No. 25-479

In the Supreme Court of the United States

NATIONAL RIFLE ASSOCIATION OF AMERICA,
Petitioner,

v.

MARIA T. VULLO,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* ADVANCING AMERICAN FREEDOM; MANHATTAN INSTITUTE; ALABAMA POLICY INSTITUTE; AMERICAN ENERGY INSTITUTE; AFA ACTION; AMERICANS FOR LIMITED GOVERNMENT; ASSOCIATION OF MATURE AMERICAN CITIZENS ACTION; GARY L. BAUER, PRESIDENT, AMERICAN VALUES; SHAWNNA BOLICK, ARIZONA STATE SENATOR, DISTRICT 2; CATHOLIC VOTE; CATHOLICS COUNT; CENTER FOR POLITICAL RENEWAL; CENTER FOR URBAN RENEWAL AND EDUCATION (CURE); CITIZENS UNITED;
[*Additional Amici Listed On Inside Cover*]

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IN SUPPORT OF PETITIONER

QUESTION PRESENTED

1. When Vullo implemented her scheme against the NRA, was it clearly established that the First Amendment did not allow a government official to coerce a disfavored speaker's service providers to punish or suppress disfavored speech on her behalf?

2. When it is obvious that a government official's conduct violates the Constitution under longstanding Supreme Court precedent, is the violation clearly established for purposes of qualified immunity despite some factual distinctions that are irrelevant under the governing constitutional rule?

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STATEMENT OF INTEREST OF *AMICI CURIAE*

Advancing American Freedom (AAF) is a nonprofit organization that promotes and defends policies that elevate traditional American values, including freedom from arbitrary power.[1] AAF "will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation,"[2] and believes American prosperity depends on ordered liberty and self-government.[3] AAF files this brief on behalf of its 5,103 members in the state of New York and its 144,819 members nationwide.

The Manhattan Institute for Policy Research ("MI") is a nonpartisan public policy research foundation whose mission is to develop and disseminate ideas that foster greater economic choice and individual responsibility. MI's constitutional studies program aims to preserve the Constitution's original public meaning. To that end, it has historically sponsored scholarship regarding

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[1] All parties received timely notice of the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amici Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Edwin J. Feulner, Jr., Conservatives Stalk the House: The Story of the Republican Study Committee, 212 (Green Hill Publishers, Inc. 1983).

[3] Independence Index: Measuring Life, Liberty and the Pursuit of Happiness, Advancing American Freedom available at https://advancingamericanfreedom.com/aaff-independence-index/ (see Gun Ownership, pages 16-19).

constitutional rights, quality-of-life issues, property rights, and economic liberty. MI scholars and affiliates have encountered unconstitutional restrictions on their speech and the institute consequently has a particular interest in defending speech rights.

Amici Alabama Policy Institute; American Energy Institute; AFA Action; Americans for Limited Government; Association of Mature American Citizens Action; Association of Mature American Citizens; Gary L. Bauer, President, American Values; Shawnna Bolick, Arizona State Senator, District 2; Catholic Vote; Catholics Count; Center for Political Renewal; Center for Urban Renewal and Education (CURE); Citizens United; Citizens United Foundation; Eagle Forum; Family Council in Arkansas; Frontiers of Freedom; Frontline Policy Council; Charlie Gerow; Global Liberty Alliance; Jay D. Homnick, Senior Fellow, Project Sentinel; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Independent Women's Law Center; Institute for Reforming Government; International Conference of Evangelical Chaplain Endorsers; Jenny Beth Martin, Honorary Chairman, Tea Party Patriots Action; Men and Women for a Representative Democracy in America, Inc.; Mountain States Legal Foundation; National Center for Public Policy Research; National Religious Broadcasters; New Jersey Family Policy Center; Noah Webster Educational Foundation; Orthodox Jewish Chamber Of Commerce; Melissa Ortiz, Principal & Founder, Capability Consulting; Palmetto Promise Institute; Project 21 Black Leadership Network; Public Interest Legal Foundation; Rio Grande

Foundation; Setting Things Right; 60 Plus Association; Southeastern Legal Foundation; Stand for Georgia Values Action; Strategic Coalitions & Initiatives, LLC; Tradition, Family, Property, Inc.; Upper Midwest Law Center; Suzi Voyles, President, Eagle Forum of Georgia; Wisconsin Family Action, Inc.; Women for Democracy in America, Inc.; Yankee Institute; and Young America's Foundation are organizations that believe in the importance of Freedom of Speech and Freedom of Association and which are concerned about government overreach that infringes on those rights.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The purpose of the Constitution is to protect the rights of individuals from government officials who are willing to trample on those rights to accomplish their political goals. This case is an instance of such disregard for the rule of law in New York. Then-Governor Andrew Cuomo and Maria Vullo, Superintendent of New York's Department of Financial Services ("DFS"), set out to undermine the ability of the National Rifle Association ("NRA") and other Second Amendment advocacy organizations to engage in the exercise of their rights of Freedom of Association and Freedom of Speech.

The NRA offered insurance programs to protect Americans exercising their Second Amendment rights. In 2018, Superintendent Vullo met with one of the insurance providers that worked with the NRA and heavy-handedly explained to them her and Governor Cuomo's "desire to leverage their powers to

combat the availability of firearms, including specifically by weakening the NRA." *Nat'l Rifle Ass'n of America v. Vullo*, No. 22-842, slip op. at 3-4 (May 30, 2024) [hereinafter *Vullo I*] (internal quotation marks omitted). Superintendent Vullo told the insurance company that while there were "an array of technical regulatory infractions plaguing the affinity-insurance marketplace," her department would be willing to make them an offer they could not refuse: overlook those infractions not related to insurance business with the NRA if the company would break ties with that advocacy organization. *Id*. at 4 (internal quotation marks omitted). Vullo and the company agreed that the company would stop providing firearm related insurance through the NRA and, in exchange, that DFS would not pursue technical regulatory infractions for non-NRA insurance programs. *Id*.

Vullo then issued two DFS guidance letters, one to insurance companies and one to financial services institutions, which warned of social backlash against the NRA and other Second Amendment advocacy groups and suggested that businesses that ceased doing business with the NRA were "fulfilling their corporate social responsibility." *Id*. (internal quotation marks omitted).

On the same day, DFS issued a press release in which Governor Cuomo said that, although "New York may have the strongest gun laws in the country," more needed to be done to "ensure that gun safety is a top priority for every individual, company, and

organization that does business across the state."[4] Governor Cuomo then directed DFS to "urge insurers and bankers statewide to determine whether any relationship they may have with the NRA or similar organizations sends the wrong message to their clients and their communities," and claimed that, "[t]his is not just a matter of reputation, it is a matter of public safety."[5] In the same statement, Superintendent Vullo said, "DFS urges all insurance companies and banks doing business in New York to join the companies that have already discontinued their arrangements with the NRA, and to take prompt actions to manage these risks and promote public health and safety."[6]

Within two weeks, insurance companies that had previously provided insurance through the NRA had signed consent decrees stipulating that the insurance plan in question violated New York law and agreed to stop providing insurance programs through the NRA even if those programs were lawful. *Vullo I*, No. 22-842, slip op. at 5-6.

Without "break[ing] new ground," this Court has already determined that Superintendent Vullo violated the NRA's First Amendment rights. *Id.* at 18. Nonetheless, the Second Circuit on remand held that Superintendent Vullo was entitled to qualified

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[4] *Governor Cuomo Directs Department of Financial Services to Urge Companies to Weigh Reputational Risk of Business Ties to the NRA and Similar Organizations*, New York Dept. of Fin. Servs. (April 19, 2018), https://dfs.ny.gov/reports_and_publications/press_releases/pr1804181.

[5] *Id.*

[6] *Id.*

immunity. *Nat'l Rifle Ass'n of America v. Vullo*, No. 21-0636-cv, slip op. at 2 (2d Cir. July 17, 2025).

No government or government official should have the power to deprive a lawful organization of a full range of financial services. New York's actions in this case are inconsistent with the First Amendment's protection of Freedom of Association and Freedom of Speech and the Second Amendment Right to bear arms. New York's actions are contrary to the principle clearly established in this and lower courts' precedent that government may not circumvent constitutional protections merely by crafty maneuvering or by engaging the help of third parties. Further, the New York DFS's actions in this case are one instance among many efforts to silence disfavored speech or hinder free association in America in recent years. If the Constitution's protections are to be more than mere "parchment barriers,"[7] courts must serve as a backstop for fundamental rights against government action and speech that is intended to harm constitutionally protected interests even where it does so indirectly.

[7] The Federalist No. 48 at 276 (James Madison) (Clinton Rossiter ed., 1999).

ARGUMENT

I. This and Lower Courts' Existing Precedent Clearly Establishes the Principle that Efforts to Indirectly Circumvent the Constitution's Protections are Invalid Just as are Direct Efforts to Violate Them.

"*Bantam Books* stands for the principle that a government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Vullo I*, No. 22-842, slip op. at 11 (citing *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67-69 (1963)). This Court and lower courts have recognized limitations not only on overt and direct violations of the rights protected in the Constitution but also limitations on the government's ability to circumvent constitutional protections of individual rights.

"[Q]ualified immunity shields officials from civil liability so long as their conduct 'does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" *Mullenix v. Luna*, 577 U.S. 7, 11 (2015) (per curiam) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231 (2009)). A right is clearly established for the purposes of qualified immunity when it is "sufficiently clear that every reasonable official would have understood that what he was doing violates that right." *Id*. at 11 (internal quotation marks omitted). This Court and lower courts have repeatedly made clear that the Constitution's protections apply even when the government violates them either through otherwise

legal activity or through a third party. These cases and others establish that principle such that no reasonable official could be ignorant of it.

A. This Court's and lower courts' precedent on racial discrimination in education clearly establish the principle that government actions that, in another context and aimed at a different purpose, might be legal, are nonetheless unconstitutional where it is clear those actions were directed at circumventing constitutional protections.

After this Court's decision in *Brown v. Board of Education*, 347 U.S. 483 (1954), some school districts attempted to avoid the consequences of that decision without creating an opportunity for judicial review. Virginia, for example, passed a law creating a "Pupil Placement Board" which had authority to determine which schools students would attend. *Adkins v. Sch. Bd. of Newport News*, 148 F. Supp. 430, 441 (E.D. Va. 1957) Relatedly, the law prohibited students' changing schools unless approved by the Board, which approval would be given only for good cause. *Id.* The law was meant to maintain *de facto* segregation even though it had been recognized as unconstitutional.

Striking down this policy, the Eastern District of Virginia wrote, "Courts cannot be blind to the obvious, and the mere fact that Chapter 70 makes no mention of white or colored school children is immaterial when we consider the clear intent of the legislative body." *Id.* at 442. Because the purpose of the law in question was to continue segregation in contravention of the Court's

decision in *Brown*, the district court struck down the law.

Courts recognized this for what it was; an attempt to treat black students as second-class citizens despite the requirements of the Fourteenth Amendment's Equal Protection Clause. As this Court explained almost twenty years later:

> Any arrangement, implemented by state officials at any level, which significantly tends to perpetuate a dual school system, in whatever manner, is constitutionally impermissible. "[T]he constitutional rights of children not to be discriminated against . . . can neither be nullified openly and directly by state legislators or state executive or judicial officers, nor nullified indirectly by them through evasive schemes for segregation whether attempted 'ingeniously or ingenuously.'"

Gilmore v. Montgomery, Alabama, 417 U.S. 556, 568 (1974) (alteration in original) (quoting *Cooper v. Aaron*, 358 U.S. 1, 17 (1958)). Nor should government officials be able to stifle the core political activities of association and speech "through evasive schemes."

In this case, Superintendent Vullo engaged in what might constitute normal prosecutorial discretion in a different context. A state regulatory agency need not prosecute every potential violation of the law. What it cannot do is condition lenience in prosecution on the regulated entity's carrying out of the state's unconstitutional purpose. The words of Governor Cuomo and Superintendent Vullo make clear their

purpose: the stifling of speech with which they disagreed. In an attempt to avoid the First Amendment's protections, the New York government employed DFS to indirectly punish the NRA and chill the future speech and association of it and other Second Amendment advocacy organizations. Such use of third parties to accomplish what the government could not do directly is in principle no different than the stratagems employed by Virginia that were intended to prop up segregation post-*Brown*. In both similar and disparate contexts, this Court and lower courts have ruled clearly on the principle that government officials cannot circumvent the Constitution's protections by creative means.

B. This Court's and lower courts' precedent clearly establish that government cannot enlist the help of third parties to accomplish indirectly what it cannot accomplish directly.

The state cannot ask a third party to do what it could not do itself, nor may it use its regulatory power to bring about an end that it could not bring about directly. Lawfully, there can be no proxy war on constitutional rights. "The text and original meaning of [the First and Fourteenth] Amendments, as well as this Court's longstanding precedents, establish that the Free Speech Clause prohibits only *governmental* abridgment of speech. The Free Speech Clause does not prohibit *private* abridgment of speech." *Manhattan Community Access Corp. v. Halleck*, 139 S. Ct. 1921, 1928 (2019) (emphasis in original) (citing *Denver Area Ed. Telecommunications Consortium, Inc. v. FCC*, 518 U.S. 727, 737 (1996) (plurality

opinion); *Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston*, Inc., 515 U.S. 557, 566 (1995); *Hudgens v. NLRB*, 424 U.S. 507, 513 (1976); *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 256 (1974)). The barrier between state and private action created by the state-action doctrine "protects a robust sphere of individual liberty." *Manhattan Community Access Corp.*, 139 S. Ct. at 1928. Yet, the First Amendment rights to free association and speech must be protected against crafty government action that seeks to abuse that robust private sphere. The will-no-one-rid-me-of-this-troublesome-priest approach is not a legitimate means of accomplishing the unconstitutional.

In the Fourth Amendment context, courts have found that a suspect or defendant's constitutional rights may be violated even where the government is not the one directly carrying out the violation. *See Skinner v. Railway Labor Executives Ass'n*, 489 U.S. 602, 614 (1989) ("Whether a private party should be deemed an agent or instrument of the Government for Fourth Amendment purposes necessarily turns on the degree of the Government's participation in the private party's activities."). As the Sixth Circuit said, "[i]n the Fourth Amendment context, we have held that the government might violate a defendant's rights by 'instigating' or 'encouraging' a private party to extract a confession from a criminal defendant." *United States v. Folad*, 877 F.3d 250, 253 (6th Cir. 2017) (citing *United States v. Lambert*, 771 F.2d 83, 89 (6th Cir. 1985)). In the Fifth Amendment context as well, "courts have held that the government might violate a defendant's right by coercing or encouraging

a private party to extract a confession from a criminal defendant." *Id*. (citing *United States v. Garlock*, 19 F.3d 441, 443-44 (8th Cir. 1994)). Similarly, in the State Action context, government coercion or some forms of government encouragement intended to bring about a certain result can transform an otherwise private actor into an agent of the government. *Blum v. Yaretsky*, 457 U.S. 991, 1004 (1982). Thus, for example, the Fifth Circuit in *Missouri v. Biden*, found state action in federal officials sometimes-successful efforts to have certain social media posts downgraded or removed. *Missouri v. Biden*, No. 23-30445 (5th Cir. Oct. 3, 2023) *rev'd on other grounds sub nom Murthy v. Missouri*, 603 U.S. 43 (2024).

In this case, the government of New York used its regulatory power and the influence that comes with that power to attempt to bring about an unconstitutional end. Not by persuasive argument but by direct threat, the government here sought to make operation and advocacy much more difficult in New York for the NRA. "[T]he principle that a government official cannot do indirectly what she is barred from doing directly," was clearly established by *Bantam Books*, *Vullo I*, No. 22-842, slip op. at 11 (citing *Bantam Books*, 372 U.S. at 67-69), but not by that case alone. Any reasonable government official would know that she cannot employ a third party to punish or prevent First Amendment protected activity.

II. The Threat to First Amendment-Protected Activity is Real and the Second Circuit's Reasoning Would Open the Door for Creative Methods of Suppression.

Around the country in recent years, at both the state and federal levels, government officials have been threatening First Amendment freedoms. If the Second Circuit's reasoning in this case stands, government officials who wish to suppress speech would have a new tool.

A. Threats to free speech from the federal government.

Federal officials in recent years have made statements and taken actions that either directly harm free speech or that suggest a willingness to target speech in the future.

In September after the murder of Charlie Kirk, Attorney General Pam Bondi said in an interview that "[t]here's free speech and then there's hate speech, and there is no place, especially now, especially after what happened to Charlie, in our society."[8] Responding to a follow up question, General Bondi said, "We will absolutely target you, go after you, if you are targeting anyone with hate speech—and that's across the aisle."[9] In a post to X after public backlash, General

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[8] Alexander Mallin, *Bondi faces criticism for saying DOJ will 'target' anyone who engages in 'hate speech'*, ABC News (Sept. 16, 2025 10:49 AM) https://abcnews.go.com/Politics/bondi-faces-criticism-doj-target-engages-hate-speech/story?id=125621716.

[9] *Id*.

Bondi limited her claim to "[h]ate speech that crosses the line into threats of violence."[10]

Also in September, in response to a comment by late night host Jimmy Kimmel, the Chairman of the Federal Communications Commission (FCC), Brendan Carr, said, "Look, we can do this the easy way or the hard way. These companies can find ways to change conduct, to take action, frankly, on Kimmel, or, you know, there's going to be additional work for the FCC ahead."[11] Chairman Carr also warned that "[l]icensed broadcasters that aired Kimmel risked 'the possibility of fines or license revocations from the FCC if [they] continue to run content that ends up being a pattern of news distortion."[12] Within a few hours of Chairman Carr's statements, ABC suspended Mr. Kimmel's show, though it was reinstated the following week.[13]

In May 2022, the Department of Homeland Security announced that it was creating a

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[10] *Id.*

[11] Joseph A. Wulfsohn, *FCC chair levels threat against ABC, Disney after Kimmel suggests Charly Kirk assassin was 'MAGA'*, Fox News (Sept. 17, 2025 5:05 PM) https://www.foxnews.com/media/fcc-chair-levels-threat-against-abc-disney-after-kimmel-suggested-charlie-kirk-assassin-maga?msockid=227d31fe865e61a807282405874c60f]

[12] Kevin Collier, *Former FCC chairs urge agency to repeal 'news distortion' policy invoked by Trump administration*, NBC News (Nov. 13, 2025 6:05 AM) (second alteration in original) https://www.nbcnews.com/tech/tech-news/fcc-chair-trump-kimmel-60-minutes-policy-abc-disney-distortion-cbs-rcna243495.

[13] *Id.*

"Disinformation Governance Board" with the purported purpose of following disinformation in the media promulgated by foreign nations and criminal organizations.[14] The Board was quickly abandoned, however, in response to negative public reaction.

Perhaps Americans were particularly wary of potential government censorship after the same administration had pressured social media companies to take down speech that the government deemed dangerous related to the COVID-19 pandemic. According to the Fifth Circuit, beginning at least as early as "the 2020 presidential transition . . . federal officials had been in regular contact with every major American social-media company about the spread of 'misinformation' on their platforms." *Missouri v. Biden*, No. 23-30445, slip op. at 2 (5th Cir. Oct. 3, 2023). These officials "urged the platforms to remove disfavored content and accounts from their sites. And, the platforms seemingly complied." *Id.* These platforms even "changed their internal policies to capture more flagged content and sent steady reports on their moderation activities to the officials." *Id.*

Assessing these activities, the Fifth Circuit concluded that government officials "likely (1) coerced the platforms to make their moderation decisions by way of intimidating messages and threats of adverse consequences, and (2) significantly encouraged the platforms' decisions by commandeering their decision-

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[14] Disinformation Governance Board (2023) Free Speech Venter, Middle Tennessee State University (Aug. 11, 2023) https://firstamendment.mtsu.edu/article/disinformation-governance-board/.

making process, both in violation of the First Amendment." *Id*. at 43.

The Cybersecurity and Infrastructure Security Agency (CISA) was created as the result of a bill passed unanimously by both chambers of Congress and signed into law by President Trump in 2018.[15] CISA's purpose is to protect critical American infrastructure like the power grid. After its creation, existing DHS efforts to hinder "disinformation" were moved into CISA as part of the Countering Foreign Influence Task Force, which "[d]espite its name . . . targeted ***Americans*** in addition to foreign speech."[16] These efforts included coordinating with social media companies in an effort to censor election "misinformation."[17]

In 2022, the Department of Justice subpoenaed Eagle Forum of Alabama and the Southeast Law Institute for information relating to their role in drafting the Alabama Vulnerable Child Compassion and Protection Act. *Boe v. Marshall*, No. 2:22-cv-184-

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[15] *Remarks by President Trump at the Signing of H.R. 3359, Cybersecurity and Infrastructure Security Agency Act*, White House (Nov. 16, 2018), https:// trumpwhitehouse.archives.gov/ briefings-statements/remarks-president-trump-signing-h-r-3359-cybersecurity-infrastructure-security-agency-act/.

[16] S. Comm. on Commerce, Science and Transportation, 119th Cong., *The Mechanics of Government Censorship: How the Biden Administration Converted the Cybersecurity and Infrastructure Security Agency into the Thought Police* 8 (2025) (emphasis in original) available at https://www.commerce.senate.gov/services/files/BFE7787E-0C18-47DF-B781-D6B92613DDC3.

[17] *Id*.

LCB, slip op. at 1-2 (M.D. Ala. Oct. 24, 2022). That subpoena was "a transparent and flagrant violation of the First Amendment," an effort to "intimidate and chill the free speech, associational, and petitioning rights of an organization whose views" were, at the time, "contrary to those of the United States Government."[18] As the district court ultimately found, "[t]he Government's nonparty subpoena's [sought] material outside the scope of discovery." *Marshall*, No. 2:22-cv-184-LCB, slip op. at 5.

B. Threats to free speech from state and local governments.

State and local governments around the country have also posed threats to free speech in recent years. For example, a school district in Ohio "bars its students from referring to transgender and nonbinary classmates using pronouns that match their biological sex if classmates prefer to go by different pronouns." *Defending Ed. v. Olentangy Local Sch. Dist. Bd. of Ed.*, No. 23-3630, slip op. at 3 (6th Cir. Nov. 6, 2025). Despite recognizing the school district's "duty to protect all students . . . from bullying and harassment," the Sixth Circuit found that the district's policy fell "far short of meeting" the "demanding" First Amendment standard." *Id.*

In Tennessee, a man spent more than five weeks in prison for an objectionable social media post in the

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[18] Br. of Amici Curiae Advancing American Freedom, et al., at 7, *Marshall*, No. 2:22-cv-184-LCB (M.D. Ala. Sept. 21, 2022) available at https://advancingamericanfreedom.com/as-filed-amicus-brief-in-eagle-forum-subpoena-case/.

aftermath of the murder of Charlie Kirk.[19] His bond was set at $2 million after the local sheriff arrested him claiming that the post was causing "alarm" about a possible school shooting in the community.[20] The charges against the man were ultimately dropped but not before he spent more than a month in jail.

There are also several important cases posing First Amendment questions currently pending this Court's consideration. In *Chiles v. Salazar*, Petitioner is challenging a Colorado law prohibiting counselors from engaging in "any practice or treatment . . . that attempts or purports to change an individual's sexual orientation or gender identity" when the patient is under 18 years of age.[21]

In *Miller v. Civil Rights Department*, a Christian bake shop owner is defending herself against claims from the California government after she chose not to express an idea with which she disagrees through her baking.[22]

And in *First Choice Women's Resource Centers v. Platkin*, a pro-life women's resource center is challenging an aggressive subpoena sought by New

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[19] R.J. Rico, *Felony dropped after a man spent a month in a Tennessee jail for a Charlie Kirk post*, Associated Press (Oct. 30, 2025 12:45 PM) https://apnews.com/article/charlie-kirk-meme-tennessee-arrest-larry-bushart-02b445f454bcfb657a48e8fa7e8ddfc9.

[20] *Id*.

[21] Petition for Certiorari at 10, *Chiles v. Salazar*, No. 24-539 (Nov. 8, 2024).

[22] Petition for Certiorari at 1, *Miller v. Civil Rights Department*, No. 25-233 (Aug. 26, 2025).

Jersey Attorney General Matthew Platkin including the demand for donor information.[23]

Throughout the country, government officials are testing the limits of their power to silence speech to which they object or coerce speech they deem essential. This Court should grant the NRA's petition for certiorari and make clear that government officials cannot hide behind qualified immunity merely by finding novel ways of violating First Amendment rights.

III. The New York Government's Actions Here Unconstitutionally Harm the NRA and Other Second Amendment Advocacy Organizations' Right to Free Association.

New York's efforts to undermine the NRA and other Second Amendment advocacy groups' ability to operate violate the freedom to associate protected by the First Amendment. Association is an American tradition. As Alexis de Tocqueville noted, early Americans made a habit of forming associations. Unlike in aristocratic societies where aristocrats hold the power and those beneath them carry out their will, in America, "all citizens are independent and weak; they can hardly do anything by themselves, and no one among them can compel his fellows to lend him their help. So they all fall into impotence if they do not learn to help each other freely."[24] Moreover, "[w]hen you

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[23] Br. for Petitioner at 3, *First Choice Women's Resource Centers, Inc., v. Platkin*, No. 24-781 (Aug. 21, 2025).

[24] 3 Alexis de Tocqueville, *Democracy in America*, 898 (Eduardo Nolla ed., James T. Schleifer trans., Indianapolis: Liberty Fund, Inc. 2010) (1840).

allow [citizens] to associate freely in everything, they end up seeing in association the universal and, so to speak, unique means that men can use to attain the various ends that they propose."[25] In America, "[t]he art of association then becomes . . . the mother science; everyone studies it and applies it."[26]

This American tradition was enshrined in the First Amendment. This Court has "long understood" the rights of Free Speech and Peaceable Assembly, and Petition in the First Amendment to imply "a corresponding right to associate with others." *Ams. for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2382 (2021) (quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 622 (1984)). Such 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.'" *Id.* (quoting *United States Jaycees*, 486 U.S. at 622).

This Court has recognized what de Tocqueville found Americans knew at the dawn of our Republic: "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," *Ams. for Prosperity Found.*, 141 S. Ct. at 2382 (internal quotation marks omitted) (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)), and that "[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an

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[25] *Id.* at 914.

[26] *Id.*

inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama*, 357 U.S. at 460 (citing *Gitlow v. New York*, 268 U.S. 652, 666 (1925)). Further, "'it is immaterial' to the level of scrutiny 'whether the beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters.'" *Ams. for Prosperity Found.*, 141 S. Ct. at 2383 (quoting *NAACP v. Alabama*, 357 U.S. at 460-61). In this case, Governor Cuomo and Superintendent Vullo sought to undermine political diversity by squeezing organizations that advocate views with which they disagree out of the marketplace for financial services, and thus to squeeze those views out of the marketplace of ideas. Such an effort to impose ideological uniformity on the political landscape of New York is antithetical to the First Amendment's protections of association and speech.

The government's actions here harm the associational interests of banks and insurance companies on the one hand, and the NRA and similar organizations on the other. Banks and insurance companies that operate in New York will reasonably believe that doing business with the NRA and other Second Amendment advocacy organizations will invite some form of retaliation by the State of New York. DFS "urge[d] all insurance companies and banks doing business in New York to join the companies that have already discontinued their arrangements with the NRA, and to take prompt actions to manage these

risks and promote public health and safety."[27] Further, New York's DFS has already pursued regulatory enforcement action against organizations doing business with the NRA and is alleged, in at least one instance, to have offered lenience in exchange for that business's cessation of economic association with the NRA.[28] Insurance companies and banks thus may dissociate from the NRA and other similar organizations not because those companies and banks are unwilling to do business with Second Amendment advocacy organizations in principle, but because they are seeking to avoid becoming DFS's target. The chilling effect is obvious.

Further, New York's actions here harm the associational interests of the NRA and its members. Some NRA members in New York, seeing the pressure the government is placing on the organization, may conclude that it is in their interest to disassociate from the NRA or other similar organizations. For example,

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[27] *Governor Cuomo Directs Department of Financial Services to Urge Companies to Weigh Reputational Risk of Business Ties to the NRA and Similar Organizations*, New York Dept. of Fin. Servs. (April 19, 2018), https://dfs.ny.gov/reports_and_publications/press_releases/pr1804181.

[28] Vullo, once in court "assume[d] in the alternative" that she had met with at least one insurance company and "offered leniency in exchange for help advancing her policy goals." *NRA v. Vullo*, 49 F.4th 700, 713 (2d Cir. 2022). Specifically, she "presented [her] views on gun control and [her] desire to leverage [her] powers to combat the availability of firearms." *Id.* at 708 (alterations in original). Vullo explained how this insurance provider was violating New York law but told its representatives that it could "come into compliance and 'avoid liability' for its regulatory infractions, including by no longer 'providing insurance to gun groups' like the NRA." *Id.* at 708.

a small or mid-size business owner could reasonably believe that while banks and insurance companies are the target of New York's zealotry today, their business may well be a target in the future. For the same reasons a person who might otherwise have joined one of these targeted organizations might decide not to do so. Superintendent Vullo acted here in a way that both invites and facilitates backlash against free association, and which may limit the ability of the NRA and its members freely to associate.

Finally, Superintendent Vullo's actions here harm the interests of members and potential members of the NRA and similar groups by shrinking the effectiveness and reach of such groups and, potentially, driving them out of business and out of the public square in New York entirely. If Superintendent Vullo's goal were realized, those in the state who wished to advocate for the Second Amendment would be unable to organize and operate effectively because they would be barred from banking and other financial services necessary to organize in the modern world.

"The right of the people to keep and bear arms", U.S. Const. amend. II, is not a "second-class right." *See McDonald v. Chicago*, 561 U.S. 742, 780 (2010). Neither is freedom of association.[29] The government of

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[29] While Freedom of Association is not as vivid in the popular imagination as Freedom of Speech, the Court recognizes its importance in several contexts. Governments can violate the First Amendment's protection of Free Association by forcing a group "to take in members it does not want," punishing individuals "for their political affiliation," denying benefits to members of an organization because of the organization's

New York here has treated both rights as if they were. The Court should not leave these fundamental rights without vindication in this case.

CONCLUSION

The Court should rule for Petitioners.

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message or forcing organizations to disclose their membership. *Ams. for Prosperity Found.*, 594 U.S. at 606 (citing *United States Jaycees*, 468 U.S. at 623; *Elrod v. Burns*, 427 U.S. 347, 355 (1976) (plurality opinion); *Healy v. James*, 408 U.S. 169, 181-182 (1972); *NAACP v. Alabama ex rel Patterson*, 357 U.S. 449, 462 (1958)). In *Americans for Prosperity Foundation*, the Court noted that the forced disclosure of member lists at issue in *NAACP v. Alabama* constituted a "chilling effect in its starkest form." *Id.* Here, too, the government's actions are likely to chill association in the state of New York.