<i>Ex Parte Young</i> , 209 U.S. 123 (1908).....	8

### Statutes & Constitutional Provision

28 U.S.C. § 2254 .....	8
42 U.S.C. § 1983 .....	8
Tex. Bus. Orgs. Code § 12.152 .....	3, 4
Tex. Bus. Orgs. Code § 12.155 .....	4
U.S. Const. art. III, § 2.....	8

**Other Authorities**

Annunciation House,  
*About Annunciation House* .....2

Annunciation House,  
*Little by Little: A Brief History* .....2

Brief of Appellee,  
*Paxton v. Annunciation House, Inc.*,  
No. 24-0573 (Tex. Nov. 27, 2024) .....2, 3, 4, 5

Jurisdictional Statement App.,  
*Paxton v. Annunciation House, Inc.*,  
No. 24-0573 (Tex. July 25, 2024) .....3, 4, 5, 6

Notice of Appeal,  
*Paxton v. Annunciation House, Inc.*,  
No. 24-0573 (Tex. July 15, 2024) .....6

### **INTEREST OF *AMICUS CURIAE*\***

Affiliated with the Catholic Diocese of El Paso, Annunciation House expresses the Catholic faith of its directors, supporters, and volunteers through the basic social services it provides to immigrants in need. Annunciation House practices the central tenet of Christianity: To love one another. Its mission is simply to serve the poor and welcome the stranger as the Bible teaches.

About a year ago, with no warning, representatives from the Texas Attorney General's Office came to Annunciation House's door with a request to examine a broad swath of its business records. Annunciation House requested 30 days to respond, but the Attorney General's Office said that Annunciation House would only be given 24 hours to turn over the requested records.

When Annunciation House sought state-court relief from the request, the Texas Attorney General's Office filed a counterclaim accusing Annunciation House of engaging in human smuggling, among other things. The Attorney General's Office sought to revoke Annunciation House's corporate charter based on its refusal to comply immediately with the request to examine Annunciation House's business records.

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\* Pursuant to Supreme Court Rule 37.6, *amicus* represents that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amicus* or its counsel made a monetary contribution to the preparation or submission of this brief. *Amicus* timely notified counsel for all parties of its intention to file this brief as required by Supreme Court Rule 37.2.

Annunciation House respectfully submits this *amicus* brief in petitioner’s support to underscore the importance of federal courts being open to pre-enforcement challenges to state investigatory demands—particularly where free exercise rights hang in the balance.

## STATEMENT

### I. ANNUNCIATION HOUSE PROVIDES SHELTER TO VULNERABLE IMMIGRANTS AND REFUGEES.

Annunciation House has operated in Texas for nearly half a century, serving as a sanctuary for those facing extreme hardship with nowhere else to go. See Annunciation House, *Little by Little: A Brief History*, <https://t.ly/tBvw3>. It “offers hospitality to migrants, immigrants, and refugees” through the lens of its Catholic faith and seeks “to be a voice for justice and compassion, especially on behalf of the most marginalized.” Annunciation House, *About Annunciation House*, <https://t.ly/ceQ3y>. Over the last 50 years, Annunciation House has provided shelter for hundreds of thousands of refugees and immigrants. Brief of Appellee at 56, *Paxton v. Annunciation House, Inc.*, No. 24-0573 (Tex. Nov. 27, 2024), <https://t.ly/3xSMS>.

Like many other nonprofits, Annunciation House depends on volunteers to help carry out its mission. *Ibid.* Volunteers work daily with immigrants and refugees, providing food and shelter to a highly vulnerable population. *Id.* at 20. Annunciation House’s volunteers form a close-knit community centered on fulfilling their religious mission by providing basic necessities to those most in need. *Ibid.*

## II. THE STATE OF TEXAS ISSUES AN INVESTIGATORY SUBPOENA AGAINST ANNUNCIATION HOUSE REQUIRING IMMEDIATE COMPLIANCE.

In February 2024, without warning, representatives from the Texas Attorney General’s Office showed up at Annunciation House’s doorstep in El Paso to serve an investigative subpoena, also known as a “request to examine” under section 12.152 of the Texas Business Organizations Code. Brief of Appellee at 22, *Paxton*, No. 24-0573.

The subpoena demanded that Annunciation House immediately turn over thousands of documents—including those containing sensitive medical and personally identifiable information—concerning all refugees and immigrants who took shelter under Annunciation House’s roof within recent years. Jurisdictional Statement App. at 93, 149, *Paxton v. Annunciation House, Inc.*, No. 24-0573 (Tex. July 25, 2024), <https://t.ly/Bzibc>. The subpoena also required production of all documents related to Annunciation House’s application for humanitarian relief funding. *Id.* at 149. For any documents that were arguably privileged, the subpoena required that Annunciation House provide a privilege log stating the grounds for privilege and identifying the names and addresses of the people who prepared, saw, or possessed the documents. *Id.* at 166–167. The subpoena threatened that failure to comply would result in criminal penalties and outright closure of Annunciation House. *Id.* at 93.

Annunciation House’s director sought more time to comply with the subpoena, explaining that he would need to meet with Annunciation House’s attorneys to evaluate the request. Brief of Appellee at 23,

*Paxton*, No. 24-0573. The State responded by asserting that the State had “full and unlimited and unrestricted” authority to inspect Annunciation House’s records, and that Annunciation House was required by law to provide “immediate access” to its documents. Jurisdictional Statement App. at 150–151, *Paxton*, No. 24-0573.

The State rejected Annunciation House’s request for an additional 30 days to comply and instead gave only 24 hours for Annunciation House to provide the thousands of documents. *Ibid.* The State reiterated that if Annunciation House didn’t turn over its records within 24 hours, the State would deem Annunciation House as noncompliant. *Ibid.* The threat was existential. The request-to-examine statute purports to authorize the Texas Attorney General to subpoena a nonprofit’s records, demand immediate compliance, and—if it fails to comply—terminate the nonprofit’s charter. See Tex. Bus. Orgs. Code §§ 12.152, 12.155.

### **III. ANNUNCIATION HOUSE SEEKS TO VINDICATE ITS FEDERAL RIGHTS IN STATE COURT.**

Left with no other option, Annunciation House filed a temporary restraining order in state court the day after it received the subpoena. Brief of Appellee at 23, *Paxton*, No. 24-0573. Annunciation House asserted that the State’s burdensome request, coupled with threats of criminal sanctions and termination of Annunciation House’s charter, infringed on the charity’s Due Process and First Amendment rights. Annunciation House also pointed out that the harm it faced from the subpoena was real and immediate—in particular, the loss of crucial long-term volunteers because of the State’s aggressive tactics. *Id.* at 24. The



court granted the relief requested the same day. *Id.* at 25.

Shortly after, the State moved for leave to file a counterclaim to revoke Annunciation House's charter and prevent it from operating in Texas. *Id.* at 24. In its proposed counterclaim, the State asserted that the purpose of its request to examine was to investigate whether Annunciation House had been illegally harboring undocumented immigrants. *Ibid.* The State also argued that Annunciation House's failure to comply with the State's investigatory demand justified revoking Annunciation House's charter. *Ibid.*

While that motion was pending, Annunciation House moved to quash the State's subpoena. *Id.* at 25. But the trial court denied the motion as moot because now that Annunciation House had filed its lawsuit, the subpoena was superseded by state discovery rules. *Id.* at 25–26. The State didn't contest the court's order. In fact, it dropped its pursuit of the subpoena entirely. Jurisdictional Statement App. at 56, *Paxton*, No. 24-0573. Instead, the State focused its efforts on closing Annunciation House down completely. *Id.* at 70–71.

Annunciation House moved for summary judgment. Brief of Appellee at 26, *Paxton*, No. 24-0573. After briefing and hearing on all pending motions, the court denied the State's motion for leave to seek termination of Annunciation House's charter and granted summary judgment to Annunciation House. *Ibid.* The court concluded that the request-to-examine statute was facially unconstitutional because it didn't provide for pre-compliance review. Jurisdictional Statement App. at 5–6, *Paxton*, No. 24-0573

(citing *City of Los Angeles v. Patel*, 576 U.S. 409, 419 (2015)). The court further ruled that any future subpoenas issued against Annunciation House would be subject to the court’s pre-compliance review. *Id.* at 6.

The State immediately noticed its intent to appeal—pursuing a direct appeal to the Texas Supreme Court. Notice of Appeal, *Paxton v. Annunciation House, Inc.*, No. 24-0573 (Tex. July 15, 2024), <https://t.ly/Tl6mt>. The case has been briefed and argued, and the parties await a decision.

## ARGUMENT

### I. STATE INVESTIGATORY DEMANDS CAN IMPOSE PARTICULARLY ONEROUS BURDENS ON NONPROFITS LIKE ANNUNCIATION HOUSE.

As Annunciation House’s own experience shows, nonprofit organizations—which rely heavily on volunteers—bear the heaviest burdens when faced with short-fuse state investigatory demands. Unlike large, for-profit organizations, nonprofits often lack the resources to locate and provide relevant records—particularly in a very short timeframe—while still performing their mission-critical work. And they have even less time to discern their legal obligations before complying with such demands. The cost of compliance is high, and the cost of not complying is even higher. It’s a lose-lose from which there is often no escape.

The stakes can be existential—as in Annunciation House’s case, where the State initially pushed for closure as a consequence of Annunciation House’s inability to comply within 24 hours. Left unchecked, the process becomes the punishment. As the number of state investigatory demands rises, it becomes even more critical that the subjects of those demands can

enforce their constitutional rights in an appropriate forum.

**II. THE COURT’S REVIEW IS NEEDED TO ENSURE THAT FEDERAL COURTS REMAIN AVAILABLE TO VINDICATE FEDERAL RIGHTS.**

All agree that state attorneys general have important roles to play in ensuring that everyone—non-profits included—follow the law. But investigations based on harassment or retaliation can chill constitutionally protected speech and activity. Investigations of a nonprofit can impose significant legal costs, divert time from the organization’s mission and activities, and damage its reputation. The chilling effect impacts not only the nonprofit that is targeted, but also the broader nonprofit community, as organizations may avoid lawful speech or actions that they think are disfavored out of fear that they will lead to investigatory scrutiny. So pre-enforcement review of state investigatory demands is critical to protecting the exercise of constitutional rights, including free-exercise rights.

Annunciation House had no means of vindicating its federal rights in federal court, as the Fifth Circuit holds that a State’s investigatory demand cannot be challenged in federal court unless a state court first enforces the demand. See *Google, Inc. v. Hood*, 822 F.3d 212, 225–226 (5th Cir. 2016). So organizations like Annunciation House *must* go to state court to vindicate federal constitutional rights against a state actor—the federal courthouse doors are closed to them.

That state of affairs contravenes this Court’s precedents on standing and ripeness that require a credible threat of enforcement. See, e.g., *Susan B. Anthony*

*List v. Driehaus*, 573 U.S. 149, 158–161 (2014). And it flouts the principle that “a federal court’s obligation to hear and decide cases within its jurisdiction is virtually unflagging.” *Id.* at 167 (cleaned up) (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–126 (2014)).

The importance of a federal forum for federal questions is deeply embedded in our legal system. It underlies the federal-question component of subject-matter jurisdiction. U.S. Const. art. III, § 2. And it animates 42 U.S.C. § 1983 and this Court’s decision in *Ex Parte Young*, 209 U.S. 123 (1908). That a party might be able to enforce its federal civil rights in state court doesn’t undermine the importance of federal-court jurisdiction over claims implicating core federal rights.

No federalism concerns militate against federal jurisdiction here. Unlike in certain habeas cases, which require that state prisoners exhaust their remedies in state court before seeking federal habeas relief to avoid unnecessary federal intervention into state proceedings, see 28 U.S.C. § 2254(b)(1), there’s no risk of federal entanglement with respect to adjudicating the federal rights implicated by state investigatory demands. Subjects of demands that wish to go to federal court aren’t removing a state action to federal court or overriding a state court’s jurisdiction. They’re simply seeking to have a federal court enforce their federal rights in the first instance. This Court’s review is needed to clarify and confirm that pre-enforcement challenges to non-self-executing civil investigatory demands have a place in federal court.

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State attorneys general are increasingly deploying civil investigatory demands, which impose particularly onerous burdens on nonprofits that often rely on volunteers to accomplish their missions. Given the stakes involved—especially the chilling effect on free speech, free association, and free exercise rights—targeted organizations should be able to bring challenges to assert their federal constitutional rights in federal court based on the credible threat of enforcement against them, just as they can in virtually every other similar context.

**CONCLUSION**

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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