

No. 25-11881

**In the United States Court of Appeals
for the Eleventh Circuit**

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION,
ET AL.,
Plaintiffs-Appellees,

V.

JAMES UTHMEIER, IN HIS OFFICIAL CAPACITY AS FLORIDA
ATTORNEY GENERAL,
Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Florida
No. 4:24-cv-00438-MW-MAF

APPELLANT’S SUPPLEMENTAL BRIEF

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INTRODUCTION

Just a few years ago, in *Moody v. NetChoice*, 603 U.S. 707 (2024), Plaintiffs swamped the courts with a blunderbuss First Amendment challenge to a Florida law that regulates internet platforms. The Supreme Court expressed significant concern about the challenge because it required fact-intensive analysis about absent platforms. Yet on remand, not one platform joined the suit. The platforms—which would have been subject to the federal rules’ demanding party-discovery provisions—continued to hide behind their trade associations.

This case is déjà vu. Despite *Moody*, Plaintiffs’ billion-dollar members have stayed in the shadows. “[N]ot a single party in” this case “is actually regulated by [HB3] and can explain how” it supposedly infringes the rights of platforms or users. *Moody*, 603 U.S. at 760 n.2 (Thomas, J., concurring in the judgment). So Florida, the district court, and this Court have had to expend resources untangling Plaintiffs’ complex web of standing theories and divining how the platforms operate. Enough is enough.

Plaintiffs lack standing to assert members’ or users’ rights. Plaintiffs do not have associational standing to bring facial or as-applied challenges on behalf of their members because the challenges require member participation. Nor can Plaintiffs “seek to vindicate the rights of” users. Supp. Br. Order. Plaintiffs meet none of the requirements for prudential third-party standing: They lack their own injury in fact, users are not hindered from protecting their own rights, and Plaintiffs do not have a

close relationship with users. Tech companies cannot target Florida’s children with addictive features that ravage their mental health and then commandeer children’s rights to stifle a law that protects children from those same predatory practices.

The stay panel rightly held that HB3 likely survives intermediate scrutiny. The Court should hold the same here. *See Mullin v. Doe*, No. 25-1083, slip op. 19 (U.S.S.C. June 25, 2026) (plurality op.) (“[A] court with appellate jurisdiction may reverse on either jurisdictional or merits grounds a lower court order that granted interim relief.”). But at minimum, the Court should vacate the preliminary injunction for lack of standing.

BACKGROUND

This Court ordered supplemental briefing on whether Plaintiffs have associational standing to assert platforms’ rights, whether they have prudential third-party standing to assert users’ rights, and whether the district court decided Plaintiffs’ as-applied challenge. *See* Supp. Br. Order. Some brief procedural history is necessary to understand the posture of those issues.

In their amended complaint, Plaintiffs brought facial and as-applied challenges, but they pressed only their facial challenge in their renewed preliminary-injunction motion. Florida pointed that out in its opposition to the motion, DE86 at 60 (“Plaintiffs press no as-applied challenges in their renewed motion.”), and Plaintiffs did not contest Florida’s understanding in their reply, *see* DE88; *id.* at 28, 42 (advancing a

single “First Amendment Claim”—Plaintiffs’ “facial challenge”). Florida argued in its opposition that Plaintiffs lack associational standing because their facial challenge requires member participation and that Plaintiffs lack third-party standing to assert users’ right. DE86 at 28-38.

The district court entered an injunction based solely on “the rights of youth under 16.” DE94 at 53; *id.* at 28 n.12 (disclaiming reliance on platforms’ rights). The court opined that Plaintiffs are likely to prevail on their facial and as-applied challenges—even though Plaintiffs did not raise an as-applied challenge in support of their request for a preliminary injunction. *Id.* at 42-43, 52-53. The court did not perform an as-applied analysis, though. Instead, it simply made a few remarks about the “billions of users” on “Facebook, Instagram, YouTube, and Snapchat.” *Id.* at 42-43.

In its initial brief in this Court, Florida contended that the district court erred because Plaintiffs lack standing to assert children’s rights and because HB3 does not violate the First Amendment. Init. Br. 18-23, 27-45. Florida focused on children’s rights because the district court relied on only them, and Plaintiffs offered “insufficient” evidence about platform rights. *See* Reply Br. 4 n.3. Plaintiffs likewise focused on children’s rights, mentioning “the rights of [their] members” just once in their answer brief. Ans. Br. 24.

ARGUMENT

I. PLAINTIFFS LACK STANDING TO ASSERT PLATFORMS’ OR USERS’ RIGHTS.

Associational standing and third-party standing are separate exceptions to the prohibition against asserting third-party rights. *See Warth v. Seldin*, 422 U.S. 490, 511 (1975); *Kowalski v. Tesmer*, 543 U.S. 125, 129-30 (2004). Associational standing allows organizations to “enforce the rights of [their] members.” *NAACP v. Browning*, 522 F.3d 1153, 1160 (11th Cir. 2008). It is a narrow “strand” of “representational standing” that allows an association to bring a claim on behalf of its members—even though they are “absent third parties”—because the association has a “particular,” “recognized” “relationship[]” with them. *United Food & Com. Workers Union Loc. 751 v. Brown Grp.*, 517 U.S. 544, 557 (1996). An association is “the medium through which its individual members seek to [express] their own views.” *NAACP v. Patterson*, 357 U.S. 449, 459 (1958). Third-party standing, by contrast, “allows litigants who challenge a statute in their own right to assert ‘concomitant’ rights of third parties when those third parties’ rights would be violated by the enforcement of the challenged restriction against the litigant.” *Mata Chornwadi v. City of Boynton Beach*, 66 F.4th 1259, 1264 (11th Cir. 2023).

Each exception has different requirements. If an association seeks to enforce the rights of its members, it need not establish its own injury-in-fact. *Brown Grp.*, 517 U.S. at 555. It can rely on “its members’ injury.” *Id.* at 551. The association can satisfy Article III and overcome the bar on third-party claims by establishing that its members

would have standing “in their own right,” that “the interests it seeks to protect are germane to [its] purpose,” and that “neither the claim[s] asserted nor the relief requested requires the participation of individual members.” *Students for Fair Admissions v. President & Fellows of Harvard Coll.*, 600 U.S. 181, 199 (2023). For third-party standing, the “litigant must have suffered an injury in fact” itself, and the “litigant must show” both that it has a “close relation to the third party” and that there is a “hindrance to the third party[]” protecting his rights. *Powers v. Ohio*, 499 U.S. 400, 410-11 (1991).

Neither exception applies here. Plaintiffs do not have associational standing to assert platforms’ rights because their challenge to HB3 requires member participation. And they lack third-party standing to assert users’ rights because Plaintiffs have no injury in fact, and they have established neither hindrance nor a close relationship.

A. Plaintiffs do not have associational standing to assert the rights of their members.

“To the extent that [Plaintiffs] seek to vindicate the rights of their member platforms,” this suit requires member participation. Supp. Br. Order; DE86 at 28-34.¹

Member participation is necessary if a claim “requires individualized proof,” *Hunt v. Wash. State Apple Adver. Comm’n*, 432 U.S. 333, 344 (1977)—that is, if the claim

¹ Florida contested Plaintiffs’ associational standing below but not in its initial brief because the district court relied on only children’s rights in enjoining enforcement of HB3. Florida maintains that Plaintiffs lack associational standing to assert children’s rights, but the member-participation requirement is particularly relevant to claims

“depend[s] upon” members’ individual “circumstances.” *Ga. Cemetery Ass’n v. Cox*, 353 F.3d 1319, 1322 (11th Cir. 2003); *see also Free Speech Coal. v. Att’y Gen.*, 974 F.3d 408, 421 (3d Cir. 2020) (“[A]ssociational standing is improper for claims requiring a fact-intensive-individual inquiry.” (quotation omitted)). For example, free-exercise claims “ordinarily require[] individual participation,” even where plaintiffs seek to enjoin enforcement of a statute, because courts must examine how the challenged law “operates against [particular individuals] in the practice of [their] religion.” *Harris v. McRae*, 448 U.S. 297, 321 (1980) (quotation omitted). Because courts must make factual determinations about individuals’ religious practices, their participation is necessary to resolve the case. *See id.*

Platform participation is necessary here. The district court would have to make numerous factual determinations about individual platforms to resolve any facial or as-applied challenges asserting platforms’ rights.

1. For a facial challenge, the court would have to “address the full range of [platforms] the law[] cover[s]” and assess the constitutionality of each of the law’s applications. *Moody*, 603 U.S. at 724. That would require the court to first determine

asserting platforms’ rights. That issue is properly before this Court because the Court afforded the parties an opportunity for “supplemental briefing” on it. *See Margolin v. Nat’l Ass’n of Immigr. Judges*, 146 S. Ct. 1285, 1287 (2026) (quotation omitted). And the “proper resolution” of the issue “is beyond any doubt.” *United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (en banc).

all the platforms that HB3 applies to, which depends on the specifics of each platform's operations. *See* Fla. Stat. § 501.1736(1)(e). The court would have to, among other things, identify which platforms meet HB3's 2-hour requirement (“[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 the platform). *Id.* § 501.1736(1)(e)2. That is a fact-intensive inquiry. In fact, the district court denied Plaintiffs' first preliminary-injunction motion because Plaintiffs did not assemble enough facts to show that one of their members meets the 2-hour requirement. *See* DE72 at 8-9.

Next, the district court would have to determine whether each covered platform is engaged in protected activity when it curates and disseminates speech. *See Moody*, 603 U.S. at 725-26. That too is a fact-intensive inquiry. It depends on whether the platform's feeds “exclude[]” certain types of content, *id.* at 731; whether the platform relies on “artificial intelligence” to operate its feeds, *id.* at 770, 795 (Alito, J., concurring in the judgment, joined by Thomas and Gorsuch, JJ.); the “corporate structure and ownership” of the platform, *id.* at 746 (Barrett, J., concurring); the material on the platform—“Truethreats.com,” for instance, might not engage in any protected activity, OA Rec'g at 21:10-21:25; and the nuances of the “algorithms” the platform uses, *see Moody*, 603 U.S. at 734; *id.* at 745-46 (Barrett, J., concurring). It matters if an algorithm “respond[s] solely to how users act online” (in which case the platform is not engaged in expression), or if the algorithm instead incorporates “a wealth of user-agnostic

judgments” about the kinds of speech the platform wants to promote. *Id.* at 736 n.5 (majority op.); *see also id.* at 745-46 (Barrett, J., concurring). It also matters whether a platform uses artificial intelligence to disseminate speech because “even the researchers and programmers creating” artificial-intelligence algorithms do not “understand” the “decisions they make.” *Id.* at 795 (Alito, J., concurring in the judgment). It is hard to say that those algorithms reflect human expressive choice. *See id.*

After identifying all the covered platforms whose feeds are protected, the district court would have to examine how HB3 “intru[des] on” each feed. *Id.* at 725 (majority op.). HB3 might not intrude on a platform’s feeds at all. If users can access a feed without an account, HB3 would not impede a platform from disseminating the feed to children and adults regardless of whether the platform uses addictive features.

If the district court finds that HB3 intrudes on some platforms’ protected activity, the court would have to determine and then apply the appropriate level of scrutiny for each such application of HB3. “Given the diversity of circumstances presented by” platforms, that is also an “individualized inquiry.” *Free Speech Coal.*, 974 F.3d at 422. HB3 might be sufficiently tailored “for one association member” but not another. *Id.* Plaintiffs, for example, say that promoting parental controls is an effective, less-restrictive alternative to HB3, Ans. Br. 7-9, but if a covered platform lacks parental controls or fails to implement them with fidelity, then promoting controls would be ineffective for that platform. Each platform’s user base is relevant too. If a platform

has many users who are young children, then Florida would have more room to regulate the platform since young children have narrower First Amendment interests and are more vulnerable to “psychological . . . injury.” *Prince v. Massachusetts*, 321 U.S. 158, 169-70 (1944); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 214 n.11 (1975). Finally, as this Court suggested at oral argument, it is also relevant whether a platform hosts pornography since platforms have no First Amendment right to expose kids to pornography. *See Free Speech Coal. v. Paxton*, 606 U.S. 461, 482 (2025); OA Rec’g at 5:28-6:30.

Only after completing all those steps would the district court know all HB3’s constitutional and unconstitutional applications. So only then could the court perform the last step of the facial analysis—decide whether “the law’s unconstitutional applications substantially outweigh its constitutional ones.” *Moody*, 603 U.S. at 724.

An as-applied challenge to HB3 would be no less fact-intensive. The district court would have to determine whether the platform meets HB3’s criteria; whether its feeds are expressive; whether HB3 interferes with the feeds; and whether HB3 is sufficiently tailored as applied to the platform.

NetChoice v. Bonta, 152 F.4th 1002 (9th Cir. 2025) is instructive. There, California passed a law that barred platforms from exposing kids to “personalized feeds” because California found that those feeds foster compulsive use of social media. 152 F.4th at 1009-10. NetChoice brought an as-applied challenge to the law, but the Ninth Circuit

held that NetChoice lacked associational standing because the challenge required member participation. *Id.* at 1013-14. “The First Amendment analysis” for a “claim related to algorithmic speech,” the court observed, “is fact intensive and will surely vary from platform to platform.” *Id.* at 1014 (quotation omitted). That “is just as true in this as-applied challenge as it was in *Moody*’s facial challenge,” and “it means, in turn, that the merits of the claim asserted and the relief requested requires the participation of individual NetChoice members.” *Id.* (same).

In short, Plaintiffs’ facial and as-applied challenges require a host of fact-specific inquiries, any one of which would make associational standing improper.² All of them together make it utterly unworkable. The preliminary-injunction litigation in *Moody* is telling. The district court was forced to rely on untested representations from Plaintiffs about how their members operate and on declarations from a few platform personnel handpicked by Plaintiffs. The lack of any direct involvement of a platform contributed to the “underdeveloped” and “incomplete” record that led to the Supreme Court’s

² See, e.g., *Harris*, 448 U.S. at 321; *Ga. Cemetery Ass’n*, 353 F.3d at 1322 (no associational standing for a facial takings claim because it was necessary to consider how the law “economically impact[ed]” individual members); *Kan. Health Care Ass’n v. Kan. Dep’t of Soc. & Rehab. Servs.*, 958 F.2d 1018, 1023 (10th Cir. 1992) (same for claim for injunctive relief, which presented the question whether the law had a “detrimental effect on” individual entities); *Bano v. Union Carbide Corp.*, 361 F.3d 696, 715 (2d Cir. 2004) (similar).

vacatur, 603 U.S. at 726, 734—the very situation the member-participation requirement is intended to prevent.

2. Plaintiffs argued below that they have associational standing because (1) their claims “do not require excessive participation,” DE88 at 19 (citing *Borrero v. United Healthcare*, 610 F.3d 1296 (11th Cir. 2010)), and (2) the member-participation requirement is merely “prudential” and courts can set it aside for the sake of “convenience and efficiency,” *id.* Those arguments fail.

First, Plaintiffs’ claims require excessive participation. In *Borrero*, this Court indicated that a claim requires excessive participation if it cannot be resolved with “limited individual participation” through “sample testimony.” 610 F.3d at 1306. That is this case. Testimony from YouTube about its algorithms, users, and accounts cannot substitute for testimony from Instagram, Snap, TikTok, and other platforms.

Second, the member-participation requirement is not discretionary. Just because “a standing requirement is prudential does not mean that its application is discretionary.” *Leaf Tobacco Exps. Ass’n v. Block*, 749 F.2d 1106, 1112 (4th Cir. 1984) (Wilkinson, J.). The member-participation requirement is “prudential and malleable by Congress”—not courts. *Brown Grp.*, 517 U.S. at 551. Congress can “abrogate” the requirement by “authoriz[ing]” an association “to sue for its members[],” *id.* at 558, but “lower federal courts lack similar authority,” *Leaf Tobacco*, 749 F.2d at 1112. If a claim

requires a court to resolve factual questions about members, the court must deny associational standing.

But even if the member-participation requirement could be set aside for the sake of “efficiency,” DE88 at 19, there is no efficiency to be gained from Plaintiffs litigating this case. Florida’s depositions of Plaintiffs’ preliminary-injunction declarants confirmed that Plaintiffs cannot litigate fact-intensive questions on behalf of their members. NetChoice’s general counsel testified that he did not even know whether Meta and Google do business outside the United States, much less how their algorithms work. *See* DE51-4 at 31:17-32:11, 113:18-115:14, 122:13-126:1; DE86-4 at 23:13-17 (testifying that the only information he has “about YouTube’s algorithms” is publicly available information). He also did not know which, if any, platforms have the features that would subject them to HB3. DE51-4 at 141:14-142:4. CCIA’s president similarly had little knowledge of member platforms. He did not know whether Meta’s products use autoplay or live streaming. DE51-5 at 116:7-13. He could only “make some generalizations” about Facebook’s users. *Id.* at 114:6-115:2. He admitted that his limited “observations” about members’ platforms were based exclusively on publicly available information. *Id.* at 27:24-28:17; *see also* DE86-5 at 23:6-25:23. He was even

unsure if he could “call[] Meta” and obtain information for this case. DE86-5 at 14:6-11.

Events since the preliminary-injunction litigation only underscore the need for member participation. Because Plaintiffs have no information about platforms, Florida has had to subpoena platforms, but they have resisted discovery, “insist[ing] that producing [nonpublic] documents is burdensome since the[] [platforms] are non-parties.” DE157 at 3. The platforms’ conduct has already forced Florida to file one enforcement action in the Central District of California. *Id.*

On top of all those problems with Plaintiffs’ lawsuit, if Plaintiffs lose on the merits, more litigation will inevitably follow. Tech companies will attempt a second “bite at the apple,” seeking to take advantage of “asymmetrical preclusion.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 402-03 (2024) (Thomas, J., concurring).

B. Plaintiffs do not have prudential third-party standing to assert the rights of users.

Lacking associational standing, Plaintiffs must rely on users’ rights to attack HB3. But they do not have standing to assert users’ rights either.

1. Plaintiffs meet none of the requirements for third-party standing. For one, they do not themselves have an injury in fact. *See id.* at 393 n.5 (majority op.) (“The third party standing doctrine” requires the litigant to establish its own injury); *Hollingsworth v. Perry*, 570 U.S. 693, 708 (2013) (same); *Mata Chornvadi*, 66 F.4th at 1265

(“Jus tertii standing allows litigants who challenge a statute *in their own right* to assert” third-party rights. (emphasis added)); DE86 at 34 (arguing that Plaintiffs cannot use their members’ injury “to satisfy Article III and then use third-party standing” to assert users’ rights). Plaintiffs have offered no evidence that they—trade associations unregulated by HB3—are injured. Without their own injury, Plaintiffs cannot rely on third-party standing to assert users’ rights. *See Aaron Private Clinic Mgmt. v. Berry*, 912 F.3d 1330, 1339 (11th Cir. 2019) (“Because . . . Aaron lacks an injury in fact, its third-party-standing argument fails.”).

Even if Plaintiffs had an injury, they have established neither hindrance nor a close relationship. There is no “hindrance” to children or adults “protect[ing] [their] own” First Amendment “interests.” *Kowalski*, 543 U.S. at 130. In the district court, Plaintiffs did not even dispute that. *See* DE88 at 26 n.8. Nor could they: Plaintiffs have relied on cases in which “minors” and “adults” challenged social-media laws in other States. *SEAT v. Paxton*, 765 F. Supp. 3d 575, 582 (W.D. Tex. 2025); *NetChoice v. Reyes*, 748 F. Supp. 3d 1105, 1112 (D. Utah 2024); DE76 at 1. Those cases are not unique. From *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503 (1969) to *Mahanoy Area Sch. Dist. v. B.L.*, 594 U.S. 180 (2021), adults and children have sued to protect their First Amendment rights time and time again.

Nor do Plaintiffs have a close relationship with users. They have never argued that they do. Rather, they claim only that their members have a close relationship with

users. But third-party standing requires the *litigant* to have a close relationship with the third party. *See Kowalski*, 543 U.S. at 130 (“[T]he party asserting the right [must have] a ‘close’ relationship with the person who possesses the right.”). Just like other “strand[s]” of “representational standing” (e.g., association-member, next friend, parent-child), third-party standing is premised on a “particular relationship[]” between the litigant and the third party. *Brown Grp.*, 517 U.S. at 557. It allows a “narrow class of litigants to assert the legal rights of others” because the litigants have a close relationship with them. *All. for Hippocratic Med.*, 602 U.S. at 393 n.5. Plaintiffs are not in that narrow class. Just as a parent could not assert the rights of a third party who has a relationship with only her child, a trade association cannot assert the rights of a third party who has a relationship with only its members.

In any event, platforms lack a close relationship with users. The “interests of” platforms and users are “antagonistic” and “potentially in conflict.” *Elk Grove Unified Sch. Dist. v. Newdow*, 542 U.S. 1, 15 (2004); *see also Harris v. Evans*, 20 F.3d 1118, 1123 (11th Cir. 1994) (en banc) (for third-party standing, the litigant and third parties must have “aligned” interests). A key feature of social-media platforms’ business model is addicting users so that they can maximize advertising revenues. *See* Init. Br. 3-8. That model has enriched tech companies at the expense of kids’ mental health. *See id.* Platforms want to defeat HB3 because its regulation of addictive design features is a barrier to profits. Florida’s children (and their parents), however, have an interest in

the features being regulated. Many children report feeling “manipulated” and “addicted” by the features. DE51-9 at 9-10. Children across the country have even sued platforms because the addictive features have caused them to suffer “a variety of harms.” *In re Soc. Media Adolescent Addiction/Personal Inj. Prods. Liab. Litig.*, 754 F. Supp. 3d 946, 954 (N.D. Cal. 2024). That conflict between platforms and children makes prudential standing improper.

The Sixth Circuit agreed in *NetChoice v. Yost*,—F.4th—, No. 25-3371 (6th Cir. June 18, 2026). *Yost* considered NetChoice’s challenge to Ohio’s child social-media law. A majority of the panel concluded that NetChoice lacked prudential standing to assert the rights of children because platforms’ and children’s interests are not aligned. The lead opinion explained that platforms’ “most vigorous advocacy for expansive First Amendment doctrine is not necessarily the most effective advocacy for [children’s] interests.” Slip op. 14 (lead op.). And the concurring opinion observed that platforms and children have “opposed” interests because Ohio’s law “is a consumer-protection law,” which protects children from platforms. *Id.* at 45-46 (Batchelder, J., concurring). So is HB3.

2. Plaintiffs have resisted every part of the test for third-party standing. They argue that the test is altogether inapplicable “in the First Amendment context,” OA Rec’g at 18:29-19:39, but this Court’s en banc decision in *Harris* forecloses that argument, *see* Reply Br. 3-4. In their supplemental brief, Plaintiffs principally rely on

Brown v. Ent. Merchants Ass’n, 564 U.S. 786 (2011) in asserting that the test is irrelevant, yet Plaintiffs previously acknowledged that *Brown* was a drive-by standing case. *See* Ans. Br. 44.

Plaintiffs also say that they need not establish their own injury but instead can rely on their members’ injury. *See* Ans. Br. 45. But that theory crashes into a wall of third-party-standing precedent requiring litigants themselves to have an injury—from *Powers* to *Hollingsworth* to *Alliance for Hippocratic Medicine*. It also runs headlong into *Warth*, which held that an association lacked standing under similar circumstances. The association sought to use its members’ injury to “satisfy the case-or-controversy requirement of Art[icle] III,” but it did not press its members’ rights—instead, it solely “raise[d] the putative rights of third parties.” 422 U.S. at 514. The Court rejected that gambit, concluding that it was “inappropriate to allow [the association] to invoke the judicial process.” *Id.*

The Fifth Circuit thus erred in *NetChoice v. Fitch*, 134 F.4th 799 (5th Cir. 2025) by allowing Plaintiffs to borrow their members’ injury for third-party standing. *See* Ans. Br. 47. The Fifth Circuit ruled that NetChoice could use its members’ injury to establish associational standing and then use its associational standing to assert users’ rights. 134 F.4th at 806. That not only defies third-party-standing precedent and *Warth* but also impermissibly stacks prudential-standing exceptions. *See* Init. Br. 22-23. Apart from that, Plaintiffs do not even have associational standing to assert their members’ rights

here, *see supra* 5, which means they have no associational standing on which to stack a third-party claim.

Plaintiffs next declare that *Craig v. Boren*, 429 U.S. 190 (1976) eliminates their close-relationship and hindrance problems. They say that under *Craig*, (1) their members have a close relationship with users because users “seek access to their” products, and (2) Plaintiffs need not establish hindrance because HB3 “directly regulates [their] members.” Ans. Br. 44-45. But even if Plaintiffs can rely on their members’ relationship with users, *but see supra* 14-15, *Craig* established no categorical rule that businesses can always assert the rights of customers when a law limits customers’ access to a product. The interests of the business and customers matter—particularly when the customers are children. *See Young Apartments v. Town of Jupiter*, 529 F.3d 1027, 1043 (11th Cir. 2008) (noting that a business “should not be permitted to attack a” law “on behalf of its” customers if the law is “generally intended to protect the health and safety of” the customers “against” the business).

As for hindrance, even if the Supreme Court did not require the plaintiff in *Craig* to establish hindrance, the Court decided *Craig* long before *Kowalski*, which reined in third-party standing and clarified that plaintiffs must always establish hindrance and a close relationship. 543 U.S. at 130; *see also Sessions v. Morales-Santana*, 582 U.S. 47, 57

(2017) (requiring hindrance and a close relationship post-*Kowalski*); *In re Checking Acct. Overdraft Litig.*, 780 F.3d 1031, 1038-39 (11th Cir. 2015) (same).³

Unable to establish third-party standing, Plaintiffs have invoked overbreadth standing, arguing that they can assert users’ rights under *Virginia v. Am. Booksellers Ass’n*, 484 U.S. 383 (1988). *See* Supp. Br. 16-17. Yet that prudential-standing exception also requires litigants to have an injury in fact. *See Am. Booksellers*, 484 U.S. at 392; *Mata Chornwadi*, 66 F.4th at 1264. And at any rate, *Mata Chornwadi* forecloses overbreadth standing because HB3 does not regulate users. Reply Br. 5. The *Yost* opinions relied on a similar rationale in denying NetChoice overbreadth standing. The concurring opinion observed: “Perhaps some [children] face limited access to social-media platforms under [Ohio’s law], but there is no risk that the state will punish them for their speech or that they will otherwise be chilled and refrain from constitutionally protected speech.” Slip op. 47 (Batchelder, J., concurring); *id.* at 14 (lead op.) (reaching the same conclusion). Like Ohio’s law, HB3 does not threaten children with

³ This Court recently indicated that *Kowalski* might leave the door open to a more “forgiving” approach to hindrance and close relationship “when enforcement . . . against the litigant would result indirectly in the violation of third parties’ rights.” *Bail Fund v. Clerk of the Cir. Ct.*, No. 24-10827, slip op. 20 n.11 (11th Cir. June 1, 2026) (unpublished). Even if that is true, it does not help Plaintiffs because they have made no showing whatsoever on hindrance. Even under a “forgiving” standard, some showing is necessary.

punishment if they speak online, so it does not implicate *American Bookseller's* concern about self-censorship.

Yost shows that overbreadth standing is improper for another reason as well. Plaintiffs believe that “wherever First Amendment overbreadth questions are concerned, they overshadow all other prudential considerations.” *Id.* at 13 (lead op.). That is wrong. A litigant cannot usurp a third party’s First Amendment rights when, as here, the litigant and the third party have divergent interests. *See id.* at 13-14. Children might “decide against challenging” HB3 because they prefer its protections—indeed, HB3 has been in effect for months yet no children (or adults) have challenged it. *Id.* at 14. Plaintiffs cannot strip children of that decision. *See All. for Hippocratic Med.*, 602 U.S. at 379-80.

II. THE DISTRICT COURT VIOLATED THE PARTY-PRESENTATION PRINCIPLE IN PASSING ON PLAINTIFFS’ AS-APPLIED CHALLENGE.

Plaintiffs raised only their facial challenge in their preliminary-injunction motion. Still, the district court considered their as-applied challenge, surmising that HB3 is likely unconstitutional “[a]s applied to Plaintiffs’ members.” DE94 at 42-43. That violated “the party-presentation principle.” *Margolin v. Nat’l Ass’n of Immigr. Judges*, 146 S. Ct. 1285, 1288 (2026). “Because courts are essentially passive instruments of government, [they] rely on the parties to frame the issues for decision and decide only the questions presented.” *Id.* The district court’s “departure from th[at] principle” here was “an

abuse of discretion,” and the court’s ruling on Plaintiffs’ as-applied challenge cannot support affirmance. *Id.*⁴ Plaintiffs impliedly acknowledged as much in their answer brief: The brief never mentions Plaintiffs’ as-applied challenge, and it is vague about Plaintiffs’ First Amendment theory—perhaps because Plaintiffs recognized the district court’s error in crediting an unraised as-applied challenge.

Party presentation aside, the court’s as-applied ruling cannot support affirmance because the court did not perform a proper as-applied analysis. It did not identify what specific “circumstances” support a valid as-applied challenge. *Schultz v. State*, 42 F.4th 1298, 1319 (11th Cir. 2022) (“[A] factual, as-applied challenge asserts that a statute cannot be constitutionally applied in particular circumstances.”). The court simply declared that HB3 is likely unconstitutional “[a]s applied to Plaintiffs’ members” because “four” members run platforms that “enable billions of users around the world to exchange speech.” DE94 at 42-43 (quoting CCIA president’s declaration).

CONCLUSION

This Court should reverse the preliminary injunction.

⁴ Florida raised this point in its initial brief. Init. Br. 41 n.24.

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I certify that on June 29, 2026, I electronically filed this document with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all parties who are registered through CM/ECF.

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