

**No. 26-10735**

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

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**CAIR FOUNDATION et al.,  
*Plaintiffs-Appellees,***

**v.**

**RONALD DESANTIS, GOVERNOR, STATE OF FLORIDA,  
*Defendant-Appellant.***

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On Appeal from the United States District Court  
for the Northern District of Florida  
Case No. 4:25-cv-00516-MW-MJF

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**UNOPPOSED BRIEF OF  
AMERICA FIRST LEGAL FOUNDATION  
AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-  
APPELLANT GOVERNOR RONALD DESANTIS  
AND IN SUPPORT OF REVERSAL**

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

As required by Eleventh Circuit Rule 26.1, I certify that the following persons and entities have an interest in the outcome of this matter:

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Pursuant to Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rules 26.1-1 and 26.1-2, *amicus curiae* America First Legal Foundation declares that it is a nonprofit corporation; that it has no parent corporation; and that no publicly held corporation owns 10% or more of its stock.

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### **INTEREST OF AMICUS CURIAE**

America First Legal Foundation (“AFL”) is a nonprofit organization dedicated to defending the rule of law, constitutional separation of powers, and the lawful exercise of executive authority at the federal and state levels. AFL regularly litigates cases involving questions of executive authority, federalism, national security, and First Amendment rights.

This interlocutory appeal presents questions squarely within AFL’s institutional focus, namely: the correct framework governing a standing analysis on third-party-coercion claims. AFL has a direct and substantial interest in assisting the presentation and resolution of the questions raised by Defendant-Appellant Governor DeSantis in this appeal. AFL “has unique . . . perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. Commodity Futures Trading Comm’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, C.J., single-judge opinion).

### **STATEMENT UNDER RULE 29(a)(4)(E)**

Under Federal Rule of Appellate Procedure 29(a)(4)(E), the undersigned certifies that no party’s counsel authored this brief in whole or in part, and no entity or person aside from *amicus*, its members, or its

counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

### **SUMMARY OF ARGUMENT**

CAIR cannot establish standing on this record. The district court's order granting a preliminary injunction must be reversed because of the grave implications of an affirmance. AFL files this amicus brief to clarify the traceability prong of the Article III standing analysis and to highlight the balance-of-powers concerns raised by the district court's order between executive offices and the judiciary.

The United States Supreme Court has analyzed the traceability requirement for Article III standing in First Amendment coercion cases through two frameworks: (1) the direct-pressure framework; and (2) the independent-action framework. The direct-pressure framework governs cases in which the government acts to directly pressure a third party to suppress or take adverse action against plaintiff's speech. The independent-conduct framework governs cases in which a plaintiff alleges that a third party's conduct—despite being an autonomous judgment and independent of government pressure—caused the plaintiff's injury. The threshold question is which line governs.

The district court applied the wrong framework in invoking *Bantam Books* and *Vullo*, the seminal cases for the direct-pressure framework. The Executive Order (“EO”) directs no action against private third parties at all; it directs the State of Florida’s own agencies in their allocation of contracts, funds, employment, and other discretionary benefits. The third parties whose conduct allegedly injured CAIR are not third parties to whom the EO is directed and not third parties whose conduct the EO regulates. They are not, in the structural sense that *Bantam Books* and *Vullo* require, the proper “third parties” at all.

Rather, the framework that governs this case is the independent-conduct doctrine. Under *Clapper* and its progeny, plaintiffs cannot rely on speculation about the unfettered choices of independent third parties. *Alliance for Hippocratic Medicine* unanimously reaffirmed that “speculative or attenuated” causal chains running through “the independent action of some third party not before the court” cannot establish standing. *Murthy* held that plaintiffs must show that the government’s conduct *procured* the third party’s responsive action—not merely that the third party acted in temporal proximity to government action. On this record, that showing is missing.

The implications of allowing CAIR to move forward on its theory of standing would be severe. State chief executives across the country routinely make business decisions tied to state-funding recipients’ associations, conduct, or affiliations. Put simply, the chief executive of a state may choose who the state does business with. If every impact that an entity experiences—no matter how far down the causal chain—is deemed traceable to the actions of the chief executive, then this lawful tool of governance is destroyed. This conversion would be most acute where the chief executive, like in this case, utilizes designation-tied determinations about public-safety threats to steer the allocation of public funds. Expanding Article III injury to encompass the kind of third-party response seen in this case would go against this Court’s recognition of the importance of properly establishing standing and would undercut the proper balance of powers between the courts and the political branches.

## **ARGUMENT**

### **I. The District Court Applied the Wrong Traceability Framework and Under the Correct One, CAIR Lacks Standing**

To establish the “irreducible constitutional minimum” of Article III standing “[t]he plaintiff must have (1) suffered an injury in fact, (2) that

is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (internal quotation marks omitted). At the preliminary-injunction stage, the plaintiff must make a “clear showing that [it] is likely to establish each element of standing.” *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (internal quotations omitted).

The Governor’s opening brief explains why CAIR falls short on all three elements. But the district court’s most significant error concerns traceability. By applying the wrong doctrinal framework, the court allowed CAIR to satisfy traceability with precisely the kind of speculative, third-party causal chain that the Supreme Court has repeatedly rejected. Traceability demands that the plaintiff’s injury flow from the defendant’s conduct, not from “the independent action of some third party not before the court.” *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992); *Murthy*, 603 U.S. at 68 n.8 (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 42 (1976)). Without that limitation, courts would become “virtually continuing monitors of the wisdom and soundness of government action.” *Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367, 383–84 (2024) (internal quotations omitted).

Supreme Court precedent has developed two distinct lines of authority for traceability, each tailored to different factual settings. The first addresses direct government pressure or coercion of a specific third party to act against the plaintiff. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58 (1963); *NRA v. Vullo*, 602 U.S. 175 (2024). The second addresses injuries flowing from independent third-party decisions, unprompted by government coercion. *See Clapper v. Amnesty Int’l USA*, 568 U.S. 398 (2013); *Murthy*, 603 U.S. at 58; *All. for Hippocratic Med.*, 602 U.S. at 384. This case falls squarely in the latter category.

**A. This is Not a Coercion Case, So *Bantam Books* and *Vullo* Do Not Apply**

*Bantam Books* and *Vullo* establish a specific structural relationship: the government communicates directly with a regulated third party over whom it holds enforcement authority, and that same third party then acts against the plaintiff because of the government’s pressure. *See Bantam Books*, 372 U.S. at 68–69; *Vullo*, 602 U.S. at 176–77.

In *Bantam Books*, the Rhode Island Legislature created a “Commission to Encourage Morality in Youth,” which, in carrying out its duties, sent threatening notices directly to a wholesale distributor (Max Silverstein & Sons), identifying specific books as “objectionable” and following

up with police visits. 372 U.S. at 61–63, 68. The distributor, understanding the notices as coercive threats backed by prosecutorial power, stopped distributing the publishers’ books. *Id.* at 63, 68. The Court held that the state, through its commission, had created a “system of informal censorship”—a regulatory regime imposed through coercion of a private intermediary, with the publishers as the targets of the suppression. *Id.* at 71–72. Thus, the publishers’ injuries were directly traceable to the distributor—the precise intermediary that the government had pressured. *Id.*

*Vullo* follows that same pattern. The Superintendent of the New York Department of Financial Services met privately with executives of regulated insurance companies and banks, signaling leniency on unrelated infractions if they severed ties with the NRA, and issued formal guidance letters directing them to “review” and “manage” relationships with gun-promotion groups. 602 U.S. at 184–86. Multiple regulated entities then terminated business with the NRA. *Id.* at 187–88. Traceability succeeded because the injury flowed from the very parties the government had directly pressured using its regulatory authority.

CAIR’s traceability theory fails both factually and structurally. The third parties whose actions allegedly injured CAIR—the Federation and

the podcast company—are not regulated by the EO, nor did the EO direct any communication or action toward them. The EO instead governs the State of Florida’s own agencies and their decisions regarding state contracts, funds, employment, and benefits. The proper “third parties” under a *Bantam Books/Vullo* theory would be those state agencies themselves, not private entities outside the EO’s scope.

Even considering public statements outside the EO’s text, the coercive alignment required by *Bantam Books* and *Vullo* is absent. In those cases, the government actor possessed direct enforcement power over the recipient, and the communications carried implicit threats of that power. *Bantam Books*, 372 U.S. at 62, 68; *Vullo*, 602 U.S. at 184–86. Here, no state actor holds enforcement authority over the Federation or the podcast company, and neither is a regulated entity. The structural predicate for coercion-based standing is missing.

Moreover, this case is legally distinguishable. *Bantam Books* and *Vullo* involved government efforts to suppress constitutionally protected speech or advocacy. The EO, by contrast, conditions state resources on non-affiliation with designated terrorist organizations—a permissible distinction under precedents like *Holder v. Humanitarian Law Project*,

561 U.S. 1, 27–35 (2010). CAIR’s claims thus do not fit the direct-pressure framework.

**B. Under The Correct Framework, CAIR Lacks Standing**

Because this is a case of independent third-party conduct, the governing precedents are *Clapper*, *Murthy*, and *Alliance for Hippocratic Medicine*. Under those precedents, “[p]laintiffs cannot rely on speculation about ‘the unfettered choices made by independent actors not before the courts,’” *Clapper*, 568 U.S. at 414 n.5 (quoting *Lujan*, 504 U.S. at 562), and they cannot “manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending,” *id.* at 416.

In *Alliance for Hippocratic Medicine*, the Court unanimously held that “speculative or attenuated” causal chains running through “the independent action of some third party not before the court” cannot establish standing, even when the alleged downstream effects of government conduct may be foreseeable. 602 U.S. at 383. And in *Murthy*, the Court applied that framework to a third-party-coercion theory directly analogous to the one CAIR asserts here, holding that plaintiffs lack standing where third-party conduct is consistent with independent decision-

making—that is, where the third party has its own reasons to act, its own history of acting in similar ways, and its own incentives independent of the challenged government conduct. 603 U.S. at 67–70. *Murthy* makes plain what *Clapper* requires in cases of this structural type: speculation about whether the government’s conduct *contributed* to the third party’s choice is not enough. The plaintiff must show that the government’s conduct *procured* the third party’s responsive action, not merely that the third party acted in temporal proximity to it.

The Federation’s withdrawal exemplifies the independent choice *Clapper* forecloses. Its own public statement—quoted by the district court—explained the decision as an exercise of “abundance of caution” pending judicial review, with the organization looking to the courts for future guidance. That is a sophisticated entity’s independent risk-management judgment, not action procured by the Governor. It reflects precisely the “unfettered choice[]” of an independent actor that defeats traceability. *Clapper*, 568 U.S. at 414 n.5.

The podcast company’s contractual withdrawal supplies even less support. CAIR offered no evidence that the company held any state contracts, that it sought any state benefits, or that the EO applied to it at

all. Nor did CAIR offer any evidence of why the company withdrew, only that it did. This is the very “speculative or attenuated” causal chain about third-party motivations that the Supreme Court explicitly forecloses. *All. for Hippocratic Med.*, 602 U.S. at 383.

When the record does not establish *why* the third party acted, traceability cannot be established by inference from *that* the third party acted. *Alliance for Hippocratic Medicine* made this point clear: Where the alleged injury “flows from the unfettered choices made by independent actors,” Article III requires more than speculation. *Id.*

The district court’s reliance on *Department of Commerce v. New York*, 588 U.S. 752 (2019), is misplaced. *Alliance for Hippocratic Medicine* expressly narrowed that precedent: predictability of third-party responses does not suffice when the chain runs through independent actors. 602 U.S. at 383. Where the third party acts for its own reasons—as the Federation’s statement confirms—foreseeability cannot bridge the gap *Clapper* requires.

The Fifth Circuit’s decision in *Jackson v. City of Houston*, 143 F.4th 640 (5th Cir. 2025), reinforces this point. Families of bystanders killed in police chases could not trace their injuries to the city because the

suspects' independent decisions to flee broke the causal chain. *Id.* at 647 n.4. "Far from the coercion or determination required," such independent choices defeated traceability. *Id.* The same holds here: the Federation's autonomous decision, and the podcast company's unexplained one, sever any traceable link to the Governor.

Under *Clapper*, *Murthy*, and *Alliance for Hippocratic Medicine*, CAIR cannot establish that its alleged injuries are fairly traceable to the Governor's EO. The Federation acted on its own stated rationale; the podcast company's motives are unknown. Article III requires more than temporal proximity or speculation about independent actors' responses. The district court erred by applying the wrong doctrine, and this Court should hold that CAIR lacks standing.

## **II. The Structural Implications of the District Court's Standing Framework Compel Reversal**

### **A. The Framework Converts Routine State Governance Into Federal Litigation**

The district court's standing theory has consequences that extend far beyond this case. State chief executives routinely make fiscal decisions tied to recipients' associations, conduct, status, or affiliations. They award or deny contracts, make hiring decisions, distribute grants, issue

licenses, and confer or withhold other discretionary benefits. These are not exceptional acts; they are core executive functions—the daily exercise of State authority over the allocation of public resources.

Such decisions inevitably generate responses in the private market. When a state announces it will or will not commit its resources to entities with particular characteristics, third parties weigh the cost of continued association against the cost of losing state eligibility. Some withdraw. Some do not. While the precise response in any given case may be uncertain, the general pattern is entirely predictable. Under the district court’s framework, however, that predictable reaction suffices to establish Article III standing and to justify preliminary injunctive relief against the State.

That result cannot be squared with settled limits on federal jurisdiction. If a third party’s withdrawal from a disfavored entity supplies traceability, then virtually any state allocation decision with foreseeable third-party consequences becomes presumptively justiciable. Every disappointed third party becomes a standing-supplying vehicle for federal challenge. Every state chief executive making a fiscal decision tied to an entity’s associations or conduct becomes a presumptive defendant in

federal preliminary-injunction litigation. The framework converts routine state governance into routine federal litigation. This conversion is unacceptable.

### **B. The Conversion is Most Acute in Designation-Tied Determinations**

The conversion is most acute where the chief executive, like in this case, utilizes designation-tied determinations about public-safety threats to inform decisions about state contracts and benefits. Chief executives routinely determine which organizations pose such threats and condition access to public funds accordingly.

*Holder* recognized that judgments about which organizations threaten national security—and how to respond—implicate executive expertise to which courts owe substantial deference. 561 U.S. at 33–35. The D.C. Circuit’s review of terrorist-organization designations under 8 U.S.C. § 1189 reflects the same principle. *See Holy Land Found. for Relief & Dev. v. Ashcroft*, 333 F.3d 156, 162 (D.C. Cir. 2003) (applying deferential review); *People’s Mojahedin Org. of Iran v. U.S. Dep’t of State*, 182 F.3d 17, 23 (D.C. Cir. 1999).

Nor is this authority uniquely federal. The Supreme Court has long recognized principles that stand the test of time, such as the police-power

authority to regulate associations engaged in conduct threatening public welfare. *See Gitlow v. New York*, 268 U.S. 652, 668 (1925). Indeed, it is universally understood that “[a] state or city may prohibit acts or things reasonably thought to bring evil or harm to its people.” *Kovacs v. Cooper*, 336 U.S. 77, 83 (1949).

A standing framework that allows plaintiffs—indeed, incentivizes them—to obtain through standing what they cannot secure on the merits would hollow out this deference, effectively inviting federal courts to supervise executive public-safety determinations. The problem is especially pronounced at the preliminary-injunction stage. *Murthy* requires a “clear showing” of standing at that stage, 603 U.S. at 58, precisely because preliminary relief entails extraordinary federal intrusion into state action before any adjudication on the merits. Such an approach cannot be reconciled with *Clapper*, *Murthy*, or *Alliance for Hippocratic Medicine*. It is equally incompatible with the deference owed to political-branch judgments about public safety and with the limited role federal courts occupy in our federalist system.

**CONCLUSION**

For the foregoing reasons, the district court's preliminary injunction should be reversed.

**CERTIFICATE OF COMPLIANCE**

I certify that this amicus brief complies with the type-volume limit of FRAP 29(a)(5) because, excluding the parts of the document exempted by FRAP 32(f), it contains 2811 words. I further certify that this amicus brief complies with the typeface and type-style requirements of FRAP 29(a)(4) and 32(a)(5) and (6) because it has been prepared in 14-point Century Schoolbook, a proportionally spaced typeface with serifs, using Microsoft Word.

/s/ Eric Yesner

**Eric Yesner**

**CERTIFICATE OF SERVICE**

I certify that on April 30, 2026, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will send a notice of docketing activity to all counsel of record.

/s/ Eric Yesner

**Eric Yesner**