

24-2481-CV

United States Court of Appeals
for the
Second Circuit

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES,
GIANNA'S HOUSE, INC., CHOOSE LIFE OF JAMESTOWN, INC.,
d/b/a Options Care Center,

Plaintiffs-Appellees,

— v. —

LETITIA JAMES,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

**BRIEF OF *AMICI CURIAE* ADVANCING AMERICAN FREEDOM, INC.;
ALABAMA POLICY INSTITUTE; ALASKA FAMILY ACTION;
AMERICAN ASSOCIATION OF SENIOR CITIZENS;
AMERICAN LEGISLATIVE EXCHANGE COUNCIL;
[ADDITIONAL *AMICI CURIAE* LISTED ON INSIDE COVER]**

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AMERICAN VALUES; AMERICANS UNITED FOR LIFE; ANGLICANS FOR LIFE; ARKANSAS FAMILY COUNCIL; ASSOCIATION OF MATURE AMERICAN CITIZENS; CENTER FOR A FREE ECONOMY; CENTER FOR POLITICAL RENEWAL; CENTER FOR URBAN RENEWAL AND EDUCATION (CURE); CHRISTIAN MEDICAL & DENTAL ASSOCIATIONS; COALITION FOR JEWISH VALUES; DELAWARE FAMILY POLICY COUNCIL; CHARLIE GEROW; INTERNATIONAL CONFERENCE OF EVANGELICAL CHAPLAIN ENDORSERS; JAMES DOBSON FAMILY INSTITUTE; TIM JONES, FORMER SPEAKER, MISSOURI HOUSE, CHAIRMAN, MISSOURI CENTER-RIGHT COALITION; LUTHERAN CENTER FOR RELIGIOUS LIBERTY; MEN FOR LIFE; NATIONAL APOSTOLIC CHRISTIAN LEADERSHIP CONFERENCE; NATIONAL CENTER FOR PUBLIC POLICY RESEARCH; NEW YORK STATE CONSERVATIVE PARTY; MELISSA ORTIZ, PRINCIPAL & FOUNDER, CAPABILITY CONSULTING; RESTORE MINNESOTA ACTION; SECURE AMERICA NOW; SETTING THINGS RIGHT; 60 PLUS ASSOCIATION; SOUTHEASTERN LEGAL FOUNDATION; PAUL STAM, FORMER SPEAKER PRO TEMPORE, NORTH CAROLINA HOUSE; STAND FOR GEORGIA VALUES ACTION; STAND UP MICHIGAN; STUDENTS FOR LIFE OF AMERICA; TEA PARTY PATRIOTS ACTION, INC.; THE FAMILY FOUNDATION OF VIRGINIA; THE JUSTICE FOUNDATION; TRADITION, FAMILY, PROPERTY, INC.; WISCONSIN FAMILY ACTION, INC.; YOUNG AMERICA'S FOUNDATION; AND YOUNG CONSERVATIVES OF TEXAS IN SUPPORT OF PLAINTIFFS-APPELLEES

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The amici curiae Advancing American Freedom, Inc.; Alabama Policy Institute; Alaska Family Action; American Association of Senior Citizens; American Legislative Exchange Council; American Values; Americans United for Life; Anglicans for Life; Arkansas Family Council; Association of Mature American Citizens; Center for a Free Economy; Center for Political Renewal; Center for Urban Renewal and Education (CURE); Christian Medical & Dental Associations; Coalition for Jewish Values; Delaware Family Policy Council; Charlie Gerow; International Conference of Evangelical Chaplain Endorsers; James Dobson Family Institute; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Lutheran Center for Religious Liberty; Men for Life; National Apostolic Christian Leadership Conference; National Center for Public Policy Research; New York State Conservative Party; Melissa Ortiz, Principal & Founder, Capability Consulting; Restore Minnesota Action; Secure America Now; Setting Things Right; 60 Plus Association; Southeastern Legal Foundation; Paul Stam, Former Speaker Pro Tempore, North Carolina House; Stand for Georgia Values Action; Stand Up Michigan; Students for Life of America; Tea Party Patriots Action, Inc.; The Family Foundation of Virginia; The Justice Foundation; Tradition, Family, Property, Inc.; Wisconsin Family Action, Inc.; Young America's Foundation; and Young Conservatives of Texas are nonprofit corporations. They do not issue stock

and are neither owned by nor are the owners of any other corporate entity, in part or in whole. They have no parent companies, subsidiaries, affiliates, or members that have issued shares or debt securities to the public. The corporations are operated by volunteer boards of directors.

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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 the fundamental American idea that all men are created equal and endowed by their Creator with unalienable rights to life, liberty, and the pursuit of happiness.¹ AAF has an interest in the continued freedom of organizations to advocate for their beliefs, whether political, social, or otherwise, without fear of government retaliation, and “will continue to serve as a beacon for conservative ideas, a reminder to all branches of government of their responsibilities to the nation.”² AAF files this amicus brief on behalf of its 4,975 members in New York and 6,176 members in the Second Circuit.

Amici Alabama Policy Institute; Alaska Family Action; American Association of Senior Citizens; American Legislative Exchange Council; American Values; Americans United for Life; Anglicans for Life; Arkansas Family Council; Association of Mature American Citizens; Center for a Free Economy; Center for Political Renewal; Center for Urban Renewal and Education (CURE); Christian

¹ All parties consented to 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).

Medical & Dental Associations; Coalition for Jewish Values; Delaware Family Policy Council; Charlie Gerow; International Conference of Evangelical Chaplain Endorsers; James Dobson Family Institute; Tim Jones, Former Speaker, Missouri House, Chairman, Missouri Center-Right Coalition; Lutheran Center for Religious Liberty; Men for Life; National Apostolic Christian Leadership Conference; National Center for Public Policy Research; New York State Conservative Party; Melissa Ortiz, Principal & Founder, Capability Consulting; Restore Minnesota Action; Secure America Now; Setting Things Right; 60 Plus Association; Southeastern Legal Foundation; Paul Stam, Former Speaker Pro Tempore, North Carolina House; Stand for Georgia Values Action; Stand Up Michigan; Students for Life of America; Tea Party Patriots Action, Inc.; The Family Foundation of Virginia; The Justice Foundation; Tradition, Family, Property, Inc.; Wisconsin Family Action, Inc.; Young America's Foundation; and Young Conservatives of Texas believe in the importance of free speech and free association and are concerned about government overreach that infringes on those rights.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The American Constitution is designed to effectuate the purpose of government: protecting the liberty of the people. That liberty depends on the rule of law which is undermined when a government official uses her power to advance her political agenda at any cost. This case is an instance of such disregard for the rule of law in New York. Rather than enforcing the law, New York Attorney General Letitia James is using her office to advance a pro-abortion agenda. This includes threatening the ability of crisis pregnancy centers specifically, and pro-life organizations generally, to engage in the exercise of their rights to free speech and free association. Because even the threat of prosecution causes harm, organizations need the opportunity to seek relief in federal courts.

Ms. James falsely claimed that statements about progesterone therapy made by National Institute of Family and Life Advocates (hereinafter “NIFLA”) and two of its member centers, Gianna’s House and Options Care Center, constituted “deceptive acts or practices” and “false advertising” under New York law, prompting this case. Given Ms. James’ record of pro-abortion and anti-pro-life pregnancy center advocacy while in office, this intimidation tactic to chill pro-life speech and disrupt freedom of association is not surprising.³

³ For example, Ms. James called the Supreme Court’s decision in *Dobbs v. Jackson Women’s Health*, 597 U.S. 215 (2022) “one of the darkest moments in the history of

Ms. James’ actions in this case are inconsistent with the First Amendment’s protection of free speech and free association. Federal courts must be able to review State action that is intended to harm constitutionally protected interests. This Court should rule for Plaintiffs-Appellees-Cross-Appellants.

ARGUMENT

I. Government Officials’ Efforts to Circumvent the Constitution’s Protections are Subject to Judicial Review Just as are Direct Efforts to Violate Them.

Governments are “instituted among Men” to secure their individual rights to “life, liberty, and the pursuit of happiness.” *The Declaration of Independence* para. 2 (U.S. 1776). Yet, government itself represents a significant danger to individual rights. As James Madison wrote, because men are not angels, “the great difficulty” in “framing a government” is that “[y]ou must first enable the government to control the governed; and in the next place, oblige it to control itself.”⁴ The Constitution, as amended by the Fourteenth Amendment, binds the authority of State officials in order to protect the rights with which individuals were endowed “by their Creator.” *The Declaration of Independence* para. 2 (U.S. 1776). As the Founders would not be surprised to learn, government officials today are seeking to take away, go

this nation.” Letita James (@NewYorkStateAG), X (June 24, 2022, 10:18 AM), <https://x.com/NewYorkStateAG/status/1540338658036817927>.

⁴ The Federalist No. 51 at 269 (James Madison) (George W. Carey and James McClellan, eds., The Liberty Fund 2001).

around, or leap over the barriers erected by the Constitution. If such efforts are successful, the guarantees of the Constitution will have offer no more protection than mere “parchment barriers.”⁵

“The Constitution deals with substance, not shadows,” and its prohibition on the infringement of First Amendment rights ought to be “levelled at the thing, not the name.” *Students for Fair Admissions v. Presidents and Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2176 (2023) (internal quotation marks omitted) (quoting *Cummings v. Missouri*, 4 Wall. 277, 325 (1867)). 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.

This is not the first time the State of New York has trampled upon the rights of groups that its elected officials disagree with. In 2017, New York’s Department of Financial Services (DFS) opened an investigation into insurance programs offered by the National Rifle Association of America (NRA) through third party insurance companies. *Nat’l Rifle Ass’n v. Vullo*, 49 F.4th 700, 706 (2d Cir. 2022) [hereinafter *NRA v. Vullo*]. Specifically, insurance policies offered through the NRA covered, among other matters, legal fees for those who used their gun in self-defense and were

⁵ The Federalist No. 48 at 256 (James Madison) (George W. Carey and James McClellan, eds., The Liberty Fund 2001).

ultimately found to have violated the law in doing so. *Id.* at 718. Asserting that these policies were insuring against violations of the law, DFS claimed that the insurance policies themselves violated the law. With these investigations and consent decrees in the background, on April 19, 2018, Superintendent of Financial Services Maria T. Vullo issued a statement saying, “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

That press release was issued in conjunction with DFS’s guidance memo, signed by Superintendent Vullo. Issued in response to the 2018 school shooting in Parkland, Florida, the guidance explained that the “social backlash against the NRA, and similar organizations that promote guns that lead to senseless violence . . . can no longer be ignored” and that “society, as a whole . . . is demanding change now.”⁷

Building on the charge that advocacy for the preservation and exercise of a constitutional right leads to the killing of children, the guidance went on to say that there is precedent for businesses acting to fulfill “their corporate and social

⁶ *Id.*

⁷ Superintendent Maria T. Vullo, New York Dept. Fin. Servs., *Guidance on Risk Management Relating to the NRA and Similar Gun Promotion Organizations*, (April 19, 2018), https://www.dfs.ny.gov/industry_guidance/industry_letters/il20180419_guidance_risk_mgmt_nra_NRA_similar_gun_promotion_orgs_insurance_industry.

responsibility. The recent actions of a number of financial institutions that severed their ties with the NRA after the AR-15 style rifle killed 17 people in the school in Parkland, Florida is an example of such a precedent.”⁸ Mere months after opening an investigation into insurers that worked with the NRA,⁹ the DFS guidance concluded with an encouragement to “its insurers to continue evaluating and managing their risks, including reputational risks, that may arise from their dealings with the NRA or similar gun promotion organizations” and “to take prompt actions to managing [sic] these risks and promote public health and safety.”¹⁰

In *National Rifle Association of America v. Vullo*, the Supreme Court ruled unanimously for the NRA, holding that the State of New York “violated the First Amendment by coercing DFS-regulated entities to terminate their business relationships with the NRA in order to punish or suppress gun-promotion advocacy.” 602 U.S. ___, No. 22-842 at 6 (May 30, 2024). The Court rightly recognized that

⁸ *Id.*

⁹ *NRA v. Vullo*, 49 F.4th at 706 (noting that DFS had begun its investigation into “the legality of certain NRA-endorsed insurance programs” in October 2017).

¹⁰ *Id.* One day after the issuance of the DFS guidance, Governor Cuomo said in a post on Twitter, “The NRA is an extremist organization. I urge companies in New York State to revisit any ties they have to the NRA and consider their reputations, and responsibility to the public.” Andrew Cuomo (@NYGovCuomo), X (Apr. 20, 2018, 8:58 AM), <https://x.com/NYGovCuomo/status/987359763825614848>.

efforts to use government power to suppress speech with which the government disagrees politically is unconstitutional. This case is fundamentally the same.

II. New York Attorney General James' Actions Here Unconstitutionally Harm the First Amendment-Recognized Free Speech and Free Association Rights of Gianna's House, Options Care Center, and Other New York Pro-Life Pregnancy Centers.

Ms. James' efforts to undermine the pro-life pregnancy centers' ability to operate violate the freedom to associate, a right that is protected by the First Amendment and 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."¹¹ Moreover, "[w]hen you 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."¹² In America, "[t]he art of

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

¹² *Id.* at 914.

association then becomes . . . the mother science; everyone studies it and applies it.”¹³

This American tradition was enshrined in the First Amendment. The Supreme Court has “long understood” the rights of free speech, 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).

The Supreme Court has recognized what Tocqueville found Americans knew at the dawn of our Republic: “Effective 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 inseparable aspect of the ‘liberty’ assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of

¹³ *Id.*

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, Ms. James sought to undermine political diversity by squeezing organizations that advocate views and provide services with which she disagrees. Such an effort to impose philosophical uniformity on the healthcare landscape of New York is antithetical to the First Amendment’s protections of association and speech. The bar for constitutional review in freedom association cases is low and was clearly exceeded in this case.

Ms. James seems clearly to have targeted NIFLA and its centers, using her otherwise legitimate power of punishing false and deceptive advertising not to pursue genuine violations of law but to punish ideological opponents. Doing so is a win-win for Ms. James. If she succeeds, she will have silenced groups working to save the lives of the unborn and protect women from regret.¹⁴ On the other hand, even if the courts rule against her censorship effort, as NIFLA points out in its petition, these ill-founded speech restrictions will impose a massive financial burden

¹⁴ As William F. Buckley, Jr. memorably wrote, “[Liberals claim to want to give a hearing to other views, but then are shocked and offended to discover that there are other views.](#)” William F. Buckley, Jr., *On the Inculcated and the Inculcators*, National Review (Jan. 11, 1956) <https://www.nationalreview.com/1956/01/on-the-inculcated-and-the-inculcators/>.

on NIFLA, the legal expenses of which will prevent it from carrying out its mission in the short term. In doing so, these legal threats and accusations succeed in undermining the work towards which Ms. James has demonstrated antipathy. If the courts reject her bid to suppress NIFLA's speech, she will at least have absorbed NIFLA's resources in the form of legal costs and time and can present the battle as part of her pro-abortion bona fides.

The question before this Court is not primarily who will win and who will lose. The question is the degree of harm Ms. James will be able to impose on New York pro-life pregnancy centers in general and on NIFLA affiliates like Gianna's House and Options Care Center in particular.

No State official should be able to use his legitimate law enforcement power to pursue those with whom she disagrees politically. This case presents an opportunity for this Court to make clear that such targeting is a direct violation of constitutional rule of law.

III. Defendant Has Shown a Pattern of Mistreating Political Opponents.

This is not the first time that Attorney General James has weaponized her office to target people and groups who disagree with her political views.

Ms. James spent her 2018 campaign for Attorney General stating her intentions to litigate against President Trump at every turn, including calls for an indictment on charges of obstruction of justice and accusations of real estate money

laundering.¹⁵ In a debate, Ms. James said that she would “focus on Donald Trump” if elected. In her victory speech, Ms. James described her campaign as “about that man in the White House who can’t go a day without threatening our fundamental rights.” She subsequently pledged to “shin[e] a bright light into every dark corner of his real estate dealings”¹⁶ and “use every area of the law to investigate President Trump and his business transactions and that of his family as well.”¹⁷

As Attorney General, Ms. James has shown specific antipathy for crisis pregnancy resource centers, which she has called “fake clinics,” and has taken legal action against other pro-life organizations.”¹⁸ She has cheered on New York Governor Kathy Hochul, who has refused to extradite abortion provider Maggie

¹⁵ *Why Letitia James Wants to Take on Trump as NY’s Attorney General*, NOWTHIS NEWS (Sept. 28, 2018), 2:01, at <https://www.youtube.com/watch?v=D1yj0NKSsuU>.

¹⁶ Max Matza, *Letitia James and Donald Trump’s History of Clashes*, BBC (Sept. 27, 2023) <https://www.bbc.com/news/world-us-canada-63000691>.

¹⁷ Andy Katz, *Incoming New York Attorney General Plans Wide-Ranging Investigations of Trump and Family*, NBC NEWS (Dec. 12, 2018), at <https://www.nbcnews.com/politics/donaldtrump/incoming-new-york-attorney-general-plans-wide-ranging-investigations-trump-n946706>.

¹⁸ See Letitia James & Andrea Miller, *With Fake Clinics Proliferating, New Yorkers Should Know Their Reproductive Health Care Rights* (Sep. 24, 2018), GOTHAM GAZETTE, <https://perma.cc/6AMY-82DQ>; Press Release, *Office of the New York State Attorney General, Attorney General James Sues Anti-Abortion Group and 11 New York Crisis Pregnancy Centers for Promoting Unproven Abortion Reversal Treatment* (May 6, 2024), <https://perma.cc/U572-Z6FR>; Letitia James (@NewYorkStateAG), X (Aug. 25, 2022, 2:06 PM), <https://perma.cc/M59B-NJDZ>; Letitia James (@NewYorkStateAG), X (Jun. 29, 2022, 2:50 PM), <https://perma.cc/5FAS-MQ3K>.

Carpenter to Louisiana to face justice for sending abortion drugs there in violation of Louisiana's pro-life laws.¹⁹ This pattern of behavior indicates Attorney General James' prejudicial approach to the law, treating it as a weapon to wield against those for whom she holds antipathy.

CONCLUSION

The Court should rule for Plaintiffs-Appellees-Cross-Appellants.

Respectfully submitted,

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¹⁹ See Press Release, Office of the New York State Attorney General, *Attorney General James Releases Statement in Response to Louisiana Indictment of New York Doctor* (January 31, 2025), <https://ag.ny.gov/press-release/2025/attorney-general-james-releases-statement-response-louisiana-indictment-new-york>.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and Fed. R. App. P. 32(a)(7)(B) because it contains 2,857 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman type style.

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