

No. 25-11881

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION; NETCHOICE,

Plaintiffs-Appellees,

v.

ATTORNEY GENERAL, STATE OF FLORIDA,

Defendant-Appellant.

On Appeal from the United States District Court
for the Northern District of Florida,
No. 4:23-cv-00438

SUPPLEMENTAL BRIEF FOR PLAINTIFFS-APPELLEES

PAUL D. CLEMENT
ERIN E. MURPHY
Counsel of Record
JAMES Y. XI
MITCHELL K. PALLAKI
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
erin.murphy@clementmurphy.com
Counsel for Plaintiffs-Appellees

June 29, 2026

**CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT**

Pursuant to 11th Cir. R. 26.1, Plaintiffs-Appellees hereby certify that there are no additional attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this particular case on appeal that were omitted from the Appellant's certificate or the certificate supplied by amici curiae. *See* CA11.Dkt.6; CA11.Dkt.23 at C.1-3; CA11.Dkt.26 at i-iv; CA11.Dkt.42 at C.1-7; CA11.Dkt.45; CA11.Dkt.46 at ii-ix.

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, 26.1-2, and 26.1-3, Plaintiffs-Appellees respectfully submit this Corporate Disclosure Statement and state as follows:

1. Computer & Communications Industry Association (CCIA) has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.
2. NetChoice has no parent corporation, and no publicly held corporation owns ten percent or more of its stock.

June 29, 2026

s/Erin E. Murphy
Erin E. Murphy

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SUPPLEMENTAL BRIEF

“Courts sometimes make standing law more complicated than it needs to be.” *Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 83 (2026). There is no need to do so here. Plaintiffs are trade organizations with members who operate “social media” websites that are the “objects” of HB3. *Diamond Alt. Energy v. EPA*, 606 U.S. 100, 114-15 (2025). As the “directly regulated parties,” Plaintiffs’ members unquestionably have standing to challenge HB3. *Id.* And because some covered members engage in First-Amendment-protected activity, those members have standing to assert a First Amendment claim in their own right.

Plaintiffs also plainly have associational standing to bring this lawsuit on their members’ behalf—which is presumably why Florida has not argued otherwise on appeal. In fact, this is a quintessential associational-standing case. Companies “join an organization ... to create an effective vehicle for vindicating interests that they share with others.” *Int’l Union v. Brock*, 477 U.S. 274, 290 (1986). Plaintiffs’ members share such an interest here. And proving Plaintiffs’ First Amendment claims requires exceedingly little member participation. The statute on its face restricts access to only those websites that “[a]llow[] users to upload content or view the content or activity of other users” and that “select content for users.” Fla. Stat. §501.1736(1)(e). It thus does not require member participation to know that HB3 burdens the First Amendment rights of both covered websites and the millions of

minors and adults who wish to access them. Nor does it require member participation to assess whether HB3 burdens more speech than necessary to accomplish the state's professed interests.

Because Plaintiffs have standing to assert that HB3 violates the First Amendment, they do not need “prudential standing” to assert the First Amendment rights of their members’ users. Plaintiffs invoke those users not to bring claims on their behalf, but because users’ rights are an essential component of the substantive First Amendment analysis. This Court must consider whether HB3 burdens “substantially more speech ... than is necessary to achieve the government’s asserted interest[s].” *Fla. Preborn Rescue v. City of Clearwater*, 161 F.4th 732, 744 (11th Cir. 2025). There is no way to conduct that analysis without evaluating the burdens HB3 imposes on the millions of minors and adults who wish to engage in protected First Amendment activity on websites covered by the law. That is why *Brown v. Entertainment Merchants Association*, 564 U.S. 786 (2011), turned principally on the First Amendment rights of minors who wished to purchase violent video games, even though the case was brought by associations for the video game and software industries. And why *Virginia v. American Booksellers Association*, 484 U.S. 383 (1988), turned on the First Amendment rights of bookbuyers, even though the only plaintiffs were associations of booksellers and bookstores.

Finally, while the district court properly held that HB3 likely violates the First Amendment on its face, it also held that HB3 likely violates the First Amendment as applied to Plaintiffs’ members. If the Court thinks that as-applied relief is more appropriate, it should narrow the injunction, not vacate it in *toto*.

I. Plaintiffs Have Associational Standing To Vindicate Their Members’ Rights.

To invoke associational standing, an organization must demonstrate that (1) at least one of its members has Article III standing, (2) the interests it seeks to protect are germane to its purpose, and (3) neither the claim asserted nor the relief requested “require[s] excessive [member] participation.” *Borrero v. United Healthcare*, 610 F.3d 1296, 1306 (11th Cir. 2010). Plaintiffs easily satisfy each requirement.

Florida has never contested the germaneness prong. D.Ct.Dkt.94.at.22. And it no longer disputes that at least one member has Article III standing. *See* D.Ct.Dkt.86-1. Nor could it. At least some of Plaintiffs’ members are “directly regulated” by HB3, *Diamond*, 606 U.S. at 115, and Florida has sued two of Plaintiffs’ members and threatened a third. *See* D.Ct.Dkt.86-1; *OAG v. TikTok*, No. 2026CA001383 (Fla. 19th Jud. Cir., filed June 15, 2026); D.Ct.Dkt.82.at.12:13-13:12.

Indeed, Plaintiffs’ members have standing twice over. HB3 not only imposes compliance costs on them—a well-accepted basis for Article III standing—but also inflicts the same First Amendment injuries recognized in *Moody v. NetChoice*, 603

U.S. 707 (2024), by restricting members’ ability to disseminate curated compilations of third-party speech. Whatever disputes there may be about *how many* members suffer that injury, there can be no serious dispute that at least one does: one of the members who submitted a declaration is YouTube, D.Ct.Dkt.76-4—a service that *Moody* squarely held engages in protected activity, 603 U.S. at 738-40. Plaintiffs’ members thus plainly have both Article III standing generally and standing to raise a First Amendment claim in particular.

Florida did raise one associational-standing argument below: It asserted that resolving Plaintiffs’ claims would require members to participate to determine which members engage in protected First Amendment activity. But the district court rejected that argument, and Florida abandoned it on appeal. For good reason: The third prong of the associational-standing test is “prudential,” not jurisdictional, and is “best seen as focusing on ... matters of administrative convenience and efficiency.” *United Food v. Brown Grp.*, 517 U.S. 544, 556-57 (1996).¹ “[D]istrict courts possess a degree of discretion in applying it.” *All. for Open Soc’y v. USAID*,

¹ Because this prong is not jurisdictional, this Court can and should hold Florida to its deliberate abandonment of that argument; resurrecting an argument Florida intentionally relinquished would “depart from the principle of party presentation basic to our adversary system.” *Wood v. Milyard*, 566 U.S. 463, 472-73 (2012). Indeed, excusing Florida’s strategic decision not to raise this argument on appeal, *see* D.Ct.Dkt.86.at.28-34, would be a particularly egregious departure from party-presentation principles when Florida is pressing a comparable argument in another case involving Plaintiffs, *see* Dkt.292.at.6-13, *NetChoice v. Uthmeier*, No.4:21-cv-220 (N.D. Fla. April 3, 2026).

651 F.3d 218, 229 (2d Cir. 2011). And they often permit associations to proceed even when *some* member participation is needed, especially if doing so will serve “judicial economy.” *Id.* at 229-30. Indeed, courts have consistently rejected the notion that associational standing is limited “to cases in which it would not be necessary to take any evidence from individual members.” *Retired Chi. Police Ass’n v. City of Chicago*, 7 F.3d 584, 601-02 (7th Cir. 1993). The question is not whether resolving the organization’s claims requires *any* member participation, but whether it would “require *excessive* participation.” *Borrero*, 610 F.3d at 1306 (emphasis added). So long as its claims “can be proved with [members’] limited participation,” the “organization has standing to assert them.” *Id.*

Plaintiffs’ claims do not require “excessive participation” by members; they require hardly any member participation at all. To determine whether HB3 violates the First Amendment, the Court must determine (1) whether the law triggers First Amendment scrutiny, (2) what level of scrutiny applies, and (3) whether the challenged provisions survive that scrutiny. None of those inquiries necessitates “excessive” member participation.

1. To decide whether HB3 triggers First Amendment scrutiny, the Court need only read HB3’s text. HB3 defines “[s]ocial media platform” as “an online forum, website, or application” that “[a]llows users to upload content or view the content or activity of other users” and “select[s] content for users.” §501.1736(1)(e). HB3 thus

applies *only* to websites that allow users to engage in speech, *see Packingham v. North Carolina*, 582 U.S. 98, 104-05 (2017), and that engage in their own First Amendment activity by selecting and disseminating content to their users, *see Moody*, 603 U.S. at 731-32. By restricting account creation on those websites, HB3 both “prevent[s] user[s] from engaging in the legitimate exercise of First Amendment rights,” *Packingham*, 582 U.S. at 108, and burdens the First Amendment rights of those websites.

Member participation is not necessary to determine that HB3 burdens the First Amendment rights of minors and adults who wish to create accounts on covered websites. Nothing about that argument turns on the specifics of the websites covered by the law. All the Court needs to know is that HB3 restricts access to websites where minors and adults alike “can speak and listen.” *Id.* at 104. It plainly does. True, Plaintiffs also argue that HB3 restricts the First Amendment right of Plaintiffs’ members. CA11.Dkt.27.at.24. But to determine whether HB3 triggers First Amendment scrutiny, it is sufficient that it implicates the First Amendment rights of *either* Plaintiffs’ members or their users. In that respect, this case differs from *Moody*. The laws at issue there did not restrict users’ access to services; they instead restricted the ability of covered services to decide what speech to disseminate and how. 603 U.S. at 720-21, 740-43. That is why the principal focus of the First Amendment analysis was on the rights of the services, putting front and center

questions about whether and which services engage in protected editorial activity when regulated by those laws.²

Here, by contrast, HB3 implicates the First Amendment regardless of its impact on members' rights, as it restricts users' access to protected speech in all applications. That is true even if some speech on some services may not be protected, as the law restricts access to *all* speech on those services, not just some narrowly defined category of speech that is unprotected. Just as a law restricting access to bookstores would implicate the First Amendment even if the store might carry a few obscene books, a law that restricts access to websites where people "upload content or view the content or activity of other users," §501.1736(1)(e)(1), implicates the First Amendment even if some of the speech users may post or access is unprotected. In all events, HB3's coverage definition ensures that it will *not* cover any service that predominantly disseminates speech that is unprotected as to minors.³

² *NetChoice v. Bonta* is distinguishable for a similar reason. It involved an as-applied challenge to a law that, *inter alia*, requires minors to obtain parental consent to access "personalized feeds." 152 F.4th 1002, 1013-14 (9th Cir. 2025). The Ninth Circuit concluded that the district court did not abuse its discretion by deciding that "it needed more information" and needed member participation, given there was a dispute whether the personalized feeds targeted by the law are expressive. *Id.* While NetChoice believes that *Moody* already answered that question, it is of little relevance here. Florida has never disputed that users engage in First-Amendment-protected activity on the services HB3 covers.

³ Though even if it did, it would not matter, since HB3 burdens adults' access too. *See FSC v. Paxton*, 606 U.S. 461, 482-83 (2025).

HB3 applies only to services where a percentage of users under 16 “spend on average 2 hours per day.” §501.1736(1)(e)(2). No website where “a substantial portion” of the material is obscene vis-à-vis minors could satisfy that requirement since HB3—in a section Plaintiffs have not challenged—prohibits anyone under 18 from accessing such a website. *See* §501.1737(2).

There is thus no need to resolve any disputes about which covered members engage in First Amendment activity to know that HB3 implicates the First Amendment. But even if there were, doing so would require virtually no member participation; HB3 regulates *only* websites that “select content for users.” §501.1736(1)(e)(3). Just as bookstores, libraries, and movie theaters “engage[] in speech activity” when they “select[] and present[]” works created by others, *Ark. Ed. Television Comm’n v. Forbes*, 523 U.S. 666, 674 (1998), websites engage in protected First Amendment activity when they select content to disseminate to their users, *see Moody*, 603 U.S. at 735-38. So a service would not be covered if it did not engage in the precise activity that *Moody* held is protected. The only real question, then, is whether any of NetChoice’s members are covered by the law. The state now concedes (as it must) that some are.

In all events, it is not even clear that Florida disputes that any covered member engages in the protected activity of selecting and disseminating content to users (presumably because to do so would be to dispute that HB3 actually covers that

member). But even if it did, resolving that dispute would not require “excessive” member participation. *Moody* confirms as much. Facebook and YouTube were not parties in that case. Yet the Court nevertheless held, based on declarations their employees submitted, that Facebook and YouTube engage in protected First Amendment activity when curating and disseminating third-party content. 603 U.S. at 733-40. While Justice Thomas expressly argued that “[a]ssociational standing raises constitutional concerns,” *id.* at 760 n.2 (Thomas, J., concurring in judgment), no Justice thought that Facebook and YouTube needed to participate as parties for the Court to determine that they engage in protected First Amendment activity. Here, too, this Court can confirm that Plaintiffs’ members (including YouTube, Snap, and Meta) engage in protected activity based on the preliminary-injunction record.⁴ There is no need for Plaintiffs’ members to participate as parties.

2. Nor does the Court need “excessive” member participation to determine whether the challenged provisions survive heightened scrutiny. Whether strict or intermediate scrutiny applies turns on whether HB3 is content- or speaker-based, not

⁴ To the extent it matters, that is likewise true as to *Moody*’s footnote reserving judgment on whether the First Amendment protects “feeds whose algorithms respond solely to how users act online,” “without any regard to independent content standards.” 603 U.S. at 736 n.5. Even assuming such services were not engaged in protected activity, Plaintiffs would need to show only that covered members have editorial standards that they use to curate content—which the record amply confirms, *see* CA11.Dkt.27.at.5-6; D.Ct.Dkt.76-1.¶12; D.Ct.Dkt.76-2.¶¶5b, 6b, 25; D.Ct.Dkt.76-3.¶¶21b, 22b, 23b, 31; D.Ct.Dkt.76-4.¶¶8, 27-35, and Florida does not and cannot deny.

on details about the services it covers. And just as the Supreme Court did not need member-specific facts to resolve the Entertainment Merchants Association's arguments that California's ban on selling violent video games to minors flunked narrow tailoring, this Court does not need member-specific facts to determine whether HB3 burdens far more speech than necessary to advance the state's asserted interests.

In the district court, Florida argued that narrow tailoring may turn on what tools and technologies covered websites employ to protect minors. But more details on those voluntary efforts (which Plaintiffs have already described in detail, CA11.Dkt.27.at.7-9) are not necessary to show that HB3 burdens far more speech than necessary. The tools members provide are only some of the many tools that parents already have at their disposal to manage their minors' access and use of the Internet. Parents can decline to give their children devices, or use the many tools offered by device manufacturers, routers, and even browsers. HB3, moreover, separately requires covered websites to terminate minors' accounts at their parents' behest—a provision that Plaintiffs have not challenged under the First Amendment. §501.1736(2)(b)(3), (3)(b)(3), (4)(b)(3). Florida has never explained why enforcing that provision would not achieve its interests, *see* CA11.Dkt.47.at.15-20 (ignoring the provision), even though the argument featured prominently in Plaintiffs' brief, *see* CA11.Dkt.27.at.32, 42. Even under intermediate scrutiny, Florida must show

that it “seriously undertook to address the problem with less intrusive tools readily available to it.” *Fla. Preborn*, 161 F.4th at 744. Yet Florida has never argued that it tried less intrusive means that failed. That defect—which persists no matter what website is regulated—is “[d]ispositive[.]” *Id.* at 744-45 (holding ordinance facially unconstitutional under intermediate scrutiny because “Florida currently has a [less restrictive] law on the books,” and “the city hasn’t argued that enforcing the existing statute would altogether fail to achieve its interests”).

During argument, it was suggested that Plaintiffs’ facial First Amendment challenge may turn in part on whether some websites covered by HB3 include some unprotected speech, such as pornography. It does not. If Florida passed a law restricting minors from reading books in libraries, a challenger would not have to document every single book every library carried to show that the statute is facially unconstitutional. That would be true even if some libraries carried books containing material that is unprotected as to minors, as it would be less speech-restrictive to simply restrict minors’ access to those books. And Florida could not save such a statute from facial invalidation by invoking concerns about minors of “tender years,” *contra* CA11.Dkt.23.at.42-45, as the less speech-restrictive way to address that concern is with a law limited to only such minors. Here, too, there may be some unprotected speech on websites covered by HB3, just as there is bound to be some unprotected speech in parks, on sidewalks, at parades, or in virtually any place where

people gather to speak and listen. “[W]hat matters here—on a facial challenge—is that the statute applies by its terms” to protected speech. *Fla. Preborn*, 161 F.4th at 745. If Florida is concerned about speech that is *not* protected, it should pass a law focused on that speech—as it did in a section of HB3 that Plaintiffs have not challenged.

United States v. Stevens is illustrative. There, the Supreme Court held a statute criminalizing the “depiction of animal cruelty” facially unconstitutional under the First Amendment. 559 U.S. 460, 474 (2010). The Court first “construe[d] the challenged statute” and concluded that it created “a criminal prohibition of alarming breadth.” *Id.* Its definition of “depiction of animal cruelty” covered “any ... depiction” in which “a living animal is intentionally maimed, mutilated, tortured, wounded, or killed.” *Id.* The statute thus by its terms covered a wide range of protected First Amendment activity, including “hunting-related depictions in which a living animal is intentionally killed.” *Id.* at 476.

While the government tried to save the statute from facial invalidation by arguing that it had some constitutional applications—namely, so-called “crush videos”—the Court rejected that argument, concluding that the “impermissible applications” of the statute “far outnumber any permissible ones.” *Id.* at 481. The Court did not require an in-depth evidentiary showing about the exact size of “the market for other [lawful] depictions,” or a detailed record of whether some hunting

magazines may contain some unprotected speech. *Id.* at 481-82. It sufficed that the challenger identified a universe of unconstitutional applications on the face of the statute that “far outnumber[ed] any permissible” constitutional applications identified by the government. *Id.* If the government wanted to ban crush and animal fighting videos, the obviously less restrictive option was to ban those alone. *Id.*

Iancu v. Brunetti is much the same. There, the Court held a bar on registering “immoral” or “scandalous” trademarks facially unconstitutional. The government tried to save the statute from facial invalidation by insisting it could constitutionally be applied to “lewd, sexually explicit, or profane marks.” 588 U.S. 388, 398 (2019). The Court rejected that effort. Even apart from its viewpoint discrimination, the law was facially unconstitutional because the “‘immoral or scandalous’ bar is substantially overbroad.” *Id.* at 399. The Court did not require a detailed record of every trademark barred by the rule or assess how many involved protected versus unprotected speech. It sufficed to show that “[t]here are a great many immoral and scandalous ideas in the world ... and the Lanham Act,” by its terms, “covers them all.” *Id.* Again, if the government wanted to bar “lewd, sexually explicit, or profane marks,” *id.* at 398, the obviously less restrictive option is a law doing just that.

Brown is also instructive. The Court did not demand a detailed factual record about the entire universe of video games covered. Even though some included speech that is unprotected as to minors, *see* 564 U.S. at 857 (Breyer, J., dissenting),

the Court did not require a catalog of the entire universe of games. It sufficed that the statute on its face restricted access to an entire category of speech that was not unprotected, and that California could not justify such a sweeping restriction. Likewise, in *Erznoznik v. City of Jacksonville*, the Court did not catalog the entire universe of potential applications of the city ordinance prohibiting drive-in theaters from showing films containing nudity. While the Court did not dispute that the city could constitutionally apply the statute to films “deemed obscene ... as to minors,” it held the ordinance facially unconstitutional because it was “demonstrably overbroad.” 422 U.S. 205, 213, 216 (1975). “The ordinance,” the Court explained, “is not directed against sexually explicit nudity, nor is it otherwise limited.” *Id.* at 213. Rather, by its terms, it “sweepingly forbids display of all films containing any uncovered buttocks or breasts, irrespective of context or pervasiveness.” *Id.* The ordinance was unconstitutional on its face because it was not confined to unprotected speech, but swept in protected films too. *See id.*

Moody did not purport to disrupt any of that substantial body of law addressing facial First Amendment challenges, let alone purport to make facial challenges virtually impossible to bring. And under the principles articulated and applied all throughout that body of law, it is plain that the Court does not need member-specific proof to evaluate Plaintiffs’ facial claims. HB3 is not limited to websites with a substantial amount of unprotected speech; it instead sweeps in all

manner of protected speech. Whether applied to YouTube, Snapchat, Instagram, or any other regulated service, HB3 not only burdens speech, but burdens far more speech than Florida’s professed interests could justify.

II. The Court May—Indeed, Must—Consider Users’ First Amendment Rights In Assessing Plaintiffs’ First Amendment Claims.

This Court has asked whether Plaintiffs have “established prudential third-party standing” “to vindicate the rights of the users of their member platforms.” CA11.Dkt.84.at.2. With respect, that appears to reflect a misunderstanding of why Plaintiffs have invoked users’ rights. This is not a case in which plaintiffs with no Article III standing have tried to “establish an Article III case or controversy by asserting another person’s rights.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 398 (2024) (Thomas, J., concurring). Nor is it a case where plaintiffs with no First Amendment rights seek to bring a First Amendment claim on behalf of third parties. *See Sec’y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 955-56 (1984); *cf. Kowalski v. Tesmer*, 543 U.S. 125, 130 (2004). Plaintiffs invoke users’ rights not to get into court or expand their universe of claims, but because users are a necessary component of the requisite First Amendment inquiry into whether HB3 “burdens substantially more speech ... than is necessary to achieve the government’s asserted interest.” *Fla. Preborn*, 161 F.4th at 744. In assessing whether a law satisfies that test, a court *must* “look[] beyond the plaintiff’s particular conduct.” *Hodge v. Talkin*, 799 F.3d 1145, 1156-57 (D.C. Cir. 2015). That is especially so when a law burdens

the dissemination of speech, as the First Amendment affords “protection” “to the communication, to its source and to its recipients both.” *Va. State Bd. of Pharm. v. Va. Citizens Consumer Council*, 425 U.S. 748, 756-57 (1976).

That explains why the Supreme Court has routinely considered third parties’ rights in First Amendment challenges without addressing “third-party standing.” Take *Brown*. The only parties there were associations of vendors who wanted to sell violent video games to minors. The Court acknowledged that the law implicated their First Amendment rights to do so. 564 U.S. at 790-92 & n.1. But the bulk of its analysis focused on minors’ rights. The plaintiffs in *Ashcroft v. FSC* were publishers, not consumers, of adult-oriented materials. Yet the Court repeatedly emphasized “the rights of adults” who wished to consume the materials in striking down the law. 535 U.S. 234, 252 (2002). The plaintiff in *United States v. Playboy* was a cable television programmer. Yet the Court repeatedly emphasized the First Amendment rights of “willing listeners” in striking down the statute on its face. 529 U.S. 803, 815 (2000). That is because First Amendment analysis not only permits, but *requires*, consideration of how a law impacts “creating, distributing, [and] consuming speech” alike. *Brown*, 564 U.S. at 792 n.1.

Even if “third-party standing” doctrine had some role to play here, it is easily met. While a “plaintiff generally must assert his own legal rights and interests,” the Supreme Court has “relaxed th[at] prudential-standing limitation” “[w]ithin the

context of the First Amendment.” *Munson*, 467 U.S. at 955-56. *Virginia v. American Booksellers Association* is illustrative. There, several organizations of booksellers and two bookstores brought a pre-enforcement facial First Amendment challenge to a Virginia statute that made it unlawful for booksellers to knowingly display explicit material to minors. 484 U.S. at 387-88 & n.3. Virginia argued that the plaintiffs lacked standing to bring their First Amendment challenge because they asserted only the “rights of bookbuyers.” *Id.* at 392-93. While the Court declined to decide whether the booksellers had First Amendment rights of their own, *id.* at 393 n.6, it disagreed. As it explained, in “the First Amendment context ‘[l]itigants ... are permitted to challenge a statute not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute’s very existence may cause others not before the court to refrain from constitutionally protected speech or expression.’” *Id.* at 392-93.

Even outside the First Amendment context, plaintiffs have “standing to litigate the rights of third parties when enforcement of the challenged restriction *against the litigant* would result indirectly in the violation of third parties’ rights.” *Kowalski*, 543 U.S. at 130.⁵ “In such cases,” “‘the obvious claimant’ and ‘the least awkward

⁵ As *Kowalski* explained, that is one of the specific contexts in which the Court “ha[s] been quite forgiving” about prudential standing and not insisted that the plaintiff meet the traditional “close” relationship and “hindrance” criteria for third-party standing. 543 U.S. at 130; *contra NetChoice v. Yost*, 2026 WL 1758907, at *8 (6th Cir. June 18, 2026) (disregarding this aspect of *Kowalski*).

challenger’ is the party upon whom the challenged statute imposes ‘legal duties and disabilities.’” *June Med. Servs. v. Russo*, 591 U.S. 299, 319 (2020) (plurality op.). Take *Craig v. Boren*, which permitted a beer vendor to assert the equal-protection rights of her underage male customers in challenging a prohibition on the sale of 3.2% beer to men under 21 and women under 18. Even though there was “no barrier whatever to Oklahoma males” raising the same constitutional challenge, 429 U.S. 190, 216 (1976) (Burger, C.J., dissenting), the Court reaffirmed that the vendor could “assert those concomitant rights of third parties that would be ‘diluted or adversely affected’ should her constitutional challenge fail,” *id.* at 195 (majority op.). So too here. HB3 directly regulates Plaintiffs’ members, so their standing is indisputable. *See supra* Part I. And the “threatened imposition of governmental sanctions” will require them to restrict prospective users’ access to their services, thereby “result[ing] indirectly in the violation of third parties’ rights.” *Craig*, 429 U.S. at 195. Plaintiffs’ members may therefore “act[] as advocates of the rights of third parties who seek access to their market or function.” *Id.*⁶

⁶ Florida claims that members and their users’ may have conflicting interests. CA11.Dkt.23.at.19-20; *see also Yost*, 2026 WL 1758907, at *9, *27-28. But the same could be said whenever a vendor invokes its customer’s rights. Indeed, California undoubtedly thought that vendors were not acting in the best interests of the minors it enacted its law to protect in *Brown*. Yet the Supreme Court nevertheless has consistently reaffirmed that those directly regulated by a law may vindicate the rights of the third parties that they are conscripted into restricting. *Russo*, 591 U.S. at 319.

It makes no difference that Plaintiffs invoke users’ rights through their members. An organization with associational standing “assert[s] the claims of its members” and stands in their stead. *Hunt v. Wash. State Apple Advert. Comm’n*, 432 U.S. 333, 342 (1977). So if an organization’s members may assert their users’ rights, it may too. That is clear from *American Booksellers*, where the associations could “allege[] an infringement of the First Amendment rights of bookbuyers,” 484 U.S. at 388 n.3, 393 & n.6, and *Brown*, where associations of video-game and software companies asserted the First Amendment rights of minors seeking to buy violent video games, 564 U.S. at 789. Multiple courts have followed suit, CA11.Dkt.27.at.48 (collecting cases)—including in challenges involving laws like HB3, *see NetChoice v. Fitch*, 134 F.4th 799, 807 (5th Cir. 2025).

III. The District Court Resolved Plaintiffs’ As-Applied Claims, And This Court May Modify The Scope Of The Injunction.

Finally, although the district court principally enjoined Florida from enforcing HB3 on the ground that the law is likely facially unconstitutional, it squarely held that Plaintiffs are likely to succeed on their as-applied claim too. The court dedicated several pages to parsing out Plaintiffs’ facial and as-applied claims and articulating the standards governing each. D.Ct.Dkt.94.at.25-28. It correctly explained that the First Amendment analysis “is the same for both the facial and as-applied challenges.” D.Ct.Dkt.94.at.28. It likewise concluded that HB3 violates the First

Amendment “[a]s applied to Plaintiffs’ members alone,” and that, “[f]acially, the law fares no better.” D.Ct.Dkt.94.at.42-43.

Admittedly, the court saw little daylight for analytical purposes between Plaintiffs’ facial and as-applied challenges because HB3 “imposes the same onerous restriction[s] with respect to each” covered service. D.Ct.Dkt.94.at.43. But it analyzed and resolved both: “Plaintiffs are substantially likely to succeed not just in their as-applied challenge but in their facial challenge as well.” D.Ct.Dkt.94.at.52-53.

Plaintiffs maintain that HB3 is unconstitutional on its face because it “raise[s] the same First Amendment issues ‘in every application to a covered business.’” *Bonta*, 152 F.4th at 1022. But if the Court thinks that Plaintiffs are entitled to preliminary relief on only their as-applied claim, then it should modify the injunction, not vacate it. Appellate courts “undoubtedly” have the power to “modify injunctions,” *AFSCME Council 79 v. Scott*, 717 F.3d 851, 872 (11th Cir. 2013), and Plaintiffs “do not object if this Court wishes to clarify that the preliminary injunction applies only to Plaintiffs’ members,” CA11.Dkt.27.at.55.n.9. At a minimum, the Court should affirm the preliminary injunction to prohibit Florida from enforcing HB3 against YouTube, Snap, and Meta—members whose First Amendment claims are amply borne out by the record.

CONCLUSION

The Court should affirm.

Respectfully submitted,

s/Erin E. Murphy

PAUL D. CLEMENT

ERIN E. MURPHY

Counsel of Record

JAMES Y. XI

MITCHELL K. PALLAKI

CLEMENT & MURPHY, PLLC

706 Duke Street

Alexandria, VA 22314

(202) 742-8900

erin.murphy@clementmurphy.com

Counsel for Plaintiffs-Appellees

June 29, 2026

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1. This brief complies with the type-volume limitation set forth in this Court's order requesting supplemental briefing, *see* CA11.Dkt.84, because it contains 4,981 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 11th Cir. R. 32-4.

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type.

June 29, 2026

s/Erin E. Murphy
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I hereby certify that on June 29, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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