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

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION and NETCHOICE, *Plaintiffs*, v. JAMES UTHMEIER, in his official capacity as Attorney General of the State of Florida, *Defendant*.	Case No. 4:24-cv-00438-MW-MAF

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rule

INTRODUCTION

Florida House Bill 3 is the latest attempt in a long line of government efforts to restrict new forms of constitutionally protected expression based on concerns about their potential effects on minors. Books, comic books, movies, rock music, and video games have all been accused of endangering minors in the past. Today, there are similar debates about "social media." While the government may certainly take part in those debates, the First Amendment does not take kindly to government efforts to resolve them. The Constitution instead leaves the power to decide what speech is appropriate for minors where it belongs: with their parents.

Earlier this year, this Court preliminarily enjoined Florida from enforcing HB3 after concluding that it likely violates the First Amendment. In doing so, the Court joined the judicial consensus across the country that such laws are unconstitutional. *E.g.*, *Comput. & Commc'ns Indus. Ass'n v. Paxton*, 747 F.Supp.3d 1011 (W.D. Tex. 2024); *NetChoice, LLC v. Yost*, 778 F.Supp.3d 923 (S.D. Ohio 2025); *NetChoice, LLC v. Griffin*, 2025 WL 978607 (W.D. Ark. Mar. 31, 2025); *NetChoice, LLC v. Bonta*, 770 F.Supp.3d 1164 (N.D. Cal. 2025); *NetChoice, LLC v. Reyes*, 748 F.Supp.3d 1105 (D. Utah 2024); *NetChoice v. Carr*, 2025 WL 1768621 (N.D. Ga. June 26, 2025); *see also NetChoice v. Fitch*, 2025 WL 2350189, at *1 (U.S. Aug. 14, 2025) (Kavanaugh, J., concurring in the denial of the application to vacate stay) (expressing "no surprise" that several district courts have "enjoined

enforcement of similar state laws"). Rightly so. HB3 completely bars minors under 14 from creating accounts on certain "social media" websites and requires 14- and 15-year-olds to obtain parental consent to do so—significantly curtailing their access to a wide swath of First Amendment protected activity. But in a Nation that values the First Amendment, the preferred response is to let parents decide what speech their minor children may access.

As this Court's June 3, 2025, opinion confirms, HB3 violates the First Amendment through and through. Dkt.94 ("PI.Op."). Indeed, the Court reached its decision after the parties engaged in months of discovery that Florida insisted was necessary just to respond to Plaintiffs' motion. Yet when it came time to filing its opposition brief, the state barely cited any of that discovery when addressing the merits of Plaintiffs' claim that HB3 violates the First Amendment. Instead, it trotted out a slew of flawed legal arguments, which this Court rejected from top to bottom.

No additional factual development will change the reality that HB3 violates the First Amendment. HB3 regulates speech, not conduct. And it does not survive any level of heightened scrutiny. While the state insists that HB3 is a narrowly tailored means of preventing addiction to "social media," HB3's "restrictions are an extraordinarily blunt instrument for furthering" that professed interest. PI.Op.42. By restricting (and in some cases, prohibiting) minors from creating accounts on "social media" websites, HB3 burdens access to websites where minors engage in

wide swaths of First Amendment activity, including "maintain[ing] connections with friends and family," "express[ing] oneself artistically and creatively," "stay[ing] informed about current events and engag[ing] in speech on important political and social issues." PI.Op.42-43. In other words, Florida has "with one broad stroke" restricted—and, for those under 14, prohibited—access to valuable sources for "exploring the vast realms of human thought and knowledge." *Packingham v. North Carolina*, 582 U.S. 98, 107 (2017). And it has done so through "requirement[s] that the Supreme Court has clearly explained the First Amendment does not countenance." PI.Op.42.

The Court should grant CCIA and NetChoice summary judgment on their First Amendment claim, enter a declaratory judgment that HB3 is unconstitutional on its face and as applied, and convert its preliminary injunction into a permanent injunction.

BACKGROUND

A. Legal and Factual Background

1. CCIA and NetChoice are Internet trade associations whose members operate many online services, including Facebook, Instagram, YouTube, and Snapchat. Those services "allow[] users to gain access to information and communicate with one another about it on any subject that might come to mind." *Packingham*, 582 U.S. at 107; Schruers.Decl.¶7, Dkt.120-2. "On Facebook, for

example, users can debate religion and politics with their friends and neighbors." *Packingham*, 582 U.S. at 104. Instagram allows users to share vacation pictures and informative videos with others. Cleland.Decl.¶6, Dkt.120-3. YouTube, for its part, endeavors to show people the world, from travel documentaries to step-by-step cooking instructions. Veitch.Decl.¶¶3, 12-15, Dkt.120-4. And on Snapchat, users can deepen connections with friends and family by communicating with each other in fun and casual ways. Boyle.Decl.¶¶3-4, Dkt.120-1. On each service, users can create accounts to share their own speech with others. PI.Op.31-32 & n.18, 46. These accounts likewise allow covered services to communicate with their users about content they think users will find engaging. PI.Op.33.n.19, 53; Schruers.Decl.¶25, Dkt.120-2; Cleland.Decl.¶31, Dkt.120-3.

Like adults, minors use these services to engage in an array of fully protected First Amendment activity. Some minors use them to read the news, connect with friends, explore new interests, and showcase their creative talents. Others use them to raise awareness about social causes and participate in public discussion on salient topics of the day. *See* PI.Op.46. Still others use them to connect with others who share similar interests or experiences, which is particularly helpful for minors who feel isolated or marginalized and are seeking support from others who understand their experiences. Schruers.Decl.¶¶9-10, Dkt.120-2; Cleland.Decl.¶27a, Dkt.120-3.

Just as people inevitably have different opinions about what books, television

shows, and video games are appropriate for minors, people inevitably have different views about whether and to what degree "social media" websites are appropriate for minors. Concerns that new means of communication may be harmful to minors, however, are hardly new. The same basic concerns have been raised repeatedly in the past about other types of speech and mediums of expression, from "penny dreadfuls" to "motion pictures," "[r]adio dramas," "comic books," and more. *Brown v. Ent. Merchs. Ass'n*, 564 U.S. 786, 797-98 (2011).

While the government can certainly participate in debates about what speech is appropriate for minors, the Supreme Court has repeatedly rejected government efforts to try to resolve those debates by decreeing what speech minors may access. *See, e.g.*, *Brown*, 564 U.S. at 794-95; *Erznoznik v. Jacksonville*, 422 U.S. 205, 213-14 (1975). After all, "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may the government bar public dissemination of protected materials to them." *Erznoznik*, 422 U.S. at 212-13. In a Nation that values the First Amendment, the preferred response is to let parents decide what speech is appropriate for their minor children.

When it comes to the Internet, parents have many tools to limit their minors' access should they choose to do so. Parents can decide whether and when to let their minor children use computers, tablets, and smartphones in the first place. And

parents who choose to let their children use such devices have many ways to control what they see and do. Device manufacturers (e.g., Apple, Google, Microsoft, Samsung, etc.) offer settings on computers, tablets, and smartphones that parents may use to limit the time minors spend on certain applications and websites. Schruers.Decl.¶12, Dkt.120-2; Cleland.Decl.¶8, Dkt.120-3. Cell carriers and broadband providers (e.g., Verizon, AT&T, T-Mobile, Comcast Xfinity, etc.) also provide parents with tools to block apps and websites from their minors' devices, ensure that they are texting and chatting with only parent-approved contacts, and restrict screen time during certain hours. Schruers.Decl.¶13, Dkt.120-2; Cleland.Decl.¶9, Dkt.120-3. Most wireless routers (e.g., NetGear, TP-Link, etc.) have similar tools. So do Internet browsers (e.g., Google Chrome, Microsoft Edge, Mozilla Firefox, etc.). Schruers.Decl.¶14, Dkt.120-2; Cleland.Decl.¶10, Dkt.120-3.

On top of all that, CCIA and NetChoice members have devoted extensive resources to developing policies, practices, and tools to protect minors who use their services. For starters, many members restrict minors under 13 from accessing their main services. Boyle.Decl.¶5, Dkt.120-1; Schruers.Decl.¶15a, Dkt.120-2; Cleland.Decl.¶12, Dkt.120-3. Some (including YouTube) also offer separate experiences geared specifically toward minors. Veitch.Decl.¶¶22a, 24, Dkt.120-4 (explaining that YouTube Kids is a "family-friendly place for kids to explore their imagination and curiosity"). And when minors are allowed to access their services,

CCIA and NetChoice members provide numerous means for parents to oversee what their minors see and do online. On Snapchat, for example, parents can control privacy settings and observe who their minors are messaging with through "Family Center." Boyle.Decl.¶¶6-8, Dkt.120-1. On Facebook, parents can review how much time their minors have spent on the application and change their privacy settings. Schruers.Decl.¶15d, Dkt.120-2; Cleland.Decl.¶11a, Dkt.120-3. On Instagram, parents can review their teens' activity and limit their ability to send direct messages. Schruers.Decl.¶15d, Dkt.120-2; Cleland.Decl.¶11b, Dkt.120-3. And on YouTube, parents can link their accounts with their teens' accounts and monitor their activity. Veitch.Decl.¶¶20-21, 23, 26b, Dkt.120-4.

Members have also invested significant time and resources into curating the content that minors and adults see on their services. Schruers.Decl.¶¶7, 15-17, Dkt.120-2; Cleland.Decl.¶¶11-17, Dkt.120-3. These efforts include restricting and removing content that they consider objectionable (e.g., violent and sexual content, content encouraging body shaming), promoting content that they consider valuable, attaching warning labels or disclaimers to content that violates their policies, and removing accounts that disseminate such content. Schruers.Decl.¶¶15b-16, Dkt.120-2; Cleland.Decl.¶16, Dkt.120-3; Veitch.Decl.¶¶23-32, Dkt.120-4. Users can also limit the kind of content they encounter by using keyword filters and choosing which accounts to follow. Schruers.Decl.¶10, Dkt.120-2;

Cleland.Decl.¶¶14-15, Dkt.120-3.

2. Notwithstanding the many cases striking down government efforts to decree what constitutionally protected speech minors may access, and the wealth of tools available to help parents tailor and restrict Internet access, Florida has taken it upon itself to dictate what is appropriate for minors on the Internet. It enacted HB3, which dramatically restricts minors' access to certain "social media platforms," significantly curtailing (and in some cases, eliminating) their ability to engage in core First Amendment activities on many of the most popular online services.

HB3 defines "social media platform" as "an online forum, website, or application" that "[a]llows users to upload content or view the content or activit[ies] of other users." Fla. Stat. §501.1736(1)(e). But HB3 does not regulate all online services that allow users to share and view content. Its definition is instead limited to the online services that minors enjoy using the most—i.e., those that facilitate the most First Amendment activity. An online service qualifies as a "social media platform" only if "[t]en percent or more of the daily active users who are younger than 16 years of age spend on average 2 hours per day or longer" on it "on the days when using" the service, and only if it "[e]mploys algorithms that analyze user data or information on users to select content for users" and has one or more "addictive features." *Id.* HB3's list of so-called "addictive features" covers "[i]nfinite scrolling," "[p]ush notifications," "personal interactive metrics," "[a]uto-play"

functions, and "[l]ive-streaming" functions. *Id*.

HB3 imposes several restrictions on access to "social media platforms" that are relevant here:

Restrictions on minors under 14. HB3 prohibits minors under the age of 14 from creating accounts on "social media platforms" altogether. §501.1736(2)(a). It also requires "social media platforms" to terminate existing accounts held by minors under age 14 and those "categorize[d] as belonging to an account holder who is likely younger than 14 years of age for purposes of targeting content or advertising." §501.1736(2)(b)(1).

Restrictions on 14- and 15-year-olds. HB3 prohibits 14- and 15-year-olds from creating an account on a "social media platform" "unless the minor's parent or guardian provides consent for the minor to become an account holder." §501.1736(3)(a). It also requires "social media platforms" to terminate existing accounts held by 14- and 15-year-olds and accounts "treat[ed] or categorize[d] as belonging to an account holder who is likely 14 or 15 years of age for purposes of targeting content or advertising" that lack parental consent. §501.1736(3)(b)(1). HB3 specifies that if its parental-consent requirements are enjoined, then they "shall be severed" and replaced with a provision banning 14- and 15-year-olds from creating accounts altogether. §501.1736(4)(a), (4)(b)(1).

HB3 does not explain how a "social media platform" is supposed to identify

who is a "parent or guardian." But regulations enacted by the Florida Attorney General require "social media platform[s]" to "conduct reasonable parental verification" in "determining whether someone is a parent." Fla. Admin. Code r.2-43.002(2). "Reasonable parental verification" means "any method that is reasonably calculated at determining that a person is a parent of a child that also verifies the age and identity of that parent by commercially reasonable means," including requesting the parent's contact information, "confirming that the parent is the child's parent by obtaining documents or information sufficient to evidence that relationship," and "utilizing any commercially reasonable method … to verify that parent's identity and age." *Id.* r.2-43.001(12).

On top of its access restrictions, HB3 imposes additional requirements related to minors' ability to hold accounts on covered services. For example, parents can request that covered websites terminate the accounts held by their minors who are under 16 years of age. §501.1736(2)(b)(3), (3)(b)(3), (4)(b)(3). Any covered website that receives such a parental request must terminate the minor's account within 10 days. *Id.*[1]

HB3 makes it an "unfair and deceptive trade practice" to "knowing[ly] or reckless[ly]" violate its provisions. §501.1736(5). HB3 grants the Florida Attorney General enforcement authority to seek civil penalties of up to $50,000 per violation.

[1] Plaintiffs did not challenge these provisions under the First Amendment.

Id. HB3's implementing regulations specify that a covered service commits a "knowing or reckless violation" if, "based on the facts or circumstances readily available," it "should reasonably have been aroused to question whether the person was a child and thereafter failed to perform reasonable age verification." Fla. Admin. Code r.2-43.002(3)(a). And the regulations all but mandate that "social media platforms" implement whatever the state deems to be "a reasonable age verification method" for all users of all ages, because the Attorney General "will not find" a knowing or reckless violation if a website "establishes it has utilized a reasonable age verification method with respect to all who access [it]." *Id.* r.2-43.002(3)(b).

B. Procedural History

In October 2024, CCIA and NetChoice brought this challenge to HB3. They asked the Court to preliminarily enjoin Florida from enforcing HB3's account-creation ban and parental-consent requirement before those provisions took effect. In June 2025, the Court granted Plaintiffs' request, concluding that they are likely to succeed on their First Amendment claim. The Court held that HB3 "clearly implicate[s] the First Amendment" because it "regulate[s] … the creation of accounts used to access speech." PI.Op.28-33. And it held that the law flunks even intermediate scrutiny because, assuming (without deciding) that the state has a significant interest in protecting minors from "compulsive use" of social media, HB3

burdens substantially more speech than is necessary to address the state's concern. PI.Op.40-41.

As the Court explained, HB3's "restrictions are an extraordinarily blunt instrument for furthering" the state's professed interest. PI.Op.42. By restricting (and, in some cases, prohibiting) minors from creating accounts on "social media" websites, HB3 burdens access to places where minors engage in wide swaths of First Amendment activity, including "maintain[ing] connections with friends and family," "express[ing] oneself artistically and creatively," "stay[ing] informed about current events and engag[ing] in speech on important political and social issues." PI.Op.42-43. And the state did not meet its burden of demonstrating that HB3 is "necessary to further the state's interest in shielding children from addiction." PI.Op.48. For instance, should parents "discover that their child has an account on a social media platform that the parent wishes to restrict, they can simply make a request to the platform that the account be terminated." PI.Op.49. Under provisions of HB3 that Plaintiffs did not challenge under the First Amendment, the website "would then be required to terminate the account within 10 business days." PI.Op.49 (citing Fla. Stat. §501.1736(2)(b)(3), (3)(b)(3)). Because the balance of equities tips decisively in Plaintiffs' favor, the Court preliminarily enjoined the state from enforcing HB3's account-creation ban and parental-consent requirement. PI.Op.53-55, 58.

Florida appealed. But it also sought to concurrently litigate the merits in this

Court, Dkt.108, prompting the Court to lift the stay of merits discovery, Dkt.112. In the parties' Rule 26(f) report, Plaintiffs explained that discovery is unnecessary because no amount of factfinding will change the reality that HB3 directly regulates speech and "is fatally overbroad." Dkt.115 at 2, 8. Plaintiffs accordingly move for summary judgment on Count 1 of their amended complaint.

ARGUMENT

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). If the party seeking summary judgment has made a sufficient showing, then the nonmovant bears the burden of "set[ting] forth, by affidavit or other appropriate means, specific facts showing a genuine issue of material fact." *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1189 (11th Cir. 2010). "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude … summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

"When the only question a court must decide is a question of law," *Saregama India Ltd. v. Mosley*, 635 F.3d 1284, 1290 (11th Cir. 2011), summary judgment need not "await the completion of … discovery." Dkt.116 at 2; *see also, e.g.*, *Reflectone v. Farrand Optical Co.*, 862 F.2d 841 (11th Cir. 1989) (affirming award of summary judgment without merits discovery). This is such a case. As the Eleventh Circuit

has recognized, "First Amendment questions" of a "purely legal" nature can be resolved on the merits without discovery. *Solantic v. City of Neptune Beach*, 410 F.3d 1250, 1274 (11th Cir. 2005) (invalidating content-based sign regulation without discovery). Indeed, the "speedy resolution of cases involving free speech is desirable" because time-consuming and costly discovery can itself chill First Amendment rights. *Dorsey v. Nat'l Enquirer*, 973 F.2d 1431, 1435 (9th Cir. 1992); *see also, e.g.*, *Time, Inc. v. McLaney*, 406 F.2d 565, 566 (5th Cir. 1969).

I. HB3 Violates The First Amendment.

A. HB3 Restricts a Staggering Amount of Core First Amendment Activity.

"'[W]hatever the challenges of applying the Constitution to ever-advancing technology, the basic principles' of the First Amendment 'do not vary.'" *Moody v. NetChoice*, 603 U.S. 707, 733 (2024). And a "fundamental principle of the First Amendment is that all persons have access to places where they can speak and listen." *Packingham*, 582 U.S. at 104. Today, those places include the "vast democratic forums of the Internet." *Id.* The Supreme Court has therefore held that the First Amendment limits the government's power to restrict access to "social media" websites like Facebook and YouTube, even when its ostensible aim is to protect minors. *Id.* at 106-08.

That rule applies with full force to government efforts to restrict minors' access to such services. The Supreme Court has repeatedly held that "minors are

entitled to a significant measure of First Amendment protection." *Erznoznik*, 422 U.S. at 212-13. Indeed, "the First Amendment recognizes the rights of youth to learn, to refuse to salute the flag, to protest war, to view films, to play video games, to attend political rallies or religious services even without the authorization of their parents, and more." PI.Op.46. So just as "the First Amendment strictly limits [the government's] power" when it "undertakes selectively to shield the public from some kinds of speech," it prohibits the government from suppressing speech "to protect the young from ideas or images that a legislative body thinks unsuitable to them." *Erznoznik*, 422 U.S. at 209, 213-14; *see also Brown*, 564 U.S. at 794-95.

Applying these principles, courts have routinely invalidated government efforts to protect minors from the purportedly harmful effects of new forms of media. In *Brown*, for example, the Supreme Court held that a California law prohibiting the sale of violent video games to minors without parental consent violated the First Amendment. 564 U.S. at 804-05. And in *Erznoznik*, the Court held the First Amendment prohibited Jacksonville from enforcing a local ordinance barring the display of movies containing nudity at drive-in theaters. 422 U.S. at 217-18.[2]

That unbroken line of precedent has led courts across the nation to enjoin

[2] Even when the government restricts access to speech that is *not* protected as to minors, courts have struck down laws that "operate[] as a ban on speech to adults." *Free Speech Coalition v. Paxton* (*FSC*), 145 S.Ct. 2291, 2312 (2025) (citing *Ashcroft v. ACLU*, 542 U.S. 656 (2004) and *Reno v. ACLU*, 521 U.S. 844 (1997)); *HM Fla.-ORL v. Governor*, 137 F.4th 1207, 1239 (11th Cir. 2025).

recent attempts to restrict minors' from accessing "social media platforms"—including parental-consent requirements materially identical to those in HB3. *See, e.g.*, *Carr*, 2025 WL 1768621; *Yost*, 778 F.Supp.3d 923; *Griffin*, 2025 WL 978607; *Reyes*, 748 F.Supp.3d 1105; *Bonta*, 770 F.Supp.3d 1164; *Paxton*, 747 F.Supp.3d 1011. As this Court recognized in its preliminary-injunction decision, HB3 should meet the same fate.

At the outset, HB3 restricts fully protected First Amendment activity. Indeed, HB3 "directly regulate[s] speech." PI.Op.33. That much is clear from its "text." PI.Op.33. HB3 categorically bars minors under 14 from creating accounts on the websites it covers. §501.1736(2)(a), (2)(b)(1). And it covers only websites where "users [can] upload content or view [others'] content." §501.1736(1)(e)(1). In other words, HB3 directly restricts minors from accessing websites where users engage in *speech*. Just as with library cards or newspaper subscriptions, people create the accounts HB3 targets to gain access to websites "where they can speak and listen." *Packingham*, 582 U.S. at 104. The "creation of a social media account" is therefore "inextricable from the speech" available on the covered websites. PI.Op.32; *see Buehrle v. City of Key W.*, 813 F.3d 973, 976-77 (11th Cir. 2015) (explaining that the state may not "ban a protected activity" by "procee[ding] upstream" to "dam the source"). By prohibiting minors under age 14 from creating accounts altogether, Florida has "enact[ed] a prohibition unprecedented in the scope of First Amendment

speech it burdens." *Packingham*, 582 U.S. at 107.

HB3's requirement that 14- and 15-year-olds obtain parental consent before creating accounts fares no better, as it likewise restricts core First Amendment activity. §501.1736(3)(a), (3)(b)(1). As this Court and numerous others have recognized, requiring minors to obtain parental consent before accessing "social media" abridges First Amendment rights. PI.Op.42-43; *see also, e.g.*, *Yost*, 778 F.Supp.3d at 954-55; *Griffin*, 2025 WL 978607, at *13; *Reyes*, 748 F.Supp.3d at 1126. The government lacks "the power to prevent children from hearing or saying anything *without their parents' prior consent*." *Brown*, 564 U.S. at 795 n.3. Otherwise, "it could be made criminal to admit persons under 18 to a political rally without their parents' prior written consent—even a political rally in support of laws against corporal punishment of children, or laws in favor of greater rights for minors." *Id.*

HB3 also burdens the First Amendment rights of *adults* to access covered websites, as it effectively requires them to verify their age before accessing those services. *See* Fla. Admin. Code r.2-43.002(3). As the Supreme Court recently reaffirmed, requiring adults to submit "proof of age" before accessing speech (even speech that is unprotected as to minors) "is a burden on the exercise of" their First Amendment rights. *FSC*, 145 S.Ct. at 2309; *see also Ashcroft*, 542 U.S. at 667 (2004) (similar); *Reno*, 521 U.S. at 856 (similar); *Carr*, 2025 WL 1768621, at *13

(similar); *Griffin*, 2025 WL 978607, at *8 (similar). By forcing adults to surrender sensitive personal information to access protected speech or forgo that First Amendment activity altogether, such requirements "discourage users from accessing" speech on the Internet and "completely bar" some adults from doing so. *Reno*, 521 U.S. at 856; Dkt.120-5 at 77:18-78:11, 96:1-11 (Allen deposition transcript).

Indeed, *FSC* lays to rest any doubt that HB3 burdens First Amendment rights. Unlike the law at issue there, which principally regulated material that is "obscene to minors," *FSC*, 145 S.Ct. at 2309, HB3 makes no pretense of limiting its reach to anything that even arguably approaches "unprotected" speech. It restricts (and, for some, categorically prohibits) minors from creating accounts on "social media platforms," even if all a teenager wants to do is attend virtual church services on Facebook or view educational materials on YouTube. If requiring adult users to verify their age before accessing "speech that is obscene only to minors" implicates the First Amendment, *FSC*, 145 S.Ct. at 2309, then it follows *a fortiori* that restricting access to speech that is *constitutionally protected* as to adults and minors alike implicates the First Amendment as well.

The unique aspects of services like Facebook, Instagram, YouTube, and Snapchat only heighten the First Amendment values at stake. While government restrictions on books, magazines, movies, and video games prohibit people from

receiving speech, HB3 also restricts users' ability to engage in their own speech and associate with like-minded individuals. PI.Op.43; *See Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982). HB3's access restrictions also interfere with the First Amendment rights of Plaintiffs' members, who "have a First Amendment right to speak to and associate with youth." PI.Op.45.n.26. Websites like Facebook, Instagram, YouTube, and Snapchat curate and disseminate speech to their users based on their own decisions about what speech they think the user will find valuable. Boyle.Decl.¶12, Dkt.120-1; Schruers.Decl.¶¶5b, 6b, 7, 25, Dkt.120-2; Cleland.Decl.¶¶21b, 22b, 23b, 31, Dkt.120-3; Veitch.Decl.¶49, Dkt.120-4. Those editorial decisions are informed by the website's choices about what content is appropriate and the content that the user has interacted with in the past (via the user's account), and they therefore constitute quintessential First Amendment activity. *See Moody*, 603 U.S. at 735-38; *Yost*, 778 F.Supp.3d at 948; *Reyes*, 748 F.Supp.3d at 1120.[3] By restricting account creation on covered websites, HB3 interferes with their First Amendment rights as well. *See* PI.Op.53.

In short, especially after *FSC* and *Moody*, there can be no serious dispute that HB3 implicates a wide swath of First Amendment rights.

[3] HB3's restrictions on the ability of websites "to communicate with their users" via the so-called "addictive features" the law targets implicate those services' First Amendment rights too, as those features plainly "involve or facilitate expression." PI.Op.33.n.19.

B. HB3 Is Subject to Strict Scrutiny.

Because HB3 restricts constitutionally protected speech, it is subject to heightened scrutiny. *See Packingham*, 582 U.S. at 103. And the sweeping nature of its restrictions demands strict scrutiny. Laws that "suppress[] a large amount of speech" that citizens "have a constitutional right to receive and to share" trigger "strict scrutiny." *FSC*, 145 S.Ct. at 2312 (citing *Reno*, 521 U.S. at 876). The law in *Playboy*, for example, "triggered strict scrutiny because it banned '30 to 50% of all adult programming.'" *FSC*, 145 S.Ct. at 2311 n.9 (citing *United States v. Playboy Ent. Grp., Inc.*, 529 U.S. 803 (2000)). "To prohibit *this much* speech," the Court explained, "is a significant restriction" that demands "strict scrutiny." *Id.* The law in *Reno* likewise "triggered—and failed—strict scrutiny because it 'effectively *suppresse[d]* a large amount of speech that adults have a constitutional right to receive' and to share." *Id.* at 2312 (citing *Reno*, 521 U.S. at 874). So did the law in *Ashcroft*. *Id.* (citing *Ashcroft*, 542 U.S. at 661-62). That makes sense. Had California restricted access to *all* video games in *Brown*, 564 U.S. at 794, or Jacksonville prohibited the public display of *all* movies in *Erznoznik*, 422 U.S. at 217-18, the First Amendment violation would have been even more glaring.

HB3's restrictions are not only expansive; they also discriminate on the basis of content and speaker, triggering strict scrutiny several times over. "Content-based laws—those that target speech based on its communicative content—are

presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Facially content-neutral laws will nevertheless "be considered content-based" if they "cannot be justified without reference to the content of the regulated speech." *Id.* at 164. And if "there is evidence that an impermissible purpose or justification underpins a facially content-neutral restriction … that restriction may be content based." *City of Austin v. Reagan Nat'l Advert. of Austin*, 596 U.S. 61, 76 (2022).

That is just the case here. At the outset, HB3 is content based on its face because it singles out certain "social media platforms" based on whether they permit users to "upload content or view the content or activity of other users." §501.1736(1)(e)(1). In other words, HB3 targets websites "based on the 'social' subject matter 'of the material [they] disseminate[].'" *Reyes*, 748 F.Supp.3d at 1122-23. The "very basis for the regulation is the difference in content" on services that facilitate social speech: Websites that facilitate speech and interaction by and between users are covered, while websites that do not facilitate peer-to-peer speech are not. *City of Cincinnati v. Discovery Network*, 507 U.S. 410, 429 (1993); *see Brown*, 564 U.S. at 798. That is why other courts have held that "[t]he elevation of … provider-generated content over user-generated content is a content-based regulation." *Students Engaged in Advancing Texas v. Paxton* (*SEAT*), 765 F.Supp.3d

575, 592 (W.D. Tex. 2025); *Reyes*, 748 F.Supp.3d at 1122-23; *cf. Angelilli v. Activision Blizzard, Inc.*, 2025 WL 1184247, at *5 (N.D. Ill. Apr. 23, 2025); *Yost*, 778 F.Supp.3d at 953 ("[C]overed websites' choices about whether and how to disseminate user-generated expression convey a message about the type of community the platform seeks to foster."). This Court should revisit its "tentative[] conclu[sion]" that singling out "peer-to-peer speech" is not a content-based distinction. PI.Op.38.

HB3's speaker distinctions reinforce that conclusion. Courts are deeply skeptical of laws that "distinguish[] among different speakers," as "[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content." *Citizens United v. FEC*, 558 U.S. 310, 340 (2010). HB3's definition of "social media platform" singles out a subset of online services for disfavored treatment. Services like Disney+ and Hulu employ many of the so-called "addictive features" that HB3 targets to keep users engaged. For example, both Hulu and Disney+ auto-play the next episode in a television series. Many popular email and messaging services utilize push notifications to alert users about new messages they have received. Yet HB3 exempts these services from coverage, no matter how long minors spend on such services. §501.1736(1)(e).

Those speaker distinctions are an obvious proxy for content discrimination. *See Reed*, 576 U.S. at 163-64. The only apparent difference between services that

are covered and services that are not is that the latter do not permit users to "upload content or view the content or activity *of other users*"—*viz.*, they lack the type of social, interactive content that HB3 targets. §501.1736(1)(e)(1). This Court suggested that the state's interest in preventing websites from using "push notifications, infinite scroll, auto-play video, live-streaming, and displays of personal interactive metrics" to "addict[]" children and "cause[] them to spend more time on the platforms" is a "content-neutral justification[]." PI.Op.39. But as this Court recognized elsewhere in its opinion, a website's use of such "features" to attract users to its service is "inextricable from" the *speech* on that service. PI.Op.33.n.19; *see also Yost*, 778 F.Supp.3d at 953. After all, it makes little sense to say that features like push notifications, infinite scroll, and autoplay are in and of themselves addictive without regard to the content they display. Users would not scroll through Instagram if it did not display content that they find especially engaging. Few people would use Instagram, for example, if it just infinitely displayed the text of a dictionary. Nor would they spend more time watching more videos on YouTube if it auto-played only videos that are uninteresting to or serve no purpose for users. And it is hard to see why push notifications would be "addictive" if they did not notify users of content they are interested in viewing.

Those commonsense observations are baked into HB3, as they are the reason why its restrictions apply to some services that utilize these features but not others.

Indeed, as the Court summarized, the state's admitted justification for restricting access to Facebook, Instagram, Snapchat, and YouTube while leaving many other mediums for speech untouched is that it believes "social media" to be "more addictive" because minors "are particularly interested in what their peers are doing and saying"—i.e., in the *content* on those services. PI.Op.36. That is "merely a different flavor of content-based regulation." *Carr*, 2025 WL 1768621, at *12. If Florida were really worried about the potential for features like auto-play and push notifications to addict minors to *all* forms of speech, then it would not have confined HB3 to websites that made the editorial choice to predominantly feature a particular category of speech.

C. HB3 Cannot Survive Any Level of Heightened Scrutiny.

To satisfy strict scrutiny, Florida must demonstrate that HB3 is "the least restrictive means of achieving a compelling state interest." *McCullen v. Coakley*, 573 U.S. 464, 478 (2014). Even intermediate scrutiny requires it to show that HB3 is "narrowly tailored to serve a significant governmental interest," *Packingham*, 582 U.S. at 105-06, that is "unrelated to the suppression of free expression," *United States v. O'Brien*, 391 U.S. 367, 377 (1968). Florida fails to make either showing.

Start with Florida's professed interest in protecting minors from alleged "addiction" to "social media." While protecting minors is certainly a laudable goal, in this context that interest is plainly related "to the suppression of free expression."

Id. After all, HB3 does not seek to protect minors from addiction to nonspeech products like "drugs and gambling." Dkt.86 at 53. It seeks to protect minors from alleged "addiction" to certain websites where they access, engage in, and interact with *speech*. The state has no legitimate interest in restricting access to speech just because minors find it especially appealing. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 576 (2011). Florida could not validly restrict access to Disney+ because it offers too many shows that "contain … catchy jingles" or end in cliffhangers. *Sorrell*, 564 U.S. at 578. Nor could it validly restrict access to books that are page-turners or use shorter chapters to keep readers more engaged. In *Brown*, for example, California did not even try to justify its law on the theory that it had an interest in preventing minors from addiction to violent video games. 564 U.S. at 799-804. For good reason. As the Supreme Court has repeatedly made clear, "the fear that speech might persuade provides no lawful basis for quieting it." *Sorrell*, 564 U.S. at 576; *see also Angelilli*, 2025 WL 1184247, at *5 ("Plaintiffs label Roblox 'addictive,' but this [is] just … another way of saying that Roblox's interactive features make it engaging …. First Amendment protections do not disappear simply because expression is impactful."). Burdening access to protected speech that citizens find especially interesting is especially inconsistent with the First Amendment.

While this Court concluded that Florida has a legitimate interest in regulating "features" that may lead individuals to spend more time engaging in speech,

PI.Op.41, that cannot be squared with the Court's observation that the "features" targeted by HB3 are "inextricable from speech" that covered services disseminate, PI.Op.33.n.19. Features like infinite scroll, push notifications, auto-play, etc., are not in and of themselves "addictive" without reference to the *speech* they display. *See supra* pp.22-24. For example, Florida would not be concerned with "infinite scroll" if it just displayed content utterly randomly, without regard to whether it is of interest to users. Nor would the state feel compelled to regulate push notifications that alert users only of content they do not care to see. Florida seeks to restrict those features as a means to restrict how much time minors spend *engaging with protected speech*. And the state simply does not have an interest in trying to ration how much time minors (or adults) spend engaging in that speech. If it did, then it is hard to see why the state would not have an equally legitimate interest in restricting the use of cliffhangers, or shorter chapters or segments, or serialization, or any of the many other features developed over the centuries that could be said "to undermine a person's ability to exercise their will in determining the amount of time that they choose to spend engaging with" books, radio programs, movies, television, and so on. PI.Opp.41.

In all events, HB3 is not a narrowly tailored means of addressing the state's professed interest. Even under intermediate scrutiny, Florida must demonstrate that HB3 does not "burden substantially more speech than necessary to further [its]

interests." *FSC*, 145 S.Ct. at 2302. Unlike laws that restrict minors from accessing websites that contain content that is *unprotected* as to minors, *see id.* at 2300, HB3 hinders access not just to websites that disseminate unprotected (or otherwise harmful) content; it restricts "with one broad stroke" access to services that for many are valuable sources for knowing current events, speaking, listening, and "otherwise exploring the vast realms of human thought and knowledge." *Packingham*, 582 U.S. at 107. On top of that, the Act has the practical effect of hindering adults' access to the same services, even though the state has no legitimate reason to do so. *See Ashcroft*, 542 U.S. at 663; *Reno*, 521 U.S. at 856-57. Florida could not restrict minors (and adults) from obtaining library cards just because some might come across *Fifty Shades of Grey*, or because some might spend two or more hours a day reading *The Hunger Games*. Nor, for example, could it prevent them from entering video games arcades just because visitors can play *Grand Theft Auto* or because some spend two or more hours playing *Dance Dance Revolution*. *See Brown*, 564 U.S. at 794-95, 798-99. For the same reasons, Florida may not restrict minors (and adults) from creating accounts on "social media" websites just because some minors may spend more time on them than Florida thinks they should.

HB3 fails narrow tailoring in other ways as well. For example, it "applies to any social media site" with the so-called "addictive features under any circumstances, even if … the site only sends push notifications if users opt in … or

the site does not auto-play video for account holders who are known to be youth." PI.Op.47. And it sweeps in websites regardless whether minors "are 'addicted' or because they simply wish[] to engage with speech for more than two hours per day." PI.Op.47-48. That underscores why HB3 is nothing like the law at issue in *FSC*. There, Texas sought to protect minors from content that is *obscene* as to them, and it chose a legislative solution that targeted only websites where a substantial amount of such unprotected content can be found. 145 S.Ct. at 2318. HB3, by contrast, burdens minors' access to the most popular "social media" websites regardless whether the website harms or addicts them.

On top of that, Florida has "too readily forgone options that could serve its interests just as well, without substantially burdening" protected speech. *McCullen*, 573 U.S. at 491; *see also Packingham*, 582 U.S. at 107. To survive intermediate scrutiny, "the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests." *McCullen*, 573 U.S. at 495. Parents already have many tools to protect their minors on the Internet, including refusing to give them smartphones and other devices in the first place. *See supra* pp.5-7. In fact, Florida appears to utilize those tools itself when it comes to limiting minors' access to "social media" in schools. Florida restricts the use of cell phones during instruction time. *See* Fla. Stat. §1006.07(2)(f). And it requires school officials to block "social media" websites on school devices.

See §1003.02(1)(g)(4). Florida has never even tried to explain why parents cannot adopt a similar approach if they wish to limit their children's access at home.

Nor has Florida explained why HB3's separate requirement that services terminate minors' accounts at their parents' behest (which Plaintiffs have not challenged under the First Amendment) is insufficient to achieve its goals. *See* Fla. Stat. §501.1736(2)(b)(3), (3)(b)(3), (4)(b)(3). That is fatal to Florida's defense of HB3, because "[t]o meet the requirement of narrow tailoring, the government must demonstrate that alternative measures that burden substantially less speech would fail to achieve the government's interests." PI.Op.50 (quoting *McCullen*, 573 U.S. at 495). Indeed, as this Court aptly observed, that "neither the legislature in enacting the law nor the Attorney General in defending it here has ever explained why the law's parental veto provision … is insufficient to achieve the state's interest" "alone is a significant indicium that the law is not narrowly tailored." PI.Op.50. 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); *see also McCullen*, 573 U.S. at 490-91. That Florida insists on layering additional restrictions on top of those existing ones underscores that its real concern is that some parents choose not to use the tools available to them to monitor what their minors do on the Internet. But the First Amendment does not tolerate speech restrictions "in support of what the State thinks

parents *ought* to want." *Brown*, 564 U.S. at 804; *see also HM*, 137 F.4th at 1245.

II. Plaintiffs Meet All Other Requirements For A Permanent Injunction.

"The standard for a permanent injunction is essentially the same as for a preliminary injunction except that the plaintiff must show actual success on the merits instead of a likelihood of success." *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1097 (11th Cir. 2004). This Court has already held that "Plaintiffs' members [will] face irreparable injury" if they must comply with HB3. PI.Op.53. As explained, HB3 violates the First Amendment—including by cutting off minors and other users from vital channels of communication, education, and self-expression. "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." PI.Op.53 (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion)); *accord Honeyfund.com v. Governor*, 94 F.4th 1272, 1283 (11th Cir. 2024). And that injury is compounded by the fact that HB3 "forces [Plaintiffs' members] to choose between either incurring unrecoverable compliance costs and curtailing their First Amendment rights to disseminate speech to willing listeners," "or risking an enforcement action" and substantial penalties, PI.Op.53—a route that Florida has already taken even in the brief period that HB3 has been in effect, *see OAG v. Snap Inc.*, No. 3:25-cv-676 (N.D. Fla. May 21, 2025). Such irreparable harms, which Plaintiffs face "twice over," amply justify converting the Court's preliminary injunction into a permanent

injunction. PI.Op.53-54.

In granting a preliminary injunction, the Court also determined that "[t]he balance of the equities and the public interest" decisively favor Plaintiffs given the constitutional rights at stake. PI.Op.54. The same holds true for a permanent injunction. Florida "has no legitimate interest in enforcing an unconstitutional law"—especially one whose unconstitutionality has been fully established on the merits. PI.Op.54 (quoting *Honeyfund.com*, 94 F.4th at 1283); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) ("[T]here can be no irreparable harm to a municipality when it is prevented from enforcing an unconstitutional statute."). And "an injunction is not contrary to the public interest because it is in the public interest to protect First Amendment rights." PI.Op.54 (quoting *Honeyfund.com*, 94 F.4th at 1283). Indeed, allowing HB3 to take effect would plainly *not* serve the public interest, as the law amounts to a "prophylactic[] bar" on minors' ability to "engag[e] in speech on social media platforms altogether," despite the many tools that empower parents to make their own tailored decisions about when and how their minors use covered services. PI.Op.50-52.

CONCLUSION

The Court should grant summary judgment to Plaintiffs on their First Amendment claim, enter a declaratory judgment that the provisions of HB3 located at Fla. Stat. §501.1736(2)(a), (2)(b)(1), (3)(a), (3)(b)(1), (4)(a), and (4)(b)(1) are

unconstitutional on their face and as applied to CCIA and NetChoice members, and convert its preliminary injunction into a permanent injunction.

Respectfully submitted,

s/Erin E. Murphy

Douglas L. Kilby
Florida Bar No. 73407
Hannah E. Murphy
Florida Bar No. 1032759
STEARNS WEAVER MILLER WEISSLER ALHADEFF & SITTERSON, P.A.
Highpoint Center
106 East College Avenue, Suite 700
Tallahassee, FL 32301
(850) 580-7200
dkilby@stearnsweaver.com
hmurphy@stearnsweaver.com

Paul D. Clement
Erin E. Murphy
James Y. Xi (*pro hac vice*)
Kevin Wynosky (*pro hac vice*)
Mitchell K. Pallaki (*pro hac vice*)
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com
erin.murphy@clementmurphy.com
james.xi@clementmurphy.com
kevin.wynosky@clementmurphy.com
mitchell.pallaki@clementmurphy.com

Counsel for Plaintiffs CCIA and NetChoice

September 2, 2025

CERTIFICATE OF COMPLIANCE

This memorandum complies with the type-volume limitation of Local Rule 7.1(F) because this memorandum contains 7,343 words, excluding the parts of the memorandum exempted by Local Rule 7.1(F).

September 2, 2025 s/Erin E. Murphy
Erin E. Murphy

CERTIFICATE OF SERVICE

I certify that on September 2, 2025, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

September 2, 2025 s/Erin E. Murphy
Erin E. Murphy