
PRUDENCE OR ABDICATION? PRUDENTIAL RIPENESS AND THE FEDERAL FORUM GUARANTEE

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INTRODUCTION

The Supreme Court is set to hear a case challenging a doctrine that many argue enables “treason to the Constitution” by allowing courts to avoid deciding cases they are duty-bound to hear.¹ The case is *First Choice Women’s Resource Centers, Inc. v. Platkin*. And the doctrine—a peculiar bird—is prudential ripeness. Ripeness, in general, plays an immensely important role in the adjudication of constitutional rights because it is a key component of justiciability, used to determine whether a dispute is sufficiently developed for judicial resolution.² But not all forms of ripeness are the same—in fact, there are two types. Constitutional ripeness is grounded in Article III of the Constitution and ensures that courts do not decide abstract or hypothetical controversies.³ Prudential ripeness, by contrast, is a judge-made doctrine that permits courts to delay adjudication even when all Article III requirements are met.⁴ This form of discretionary restraint is justified on pragmatic grounds—efficiency, timing, or judicial modesty. But when courts invoke prudential ripeness to withhold judgment on otherwise justiciable constitutional claims, they risk undermining Congress’s decision to provide a federal forum and deny timely relief to those facing imminent constitutional harm. The facts of *First Choice* offer a vivid, and quite complex, example—one that unfolds as a procedural saga crossing courts and jurisdictions like a legal relay race.

The case began when the New Jersey Attorney General issued an unusually broad administrative subpoena to First Choice—a nonprofit network of pro-life pregnancy centers—claiming it may have misled consumers.⁵ Citing three

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1. *See* *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821).

2. 15 MOORE’S FEDERAL PRACTICE § 101.70 (3d ed. 2025).

3. *Id.*

4. *Id.*

5. Petition for a Writ of Certiorari at 2, *First Choice Women’s Res. Ctrs., Inc. v. Platkin*, 145 S. Ct. 2793 (2025) (No. 24-781).

statutory provisions, including the New Jersey Consumer Fraud Act, the Attorney General demanded ten years of internal records, including the names of thousands of donors and clients.⁶

With just two days before the subpoena deadline, First Choice turned to federal court.⁷ It filed suit under 42 U.S.C. § 1983, arguing that the subpoena violated its First and Fourteenth Amendment rights and seeking a temporary restraining order.⁸ Although the Attorney General didn't challenge jurisdiction, the district court dismissed the case for that reason, finding the claims unripe until "the state court enforces the Subpoena."⁹

After the dismissal in federal court, the Attorney General took matters to state court to compel compliance.¹⁰ The state court granted enforcement—but declined to touch the constitutional issues First Choice had raised.¹¹ First Choice then appealed the order and began turning over documents, while continuing to object to disclosing its donors' identities.¹² Although the Attorney General later filed a motion "to enforce litigant's rights," seeking full compliance with the subpoena—including donor names—and asked the court to impose sanctions, the state court held off, waiting for the appeal to play out.¹³

In the meantime, the Third Circuit dismissed First Choice's federal appeal as moot and sent the case back to the district court.¹⁴ Importantly, the appellate court emphasized that "[b]ased on subsequent developments in state court, it is now undisputed that [First Choice's] claims are ripe."¹⁵ Yet the district court still wasn't convinced.¹⁶ It held the claims weren't ripe yet, reasoning that nothing would be ready for adjudication until the state court explicitly ordered compliance "under threat of contempt."¹⁷ First Choice appealed again, now facing a labyrinth of overlapping state and federal proceedings.¹⁸

Not long after, the state court denied the Attorney General's enforcement and sanctions motion, noting that First Choice had complied "in full" with its order.¹⁹ Once again, the court reiterated it had never ruled on the constitutional issues at the center of the dispute.²⁰

6. *Id.* app. at 90a, 100a–10a.

7. *Id.* app. at 111a–42a.

8. *Id.*

9. *Id.* app. at 80a.

10. *Id.* at 11.

11. *Id.* app. at 156a–58a.

12. *Id.* at 11–12.

13. *Id.* app. at 59a, 62a.

14. *See* First Choice Women's Res. Ctrs., Inc. v. Att'y Gen. N.J., No. 24-1111, 2024 WL 3493288, at *1 (3d Cir. July 9, 2024).

15. *Id.*

16. Petition for a Writ of Certiorari, *supra* note 5, app. at 26a.

17. *Id.* app. at 42a; *see also id.* app. at 26a.

18. *Id.* at 13.

19. *Id.*

20. *Id.*

With the case again before the Third Circuit, the divided court affirmed the district court's dismissal in a per curiam opinion.²¹ Raising prudential ripeness concerns, the majority reasoned that First Choice could still raise its federal constitutional claims in state court, and that federal intervention would be premature.²² But it said little about the risk that, by the time the state court acted, access to a federal forum might be permanently lost.²³ In doing so, the court adopted the Fifth Circuit's take on ripeness and parted ways with the Ninth—widening an already active circuit split.²⁴

The procedural chaos in *First Choice* is more than a case-management headache—it highlights the immense power federal courts wield over whether and when plaintiffs may adjudicate constitutional claims in a federal forum. The case raises a pressing question: can federal courts decline to hear constitutionally justiciable claims based solely on prudential considerations? This Article argues they cannot. Part I examines the uncertain origins and evolution of the prudential ripeness doctrine, revealing its tenuous constitutional foundation and the Supreme Court's recent skepticism toward its application. Part II focuses on § 1983—the statute where this doctrine most often emerges—demonstrating that Congress enacted it to guarantee immediate federal access, not to make plaintiffs dependent on state court proceedings. Part III details the structural and doctrinal harms that result when courts invoke prudential ripeness to avoid review: it creates procedural traps that can bar plaintiffs from ever obtaining federal review, encourages judicial abdication of the constitutional duty to decide cases within the court's jurisdiction, and treats jurisdictional statutes—like § 1343—as discretionary rather than binding mandates. Lastly, Part IV offers two paths forward: a broader one that calls for abandoning prudential ripeness entirely and returning the doctrine to its constitutional foundations, and a narrower one that urges the Court to reject the *Hood* rule and ensure that pre-enforcement constitutional challenges—particularly under § 1983—receive timely federal review.

I. FROM BRANDEIS TO *KMICK*: THE RISE AND EROSION OF PRUDENTIAL RIPENESS

Though often described in constitutional terms, the ripeness doctrine has long suffered from an unclear legal pedigree. The Supreme Court has at times traced ripeness to Article III, yet many foundational ripeness cases make no mention of constitutional requirements at all. Justice Brandeis's famous concurrence in *Ashwander v. Tennessee Valley Authority* introduced what later became known as ripeness, emphasizing that courts should avoid constitutional rulings unless absolutely necessary, and only in the context of a “real, earnest,

21. *Id.* app. at 3a–5a.

22. *Id.* app. at 4a–5a.

23. *See id.*

24. *See id.*; *see also* Google, Inc. v. Hood, 822 F.3d 212 (5th Cir. 2016); Twitter, Inc. v. Paxton, 56 F.4th 1170 (9th Cir. 2022).

and vital controversy”²⁵ Yet Brandeis seemed to present these ideas as discretionary tools—not jurisdictional mandates.²⁶

The Court’s modern ripeness framework emerged in *Abbott Laboratories v. Gardner*, which held that courts should avoid premature adjudication to prevent entanglement in “abstract disagreements” over policy, and that a ripeness inquiry requires assessing both the “fitness of the issues for judicial decision” and the “hardship to the parties of withholding court consideration.”²⁷ While the Court acknowledged the plaintiffs’ standing, it made no effort to anchor ripeness in Article III. Instead, the decision relied on the Administrative Procedure Act, further suggesting that ripeness was a matter of statutory or prudential concern.²⁸

Confusion deepened in later cases. In *Socialist Labor Party v. Gilligan*, the Court said jurisdiction “should not be exercised unless the case ‘tenders the underlying constitutional issues in clean-cut and concrete form,’” implicitly treating ripeness as a prudential restraint rather than a constitutional command.²⁹ But in the *Regional Rail Reorganization Act Cases*, the Court described ripeness as partly involving the existence of a “Case or Controversy” under Article III, while also invoking judicial restraint.³⁰ Two years later, in *Buckley v. Valeo*, the Court again seemed to call ripeness a prudential doctrine, distinguishing it from Article III’s case or controversy limits.³¹

Despite it lacking a constitutional or statutory foundation, the Supreme Court endorsed the prudential ripeness doctrine for many years. But more recently, it has begun to question its legitimacy. In *Lexmark International, Inc. v. Static Control Components, Inc.*, the Court signaled deepening skepticism toward prudential doctrines. There, the Court noted “tension” between prudential standing and the judiciary’s obligation to decide cases within its jurisdiction, narrowing the “zone of interests” test to a matter of statutory interpretation rather than judicial discretion.³² It even called the term “prudential standing” a “misnomer.”³³ Then, in *Susan B. Anthony List v. Driehaus*, the Court further distanced itself from prudential ripeness.³⁴ After confirming that the plaintiff had suffered an Article III injury, the Court rejected the notion that prudential considerations could bar adjudication. It remarked:

To the extent [a defendant] would have us deem [a plaintiff’s] claims nonjusticiable “on grounds that are ‘prudential,’ rather than constitutional,” “[t]hat request is in some tension with our recent reaffirmation of the

25. 297 U.S. 288, 346 (1936) (Brandeis, J., concurring) (quoting *Chicago & Grand Trunk Ry. v. Wellman*, 143 U.S. 339, 345 (1892)); see also Nora Coon, *Ripening Green Litigation: The Case for Deconstitutionalizing Ripeness in Environmental Law*, 45 ENV’T L. 811, 823–24 (2015).

26. See Gene R. Nichol, Jr., *Ripeness and the Constitution*, 54 U. CHI. L. REV. 153, 162–63 (1987).

27. 387 U.S. 136, 148–49 (1967); see also Coon, *supra* note 25, at 824–25.

28. *Abbott Labs*, 387 U.S. at 148–49; Coon, *supra* note 25, at 825–26.

29. 406 U.S. 583, 588 (1972) (quoting *Rescue Army v. Mun. Ct.*, 331 U.S. 549, 584 (1947)); see also Coon, *supra* note 25, at 825.

30. 419 U.S. 102, 138–39 (1974); Coon, *supra* note 25, at 825–26.

31. 424 U.S. 1, 117 (1976); Coon, *supra* note 25, at 826.

32. 572 U.S. 118, 125–29 (2014).

33. *Id.* at 127 (quoting *Ass’n of Battery Recyclers v. EPA*, 716 F.3d 667, 675 (D.C. Cir. 2013)).

34. 573 U.S. 149 (2014).

principle that ‘a federal court’s obligation to hear and decide’ cases within its jurisdiction ‘is virtually unflagging.’”³⁵

Most decisively, in *Knick v. Township of Scott*,³⁶ the Court rejected the *Williamson County* state-litigation requirement—a prudential ripeness rule.³⁷ That rule required takings plaintiffs to first seek compensation through state remedies before their claim would be considered ripe for federal court.³⁸ The Court held that this prudential ripeness barrier “imposes an unjustifiable burden on takings plaintiffs” and “conflicts with the rest of our takings jurisprudence.”³⁹ It emphasized that the doctrine had effectively relegated the Takings Clause “‘to the status of a poor relation’ among the provisions of the Bill of Rights,” and ultimately concluded that it was based “on a mistaken view of the Fifth Amendment” and had to be overruled.⁴⁰

In light of the Court’s mounting skepticism⁴¹ toward prudential doctrines—particularly those that function as gatekeeping devices to federal jurisdiction—it is striking that the ripeness doctrine is so often invoked to override clear statutory grants of jurisdiction. Below, the article will explore the consequences of this

35. *Id.* at 167 (quoting *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 125–26 (2014)).

36. 588 U.S. 180 (2019).

37. *See* *Horne v. Dep’t of Agric.*, 569 U.S. 513, 525–26 (2013); *Suitum v. Tahoe Reg’l Plan. Agency*, 520 U.S. 725, 733–34 (1997).

38. *See Knick*, 588 U.S. at 184.

39. *Id.* at 185.

40. *Id.* at 189, 185 (quoting *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994)).

41. This mounting skepticism from the Supreme Court has left lower courts understandably cautious. Many now apply prudential ripeness with hesitation. The Fifth Circuit, for instance, acknowledged this uncertainty in *Umphress v. Hall*, noting that although the Supreme Court “has questioned ‘the continuing vitality of the prudential ripeness doctrine,’” it had not definitively resolved the issue. 133 F.4th 455, 468 (5th Cir. 2025) (quoting *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014)). Applying the prudential factors briefly and without enthusiasm, the court concluded that they were satisfied only because the underlying issue was legal and the plaintiff faced tangible hardship in the form of chilled speech and the threat of enforcement.

Other circuits have taken similar approaches. The First Circuit, in *New Hampshire Lottery Commission v. Rosen*, echoed the Court’s warning in *Driehaus*, observing that prudential ripeness may conflict with the federal judiciary’s “‘virtually unflagging’ obligation” to exercise its jurisdiction. 986 F.3d 38, 52 n.8 (1st Cir. 2021) (quoting *Driehaus*, 573 U.S. at 167). The Ninth Circuit, too, has recognized that the doctrine’s status is unsettled. *See* *Seattle Pacific Univ. v. Ferguson*, 104 F.4th 50, 66 (9th Cir. 2024) (“[T]he Supreme Court in dictum has questioned the ‘continued vitality’ of prudential ripeness . . .”).

The Sixth Circuit has gone further. In *Kiser v. Reitz*, it interpreted *Driehaus* as having effectively subsumed prudential ripeness into constitutional standing. 765 F.3d 601, 607 (6th Cir. 2014). While the court acknowledged the traditional two-part test, it grounded its analysis entirely in Article III standing doctrine, suggesting that prudential ripeness had become redundant.

This trend in the lower courts mirrors a broader shift in legal thought. Leading scholars and individual judges have likewise raised serious questions about the continued relevance and coherence of prudential ripeness. Erwin Chemerinsky has long argued that the distinction between standing and ripeness is largely illusory and needlessly complicates justiciability. “There is no identifiable benefit to having a distinct test termed ripeness,” he writes. Erwin Chemerinsky, *A Unified Approach to Justiciability*, 22 CONN. L. REV. 677, 683 (1990). Judge LeCraft Henderson of the D.C. Circuit put the matter more bluntly: “I believe ripeness is a solution in search of a problem and a needlessly muddled area of justiciability.” *Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1163 (D.C. Cir. 2025) (Henderson, J., concurring). She added: “Insofar as ripeness traces its lineage to Article III, it has become absorbed by standing. Insofar as ripeness rests on prudential considerations, it infringes on our constitutional duty to adjudicate a proper case or controversy.” *Id.*

practice, particularly in the context of § 1983, which is at the heart of *First Choice*.

II. CONGRESSIONAL DESIGN AND THE FEDERAL FORUM GUARANTEE IN § 1983

Federal courts have a constitutional obligation to exercise jurisdiction where it exists.⁴² That seems noncontroversial. Yet over time, judge-made prudential doctrines have authorized courts to refrain from hearing cases even when all Article III requirements are satisfied and Congress has expressly conferred jurisdiction. Though often justified as tools of judicial economy or restraint, these doctrines allow unelected judges to override legislative policy decisions and, in doing so, violate basic separation of powers principles.

These concerns are particularly acute when courts apply prudential consideration to dismiss claims under 42 U.S.C. § 1983, the central statute at issue in *First Choice v. Platkin*. That statute was never intended as a procedural backstop or secondary remedy. It was Congress's deliberate response to the post-Civil War reality that state institutions—especially courts—had systematically failed to protect federal rights.⁴³ When modern courts defer or dismiss § 1983 claims under the guise of prudential ripeness, they risk reestablishing the very state supremacy that § 1983 was designed to overcome.

The history of the statute illustrates this vividly.⁴⁴ In the years following the Civil War, Southern states not only resisted federal civil rights enforcement but did so with open hostility.⁴⁵ State courts routinely excluded Black Americans as witnesses, barred Black Americans from jury service, and denied them access to basic civil remedies.⁴⁶ Meanwhile, federal officials attempting to enforce national laws on conscription, taxes, and loyalty were sued in state courts under hostile laws designed to obstruct federal authority.⁴⁷ Political violence ran rampant.⁴⁸ Klansmen disrupted Republican meetings, attacked Black citizens, and used terror to suppress voter participation.⁴⁹ As one historian put it, “[t]hey were guilty of shootings, murders, and plundering”⁵⁰

Congress understood the problem was not just private violence, but state complicity—both through active resistance and systemic inaction.⁵¹ During debates over what became the Civil Rights Act of 1871, lawmakers expressed

42. See, e.g., *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821) (“We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.”).

43. Richard Briffault, *Section 1983 and Federalism*, 90 HARV. L. REV. 1133, 1137 (1977).

44. This article recognizes and appreciates the efforts of Professor Briffault at Columbia Law School, who authored “Section 1983 and Federalism,” thoroughly analyzing the history of 42 U.S.C. § 1983.

45. Briffault, *supra* note 43, at 1151–52.

46. *Id.* at 1151.

47. *Id.* at 1150.

48. *Id.* at 1153.

49. *Id.* at 1153 n.104.

50. *Id.* (quoting KENNETH M. STAMPP, *THE ERA OF RECONSTRUCTION, 1865-1877*, at 200 (1965)).

51. *Id.* at 1154.

deep alarm over the inability—or refusal—of state institutions to provide redress.⁵² Representative David Perley Lowe described a dire situation: “[w]hile murder is stalking abroad in disguise, while whippings and lynchings and banishment have been visited upon unoffending American citizens, the local administrations have been found inadequate or unwilling to apply the proper corrective.”⁵³ Others emphasized the collapse of judicial neutrality. Representative John Beatty cited “prejudiced juries or bribed judges,”⁵⁴ Representative Joseph Hayne Rainey warned that “the courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity[,]”⁵⁵ and Representative James Henry Platt observed that judges were exercising “almost despotic powers . . . against Republicans without regard to law or justice”⁵⁶

The violence also had clear political dimensions. Representative Clinton Levering Cobb of North Carolina spoke of the “social and political disability” imposed on Black citizens and white Republicans alike.⁵⁷ Representative John Coburn of Indiana explained that the concern was not “isolated outrages,” but “crimes perpetrated by concert and agreement, by men in large numbers acting with a common purpose” to target people based on their political beliefs.⁵⁸ Representative Ellis Roberts went further: “[O]ne rule never fails: the victims whose property is destroyed, whose persons are mutilated, whose lives are sacrificed, are always Republicans. . . . Such uniformity of result can come only from design.”⁵⁹

Importantly, Congress did not view the states’ failure as incidental or correctable through existing channels.⁶⁰ President Ulysses S. Grant, unsure whether his administration could constitutionally respond alone, requested emergency legislation. He reported to Congress:

A condition of affairs now exists in some of the States of the Union rendering life and property insecure, and the carrying of the mails and the collection of the revenue dangerous. . . . That the power to correct these evils is beyond the control of State authorities I do not doubt; that the power of the Executive of the United States, acting within the limits of the existing laws, is sufficient for present emergencies is not clear.⁶¹

Congress responded by passing the Civil Rights Act of 1871—the most sweeping expansion of federal jurisdiction since the Judiciary Act of 1789.⁶² Through what is now § 1983, Congress created a direct federal cause of action

52. *Id.* at 1154–55.

53. CONG. GLOBE, 42d Cong., 1st Sess. 374 (1871).

54. *Id.* at 429.

55. *Id.* at 394.

56. *Id.* app. at 186.

57. *Id.* at 439.

58. *Id.* at 457.

59. *Id.* at 413.

60. Briffault, *supra* note 43, at 1153.

61. CONG. GLOBE, 42d Cong., 1st Sess. 236 (1871).

62. Briffault, *supra* note 43, at 1147.

for constitutional violations committed under color of state law. Crucially, it did so to provide a federal forum that did not require plaintiffs to exhaust or rely on state courts. As Representative David Perley Lowe made clear: “[i]t is said that the States are not doing the objectionable acts. This argument is more specious than real. . . . What practical security would this provision give if it could do no more than to abrogate and nullify the overt acts and legislation of a State?”⁶³

As this history shows, § 1983 was designed to ensure access to a federal forum. That still remains true. And the Supreme Court so recognized in *Mitchum v. Foster*, explaining that the statute is meant to “open[] the federal courts to private citizens, offering a uniquely federal remedy against incursions under the claimed authority of state law.”⁶⁴ Further, in *Monroe v. Pape*, the Court stressed § 1983’s unambiguous text, noting that it was “cast in general language” and that “[i]t is no answer that the State has a law which if enforced would give relief.”⁶⁵ The Court went further to insist that a state remedy “need not be first sought and refused before the federal one is invoked.”⁶⁶ It is “abundantly clear,” the Court noted, that § 1983 guarantees “a federal right in federal courts.”⁶⁷ Thus, when modern courts invoke prudential ripeness to delay adjudication of § 1983 claims—as the Third Circuit did in *First Choice*—they do more than defy the statute’s historical meaning; they disregard the Supreme Court’s modern interpretations of § 1983 and effectively nullify Congress’s judgment that federal rights require federal remedies.

III. THE CONSTITUTIONAL COSTS OF PRUDENTIAL RIPENESS

Understanding the historical and statutory design of § 1983 reveals just how sharply prudential ripeness cuts against it. But the problem is not only historical or textual—it is also practical. When courts invoke prudential ripeness to dismiss otherwise justiciable constitutional claims, they trigger three constitutional problems: they often deny plaintiffs their statutorily conferred federal remedy, abdicate judicial responsibility, and subvert the federal jurisdiction Congress deliberately created. In so doing, they provoke serious separation of powers concerns by distorting the role of the judiciary and overriding legislative judgment.

Regarding the first problem, prudential ripeness can create procedural traps that effectively extinguish federal rights. A prime example is the concern raised in *Knick v. Township of Scott*. There, the Court explained that requiring takings plaintiffs to exhaust state remedies before their claims are deemed ripe for federal court creates a constitutional “Catch-22”: the plaintiff cannot access federal court

63. CONG. GLOBE, 42d Cong., 1st Sess. 375 (1871).

64. 407 U.S. 225, 239 (1972).

65. 365 U.S. 167, 183 (1961).

66. *Id.*

67. *Id.* at 180.

without first going to state court, but if she goes to state court and loses, her federal claim may be barred altogether.⁶⁸

That exact Catch-22 is now unfolding in *First Choice*. Faced with an imminent threat to its First Amendment rights, First Choice filed this action in federal court and sought emergency relief before the state subpoena's compliance deadline.⁶⁹ But the district court—twice—dismissed the case, holding that the claims were unripe until the state court enforced the subpoena.⁷⁰ The court candidly acknowledged that its ruling created a “preclusion trap”: a constitutional challenge like First Choice's would “seldom if ever be ripe” because once the state adjudicates the issues, “res judicata principles will likely bar . . . a claim in federal court.”⁷¹ Upon the second appeal, the Third Circuit agreed with the district court. Citing prudential ripeness, the appellate court stated that First Choice “can continue to assert its constitutional claims in state court” and expressed confidence the state court would adjudicate those claims adequately.⁷²

This reasoning is fatal to the federal remedy Congress designed. By conditioning § 1983 jurisdiction on the progress of state proceedings, courts risk relegating constitutional claims to state court entirely, where res judicata or abstention doctrines may later foreclose federal review.⁷³ That outcome is precisely what *Knick* sought to prevent and stands in direct conflict with the original understanding of § 1983.

Second, the Third Circuit's confidence in state court review amounts to an abdication of federal judicial responsibility. Federal courts have a “virtually unflagging obligation . . . to exercise the jurisdiction given them.”⁷⁴ As the Supreme Court has long made clear, “[w]hen a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction.”⁷⁵ And as Chief Justice Marshall warned, a federal court has “no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution.”⁷⁶ Federal courts, then, have an affirmative duty to hear

68. *Knick v. Twp. of Scott*, 588 U.S. 180, 184–85 (2019).

69. Petition for a Writ of Certiorari, *supra* note 5, at 10.

70. *Id.* app. at 8a, 26a.

71. *Id.* app. at 54a, 82a n.7.

72. *Id.* app. at 4a.

73. This is not a novel matter for the Third Circuit. It just happened in *Smith & Wesson Brands, Inc. v. Attorney General*. 27 F.4th 886 (3d Cir. 2022). There, a federal challenge was dismissed under *Younger* abstention, and by the time it returned to federal court, a state court had already rejected the constitutional claims. The district court then dismissed on res judicata grounds—a result the Third Circuit affirmed—effectively giving state courts the final word on federal constitutional rights. *Id.*

74. *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976).

75. *Wilcox v. Consol. Gas Co.*, 212 U.S. 19, 40 (1909).

76. *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). This “Cohens rule” has been reaffirmed many times, standing for the principle that federal courts cannot shirk their duty to decide cases within their jurisdiction. *See, e.g., Bank of United States v. Deveaux*, 9 U.S. (5 Cranch) 61, 87 (1809) (“The duties of this court, to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation.”); *Hyde v. Stone*, 61 U.S. (20 How.) 170, 175 (1858) (“But the courts of the United States are bound to proceed to judgment, and to afford redress to suitors before them, in every case to which their jurisdiction extends. They cannot

constitutionally justiciable claims—particularly where core rights like free speech and religious liberty are at stake. The mere possibility that a state court might ultimately reach the correct result does not relieve federal courts of their obligation.

Some might argue that ripeness does not foreclose federal adjudication of constitutional rights but merely postpones it—rendering any concerns of judicial abdication overstated. But the historical context shows otherwise. Congress enacted § 1983 not just to create a federal remedy, but to guarantee immediate federal access where state systems failed.⁷⁷ Thus, even judicial delay raises serious separation of powers concerns because: (1) Congress often did not contemplate any delay in the exercise of federal jurisdiction, (2) postponing adjudication effectively modifies the statutory framework, and (3) delay can deter litigants from seeking relief in federal court.⁷⁸ Thus, delaying adjudication under the guise of prudential ripeness distorts the remedial framework Congress deliberately designed. Far from a benign procedural pause, such delay can function as de facto preclusion—undermining both the statutory scheme and the Constitution’s separation of powers.

Third, the use of prudential ripeness to postpone or deny review of § 1983 claims threatens not only individual rights, but also the jurisdictional framework Congress enacted to protect them.⁷⁹ As Professor Martin Redish warns, when federal courts systematically defer § 1983 claims, “the jurisdictional statute [§ 1343] is inescapably rendered a nullity.”⁸⁰ Section 1343 expressly grants federal courts jurisdiction over actions “to redress the deprivation, under color of any State law, . . . of any right, privilege or immunity secured by the Constitution.”⁸¹ That jurisdiction was never meant to be conditional.

abdicate their authority or duty in any case in favor of another jurisdiction.”); *Bd. of Comm’rs v. Aspinwall*, 65 U.S. (24 How.) 376, 385 (1861) (“But no court, having proper jurisdiction and process to compel the satisfaction of its own judgments, can be justified in turning its suitors over to another tribunal to obtain justice.”); *Burgess v. Seligman*, 107 U.S. 20, 34 (1882) (explaining that a federal court’s failure to render “independent judgment in cases not foreclosed by previous adjudication” is a “derelection of their duty”); *Chicot Cnty. v. Sherwood*, 148 U.S. 529, 534 (1893) (“[T]he courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.”); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234 (1922) (holding that when a party properly invokes federal jurisdiction, the court is “bound to take the case and proceed to judgment”); *Mondou v. N.Y., New Haven & Hartford R.R. (Second Employers’ Liability Cases)*, 223 U.S. 1, 58 (1912) (noting that the “existence of the jurisdiction creates an implication of duty to exercise it”). As one scholar has observed, if the “unflinching” duty to exercise jurisdiction is taken seriously, “a great deal of established doctrine will have to go.” Ernest A. Young, *Prudential Standing After Lexmark International, Inc. v. Static Control Components, Inc.*, 10 DUKE J. CONST. L. & PUB. POL’Y 149, 161 (2014).

77. Martin H. Redish, *Abstention, Separation of Powers, and the Limits of the Judicial Function*, 94 YALE L.J. 71, 105 (1984).

78. *Id.* at 90 (“But even a delay in the exercise of federal jurisdiction may be considered a violation of separation of powers if it has not been contemplated by Congress. Conceptually, a delay of federal adjudication constitutes a modification of the statutory structure, much as a preclusion under narrowly defined circumstances may. The difference is merely one of degree.”); see also *Patsy v. Bd. of Regents*, 457 U.S. 496, 503 (1982) (rejecting the requirement of exhaustion of state administrative remedies for 1983 suits).

79. See Redish, *supra* note 77, at 72.

80. *Id.* at 111.

81. 28 U.S.C. § 1343(a)(3).

Redish further explains that in the precursor to § 1343, Congress gave individuals the unqualified right to bring constitutional claims in federal court, without requiring any judicial evaluation of whether state remedies were available or adequate.⁸² Access depended solely on the plaintiff's subjective decision to seek federal protection against state-based violations.⁸³ This design stands in sharp contrast to the Civil Rights Removal Statute, codified today as 28 U.S.C. § 1443, which permits removal from state to federal court only when a defendant is "denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States."⁸⁴ That statute, which traces back to § 3 of the Civil Rights Act of 1866, conditions federal access on an objective judicial finding of state court inadequacy.⁸⁵ This contrast shows that Congress knew how to require judicial gatekeeping when it wanted to—but made a different, deliberate choice in § 1343.⁸⁶ By granting plaintiffs—not judges—the authority to decide when to seek federal jurisdiction, Congress made a structural judgment in favor of immediate and unimpeded access to federal courts.⁸⁷

In light of this statutory structure, "an argument that construes a jurisdictional statute as somehow vesting a power in the federal courts to adjudicate the relevant claims without a corresponding duty to do so is unacceptable."⁸⁸ Though jurisdictional statutes have at times been framed in permissive terms, allowing federal courts to treat jurisdiction as optional would mean "every substantive right created by Congress would effectively be subject to a practical veto by the federal judiciary."⁸⁹ And "[i]f a jurisdictional grant is merely an invitation to exercise jurisdiction, there is no logical reason why a federal court could not choose to disregard a particular federal statute—or a particular suit arising under a federal statute—which the Court deemed inadvisable."⁹⁰ As Redish puts it: "[s]urely, then, a congressional provision of jurisdiction must mean more than simply the option for the federal court to act."⁹¹ Any other construction would lead to "absurd results."⁹²

Doctrines like prudential ripeness, which condition access on discretionary judicial assessments, directly conflict with that judgment and erode the jurisdiction Congress constitutionally assigned to the federal judiciary. It follows that a jurisdictional grant cannot be understood as nothing more than an open invitation for federal courts to intervene at their discretion.

82. Redish, *supra* note 77, at 112.

83. *Id.*

84. 28 U.S.C. § 1443(1).

85. Redish, *supra* note 77, at 108 & n.165.

86. *Id.* at 111–12.

87. *Id.*

88. *Id.* at 112.

89. *Id.* at 113.

90. *Id.*

91. *Id.*

92. *Id.* at 112.

These consequences should give courts serious pause before deploying prudential ripeness to override Congress's express jurisdictional choices. When a court declines to hear claims brought under clear statutory mandates like § 1983, relying instead on judge-made doctrines of timing or discretion, it does not merely exercise modest restraint. It revives the very problems Congress aimed to eliminate: procedural traps, judicial abdication, and disregard for congressional design.

IV. TOWARD A CONSTITUTIONALLY GROUNDED RIPENESS DOCTRINE

The Court should formally repudiate the prudential strand of ripeness and cabin the doctrine to its meaning under Article III. That Article III limit serves a narrow but vital role: it prevents federal courts “from entangling themselves in abstract disagreements” by adjudicating disputes too early.⁹³ That is all the Constitution requires. Prudential ripeness, by contrast, and as outlined above, is a judge-made doctrine that allows courts to delay adjudication of otherwise justiciable claims—sometimes even overriding clear statutory mandates.⁹⁴ Going forward, the ripeness doctrine should be grounded exclusively in the case-or-controversy requirement of Article III, not in judicial discretion masquerading as prudence.⁹⁵

Of course, if the Court takes that step, it may have to yell “Jenga.” As Professor Katherine Mims Crocker has observed, prudential ripeness is just one block in a much taller stack of judicially created prudential doctrines. Among those the Court has, at various times, described as prudential are:

- The general bar on third-party standing,
- The zone-of-interests test as applied to constitutional claims,
- The prohibition on asserting generalized grievances,
- The taxpayer-standing rule,
- The bar on federal-question jurisdiction over domestic-relations matters,
- The “fitness” and “hardship” test in ripeness,
- At least some aspects of mootness, adverseness, and the political-question doctrine,
- Abstention doctrines,
- Certain elements of state sovereign immunity, and

93. *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985) (quoting *Abbott Lab's v. Gardner*, 387 U.S. 136, 148 (1967)); *see also Renne v. Geary*, 501 U.S. 312, 322 (1991) (explaining that to be ripe under Article III, a claim must present a live controversy advanced in a “clean-cut and concrete form” (quoting *Rescue Army v. Mun. Ct.*, 331 U.S. 549, 584 (1947))).

94. *See supra* note 4 and accompanying text.

95. One might argue that the ripeness doctrine should be repudiated entirely, as it is largely duplicative: the concerns it purports to address are already captured by the doctrine of standing. Many have made this point. *See, e.g., Indus. Energy Consumers of Am. v. FERC*, 125 F.4th 1156, 1163 (D.C. Cir. 2025) (Henderson, J., concurring) (“I believe ripeness is a solution in search of a problem and a needlessly muddled area of justiciability.”); Joel S. Nolette, *Last Stand for Prudential Standing? Lexmark and Its Implications*, 16 *GEO. J.L. & PUB. POL'Y* 227 (2018). That may well be true. But that article will be saved for another day.

- The act-of-state doctrine.⁹⁶

Once one prudential block falls, the rest may follow. As Crocker observes, “sweeping criticisms of prudential principles could destabilize a large swath of jurisdictional doctrine.”⁹⁷ But is that necessarily a bad result? These doctrines—including prudential ripeness—lack any foundation in constitutional text and instead rest on vague appeals to judicial restraint or docket management.⁹⁸ If the Court is serious about adhering to constitutional text and original meaning, prudential ripeness has no rightful place in the justiciability lexicon. And if pulling that one block sends others tumbling, then so be it.

If the Court declines to topple the entire structure, however, it could easily resolve *First Choice* on narrower grounds. It could reject the Third and Fifth Circuits’ view—first adopted in *Google, Inc. v. Hood*⁹⁹—that a constitutional challenge to an administrative subpoena is unripe unless and until a state court enforces it. In effect, the *Hood* rule functions like an exhaustion requirement, deeming claims unripe until a plaintiff either complies with a subpoena or faces state enforcement. But ripeness has never been a doctrine that requires plaintiffs to suffer the very harm they seek to avoid.¹⁰⁰ The doctrine is meant to ensure only that courts avoid entangling themselves in speculative or abstract disputes. And there is nothing speculative or abstract about a plaintiff facing a subpoena like that in *First Choice*. Such early-stage investigative demands can chill speech, pressuring regulated parties to self-censor or comply under threat.¹⁰¹

Abandoning the *Hood* rule would yield two significant benefits. First, requiring individuals to violate a legal command—and risk civil or criminal penalties—just to obtain judicial review imposes an unacceptably harsh burden on constitutional rights. That approach discourages meritorious challenges and may lead, in practice, to important rights going unvindicated. Pre-enforcement challenges, by contrast, serve as a crucial safeguard, enabling litigants to seek relief before the damage is done. Second, both regulated parties and the government benefit when the legality of a regulatory action is resolved up front. If the plaintiff loses, they know they must comply. If the government loses, it avoids the wasted effort of enforcing a rule or subpoena only to have its authority invalidated later. Pre-enforcement review thus promotes legal clarity and respect for constitutional limits.

96. Katherine Mims Crocker, *A Prudential Take on a Prudential Takings Doctrine*, 117 MICH. L. REV. ONLINE 39, 50 (2018).

97. *Id.* at 51.

98. *See* Warth v. Seldin, 422 U.S. 490, 500 (1975).

99. 822 F.3d 212 (5th Cir. 2016).

100. *See* Babbitt v. UFW Nat’l Union, 442 U.S. 289, 298 (1979) (noting that courts have jurisdiction over pre-enforcement challenges when plaintiffs show they are facing “a realistic danger of sustaining a direct injury as a result of the statute’s operation or enforcement”); *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383, 393 (1988) (explaining that “an actual and well-founded fear that the law will be enforced” can be enough for justiciability concerns).

101. *See* *Twitter, Inc. v. Paxton*, 56 F.4th 1170, 1178 n.3 (9th Cir. 2022) (stating that the subpoena recipient’s “objectively reasonable chilling of its speech or another legally cognizable harm” satisfied Article III).

In short, the Court does not need to tear down the entire Jenga tower to fix the problem in *First Choice*. Rejecting the *Hood* rule alone would go a long way toward restoring proper access to federal court in pre-enforcement constitutional challenges. But in doing so, it would also reveal the deeper fragility of the prudential ripeness doctrine and underscore why it might be time to remove it from the justiciability toolkit.

CONCLUSION

Prudential ripeness is not a principled exercise of judicial restraint—it is a discretionary barrier that distorts statutory design and exceeds constitutional limits. Especially in the context of § 1983, it invites courts to deny a federal forum where Congress demanded one. *First Choice v. Platkin* gives the Supreme Court a long-overdue opportunity to abandon this flawed doctrine. It's time to move on.