UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION and NETCHOICE,

Plaintiffs,

v.

ASHLEY BROOKE MOODY, in her official capacity as Attorney General of the State of Florida,

Defendant.

Case No. 4:24-cv-438-MW-MAF

PLAINTIFFS' REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

Florida's opposition underscores the profound First Amendment problems with HB3 and the pressing need for a preliminary injunction. HB3 restricts minors from creating accounts on the most popular "social media" websites and does so based on content and speaker to boot. Courts across the country have rejected similar efforts as inconsistent with the First Amendment. This Court should do the same. While states have an interest in protecting minors, restricting minors from speaking and listening on "social media" websites is not an appropriate means of achieving that interest. In a Nation that values the First Amendment, decisions about what speech and media minors may access are for parents—not the government—to make.

The state defends HB3 as a restriction on conduct, not speech, on the theory that it regulates "account creation." Courts have repeatedly rejected that argument. Just as with library cards, newspaper subscriptions, or any other "conduct" necessary to access speech, people create accounts on "social media" websites to "speak and listen." *Packingham v. N.C.*, 582 U.S. 98, 104 (2017). Florida does not dispute that prohibiting minors from creating accounts on "social media" websites makes it near impossible for them to engage in the full range of social and interactive First Amendment activity that users enjoy on those websites—be it posting their thoughts on their Instagram profiles or sharing photos with friends on Snapchat.

Florida's efforts to satisfy heightened scrutiny likewise fall short. It insists that HB3 serves its interest in "protecting children from addiction" and likens HB3 to laws protecting minors from "drugs and gambling." Fla.PI.Opp.29. But HB3 does not seek to protect minors from "addiction" to non-speech products. HB3 seeks to protect minors from purported "addiction" to the most popular websites where minors engage in and interact with *speech*. Florida has no legitimate interest in restricting minors from publishing or accessing speech on websites that disseminate protected speech in ways that minors find especially engaging. If it did, then Florida could limit how much time minors spend reading page-turning novels or watching gripping TV shows. Burdening protected speech that citizens find especially compelling is especially inconsistent with the First Amendment.

In the end, Florida has no answer to scores of precedents prohibiting states from decreeing what minors can say, see, and hear. Courts have repeatedly enjoined similar efforts to protect minors from the purportedly harmful effects of "social media." Florida identifies no reason to depart from that consensus.

I. Plaintiffs Are Likely To Succeed On Their First Amendment Claim.[1]

A. HB3 Triggers Strict Scrutiny.

1. Florida does not deny that adults and minors use websites like YouTube and Snapchat to engage in protected First Amendment activity. It nevertheless tries to evade First Amendment scrutiny by insisting that HB3 regulates the "conduct" of "'entering into a contract'" to "become an account holder" on "social-media platforms," not speech. Fla.PI.Opp.18-21. The state ignores that creating an account—a personalized profile containing information the user chooses to present to others—is itself speech. *E.g.*, *Carafano v. Metrosplash.com*, 339 F.3d 1119, 1124 (9th Cir. 2003). But that aside, courts have repeatedly held that the First Amendment may not be evaded by isolating some purportedly "non-speech" component of protected activity. *See Otto v. Boca Raton*, 981 F.3d 854, 861 (11th Cir. 2020). Nor can the government restrict "protected activity" by "proceed[ing] upstream" to "dam the source." *Buehrle v. Key West*, 813 F.3d 973, 977 (11th Cir. 2015). A law that precludes publishing books does not become any more tolerable if it accomplishes

[1] Plaintiffs' opposition to Florida's motion to dismiss explains why Florida's threshold arguments lack merit. The complaint is not a shotgun pleading, and Plaintiffs have a cause of action under both §1983 and *Ex parte Young*. MTD.Opp.5-6, 20-22. Plaintiffs likewise have associational standing. At least one member has Article III standing to sue, *see* Veitch.Decl.¶5; Boyle.Decl.¶9; Cleland.Decl.¶20; Schruers.Decl.¶4, and proving Plaintiffs' First Amendment claim does not require excessive member participation. MTD.Opp.7-15. Plaintiffs also have prudential standing to assert the rights of members' users. MTD.Opp.15-20. Plaintiffs incorporate those arguments by reference.

that end by banning "purchasing or using ink." *Sorrell v. IMS Health*, 564 U.S. 552, 571 (2011). So too with a law that precludes people from reading the Miami Herald by banning them from creating an account on miamiherald.com. Just as with library cards, newspaper subscriptions, or any other "conduct" necessary to access speech, people create the accounts HB3 targets to gain access to websites "where they can speak and listen." *Packingham*, 582 U.S. at 104. Divorcing the act of creating an account from the intended objective of using the website is like trying to divorce the act of buying a book from the intended objective of reading it. *See Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 792 n.1 (2011).

That is precisely why the Supreme Court has held that when the government restricts access to "social media," it "prevent[s] the user from engaging in the legitimate exercise of First Amendment rights." *Packingham*, 582 U.S. at 108. The Court did so, moreover, while reversing a decision holding that a statute prohibiting sex offenders from "access[ing] certain carefully-defined Web sites" was "a regulation of conduct," not speech. *State v. Packingham*, 368 N.C. 380, 386 (2015). Florida tries to distinguish *Packingham* on the theory that North Carolina's law "foreclosed access to social media altogether," whereas HB3 merely restricts minors from creating accounts. Fla.PI.Opp.25. But that ignores that creating an account involves speech, and is impossible to square with cases like *Ashcroft v. ACLU*, 542 U.S. 656 (2004), and *Reno v. ACLU*, 521 U.S. 844 (1997). Neither statute in those

cases "foreclosed" adults from accessing speech on the Internet; they just made it more difficult to do so. Yet those laws nevertheless triggered (and failed) heightened First Amendment scrutiny.

Courts across the country have therefore rejected efforts to characterize laws that restrict minors from creating accounts on "social media" as regulations of "conduct." *E.g., NetChoice v. Yost*, 716 F.Supp.3d 539, 552-53 (S.D. Ohio 2024). There is no reason for a different approach here. To be sure, users may still engage in *some* activity on *some* websites without an account, such as anonymously viewing content posted by others. But Florida does not seriously dispute that restricting minors from creating accounts will preclude them from engaging in the full range of First Amendment activity on those services. Pls'.PI.Br.20-21. After all, people do not just use "social media" to anonymously browse content posted by others. They use those websites to engage in the sort of social interaction with other users that is only possible with an account, such as publishing their thoughts on their Facebook profiles and sharing photos with friends on Snapchat.

Florida argues that websites can avoid "the account-holding restriction" by removing so-called "addictive features." Fla.PI.Opp.21. But that argument runs headlong into another First Amendment problem, as a website's choice about how to "organiz[e] and present[]" collections of "third-party speech" is "expressive activity" protected by the First Amendment. *Moody v. NetChoice*, 603 U.S. 707,

731-32 (2024). Just as Florida may not prohibit a newspaper from using push notifications to alert users of news or override its decision to display articles with seamless pagination, Florida cannot prohibit Plaintiffs' members from offering the same features. When it comes to disseminating speech, decisions about how to "organiz[e] and present[]" collections of speech are for private parties—not the government—to make. *Id.* at 731-32. By the state's logic, it could ban these features *entirely* (not just restrict minors' access to them) without even implicating the First Amendment.

The state tries to analogize HB3 to laws that prohibit minors from entering establishments that serve alcohol. Fla.PI.Opp.21-24. But as other courts have explained in rejecting that analogy, *see NetChoice v. Griffin*, 2023 WL 5660155, at *16 (W.D. Ark. Aug. 31, 2023), such laws principally regulate the non-speech activity of drinking alcohol, and any impact on speech inside those premises is incidental. *See Indigo Room v. Fort Myers*, 710 F.3d 1294, 1300 (11th Cir. 2013). The government, moreover, has reasons "unrelated to the suppression of free expression" to limit access to establishments that serve alcohol. *U.S. v. O'Brien*, 391 U.S. 367, 377 (1968). Here, "[b]y contrast, the primary purpose of a social media platform is to engage in speech," and the restrictions HB3 imposes on speech are anything but incidental. *Griffin*, 2023 WL 5660155, at *16. As Florida acknowledges, *the entire point* of HB3 is to restrict minors from spending time on

websites that disseminate speech in ways they find especially compelling. Fla.PI.Opp.4-10.

Florida's reliance on *Arcara v. Cloud Books*, 478 U.S. 697 (1986), fails for similar reasons. There, New York applied its law banning prostitution to shut down an adult bookstore where prostitution was commonplace. Doing so did not violate the First Amendment because the law regulated non-expressive conduct (prostitution), and the impact on speech was incidental. *Id.* at 707. For the same reasons, Florida cannot rely on *TikTok v. Garland*, 145 S.Ct. 57 (2025). Dkt.56. The law there regulated TikTok's foreign ownership based on national security concerns, and the impact on speech was again incidental. 145 S.Ct. at 64-66. Even so, the Court did not hold that the First Amendment did not apply—instead, it assumed that it did before holding that the law satisfied First Amendment scrutiny.

2. HB3 not only restricts an unprecedented amount of First Amendment activity; it does so based on content and speaker. Florida insists that HB3 is content neutral because the text focuses on "addictive features." Fla.PI.Opp.27. But facially content-neutral laws may still be content based if "there is evidence" of "an impermissible purpose or justification." *City of Austin v. Reagan Nat'l Advert.*, 596 U.S. 61, 76 (2022). That is the case here: State officials explained that Florida enacted HB3 in part because of the *content* minors may encounter on "social media."

Pls'.PI.Br.24. And Florida's brief doubles down on that by repeatedly outlining the supposedly harmful content on those websites. Fla.PI.Opp.2, 4-6.

HB3's speaker-based distinctions reinforce the conclusion that HB3 singles out websites based on content. Pls'.PI.Br.24-25. Florida does not dispute that services like Disney+ employ the same so-called "addictive features" to keep users engaged. Likewise, email and direct messaging services (which are excluded from HB3) often include such features as well. Florida tries to justify the differential treatment on the theory that "[s]ocial media is more addictive" and "associated with higher rates of depression." Fla.PI.Opp.29. But as the state explained both at the signing ceremony and in its brief, Florida thinks that "social media" is particularly "addictive" and "associated with higher rates of depression" because "social media" delivers *content* that supposedly leads to addiction and depression. *See* Pls'.PI.Br.24; Fla.PI.Opp.2, 4-6.[2] If Florida really thinks that features like push notifications lead to "addiction" and "depression" independent of the content on "social media," then it would have swept in all services with those features. *See NetChoice v. Reyes*, 2024 WL 4135626, at *15 (D. Utah Sept. 10, 2024).

[2] Florida's emphasis on the Surgeon General Report confirms the point. That report repeatedly highlights supposedly harmful *content* that minors may encounter. U.S. Surgeon General, *Social Media and Youth Mental Health* 5-6, 8-9, 16-19 (May 23, 2023). And Florida's own expert repeatedly speculated that "social media" harms minors because of *content* on those websites. Twenge.Dep.Ex.1 at 54-55 ("cyberbullying," "inappropriate content around drugs and alcohol," and "negative comments on posts").

B. HB3 Cannot Survive Any Level of Heightened Scrutiny.

1. When Florida finally turns to strict scrutiny, it abandons any argument that HB3 is justified by an interest in assisting parental authority. That decision is wise. Supreme Court precedent forecloses that argument, Pls'.PI.Br.27, and that interest would not justify banning minors from creating accounts *even if their parents approve*. Pls'.PI.Br.26-27. Similarly, while its brief repeatedly invokes concerns about predators and "sextortion," *see* Fla.PI.Opp.2, 6, Florida does not actually argue that HB3 is narrowly tailored to protect minors from predators. Nor could it; if restricting convicted sex offenders from accessing "social media" websites is not a narrowly tailored means of protecting minors, *see Packingham*, 582 U.S. at 107-08, restricting minors from accessing those websites is plainly not either. Pls'.PI.Br.27-28.

Florida is thus left insisting that HB3 serves its interest in "protecting children from addiction." Fla.PI.Opp.29. But while protecting minors is a laudable goal, "overly general statements of abstract principles do not satisfy the government's burden to articulate a compelling interest." *Awad v. Ziriax*, 670 F.3d 1111, 1129-30 (10th Cir. 2012). Strict scrutiny demands that the state "specifically identify an 'actual problem' in need of solving," which requires firm "proof"—not just "predictive judgment"—of "a direct causal link" between covered websites and

"harm to minors." *Brown*, 564 U.S. at 799. Mere "correlation" will not do. *Id.* at 800.

Florida's evidence falls short. Despite having months to muster evidence in support of its speculation that "social-media platforms are dangerous for children," Fla.PI.Opp.3, the evidence it offers is thin and at best shows that the impact of "social media" on minors remains hotly debated. Its primary authority, a report from the Surgeon General, acknowledges that "social media" has many *benefits*; that "[m]ore research is needed to fully understand the impact of social media"; and that "[m]ost prior research to date has been correlational." *Surgeon General Report*, *supra*, at 4, 6, 11.

Florida's other source, Dr. Twenge's declaration, is similarly flawed. As another court explained in rejecting Utah's reliance on Dr. Twenge, "the majority of the reports she cites show only a correlative relationship between social media use and negative mental health impacts," *Reyes*, 2024 WL 4135626 at *13, which is likely why she acknowledged that "we need more experimental studies, especially on children and teens." Twenge.Dep.Ex.1 at 202. That is hardly the conclusive proof of a causal link that the First Amendment requires. And if history is any indication, that demand for proof is wise. After all, many forms of new media (from comic books to radio) have been accused of harming minors, only to have the perceived threat prove unfounded. Compl.¶¶17-19.

Even if Florida could muster proof that the harms it purports to address are real, HB3 would still fail heightened scrutiny. It is not even clear that the state's interest in protecting minors from "addiction" is "unrelated to the suppression of free expression." *O'Brien*, 391 U.S. at 377. After all, HB3 does not seek to protect minors from addiction to non-speech products like "drugs and gambling." Fla.PI.Opp.29. Florida seeks to protect minors from "addiction" to websites where they engage in and interact with *speech*. But the state has no legitimate interest in restricting minors from accessing websites because Florida thinks they disseminate speech in ways that minors find too appealing. If it did, then Florida could restrict access to Disney+ because it includes too many engaging cartoons, or Marvel.com because it includes too many page-turning comics.

Even setting that aside, the means Florida has chosen are both over- and underinclusive. Pls'.PI.Br.28-30. Florida does not meaningfully address Plaintiffs' arguments about why HB3 is underinclusive. *See SEAT v. Paxton*, 2025 WL 455463, at *14 (W.D. Tex. Feb. 7, 2025). Florida insists that HB3 is not overinclusive because it targets "platforms that present a higher risk of addicting children"—i.e., websites that minors use most. Fla.PI.Opp.31. But singling out websites that minors especially enjoy using is a First Amendment vice, not virtue. Pls'.PI.Br.30.

Florida points out that users can still view some content on some websites without an account. If anything, encouraging users to use websites anonymously

makes it more difficult for websites to deploy the many tools they typically use to ensure that the content minors encounter is age appropriate. Fla.PI.Opp.Ex.7 at 158:6-160:21.[3] But that aside, Florida does not meaningfully dispute that HB3 restricts minors from engaging in all sorts of First Amendment activity on the most popular websites, including the ability to publish content associated with their self-created accounts. And by requiring all users to verify their age, the law hinders adults' ability to engage in First Amendment activity too. Pls'.PI.Br.29; Allen.Dep.Ex.2 at 78:8-14. HB3 is thus "a breathtakingly blunt instrument for reducing social media's harm to children," *Yost*, 716 F.Supp.3d at 559, as it "burden[s] substantially more speech than is necessary" to further the state's interests. *Ward v. Rock Against Racism*, 491 U.S. 781, 799 (1989).

On top of that, Florida has no answer to the fact that less restrictive alternatives are available. When it comes to constitutionally protected material on the Internet, enabling people to voluntarily filter content at the receiving end is less restrictive than restricting content at the source. Parents already have many tools to protect their minors on the Internet, including refusing to give them smartphones in the first place. If the state is concerned that these tools are "difficult to use and easy

[3] It also underscores HB3's underinclusiveness problem, as minors that access "social media" without an account will still encounter so-called "addictive features" like infinite scroll, livestreaming, and autoplay.

to circumvent,"[4] Fla.PI.Opp.32, a campaign promoting them is less restrictive. *See U.S. v. Playboy Ent. Grp.*, 529 U.S. 803, 823 (2000); *SEAT*, 2025 WL 455463, at *12.

If Florida's real complaint is that parents choose not to use these tools, a law "in support of what the State thinks parents *ought* to want" does not cut it. *Brown*, 564 U.S. at 804. And even if "[p]arents alone" cannot address the state's concerns, Fla.PI.Opp.33, Florida nowhere explains why HB3's separate requirement that services terminate minors' accounts at their parents' behest (which Plaintiffs are not challenging under the First Amendment) is not enough. *E.g.*, Fla. Stat. §501.1736(2)(b)(3). Even under intermediate scrutiny, a "prophylaxis-upon-prophylaxis approach" is "a significant indicator that the regulation may not be necessary for the interest it seeks to protect." *FEC v. Cruz*, 596 U.S. 289, 306 (2022).

II. The Other Preliminary Injunction Factors Support Relief.

The other preliminary injunction factors favor relief. Florida does not dispute that the "loss of First Amendment freedoms" "constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976). And while it speculates that the record is "underdeveloped," Fla.PI.Opp.34-35, Florida does not deny that once Plaintiffs show a likelihood of success, they "also meet the remaining requirements as a

[4] It is not even clear how frequently (if at all) minors circumvent these tools. Florida's own expert admitted he had no data and was just speculating about whether minors circumvent parental tools. Allen.Dep.Ex.2 at 210:1-218:10.

necessary legal consequence." *Otto*, 981 F.3d at 870. Florida's primary argument is that Plaintiffs purportedly waited too long to file their motion. Fla.PI.Opp.35-36. But Plaintiffs filed this lawsuit over two months *before* HB3's effective date, and courts routinely grant relief on similar timelines. *E.g., Wood v. Fla. Dep't of Educ.*, 729 F.Supp.3d 1255, 1286 (N.D. Fla. 2024); *CCIA v. Paxton*, 2024 WL 4051786 (W.D. Tex. Aug. 30, 2024). That aside, the state's equitable arguments are undermined both by the nine-plus-month delay built into HB3 and by the fact that HB3 leaves some minors free to access all the same services with only one parent's approval. *SEAT*, 2025 WL 455463, at *14, *18. Given the many tools available to parents who wish to restrict their minor's access to these websites, Florida has not shown how maintaining the status quo could cause any material harm.

CONCLUSION

The Court should grant the motion.

Respectfully submitted,

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February 14, 2025

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

This Court has granted Plaintiffs leave to file this reply in support of their motion for preliminary injunction. Dkt.35. This reply complies with the type-volume limitation of Local Rule 7.1(F) and (I) because it contains 3,199 words, excluding the parts of the reply exempted by Local Rule 7.1(F).

February 14, 2025

/s/ Douglas L. Kilby
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was electronically served on all counsel of record via the CM/ECF system on this 14th day of February, 2025.

/s/ Douglas L. Kilby
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