
United States Court of Appeals

for the

Eleventh Circuit

CAIR-FOUNDATION, INC., a Washington DC Nonprofit Corporation,
CAIR-FLORIDA, INC., a Florida Nonprofit Corporation,

Plaintiffs-Appellees,

— v. —

GOVERNOR, STATE OF FLORIDA,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA

BRIEF OF *AMICUS* KNIGHT FIRST AMENDMENT INSTITUTE AT COLUMBIA UNIVERSITY IN SUPPORT OF APPELLEES

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

Pursuant to Eleventh Circuit Rule 26.1-1, 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 Rule 26.1, I certify that the Knight First Amendment Institute at Columbia University is a non-profit corporation, that it has no parent corporation, and that no publicly held corporation owns 10% or more of its stock.

Dated: July 9, 2026

/s/ Corey Stoughton

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TABLE OF CONTENTS

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT	C-1
IDENTITY AND INTEREST OF AMICUS CURIAE.....	1
STATEMENT OF THE ISSUES.....	1
SUMMARY OF ARGUMENT	1
ARGUMENT	3
I. The Executive Order is Subject to Heightened Scrutiny Because It Reflects an Impermissible Purpose to Suppress Disfavored Ideas	3
A. The Executive Order seeks to suppress a purported “ideology” with which the state disagrees.....	3
B. The Executive Order’s specific focus on CAIR confirms its improper purpose.....	10
C. The Governor’s statements further confirm the Executive Order’s improper purpose	13
D. <i>Hubbard</i> does not foreclose this Court from considering improper purpose.....	14
II. The Executive Order Cannot Survive Any Heightened Level of Constitutional Scrutiny	16
A. The Executive Order’s breadth establishes its purpose to suppress disfavored speech and lack of tailoring to any legitimate purpose	17
B. Upholding the Executive Order would empower attacks on any organization opposed to prevailing government orthodoxy	24
CONCLUSION	26
CERTIFICATE OF COMPLIANCE.....	28
CERTIFICATE OF SERVICE	29

TABLE OF CITATIONS**Pages****Cases:**

<i>Al Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury</i> , 686 F.3d 965 (9th Cir. 2012)	20
<i>Am. Bar Ass'n v. U.S. Dep't of Just.</i> , 783 F. Supp. 3d 236 (D.D.C. 2025).....	26
<i>Ams. for Prosperity Found. v. Bonta</i> , 594 U.S. 595 (2021).....	19, 23, 24, 25
<i>Ark. Writers' Project, Inc. v. Ragland</i> , 481 U.S. 221 (1987).....	11, 12
<i>Brown v. Ent. Merchs. Ass'n</i> , 564 U.S. 786 (2011).....	20
<i>Brown v. Hartlage</i> , 456 U.S. 45 (1982).....	10
<i>Chiles v. Salazar</i> , 146 S. Ct. 1010 (2026).....	9
<i>Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale</i> , 901 F.3d 1235 (11th Cir. 2018)	19
<i>Ga. Assoc. of Educators v. Gwinnett Cnty. Sch. Dist.</i> , 856 F.2d 142 (11th Cir. 1988)	15
<i>Healy v. James</i> , 408 U.S. 169 (1972).....	8, 9
<i>Holder v. Humanitarian Law Project</i> , 561 U.S. 1 (2010).....	18, 22
<i>Honeyfund.com, Inc. v. Governor</i> , 94 F.4th 1272 (11th Cir. 2024)	9
<i>Iancu v. Brunetti</i> , 588 U.S. 388 (2019).....	9
<i>In re Hubbard</i> , 803 F.3d 1298 (11th Cir. 2015)	14, 15

<i>In re Wild</i> , 994 F.3d 1244 (11th Cir. 2021)	22
<i>Leathers v. Medlock</i> , 499 U.S. 439 (1991)	11
<i>Masterpiece Cakeshop v. Colo. Civ. Rights Comm’n</i> , 584 U.S. 617 (2018)	13
<i>Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue</i> , 460 U.S. 575 (1983)	6, 11, 12
<i>Moms for Liberty – Brevard Cnty. v. Brevard Pub. Schs.</i> , 118 F.4th 1324 (11th Cir. 2024)	9
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024)	7, 13, 24
<i>NAACP v. Alabama ex rel. Patterson</i> , 357 U.S. 460 (1958)	25
<i>NAACP v. Button</i> , 371 U.S. 415 (1963)	16
<i>O’Boyle v. Sweetapple</i> , 187 F. Supp. 3d 1365 (S.D. Fla. 2016)	15
<i>Otto v. City of Boca Raton</i> , 981 F.3d 854 (11th Cir. 2020)	6-7
<i>R.A.V. v. City of St. Paul</i> , 505 U.S. 377 (1992)	6, 7, 24, 26
<i>Reed v. Town of Gilbert</i> , 576 U.S. 155 (2015)	5-6, 16
<i>Reno v. ACLU</i> , 521 U.S. 844 (1997)	21
<i>Rosenberger v. Rector & Visitors of Univ. of Va.</i> , 515 U.S. 819 (1995)	7
<i>Se. Promotions, Ltd. v. Conrad</i> , 420 U.S. 546 (1975)	23
<i>Shelton v. Tucker</i> , 364 U.S. 479 (1960)	20

<i>Sorrell v. IMS Health Inc.</i> , 564 U.S. 552 (2011).....	3, 4, 5, 6, 7, 9, 10, 12
<i>Speech First, Inc. v. Cartwright</i> , 32 F.4th 1110 (11th Cir. 2022)	20
<i>Texas v. Johnson</i> , 491 U.S. 397 (1989).....	9
<i>Thompson v. W. States Med. Ctr.</i> , 535 U.S. 357 (2002).....	22
<i>Turner Broad. Sys., Inc. v. FCC</i> , 512 U.S. 622 (1994).....	7
<i>Turner Broad. Sys., Inc. v. FCC</i> , 520 U.S. 180 (1997).....	16
<i>United States v. Al-Timimi</i> , 164 F.4th 292 (4th Cir. 2026)	9
<i>United States v. Frandsen</i> , 212 F.3d 1231 (11th Cir. 2000)	23
<i>United States v. O’Brien</i> , 391 U.S. 367 (1968).....	14, 15
<i>United States v. Playboy Entm’t Grp.</i> , 529 U.S. 803 (2000).....	21
<i>Ward v. Rock Against Racism</i> , 491 U.S. 781 (1989).....	3
<i>Wollschlaeger v. Governor of Florida</i> , 848 F.3d 1293 (11th Cir. 2017)	6, 12, 20

Statutes & Other Authorities:

U.S. Const. Amend I	1, 2, 3, 9, 10, 11, 14, 15, 16, 17, 19, 26
8 U.S.C. § 1189(a)(2)(A)(i)	22
8 U.S.C. § 1189(a)(4)(B)	23
8 U.S.C. § 1189(a)(5).....	23
8 U.S.C. § 1189(a)(6).....	23

8 U.S.C. § 1189(c)(1).....	23
Executive Order Number 25-244.....	1, 21
Fla. Stat. § 775.30	21
Fla. Stat. § 775.31	21
Fla. Stat. § 775.33	18
Fla. Stat. § 874.03(7).....	21
Fla. Stat. § 943.03101	21
David Cole, <i>The First Amendment’s Borders: The Place of Holder v. Humanitarian Law Project in First Amendment Doctrine</i> , 6 Harv. L. & Pol’y Rev. 147 (2012).....	25
Louis Casiano, <i>Gavin Newsom lashes out at ‘trash organization’ NRA after Second Amendment ‘hypocrisy’ accusation</i> , Fox News (Jan. 25, 2023), https://www.foxnews.com/politics/california-gov-newsom-lashes-trash-organization-nra-second-amendment-hypocrisy-accusation	25
Sean Hannity, <i>Stephen Miller: The Democratic Party is a ‘domestic, extremist organization’</i> , Fox News (Aug. 25, 2025), https://www.foxnews.com/video/6377384186112	26
Shirin Sinnar, <i>Terrorism, Not Treason: The Rise and Fall of Criminal Charges</i> , 2024 U. Chi. Legal F. 275 (2024).....	22

IDENTITY AND INTEREST OF AMICUS CURIAE

The Knight First Amendment Institute at Columbia University (the “Knight Institute”) defends the freedoms of speech and the press through strategic litigation, research, policy advocacy, and public education. Its litigation and other work focus on threats to freedom of speech and protecting the right to free expression. The Knight Institute’s clients rely on First Amendment doctrines developed through the courts. Accordingly, the Knight Institute has a significant interest in this case.¹

STATEMENT OF THE ISSUES

1. Whether the state of Florida’s Executive Order Number 25-244 (the “Executive Order”) is subject to heightened constitutional scrutiny because it targets CAIR for the improper purpose of suppressing CAIR’s speech.
2. Whether the Executive Order serves a compelling or important governmental interest and is sufficiently tailored, as required to survive strict or intermediate scrutiny.

SUMMARY OF ARGUMENT

The District Court correctly held that the Executive Order “coerces third parties, under threat of losing government benefits, to disassociate from [CAIR],

¹ No party’s counsel authored this brief in whole or in part; no party or its counsel contributed money intended to fund the preparation or submission of this brief; and no person—other than *amicus curiae*, its members, or its counsel—contributed money that was intended to fund the preparation or submission of this brief.

thereby closing avenues of expression and suppressing CAIR's protected speech." D.I. 43² ("PI Order") at 1-2. *Amicus curiae* writes to emphasize two additional legal points.

First, the Executive Order also violates the First Amendment because it has the improper purpose of suppressing CAIR's disfavored viewpoint. Binding Supreme Court precedent establishes that a speech regulation motivated by a desire to silence the speaker's viewpoint is subject to heightened scrutiny, a principle that the Eleventh Circuit has applied in its own cases. Because both the Executive Order itself and the facts surrounding its issuance show the Governor's purpose to suppress speech based on CAIR's purported "ideology," the Executive Order is subject to heightened scrutiny and is presumptively unconstitutional.

Second, the Executive Order's astonishing sweep fails any applicable level of First Amendment scrutiny. The Executive Order is not narrowly tailored to further a compelling or important government interest because it is unrelated to the Governor's pretextual interest in fighting terrorism and because it restricts a broad array of speech and association unnecessarily. That broad reach exposes the government's true, improper purpose to suppress a disfavored viewpoint. Permitting this Executive Order to pass constitutional scrutiny would give states far-reaching

² "D.I." citations refer to the docket filings in the District Court.

authority to punish advocacy organizations for their constitutionally protected speech and association, threatening the First Amendment rights that are essential to our democracy.

ARGUMENT

I. The Executive Order is Subject to Heightened Scrutiny Because It Reflects an Impermissible Purpose to Suppress Disfavored Ideas

Both this Court and the Supreme Court have held that regulations evincing an impermissible viewpoint-based purpose, like the Executive Order, are subject to heightened scrutiny and presumptively unconstitutional. The Executive Order’s impermissible purpose of suppressing CAIR’s disfavored viewpoint is evident in the Order’s highly specific regulation of CAIR and its express focus on “ideology.” The Governor’s statements confirm the same.

A. The Executive Order seeks to suppress a purported “ideology” with which the state disagrees

“The First Amendment requires heightened scrutiny whenever the government creates ‘a regulation of speech because of disagreement with the message it conveys.’” *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 566 (2011) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). In *Sorrell*, the Supreme Court struck down a Vermont statute that regulated the “sale, disclosure, and use of pharmacy records that reveal the prescribing practices of individual doctors.” *Id.* at 557. The statute imposed different requirements based on whether the purpose of the regulated action was marketing (prohibited) or some other purpose such as education

(permitted). *Id.* at 564. The Court found such differentiation warranted heightened scrutiny because the law regulated based “in large part on the content of a purchaser’s speech,” *id.*, making it “apparent” that the statute’s choices “are aimed at a particular viewpoint,” *id.* at 565.

The context of the Executive Order is a far cry from regulating disclosure of pharmacy records, but the constitutional defect in the Order is in the same category as (and several degrees more pernicious than) the Vermont statute struck down in *Sorrell*. The Executive Order is overtly justified by the Governor’s hostility to CAIR’s perceived ideology and allegations of attenuated associations with others who purportedly share that ideology. The “Whereas” clauses setting out the Executive Order’s rationale focus on CAIR’s supposed connection to the Muslim Brotherhood, which, according to the Executive Order, has an “Islamist ideology” that the Governor condemns as “irreconcilable with foundational American principles of life, liberty, and the pursuit of happiness . . . , especially including the right to religious freedom and the equal protection of the laws.” D.I. 21-1 (“Exec. Order”) at 1.

Having set out this rationale, the Executive Order directs state actors to regulate CAIR and its associates to address the Governor’s ideology-based concerns. It labels CAIR a “terrorist organization[] for the purpose of this Executive Order,” *id.* at 3, § 1, and directs the “Florida Department of Law Enforcement and the Florida

Highway Patrol” to take “all lawful measures to prevent unlawful activities in Florida” by CAIR, *id.* at 3-4, § 2. It also directs “all other Executive and Cabinet Agencies” to “undertake all lawful action” to prevent CAIR and “any person known to have provided material support or resources to” CAIR “from receiving any contract, employment, funds, or other benefit or privilege from such Executive or Cabinet Agency or any entity regulated by such Executive or Cabinet Agency or from any County or Municipality of the State.” *Id.*

This is textbook viewpoint discrimination. Just as heightened scrutiny was warranted when Vermont imposed differentiated regulation for the purpose of favoring companies with preferred purposes, *see Sorrell*, 564 U.S. at 564-65, so heightened scrutiny is warranted here, where Florida seeks to impose special regulations on CAIR for the purpose of disfavoring its purported ideology and associations. As in *Sorrell*, “[a]ny doubt that [the Executive Order] imposes an aimed, content-based burden . . . is dispelled by the record.” *Id.* at 564 (citing legislative findings confirming the statute’s “purpose and practical effect” in determining that the statute was “aimed at a particular viewpoint”).

The principle that heightened scrutiny applies where the government’s purpose is to disfavor certain ideas has been applied consistently across decades of Supreme Court and Eleventh Circuit precedent. In *Reed v. Town of Gilbert*, for example, the Supreme Court struck down a sign regulation and reaffirmed that “strict

scrutiny applies either when a law is content based on its face or when the purpose and justification for the law are content based.” 576 U.S. 155, 166 (2015). In *R.A.V. v. City of St. Paul*, the Court struck down a law criminalizing cross-burning “which one knows or has reasonable grounds to know arouses anger, alarm or resentment in others on the basis of race, color, creed, religion or gender.” 505 U.S. 377, 380 (1992). Notwithstanding the general lack of constitutional protection for so-called “fighting words,” the Court held, “[t]he government may not regulate use based on hostility—or favoritism—towards the underlying message expressed.” *Id.* at 386. In *Minneapolis Star & Tribune Co. v. Minnesota Commissioner of Revenue*, the Supreme Court struck down a tax on newspapers, holding that where the “goal of the regulation is not unrelated to suppression of expression” it is “presumptively unconstitutional.” 460 U.S. 575, 585 (1983). And in *Wollschlaeger v. Governor of Florida*, a majority of the *en banc* Eleventh Circuit struck down restrictions on speech of doctors and medical professionals on the subject of firearm ownership, finding that Florida “may not burden the speech of others in order to tilt public debate in a preferred direction.” 848 F.3d 1293, 1313-14 (11th Cir. 2017) (Jordan, J.) (quoting *Sorrell*, 564 U.S. at 578-79). As this Court reaffirmed in *Otto v. City of Boca Raton*, “government must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for

the restriction.” 981 F.3d 854, 864 (11th Cir. 2020) (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995)).

Examining censorial purpose is critical to prevent the government from using regulatory power to “effectively drive certain ideas or viewpoints from the marketplace,” *R.A.V.*, 505 U.S. at 387-88 (citations omitted), or “tilt public debate in a preferred direction,” *Sorrell*, 564 U.S. at 578-79; *see also Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 641 (1994) (noting the “inherent risk” that “[g]overnment action that stifles speech on account of its message . . . seeks not to advance a legitimate regulatory goal, but to suppress unpopular ideas or information or manipulate the public debate through coercion rather than persuasion”); *Moody v. NetChoice, LLC*, 603 U.S. 707, 740-41 (2024) (“[A] State may not interfere with private actors’ speech to advance its own vision of ideological balance.”).

That is exactly what the Governor has made clear he aims to do here: create an environment hostile to the operation of an advocacy organization in order to drive the organization away and suppress its speech. The record provides concrete evidence of Florida’s accomplishment of that aim: due to the Executive Order, a production company withdrew from an agreement with CAIR to create a podcast “intended to support CAIR’s public education and civil rights work through interviews, commentary, and other expressive conduct,” eliminating “immediate and future speech opportunities for CAIR’s advocacy.” PI Order at 6. Additionally, the

Executive Order arguably prevents CAIR from accessing the “benefit or privilege” of government space for events such as rallies and town halls, cutting off its ability to share its message. Exec. Order at 3-4, § 2; *cf. Healy v. James*, 408 U.S. 169, 181-82 (1972) (holding that denying student group “access to . . . customary media for communicating with the administration, faculty members, and other students” limited its “ability to participate in the intellectual give and take of campus debate”).

The government’s conclusory contention that the ideology targeted by the Executive Order is associated with violence and terrorism only underscores the Executive Order’s impermissible purpose, even if that heavily contested contention is taken at face value. The Supreme Court’s decision in *Healy* is on point. There, a public college president denied recognition to a student group he concluded was “affiliated with, or at least retained an affinity for,” a national organization that had engaged in acts of violence. 408 U.S. at 187. The president “attributed what he believed to be the philosophy of that organization to the local group,” including “a philosophy of violence and disruption,” which he said threatened “destruction of the very ideals and freedoms upon which academic life is founded.” *Id.* The Supreme Court held that “mere disagreement . . . with the group’s philosophy affords no reason to deny it recognition.” *Id.* As in *Healy*, the Executive Order impermissibly conflates allegations of *association* with an organization the government believes to be criminal with actual criminality. The Supreme Court “has consistently

disapproved governmental action . . . denying rights and privileges solely because of a citizen’s association with an unpopular organization,” *id.* at 185-86 (collecting cases), and this case should be no exception.

The holding in *Healy* is grounded in the “bedrock principle underlying the First Amendment”: “the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” *Texas v. Johnson*, 491 U.S. 397, 414 (1989). As the Supreme Court has explained many times, the government “may not restrict speech or association simply because it finds the views expressed by any group to be abhorrent.” *Healy*, 408 U.S. at 187-88; *see Iancu v. Brunetti*, 588 U.S. 388, 396-97 (2019) (holding that law forbidding “immoral or scandalous” trademarks was facially unconstitutional); *Chiles v. Salazar*, 146 S. Ct. 1010, 1029 (2026) (“[T]he First Amendment stands as a shield against any effort to enforce orthodoxy in thought or speech in this country.”); *Honeyfund.com, Inc. v. Governor*, 94 F.4th 1272, 1277 (11th Cir. 2024) (striking down law that barred employers from holding mandatory meetings on specific topics the state considered offensive); *Moms for Liberty – Brevard Cnty. v. Brevard Pub. Schs.*, 118 F.4th 1324, 1335 (11th Cir. 2024) (“Enduring speech that irritates, frustrates, or even offends is a ‘necessary cost of freedom.’” (quoting *Sorrell*, 564 U.S. at 575 (2011))); *see also United States v. Al-Timimi*, 164 F.4th 292, 393 (4th Cir. 2026) (holding that the First Amendment protects “[t]eaching of the moral

propriety or even moral necessity for a resort to force and violence” unless speech is intended and likely to cause “imminent” lawlessness or “facilitates or solicits a particular crime” (citations omitted)). Thus, even if the government legitimately believes that CAIR is engaged in harmful speech, the First Amendment demands that its response to that speech be “more speech, not enforced silence.” *Brown v. Hartlage*, 456 U.S. 45, 61 (1982) (citation omitted).

B. The Executive Order’s specific focus on CAIR confirms its improper purpose

Even if the Executive Order’s improper purpose to target a disfavored viewpoint were not expressly stated in the Executive Order itself, its differential treatment of CAIR strongly supports a finding of improper purpose, triggering heightened scrutiny. As the Supreme Court held in *Sorrell*, regardless of any overt expression of viewpoint-discriminatory purpose, regulations creating classes of disfavored speakers generally require heightened scrutiny where there is a risk that such regulations reflect an effort by the government to suppress disfavored ideas. 564 U.S. at 564. The Supreme Court applied heightened scrutiny because “the statute disfavor[ed] specific speakers, namely pharmaceutical manufacturers” who intended to purchase data to engage in disfavored speech—namely, the marketing of brand-name drugs. *Id.* The creation of this “narrow class of disfavored speakers” engaged in disfavored speech confirmed that the statute’s “purpose [was] to suppress speech.” *Id.* at 566.

Similarly, in *Minneapolis Star*, the Supreme Court applied strict scrutiny to strike down a tax that “target[ed] a small group of newspapers,” 460 U.S. at 591, noting that differential treatment of the press may “suggest[] that the goal of the regulation is not unrelated to suppression of expression, and such a goal is presumptively unconstitutional,” *id.* at 585. A few years later, the Supreme Court reaffirmed *Minneapolis Star*, striking down a similar magazine tax that did not “evenly appl[y] to all magazines” and instead unconstitutionally “target[ed] a small group within the press.” *Ark. Writers’ Project, Inc. v. Ragland*, 481 U.S. 221, 229 (1987). And in *Leathers v. Medlock*, the Supreme Court upheld a generally applicable tax that exempted print and broadcast media but not cable television, but only because, on the record in that case, the distinction did not “threaten[] to suppress the expression of particular ideas or viewpoints,” 499 U.S. 439, 447 (1991), emphasizing that there was “no indication . . . that Arkansas has targeted cable television in a purposeful attempt to interfere with its First Amendment activities,” *id.* at 448. In so holding, the Court confirmed that laws “target[ing] a small group of speakers,” are “suspect,” *id.* at 447, noting that such laws may be “directed at, or present[] the danger of suppressing, particular ideas,” *id.* at 453.

The Executive Order is directed at specific speakers with the apparent intent of suppressing particular ideas. Indeed, the Order’s explicit naming of CAIR and express focus on “ideology” reveals its purpose even more starkly than the laws at

issue in *Minneapolis Star* or *Arkansas Writers' Project*, which functionally applied only to certain publications but did not identify them by name or express any perspective on their “ideology.” *Minneapolis Star*, 460 U.S. at 577-79; *Ark. Writers' Project*, 481 U.S. at 224-25. Unlike in those cases, the Executive Order cannot, and does not, purport to apply a general rule that only incidentally targets certain speakers in service of some content-neutral purpose.

In that way, the Executive Order is akin to the speaker-specific regulation in *Wollschlaeger*, where the *en banc* Eleventh Circuit struck down restrictions on certain speech about firearm ownership, finding the law contained impermissible “speaker-focused and content-based restrictions on speech” including because it applied “only to the speech of doctors and medical professionals.” 848 F.3d at 1307 (Jordan, J.). As this Court noted, “Florida may generally believe that doctors and medical professionals should not ask about, nor express views hostile to, firearm ownership,” but “it ‘may not burden the speech of others in order to tilt public debate in a preferred direction.’” *Id.* at 1313-14 (quoting *Sorrell*, 564 U.S. at 578-79). Likewise, here, the Governor may generally believe that “Islamist ideology” is “irreconcilable with foundational American principles,” Exec. Order at 1, but he may not burden the speech of CAIR and those with whom it associates in order to suppress that disfavored viewpoint.

C. The Governor’s statements further confirm the Executive Order’s improper purpose

The Governor’s statements also confirm the Executive Order’s improper purpose. For example, on the day he issued the Executive Order, the Governor made a public statement about protecting Floridians “against CAIR” by “crafting legislation to stop the creep of sharia law.” D.I. 24-1 ¶ 17. This statement can be linked to other statements signaling the Governor’s disdain for the Muslim community and advocacy the Governor perceives as associated with Muslims or Islam. The Governor has reportedly said that Palestinian refugees are “all antisemitic,” *id.* ¶ 3, made references to “so-called Islamophobia,” *id.* ¶ 4, and called for bans on pro-Palestinian student groups based on their constitutionally protected advocacy, *id.* ¶ 5. One week before signing the Executive Order, the Governor posted on X, “The wages of sharia . . .” in response to a post about the death of a Muslim woman in the Netherlands. *Id.* ¶ 16. The Court should weigh these statements in assessing the Order’s constitutionality. *See Moody*, 603 U.S. at 741 (referencing statements by law’s sponsor and the Governor as evidence of the state’s motivation to silence viewpoints it disagrees with); *cf. Masterpiece Cakeshop v. Colo. Civ. Rights Comm’n*, 584 U.S. 617, 639 (2018) (citing the government’s “official expressions of hostility to religion” as evidence of a violation of the free exercise clause).

D. *Hubbard* does not foreclose this Court from considering improper purpose

This Court’s decision in *In re Hubbard*, 803 F.3d 1298 (11th Cir. 2015), does not foreclose the Court from considering the Executive Order’s improper purpose. *Hubbard* holds that evidence of improper purpose is not sufficient to establish the unconstitutionality of a facially neutral statute that otherwise does not violate the First Amendment; it does not support the proposition that improper purpose is irrelevant to assessing the constitutionality of a regulation—nor could it consistent with other binding precedent. *Id.* at 1312.

In *Hubbard*, this Court held that “courts cannot ‘strike down an otherwise constitutional statute on the basis of an alleged illicit motive.’” *Id.* (quoting *United States v. O’Brien*, 391 U.S. 367, 383 (1968)). On that basis, the Court quashed a subpoena demanding discovery aimed at establishing that individual lawmakers had a retaliatory motive in enacting the challenged statute, which allegedly targeted a specific public sector union with views adverse to the state. *Id.* at 1301-02. Critically, this Court had already upheld the constitutionality of the challenged statute under the First Amendment such that the plaintiffs’ claims were viable only if a retaliatory purpose was independently sufficient to state a First Amendment claim, notwithstanding that the statute was “otherwise constitutional.” *Id.* at 1312 (citation omitted).

Hubbard has no application here because the Executive Order is not “otherwise constitutional.” Unlike the statute in *Hubbard*, it is not facially content- or speaker-neutral. As this Court acknowledged in the decision itself, *Hubbard* does not apply to cases that involve “acts of governmental retaliation that explicitly single out a specific group.” *Id.* at 1314. That limitation was necessary to reconcile *Hubbard* with the Eleventh Circuit’s earlier decision in *Georgia Association of Educators v. Gwinnett County School District*, where the “crucial fact,” fatal to the statute, was that it was not “a generally applicable policy—it specifically singled out” members of two teachers’ associations, i.e., particular speakers. *Id.* at 1314 (citing *Ga. Assoc. of Educators v. Gwinnett Cnty. Sch. Dist.*, 856 F.2d 142, 144 (11th Cir. 1988)). And, as discussed extensively above, *see supra* §§ I.A, I.B, it is well established that improper viewpoint-based purpose is relevant to assessing the constitutionality of the government’s acts under the First Amendment.³

³ *Hubbard* could not foreclose this Court’s consideration of the Executive Order’s purpose for another reason: its rationale does not extend beyond the context of legislative enactments. *Hubbard* is grounded in the Supreme Court’s ruling in *United States v. O’Brien*, 391 U.S. 367, 384 (1968), which declined to impute the intent of a “handful” of legislators to an entire legislative body because “[w]hat motivates one legislator . . . is not necessarily what motivates scores of others.” *Hubbard*, 803 F.3d at 1312. That logic does not apply to the motives of the Governor, who has the singular authority to issue executive orders. At least one Florida district court has correctly found *Hubbard*’s rationale to be so limited. *See O’Boyle v. Sweetapple*, 187 F. Supp. 3d 1365, 1374-75 & n.9 (S.D. Fla. 2016) (noting that the *Hubbard/O’Brien* rule “seems to be limited to legislative acts” and reasoning that “it is easier to identify the retaliatory purpose of a non-legislative act”).

II. The Executive Order Cannot Survive Any Heightened Level of Constitutional Scrutiny

The Executive Order fails any heightened level of First Amendment scrutiny. If strict scrutiny applies, the Governor must show the Executive Order is “narrowly tailored to serve compelling state interests.” *Reed*, 576 U.S. at 163. If intermediate scrutiny applies, the Executive Order must “advance[] important governmental interests unrelated to the suppression of free speech and . . . not burden substantially more speech than necessary to further those interests.” *Turner Broad. Sys., Inc. v. FCC*, 520 U.S. 180, 189 (1997).

The Executive Order serves no legitimate—let alone important or compelling—interest. It burdens substantially more speech than necessary to further its purported interest in “[t]hwarting terrorism,” *contra* Defendant-Appellant’s Opening Brief (“Opening Br.”) at 29, revealing that interest to be pretextual and exposing a lack of necessary tailoring. Florida has a range of tools at its disposal to address actual terrorism and, unlike those tools, the Executive Order makes no effort to safeguard the constitutionally protected speech and association it threatens. “Because First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity.” *NAACP v. Button*, 371 U.S. 415, 433 (1963). The Executive Order does not come close to meeting this standard. The Court therefore should find that the Executive Order fails either intermediate or strict scrutiny. Failing to do so would grant governors—and the President—

authoritarian powers to punish individuals and organizations whose views those individual leaders opposed.

A. The Executive Order’s breadth establishes its purpose to suppress disfavored speech and lack of tailoring to any legitimate purpose

The Governor’s claimed interest is “[t]hwarting terrorism,” Opening Br. at 29, but the Executive Order does not merely restrict activity linked to “terrorism finance and material support,” *contra id.* at 27. The Florida Attorney General has asserted that, under the Executive Order, CAIR is “barred from using *any and all* state resources.” D.I. 41-2 at ¶ 5 (emphasis added); *see also* Exec. Order at 3-4, § 2 (prohibiting CAIR from “receiving any contract, employment, funds, or other benefit or privilege” from the state or any local government). If this view is correct, CAIR is prohibited from accessing government space for events such as rallies and town halls, regardless of the purpose of those events and with no evidence that such events have been linked to support for terrorism; from participating in public school or state university programming, including programming designed to foster debate and intellectual inquiry; from applying for public grants, including those designed to support its religious and community-building purposes; and from partnering with local governments on community outreach programs designed to benefit the Muslim communities CAIR was founded to support. No speculation is required to comprehend the vast, direct impact this restriction places on CAIR’s First Amendment rights.

The Executive Order also prevents any Floridian who provides *any* “material support” to CAIR “from receiving any contract, employment, funds, or other benefit or privilege” from the state. Exec. Order at 3-4, § 2. The Florida Attorney General has gone so far as to describe the Executive Order as preventing “any organization affiliated with CAIR” from accessing any “state and local resources”—a statement that sweeps in everything from a walk in the park to reliance on municipal trash collection. D.I. 41-2 at ¶ 2. Florida’s sweeping definition of “material support” includes “any . . . service, including . . . training, [and] expert advice or assistance.” Fla. Stat. § 775.33. In *Holder v. Humanitarian Law Project*, the Supreme Court held that a near-identical federal definition of material support directly regulated protected speech, rejecting the government’s claim that it solely regulated conduct. 561 U.S. 1, 27 (2010). Just as the regulation in *Holder* limited the plaintiffs’ ability to participate in activities constituting “material support . . . in the form of speech,” *id.* at 28, so does the Executive Order burden the participation of both CAIR and any Florida individual or organization seeking to engage with CAIR.⁴

⁴ In *Holder*, the Supreme Court ultimately rejected the as-applied challenge to the federal material support provision, but only because the case involved the provision of support directly to organizations the government said actually were engaged in terrorism, there was a voluminous legislative record explaining the purported need for the law, and the organizations were foreign, not domestic. 561 U.S. at 29-30, 39. In fact, the *Holder* Court explicitly stated: “We . . . do not suggest that Congress could extend the same prohibition on material support at issue here to domestic organizations.” *Id.* at 39.

Indeed, the Executive Order has already chilled CAIR’s protected expressive activities, providing concrete evidence of its unconstitutional effect. For example, CAIR was prevented from airing a podcast intended to promote civil rights when a production company withdrew based on the Executive Order. D.I. 21 at ¶¶ 66-68. Attendance at CAIR’s 2026 Muslim Day event at the Florida Capitol “was approximately half of the attendance from 2025,” and “CAIR-Florida received communications from individuals . . . indicating that they would not attend due to concerns arising from the Executive Order.” D.I. 41-1 ¶ 5. Burdening such events has clear First Amendment implications, *cf. Fort Lauderdale Food Not Bombs v. City of Fort Lauderdale*, 901 F.3d 1235, 1238 (11th Cir. 2018) (holding that non-profit’s “outdoor food sharing” event intended to “communicate” a political message was “expressive conduct protected by the First Amendment”), including by imposing a chilling effect on those who wish to attend in order to associate with CAIR toward shared goals, *see Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 618-19 (2021) (prohibiting California from collecting non-profit donor information on the grounds that it risked “chilling” association that would “further shared goals”).

The Governor does not even attempt to explain how the state’s asserted interest in thwarting terrorism requires such broad prohibitions. Thus, because the Executive Order burdens speech that is disconnected from the problem it purports to

address, it cannot survive constitutional scrutiny. *Wollschlaeger*, 848 F.3d at 1317 (Jordan, J.) (holding law failed heightened scrutiny because its “provisions are not appropriately tailored to address the concerns identified . . . in the record”); *see also Brown v. Ent. Merchs. Ass’n*, 564 U.S. 786, 804 (2011) (concluding that law enacted to assist parents in preventing their children from purchasing violent video games was “vastly overinclusive” where it swept in children whose parents did not disapprove of such games); *Al Haramain Islamic Found., Inc. v. U.S. Dep’t of Treasury*, 686 F.3d 965, 997, 1001 (9th Cir. 2012) (holding that restriction on speech was not narrowly tailored where there was “little evidence that the pure-speech activities” prohibited would threaten the government’s asserted interest).

The Governor gets it backward when he argues that the Executive Order’s breadth is justified because “[e]ven seemingly benign support of a terrorist organization, after all, can bolster terroristic violence.” Opening Br. at 25. A constitutional scheme must minimize its impact on constitutional rights by carving out—not broadly sweeping in—protected speech and association. *See Shelton v. Tucker*, 364 U.S. 479, 487-88, 490 (1960) (striking down statute that required teachers to disclose “every single organization with which [they have] been associated over a five-year period” because its “scope” was “completely unlimited” and “indiscriminate”); *see also Speech First, Inc. v. Cartwright*, 32 F.4th 1110, 1125-26 (11th Cir. 2022) (finding harassment policy “almost certainly” overbroad

and not narrowly tailored where it included swaths of speech beyond what was necessary to prohibit harassment).

Moreover, if Florida truly believed that CAIR was engaged in terrorism or other criminal acts, there are state and federal mechanisms to investigate and prosecute those acts. The Executive Order itself cites Florida's counterterrorism statutes, Exec. Order at 3-4, § 2, which provide for penalty enhancement when an individual commits a charged offense to "facilitate[] or further[] any act of terrorism," *see* Fla. Stat. § 775.31; *see also id.* §§ 874.03(7) and 775.30 (defining "terrorism" and "terrorist organizations"). Similarly, the Florida legislature expressly contemplated "very close coordination of federal, state, and local law enforcement agencies" in anti-terrorism matters, *id.* § 943.03101, demonstrating Florida's ability to cooperate or assist with federal investigations or prosecutions, including relating to a Foreign Terrorist Organization designation.

The existence of paths for criminal investigation and prosecution or federal designation is fatal because a law is not narrowly tailored if a less restrictive alternative would serve the asserted interest. *See United States v. Playboy Entm't Grp.*, 529 U.S. 803, 813 (2000). The breadth of the Executive Order "imposes an especially heavy burden on the Government to explain why a less restrictive" action, like those discussed above, is not sufficient to serve its purported interest in thwarting terrorism. *See Reno v. ACLU*, 521 U.S. 844, 879 (1997). But "there is no

hint that [the Governor] even considered these or any other alternatives.” *See Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 373 (2002).

In stark contrast with the Executive Order, both criminal prosecution and federal designation as a Foreign Terrorist Organization provide procedural safeguards.⁵ By their very nature, state or federal prosecutions require an investigation, a decision to charge, and for CAIR to have its day in court; as this Court has explained, “prosecution” is “a legal term of art” referring to “the institution and continuance of a criminal suit and the process of exhibiting formal charges against an offender before a legal tribunal, and pursuing them to final judgment on behalf of the state or government, as by indictment or information.” *In re Wild*, 994 F.3d 1244, 1266 n.21 (11th Cir. 2021) (citation and alterations omitted). Federal designation as a Foreign Terrorist Organization also provides for specific process, including notice to congressional leaders, 8 U.S.C. § 1189(a)(2)(A)(i), procedures

⁵ Such safeguards were central to the decision in *Holder*, where the Supreme Court relied on the fact that the federal material support provision “only applie[d] to designated foreign terrorist organizations” and provided for “judicial review of the designation.” 561 U.S. at 35; *see also* PI Order at 18-22 (distinguishing *Holder*). Even with those safeguards, in the years since *Holder*, the federal material support provision has garnered significant criticism for its broad sweep, which “criminaliz[es] acts multiple steps removed from violence.” *See, e.g., Shirin Sinnar, Terrorism, Not Treason: The Rise and Fall of Criminal Charges*, 2024 U. Chi. Legal F. 275, 290-93 (2024).

for revocation of the designation, *id.* §§ 1189(a)(4)(B), 1189(a)(5), 1189(a)(6), and a path for judicial review, *id.* § 1189(c)(1).

These procedures highlight the utter absence of any procedural safeguards in the Executive Order or the process leading up to it. The Executive Order was designation by fiat, and its flimsy rationale is evident in its “Whereas” clauses. It does not purport to be based on an investigation of CAIR. There is no process for objection, reconsideration, or appeal. There is nothing in the Executive Order to prevent the dangerous blurring of lines between protected speech and purported criminality, or to help “obviate the dangers of a censorship system.” *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559-60 (1975) (citations omitted); *United States v. Frandsen*, 212 F.3d 1231, 1238 (11th Cir. 2000).

Beyond establishing the lack of requisite tailoring, the Governor’s decision to impose an overbroad regulation of speech disconnected from terrorism—rather than pursuing existing, narrower alternatives to combating such criminality—suggests that his professed interest is a pretext for viewpoint discrimination. This Court need not accept the government’s assertion of a purported interest that is unsupported by the record. In *Bonta*, the Supreme Court considered a California law requiring all charitable organizations to report information about their top donors, purportedly to combat charity fraud. 594 U.S. at 612-13. But the state could not identify a single instance in which it actually used such reports to advance the state’s investigative,

regulatory, or enforcement efforts. *Id.* By looking beyond the state’s professed purpose to the practical effect of the statute, the Court determined, “[i]n reality, then, California’s interest is less in investigating fraud and more in ease of administration.” *Id.* at 614. The same disconnect between interest and practical effect exists here. Combined with other factors, such as the Executive Order’s express focus on “ideology,” *see supra* § I, and the flimsiness of the purported connection between CAIR and terrorism, *see* Plaintiffs-Appellees’ Response Brief at 31-36, the record here reveals that “[i]n fact the only interest distinctively served” by targeting CAIR “is that of displaying [the Governor’s] special hostility towards” CAIR’s speech, ideas, and associations, *see R.A.V.*, 505 U.S. at 396. That interest categorically is not legitimate—let alone important or compelling. *E.g., Moody*, 603 U.S. at 740 (explaining that the state’s interest is “very much related to the suppression of free expression, and it is not valid, let alone substantial”).

B. Upholding the Executive Order would empower attacks on any organization opposed to prevailing government orthodoxy

Sanctioning the Executive Order would create a dangerous, authoritarian precedent. The Executive Order designates CAIR a terrorist organization by fiat, cutting off CAIR and any Florida individual or organization associated with it from access to government facilities, benefits, services, and employment. By design and effect, the Executive Order isolates CAIR in order to suppress its ideas. Nonprofit advocacy groups like CAIR necessarily depend on support from and association with

others. The Supreme Court has “explained that ‘[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.’” *Bonta*, 594 U.S. at 606-07 (quoting *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958)). The Executive Order targets precisely that dynamic, threatening CAIR’s ability to participate in effective advocacy.

Exercising indistinguishable power, any state governor—or the President—could target any organization he personally disfavors, threatening groups across the ideological spectrum who happen to be out of step with government orthodoxy—indeed, with a single individual’s view of government orthodoxy. *See* David Cole, *The First Amendment’s Borders: The Place of Holder v. Humanitarian Law Project in First Amendment Doctrine*, 6 Harv. L. & Pol’y Rev. 147, 173 (2012) (noting the “risk of improperly motivated censorship” of domestic groups that are “potentially in a position to challenge the incumbent administration’s hold on political power”).

This is not a hyperbolic concern. Our current political environment is replete with examples of heightened rhetoric directed by powerful political actors at those with contrary points of view. To name just a few: Governors have targeted the National Rifle Association as “trash” and envisioned making it “obsolete,”⁶ and

⁶ Louis Casiano, *Gavin Newsom lashes out at ‘trash organization’ NRA after Second Amendment ‘hypocrisy’ accusation*, Fox News (Jan. 25, 2023), <https://www.foxnews.com/politics/california-gov-newsom-lashes-trash-organization-nra-second-amendment-hypocrisy-accusation> (quoting California

members of the federal executive branch have labeled the minority political party a “domestic extremist organization.”⁷ In some cases—including but not limited to this one—such rhetoric has already translated into abuses of power designed to suppress a disfavored organization. *E.g.*, *Am. Bar Ass’n v. U.S. Dep’t of Just.*, 783 F. Supp. 3d 236, 239, 246 (D.D.C. 2025) (granting preliminary injunction after federal government terminated grants to the ABA, citing the ABA’s “support of activist causes”).

The Court should not empower politically motivated “terrorist” designations directed at shuttering non-profits in conflict with political leaders. The First Amendment exists to prevent the government from “driv[ing] certain ideas or viewpoints from the marketplace,” the exact motivation in play here. *See R.A.V.*, 505 U.S. at 387-88 (citations omitted).

CONCLUSION

For the foregoing reasons, *amicus curiae* respectfully urges this Court to affirm.

Governor Gavin Newsom as saying about the NRA: “I look forward to the day your trash organization is obsolete”).

⁷ *E.g.*, Sean Hannity, *Stephen Miller: The Democratic Party is a ‘domestic, extremist organization’*, Fox News (Aug. 25, 2025), <https://www.foxnews.com/video/6377384186112> (quoting White House Deputy Chief of Staff for Policy Stephen Miller as calling the Democratic Party a “domestic, extremist organization”).

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this Brief complies with the type-volume limitations set forth in Federal Rule of Appellate Procedure 32(a)(7)(A) and Eleventh Circuit Rule 32-4 because it contains 6,198 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f) and Eleventh Circuit Rule 32-4.

I further certify that this Brief complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5)–(6) because it has been prepared in a proportionally spaced typeface of Times New Roman 14-point font.

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CERTIFICATE OF SERVICE

I certify that on July 9, 2026, I electronically filed the foregoing with the Clerk of Court using the Court's CM/ECF system, which will send an electronic copy to all counsel of record.

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