No. _____

In the
Supreme Court of the United States

META PLATFORMS, INC., formerly doing business as Facebook, Inc.,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

"[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." *Burson v. Freeman*, 504 U.S. 191, 196 (1992). Despite that core protection, Washington has imposed extraordinary disclosure obligations (backed by stiff fines) on digital platforms that make it financially irrational for them to disseminate political advertisements. Platforms must provide any member of the public who demands it a litany of details about the political advertisements they display within two business days. The chilling effect is undeniable: The requirements are so burdensome that Meta, Google, and others have stopped disseminating political advertisements in Washington altogether. While the burden this regime imposes on political speech is overwhelming, the public demand for the mandated information is virtually nonexistent. Between 2018 and 2021, Meta received requests under the law from just three people. Meta produced most (but not all) of the information, but the state sued anyway and sought and obtained an astonishing $35 million fine—the largest campaign-finance penalty in U.S. history. In a fractured opinion, the Washington Supreme Court found no First Amendment violation, expressly disagreeing with a Fourth Circuit decision holding a similar Maryland regime unconstitutional.

The question presented is:

Whether the First Amendment permits a state to impose onerous content- and speaker-based disclosure requirements on third-party platforms that make it

financially irrational for those platforms to disseminate political speech.

PARTIES TO THE PROCEEDING

Petitioner Meta Platforms, Inc. was a petitioner-appellant in the Washington Supreme Court and a defendant in the Washington Superior Court.

Respondent State of Washington was a respondent-appellee in the Washington Supreme Court and the plaintiff in the Washington Superior Court.

CORPORATE DISCLOSURE STATEMENT

Petitioner Meta Platforms, Inc. f/k/a Facebook, Inc. is a non-governmental corporate party. No publicly held corporation owns 10% or more of its stock. Petitioner Instagram, LLC is a non-governmental corporate party and a subsidiary of Petitioner Meta Platforms, Inc. f/k/a Facebook, Inc. that is wholly owned and controlled by its parent.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and is directly related to the following proceedings:

- *State v. Meta* Platforms*, Inc.*, No. 20-2-07774-7 SEA (Wash. Super. Ct.) (judgment entered on October 26, 2022).
- *State v. Meta Platforms, Inc.*, No. 84661-2-I (Wash. Ct. App.) (decision issued on December 2, 2024).
- *State v. Meta Platforms, Inc.*, No. 103748-1 (Wash.) (decision issued June 18, 2026; mandate issued August 25, 2026).

TABLE OF CONTENTS

QUESTION PRESENTED i
PARTIES TO THE PROCEEDING iii
CORPORATE DISCLOSURE STATEMENT iv
STATEMENT OF RELATED PROCEEDINGS v
TABLE OF AUTHORITIES viii
PETITION FOR WRIT OF CERTIORARI 1
OPINIONS BELOW 4
JURISDICTION 4
CONSTITUTIONAL PROVISIONS INVOLVED 5
STATEMENT OF THE CASE 5
A. Washington's Political Advertisement Disclosure Regime 5
B. Advertising on Facebook 8
C. Procedural Background 11
REASONS FOR GRANTING THE PETITION 14
I. The Decision Below Is Egregiously Wrong 16
A. Washington's Exceedingly Onerous Burdens on Platforms for Disseminating Political Advertising Trigger Strict Scrutiny 16
B. Washington's Third-Party Disclosure Regime Flunks Any Form of Exacting Scrutiny Worthy of the Name 25
II. The Decision Below Creates A Split With The Fourth Circuit 31
III. The Question Presented Is Exceptionally Important 33

CONCLUSION 37

APPENDIX

Appendix A

Opinion, Supreme Court of Washington, *Washington v. Meta Platforms*, No. 103748-1 (June 18, 2026)..... App-1

Appendix B

Order, Supreme Court of Washington, *Washington v. Meta Platforms*, No. 103748-1 (Aug. 20, 2026) App-105

Appendix C

Opinion, Court of Appeals for Washington, *Washington v. Meta Platforms, Inc.*, No. 84661-2-I (Dec. 2, 2024)..... App-107

Appendix D

Order, Superior Court of Washington, *Washington v. Meta Platforms, Inc.*, No. 20-2-07774-7 (Oct. 6, 2022)..... App-191

Appendix E

Order, Superior Court of Washington, *Washington v. Meta Platforms, Inc.*, No. 20-2-07774-7 (Oct. 6, 2022)..... App-194

Appendix F

Judgment, Superior Court of Washington, *Washington v. Meta Platforms, Inc.*, No. 20-2-07774-7 (Oct. 26, 2022)..... App-206

Appendix G

Relevant Constitutional Provision..... App-211

U.S. Const. amend. I App-211

TABLE OF AUTHORITIES

Cases

Ams. for Prosperity Found. v. Bonta,
594 U.S. 595 (2021) 25, 30

Ariz. Free Enter. Club's Freedom Club PAC v. Bennett,
564 U.S. 721 (2011) 18

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607 U.S. 71 (2026) 18, 22

Brown v. Ent. Merch. Ass'n,
564 U.S. 786 (2011) 36

Buckley v. Am. Const. L. Found., Inc.,
525 U.S. 182 (1999) 17

Buckley v. Valeo,
424 U.S. 1 (1976) 17, 18, 19, 23

Burson v. Freeman,
504 U.S. 191 (1992) 1, 17

Citizens United v. FEC,
558 U.S. 310 (2010) 18, 22, 33

FEC v. Cruz,
596 U.S. 289 (2022) 3, 25, 33, 35

First Nat'l Bank of Bos. v. Bellotti,
435 U.S. 765 (1978) 17

Free Speech Coal. v. Paxton,
606 U.S. 461 (2025) 17

Holt v. Hobbs,
574 U.S. 352 (2015) 29

McConnell v. FEC,
540 U.S. 93 (2003) 22

McCullen v. Coakley,
573 U.S. 464 (2014)..... 29, 30

McCutcheon v. FEC,
572 U.S. 185 (2014)..... 29

Meyer v. Grant,
486 U.S. 414 (1998)..... 18, 19, 20

Miami Herald Publ'g Co. v. Tornillo,
418 U.S. 241 (1974)..... 19, 20, 21

Nat'l Republican Senatorial Comm. v. FEC,
609 U.S. 908 (2026)..... 25, 28, 29

NRA v. Vullo,
602 U.S. 175 (2024)..... 20, 23

Packingham v. North Carolina,
582 U.S. 98 (2017)..... 35

Randall v. Sorrell,
548 U.S. 230 (2006)..... 4, 36

Republican Party of Minn. v. White,
536 U.S. 765 (2002)..... 17

Sorrell v. IMS Health,
564 U.S. 552 (2011)..... 20, 21

United States v. Playboy Ent. Grp.,
529 U.S. 803 (2000)..... 19

Wash. Post v. McManus,
944 F.3d 506 (4th Cir. 2019)..... 3, 13, 15, 17, 20, 22, 23, 26, 28, 31, 32, 33

Constitutional Provision

U.S. Const. amend. I 5

Statutes

RCW 42.17A.235..... 6

RCW 42.17A.235(2) 28
RCW 42.17A.240 6
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RCW 42.17A.260(1) 28
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RCW 42.17A.345(1) 6, 20
RCW 42.17A.345(1)-(2) 6
RCW 42.17A.345(1)(c) 26
RCW 42.17A.750(1)(c) 8
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WAC 390-18-050(3) 7
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Loeb & Loeb LLP (Nov. 2022), https://perma.cc/SN6M-7YGF 5

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Yahoo, *Ad Specs Guide*, https://perma.cc/GVQ5-KZHH (last visited Nov. 13, 2026) 9

PETITION FOR WRIT OF CERTIORARI

"[T]he First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office." *Burson v. Freeman*, 504 U.S. 191, 196 (1992). Nevertheless, Washington has enacted a novel political-speech disclosure regime so onerous that it has caused several key forums to decline to run political advertisements altogether in an effort to avoid crippling penalties. The regime explicitly targets political speech and political speech alone—yet it does not target the political speaker. Washington instead burdens digital platforms that display and disseminate political advertisements with a virtually unprecedented obligation to provide any member of the public who demands it a litany of information, including the name and address of who paid for the ad, the payment method used, the amount paid, detailed demographic information about the audiences the speaker targeted and reached, and the number of "impressions" generated—all within two business days.

Those onerous disclosure requirements apply to platforms 365 days a year, while disclosure obligations for actual political speakers apply only in the few weeks before an election. One need not be a Washington citizen or even self-identify to make such a request. Nor does the requester have to specify particular ads of interest; a blanket request for all information about every political ad shown to anyone in Washington suffices. Platforms must turn over all requested information with no questions asked, so a requester can seek the information for any purpose, including, e.g., to harass the speaker. And if a

platform fails to fully comply within two business days, it can be fined a whopping $30,000 per violation.

The chilling effect of this regime on core political speech is undeniable. That is not a matter of speculation: After the state imposed these obligations, Meta, Google, Yahoo, and others all independently concluded that it is simply not worth the cost of continuing to permit political ads on their services in Washington now that the state has made doing so financially irrational. Had Washington simply banned political ads from digital platforms altogether, that would be an obvious First Amendment violation. The result should be no different when a state achieves the same end via the most burdensome political-ad disclosure regime in the Nation (save only a similar Maryland regime that was promptly enjoined by the Fourth Circuit).

The Washington Supreme Court nevertheless upheld this speech-suppressing regime, via a deeply fractured collection of opinions. The lead opinion did not dispute that efforts to regulate core political speech typically trigger strict scrutiny. But it held that *all* disclosure regimes get only exacting scrutiny, even if the disclosure obligation is imposed on the media, rather than on the political speaker. While the opinion recognized that several platforms have withdrawn from the market under the weight of Washington's law, it dismissed that chill as "self-imposed," positing that "Meta, not the State, chose to foreclose advertising opportunities for candidates." App.27. And though this Court has repeatedly explained in recent years that "the prevention of '*quid pro quo*' corruption" is the "*only* … permissible ground

for restricting political speech," *FEC v. Cruz*, 596 U.S. 289, 305 (2022) (emphasis added), the lead opinion justified Washington's regime as permissibly advancing "voter education." App.23.

That conclusion is profoundly wrong. This Court has repeatedly recognized that regulations of core political speech trigger strict scrutiny. While the Court has sometimes applied exacting scrutiny to disclosure requirements on *political speakers*, it has never applied anything other than strict scrutiny to disclosure requirements on third parties that disseminate political speech. As Judge Wilkinson explained for a unanimous Fourth Circuit in enjoining a similar Maryland law, "[d]isclosure obligations applied to neutral-third party platforms are … from a First Amendment perspective, different in kind from conventional campaign finance regulations." *Wash. Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019). Given the "organic desire to succeed at the ballot box," disclosure obligations on political candidates are unlikely to deter them from speaking. *Id.* But that logic "falters" when disclosure obligations are extended to neutral third-party platforms, which will stop (and have stopped) displaying political speech if the government makes it financially irrational to do so. *Id.* That multiple platforms have withdrawn from the political-advertising market in Washington makes the chilling effect unmistakable and underscores that Washington's regime cannot begin to withstand even exacting scrutiny.

The consequences of leaving Washington's law standing are difficult to overstate. Among its many constitutional defects, the law's disclosure

requirements do not apply to all media that disseminate political advertisements equally; Washington has singled out digital platforms for additional mandatory disclosures. Yet digital advertisements are among the least expensive forms of political advertisement. Thus, Washington's law and its real-world chilling effect tilts the playing field in favor of big-money campaigns and incumbents who can afford more expensive traditional kinds of political advertising.

Nor are digital platforms overreacting to a hypothetical threat. As this case dramatically illustrates, Washington stands ready to seek crippling penalties (here, $35 million) against digital platforms for even partial disclosures. However well-intentioned Washington's law may be, there is no serious dispute that it has had the real-world effect of "harm[ing] the electoral process" by making it far more difficult for challengers to "mount[] effective campaigns against incumbent officeholders," reducing "democratic accountability." *Randall v. Sorrell*, 548 U.S. 230, 249 (2006). This Court should not allow that unconstitutional dynamic to persist.

OPINIONS BELOW

The opinion of the Washington Supreme Court is reported at 590 P.3d 1099 and reproduced at App.1-104. The opinion of the Court of Appeals of Washington is reported at 560 P.3d 217 and reproduced at App.107-90.

JURISDICTION

The Washington Supreme Court issued its opinion on June 18, 2026. App.1-104. It denied a motion for reconsideration on August 20, 2026.

App.105-06. Justice Kagan extended the time to file a petition until November 15, 2026. This Court has jurisdiction under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I.

STATEMENT OF THE CASE

A. Washington's Political Advertisement Disclosure Regime.

Washington has "the country's strongest (and strictest) political advertising law." Robyn Mohr & Jessica Lee, *Upcoming Midterm Elections Highlight Regulatory Risks of Online Political Advertising*, Loeb & Loeb LLP (Nov. 2022), https://perma.cc/SN6M-7YGF. Like many jurisdictions, Washington requires sponsors of political advertising, including candidates for office and political committees, to make certain disclosures on the face of their advertisements; to report information about their advertisement expenditures; to disclose any foreign involvement; and to make much of this information open for public inspection. *See* former ch. RCW 42.17A.320[1]; RCW

[1] Former chapter 42.17A RCW has since been recodified, with no substantive change, as Title 29B RCW. But because the former chapter applied during the time of this action, and to conform to the decisions below, this petition refers to former chapter 42.17A. *See* App.5 n.1.

42.17A.260; RCW 42.17A.305; RCW 42.17A.235; RCW 42.17A.240.

But Washington has gone much further than that. Washington requires disclosures not only from the political actors sponsoring the advertisements, but also from third-party platforms that display and disseminate them. Under the state's Fair Campaign Practices Act (FCPA), any "commercial advertiser who has accepted or provided political advertising or electioneering communications" during an election must "maintain current books of account" containing specified information, including: (1) "[t]he names and addresses of persons from whom it accepted political advertising or electioneering communications;" "[t]he exact nature and extent of the services rendered;" and "[t]he total cost and the manner of payment for the services." RCW 42.17A.345(1). The third-party advertiser must make that information "open for public inspection" for at least five years after the applicable election and provide it to the state upon request. *Id.* at (1)-(2).

Washington's Public Disclosure Commission—the state agency charged with administering and enforcing the FCPA—has expanded those requirements even further. It requires commercial advertisers to record a copy of the ad; the name and address of the person paying for it, including their federal employer identification number, or other verifiable identification; the total cost of the ad, how much of that amount has been paid, who made the payment, when it was paid, and what method of payment was used; and the date(s) the ad was presented to the public. WAC 390-18-050(6). That

information must be "updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information." *Id.* at (3).

In 2018, the commission expanded the definition of "commercial advertisers" to include "digital communication platforms" and those who sell "digital communications." *Id.* at (1), (7)(g). It also imposed additional disclosure requirements on those "digital communications platforms" alone. In particular, the commission required those platforms to collect information describing "the demographic information"; the "statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached"; and the "total number of impressions generated by the advertisement or communication." *Id.* at (7)(g). Those distinct digital-only requirements, combined with the nature of digital advertising, which includes a high volume of low-priced ads and, unlike traditional advertising, does not involve review of advance copies that permits ready classification of ads as political, means that the burdens of Washington's regime weigh particularly heavy on digital-advertising platforms. *See* App.81-84.

On top of collecting, maintaining, and updating all this information, a third-party platform must make the information available "for public inspection by any person" both in person and by digital transmission within two business days of a request. WAC 390-18-050(4). A request for information need not identify any specific advertisement, candidate, initiative, or

campaign; it can simply demand that the "commercial advertiser" produce information about all political ads it disseminated within the past five years. Failure to timely disclose any of that voluminous information is punishable by up to $10,000 per advertisement. App.37; RCW 42.17A.750(1)(c). And in certain circumstances, those fines can be trebled. RCW 42.17A.750(1)(c).

B. Advertising on Facebook.

Meta owns and operates a variety of online services and applications, including Facebook. App.8. Facebook provides a wide-reaching service for advertising that makes political advertising far less expensive relative to traditional means, like print, television, or radio. *See* App.65-66 (McCloud, J., dissenting). Indeed, political actors can purchase ads on Facebook for as little as a dollar. Given that very low barrier to access to a very wide audience, Facebook and other online platforms have become a critically important forum for non-establishment and non-incumbent candidates, as well as for grassroots campaigns. *See* App.65-66; *see also* Daniel Kreiss & Bridget Barrett, *Democratic Tradeoffs: Platforms and Political Advertising*, 16 Ohio St. Tech. L.J. 493, 497 (2020) (observing that "digital political advertising" has "lowered the costs of purchasing paid political speech, … allow[ing] a greater range of actors to engage in paid political advertising" and "promot[ing] electoral participation").

Before 2018, that was as true in Washington state as elsewhere. But after Washington expanded its burdensome disclosure requirements for digital platforms, Meta was forced to stop offering political

advertising in the state altogether. App.8-9; App.109-10. After all, Washington puts the onus entirely on Meta to identify all state or local candidates and ballot initiatives, which is no easy feat (nearly 7,000 candidates filed for office in 2020, App.80); to sort through the millions of ads it displays and determine which ones qualify as a "political" or "electioneering communication"; then stand ready to provide detailed information about any and all of those ads going back five years on 48 hours' notice. And the costs of even minor noncompliance are astronomical, with a penalty of up to $30,000 for failing to timely provide even one piece of information about a $1 ad.

Given the near-impossibility of full compliance and the threat of crippling penalties, Meta banned political ads on its services in Washington. *See* App.8; App.66 (McCloud, J., dissenting). Meta was not alone. Other major online advertising platforms, including Google, Yahoo, and Choozle, imposed similar bans after Washington's new obligations took effect. *See* App.25; Yahoo, *Ad Specs Guide*, https://perma.cc/GVQ5-KZHH; Google, *Political Content*, https://perma.cc/XE76-UYUB; Choozle, *Political Advertising Policy & Guidelines*, https://perma.cc/Y83Q-PZSW.

Despite Meta's efforts to eliminate political ads, some still manage to slip through. Meta accordingly has engaged in substantial efforts to avoid running afoul of Washington's regime. In 2018, Meta launched its Ad Library, a free website maintained by Meta that stores all advertisements displayed on Facebook that have been identified as being about "Social Issues, Elections or Politics." App.9. The Ad Library contains

a wealth of information, including most (but not all) of the information Washington's law demands. App.9. For example, the Ad Library includes a copy of the ad and information about who paid for it, how much they spent, and an approximate size of the audience reached, App.9; App.98; App.109, but it does not list the street addresses of sponsors, payment methods, or exact number of impressions, App.9.

Upon receiving a request for information under Washington's regime, Meta will supplement the Ad Library by providing additional information about ads that may implicate Washington's regime. Meta provides a requester with a form to help it process and identify the relevant data sought. *See* Wash.CP.7990. Through that process, Meta seeks to ensure that the request is coming from a legitimate individual before its legal team works with its analysts to provide the relevant information. Wash.CP.7990-91.

Between 2018 and 2021, Meta received requests from just three individuals. App.6. None of those requests was for the purpose of informing the electorate. Two simply sought to test Meta's compliance with Washington's laws. *See* Wash.CP.7580-82, 8060-61. And the third sought information for the requester's political research and tracking business. *See* Wash.CP.38-39. Consistent with those objectives, the requests were extremely broad; one sought information on "every political ad shown in Washington State since 2016." App.31 n.15. Despite Meta's good-faith efforts to respond, it was unable to provide all the required information in the exceedingly short two-business-day window mandated by the law. The two requesters seeking to test Meta's

compliance immediately filed complaints with the commission, who referred the matter to the state attorney general. App.67-68 (McCloud, J., dissenting).

C. Procedural Background.

In April 2020, the attorney general sued Meta in Washington Superior Court for violating the FCPA. App.6. Following cross-motions for summary judgment, the state trial court ruled for Washington on every single question of fact and law. App.200-05. The court rejected Meta's First Amendment arguments and determined that each advertisement within each of the three requests for which Meta failed to provide complete information was a separate violation, producing a whopping 822 FCPA violations.[2] App.6-7. Though Meta provided almost all the information it was required to disclose, the trial court nevertheless imposed the maximum $10,000 statutory fine for each violation, awarded Washington fees and costs, and trebled the judgment. App.6-7. All told, Meta was fined a staggering $35 million for its partial failure to respond to requests from three individuals in 48 hours. That marks "the highest campaign finance violation penalty in United States history." App.69 (McCloud, J., dissenting).

After the court of appeals affirmed the superior court "in whole," App.108, Meta petitioned the Washington Supreme Court for review, arguing that Washington's third-party disclosure regime violates the First Amendment, that the lower courts

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[2] The court counted two separate requests for the same advertisements as two separate violations. App.31.

improperly treated the failure to fully respond to each request for an ad as a separate violation, and that the $35 million penalty is unconstitutionally excessive. The court agreed to hear the case and ultimately issued three separate opinions—each joined by only three justices.

The lead opinion affirmed across the board. On the First Amendment, it held that because these are "campaign-related disclosure laws," they warrant only "less restrictive exacting scrutiny." App.16. Though the opinion recognized that neither this Court nor the Washington Supreme Court had previously applied exacting scrutiny to disclosure laws directed at third parties, it concluded that it does not matter who is required to do the disclosing because "voters benefit just as much from disclosure laws applied to platforms as they do from disclosure laws applied to candidates." App.19. The opinion then found that Washington's law satisfies exacting scrutiny. On the interest side, it concluded that Washington's law "is substantially related to the State's interest in achieving election transparency and fostering an informed electorate." App.23. And though the opinion admitted that "it is possible to identify alternative measures Washington could take to inform voters," and that "other states have taken different approaches," it held that this "alone is insufficient to find that the law fails exacting scrutiny." App.21-22. The opinion dismissed the fact that Meta and others had stopped allowing political advertising as a "self-imposed" decision that "does not impact this court's exacting scrutiny analysis." App.27. The lead opinion then agreed with the state and the lower courts that each advertisement within each of the three requests constituted a separate

violation and thus yielded a massive $35 million fine, the largest campaign-finance penalty in history. App.30-38. The lead opinion then tersely rejected an Eighth Amendment challenge to that penalty. App.38-41

Three justices concurred in part and dissented in part. They agreed that Washington's law does not violate the First Amendment but would have applied an even more deferential form of review. App.42. They disagreed with the lead opinion's interpretation of what constitutes a "violation" under the FCPA, but rejected a constitutional challenge to the $35 million penalty. App.55-57.

Three justices dissented. The dissent faulted the lead opinion for applying exacting scrutiny "without really grappling with the distinctive burdens the FCPA places on the targeted platform or the speech-chilling effects it has on the platform and its potential users." App.74. Citing the Fourth Circuit's recent decision invalidating a similar Maryland law, the dissent explained how, "[b]ecause political actors and neutral third-party platforms operate under markedly different incentives, the consequences of a disclosure law vary starkly depending on where its burdens are placed." App.75 (citing *McManus*, 944 F.3d at 517). As the dissent explained, the lead opinion should have taken into account "the fact that the platform-based disclosure law had a chilling effect on political speech." App.76.

The dissent then identified multiple factors that render Washington's law unduly burdensome, including that it imposes "serious financial and technical burdens, and such steep potential penalties

for violations, that Meta has concluded it is financially irrational to continue hosting Washington political ads on its platforms." App.78. The dissent explained that Meta put forward evidence showing that "it cannot identify covered ads without significant and ongoing expenditures of time and money," and that "responding to disclosure requests within 48 hours—no matter how many ads the request covers, and no matter who requests the ad and for what purpose—is not narrowly tailored and is unduly burdensome." App.83-84.

Assuming the law could be applied consistent with the First Amendment, however, the dissenters agreed with the lead opinion that each separate advertisement request is an independent violation. App.85-90. But they would have held that the $35 million penalty is excessive under the Eighth Amendment, as the "nature and extent" of Meta's specific conduct by disclosing some, but not all, of the information in response to three individuals' requests cannot justify a $35 million fine. App.98.

REASONS FOR GRANTING THE PETITION

Washington's third-party disclosure regime is the most burdensome in the Nation. Its only rival was enjoined by the Fourth Circuit as an obvious First Amendment violation. The law's chilling effect is undeniable: The biggest and most important digital advertisers no longer offer political advertising in the state at all. A third-party "disclosure" regime so onerous that it results in no actual disclosure but instead shuts down channels for political speech altogether deserves strict scrutiny and cannot withstand any form of First Amendment scrutiny.

The Washington Supreme Court concluded otherwise only by ignoring the distinct First Amendment problems that third-party disclosure regimes create and applying scrutiny that was "exacting" in name only. That decision is misguided, squarely conflicts with the Fourth Circuit, and has dangerous implications for political candidates and voters alike.

The Washington Supreme Court excused the state from the rigors of strict scrutiny by analogizing its regime to laws that impose disclosure obligations on *political speakers*. But laws that impose disclosure obligations on political speakers are categorically different from laws that impose obligations on entities that disseminate political speech. Political actors face disclosure obligations on virtually every aspect of their campaigns and are distinctly unlikely to self-censor in the face of disclosure requirements, given their motivation to spread their message in pursuit of victory at the ballot box. That "rationale falters," however, when it comes to "neutral third-party platforms," which have no incentive to continue disseminating political speech if the government makes it economically irrational to do so. *McManus*, 944 F.3d at 516. And the lived experience in Washington confirms that the state's law does just that—which means that it does not even lead to disclosure and could not satisfy even exacting scrutiny.

While efforts to impose burdensome disclosure obligations on third-party platforms are anomalous, they have been tried elsewhere. Maryland enacted a similar third-party disclosure regime and applied it to third-party digital platforms around the same time as

Washington. That regime is no longer in force—because the Fourth Circuit concluded that it violated the First Amendment.

That split is reason enough for this Court to intervene, but the importance of the issue here cannot be overstated. Political speech is at the apex of First Amendment protection and Washington's third-party disclosure regime has closed off an entire forum for political speech. Worse still, the effect of that suppression is to skew elections. By forcing major online platforms like Facebook and Google to cease disseminating political ads in Washington, the state hamstrings small campaigns while providing a huge advantage to big money campaigns and incumbents who can afford to purchase the "more expensive and traditional means," such as television, radio, and newspaper advertisements. App.78 (McCloud, J., dissenting). Shutting down political speech in ways that are not politically neutral is as antithetical to First Amendment values as it gets. And our Constitution does not permit states to impose prohibitive compelled-speech mandates on media companies and then fine them tens of millions of dollars when they inevitably cannot perfectly comply. This Court should grant review and reverse.

I. The Decision Below Is Egregiously Wrong.

A. Washington's Exceedingly Onerous Burdens on Platforms for Disseminating Political Advertising Trigger Strict Scrutiny.

1. Though the First Amendment protects everything from violent video games to funeral protests, political speech by candidates for office lies

at "the heart of the First Amendment's protection." *First Nat'l Bank of Bos. v. Bellotti*, 435 U.S. 765, 776 (1978). "The First Amendment affords the broadest protection to such political expression" to ensure the "unfettered interchange of ideas for the bringing about of political and social change[] desired by the people." *Buckley v. Valeo*, 424 U.S. 1, 14 (1976). To ensure that "the electorate may intelligently evaluate the candidates' personal qualities and their positions on vital public issues before choosing among them on election day," candidates must have "the unfettered opportunity to make their views known" to voters. *Id.* at 52.

Precisely because "the First Amendment has its fullest and most urgent application to speech uttered during a campaign for public office," *Burson*, 504 U.S. at 196, states bold enough to regulate political speech must overcome strict scrutiny, "the most demanding test known to constitutional law," *Free Speech Coal. v. Paxton*, 606 U.S. 461, 484 (2025). Indeed, "[w]hile generic content-based regulations strain our commitment to free speech, content-based regulations that target *political* speech are especially suspect." *McManus*, 944 F.3d at 513. It is thus no surprise that, "[w]hen a State's election law directly regulates core political speech," this Court has "always subjected the challenged restriction to strict scrutiny." *Buckley v. Am. Const. L. Found., Inc.*, 525 U.S. 182, 207 (1999) (Thomas J., concurring in the judgment).[3]

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[3] *Cf. Republican Party of Minn. v. White*, 536 U.S. 765, 793 (2002) (Kennedy, J., concurring) (advocating an even more protective categorical approach because "[t]he political speech of candidates is at the heart of the First Amendment, and direct

To be sure, this Court has carved out a narrow exception to that rule for disclosure laws directed at political actors, reasoning that such laws "impose no ceiling on campaign-related activities and do not prevent anyone from speaking." *Citizens United v. FEC*, 558 U.S. 310, 366 (2010) (citation omitted); *see, e.g.*, *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 735 (2011) (noting that this Court has applied "a lower level of scrutiny" to "requirements that political funding sources disclose their identities"); *Buckley*, 424 U.S. at 62 (upholding disclosure law directed at "political committees" and "candidates"). But those laws promote disclosure without chilling speech precisely because they apply only to direct participants in the political process who are distinctly unlikely to be deterred in speaking as they pursue victory at the ballot box. *Cf. Bost v. Ill. State Bd. of Elections*, 607 U.S. 71, 77-79 (2026) (recognizing candidate's distinct interests in electoral outcomes). The same is not true of laws that target those who disseminate the political speech of others.

For that reason, this Court has squarely rejected efforts to evade strict scrutiny by targeting those who disseminate the political speaker's message instead of the speaker herself. In *Meyer v. Grant*, 486 U.S. 414 (1998), for example, the Court held that a Colorado law that made it a felony to pay people to circulate ballot-initiative petitions violated the First Amendment.[4] The "prohibition against the use of paid

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restrictions on the content of candidate speech are simply beyond the power of government to impose").

[4] Though *Meyer* used the term "exacting scrutiny," 486 U.S. at 420, this Court has subsequently clarified that notwithstanding

circulators," the Court explained, "has the inevitable effect of reducing the total quantum of speech on a public issue," since it "limits the number of voices who will convey [the proponents'] message." *Id.* at 422-23. While Colorado tried to defend the law on the ground that "other avenues of expression remain open," the Court rejected that argument. *Id.* at 424. The statute restricted "access to the most effective, fundamental, and perhaps economical avenue of political discourse." *Id.* "That it leaves open 'more burdensome' avenues of communication, does not relieve its burden on First Amendment expression." *Id.* "The First Amendment protects [the proponents'] right not only to advocate their cause but also to select what they believe to be the most effective means for so doing." *Id.*

This Court has further made clear that strict scrutiny applies with full force to laws that burden the dissemination of speech, s*ee, e.g.*, *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 812 (2000) (because the "distinction between laws burdening and laws banning speech is but a matter of degree," "content-based burdens must satisfy the same rigorous scrutiny as its content-based bans"), including laws that threaten to silence speech via burdensome compelled-speech requirements. In *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241 (1974), for instance, this Court struck down a Florida law that required newspapers to give political candidates space to respond to editorials criticizing the candidate. Even though the law did not ban any speech, it nevertheless ran afoul of the First Amendment by imposing costs

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that earlier inartful use of this term, *Meyer* applied strict scrutiny. *Buckley*, 525 U.S. at 207.

(in the form of a compelled-speech mandate) on the newspaper's decision to run such editorials. The statute, the Court explained, "exacts a penalty on the basis of the content of a newspaper." *Id.* at 256. And faced with those penalties, "editors might well conclude that the safe course is to avoid controversy." *Id.* at 257. That self-censorship would inevitably "blunt[] or reduce[]" "political and electoral coverage" and "dampen[] the vigor and limit[] the variety of public debate." *Id.* at 257. Simply put, as this Court has frequently admonished, "[l]awmakers may no more silence unwanted speech by burdening its utterance than by censoring its content." *Sorrell v. IMS Health*, 564 U.S. 552, 566 (2011). After all, the government "cannot do indirectly what [it] is barred from doing directly." *NRA v. Vullo*, 602 U.S. 175, 190 (2024).

2. Applying those principles, Washington's third-party disclosure regime triggers strict scrutiny several times over. It not only compels speech, but does so on the basis of content, imposing burdensome requirements only on digital platforms that choose to disseminate "political advertising or electioneering communications." RCW 42.17A.345(1). And the content it singles out is political speech, "an area in which the importance of First Amendment protections is at its zenith." *Meyer*, 486 U.S. at 425. Moreover, it imposes distinct burdens on particular speakers—digital platforms—and thus skews the political debate. In short, the law suffers from a "collection of First Amendment infirmities" that demand strict scrutiny. *McManus*, 944 F.3d at 520.

Washington's regime could not survive any exacting scrutiny worthy of the name, as it is so burdensome that it has forced several digital platforms, including Meta, Google, Yahoo, and Choozle, to stop disseminating political advertising in Washington entirely. By making it financially irrational for digital platforms to disseminate political advertisements, and thereby shutting down avenues for political disclosure altogether, the law promotes no actual disclosure (i.e., its purported justification). It instead simply suppresses political speech. Like the law in *Tornillo*, Washington's regime "dampens the vigor and limits the variety of public debate." 418 U.S. at 257.

Moreover, Washington's regulations single out particular speakers—digital platforms—for distinct burdens. Even burdens applicable to all commercial advertisers weigh more heavily on digital platforms that disseminate far more advertisements, for a greater variety of candidates at far lower rates, than traditional media. Indeed, complying with Washington's disclosure regime is especially difficult for digital platforms that do not review advance ad copies to alert them to which ads trigger the law's requirements. That discrimination among speakers independently triggers strict scrutiny. *Sorrell*, 564 U.S. at 571. The regime impermissibly tilts the playing field in favor of certain political speakers, as digital advertising is one of the cheapest and most effective ways for candidates and organizations to disseminate their views to voters. The loss of digital advertising benefits big-money campaigns and incumbents who can afford more expensive and traditional kinds of advertising. It hamstrings small,

upstart challengers who rely on inexpensive digital advertising to efficiently and effectively express their message. No matter what form of heightened scrutiny applies, Washington's vague interests in "transparency" and "voter education" cannot begin to justify exacting such a steep First Amendment toll.

3. The lead opinion below refused to apply strict scrutiny, concluding that disclosure laws categorically receive exacting scrutiny regardless of whom they target or how they operate. App.16-17. But as it conceded, courts have never applied anything but strict scrutiny to a political-speech disclosure requirement directed at those who disseminate the political speech of others. App.18-19.[5] That reflects the unique incentives for candidates and other direct participants in the political process. Lesser, but still exacting, scrutiny applies to disclosure laws directed at political actors because they are uniquely unlikely to be deterred from speaking. *See, e.g.*, *Citizens United*, 558 U.S. at 366; *cf. Bost*, 607 U.S. at 78 ("Candidates, in short, are not 'mere bystanders' in their own elections."). Those direct participants in the political process "have an organic desire to succeed at the ballot box," and that distinct "ambition generally offsets, at least in part, whatever burdens are posed

[5] The court offered *McConnell v. FEC*, 540 U.S. 93, 237-38 (2003), as a lone example of this Court applying lower scrutiny to campaign-disclosure laws directed at third parties. App.18-19. But *McConnell* involved the unique broadcaster context, where the Court deemed broadcaster-specific requirements necessary to ensure compliance with "broadcasting fairness" obligations. 540 U.S. at 237. "[W]hat goes for broadcasters is too much a product of their technical circumstances to serve as a template for state regulation writ large." *McManus*, 944 F.3d at 519.

by disclosure obligations." *McManus*, 944 F.3d at 516. Because disclosure laws directed at political actors will not deter them from speaking, the law promotes actual disclosure of the information associated with their speech and triggers only exacting review.

But that "rationale falters when extended to neutral third-party platforms that view political ads no differently than any other." *Id.* Unlike political actors, third-party platforms are not organically motivated to share political messages and are much more likely to be deterred from speaking altogether. *Cf. Vullo*, 602 U.S. at 198 ("[I]ntermediaries will often be less invested in the speaker's message and thus less likely to risk the regulator's ire."). So when the government imposes burdensome disclosure requirements on third-party platforms as a cost for disseminating political speech, "it makes certain political speech more expensive to host than other speech." *McManus*, 944 F.3d at 516. Thus, "[w]hile ordinary campaign finance disclosure requirements do not 'necessarily reduce[] the quantity of expression,' the same cannot be said for platform-based laws." *Id.* at 517 (citing *Buckley*, 424 U.S. at 19). And when the law makes it irrational for third-party platforms to disseminate political speech altogether, it not only impermissibly suppresses political speech, but results in no actual disclosure, as the disclosure obligations are triggered only by the political speech that is being chilled altogether.

This case well illustrates the point. Washington has for decades mandated disclosures from candidates and political organizations (as have most other states and the federal government) without driving

candidates or committees out of the picture. But after Washington imposed onerous disclosure requirements on digital platforms, Meta, Google, and others had little choice but to stop disseminating political ads in Washington, leaving no information about that suppressed political speech to disclose. And now that Washington has made clear that it has no qualms about seeking tens of millions of dollars in penalties for partial noncompliance with the disclosure regime, even more platforms are likely to conclude it is economically irrational to disseminate political advertisements that cost as little as a dollar and yield even less in profits.

In eliding the political actor/platform distinction, the court reasoned that "courts do not have a history of carving out exceptions based on the type of actor sharing the speech." App.19. That gets things backwards. This Court's precedent applying lesser scrutiny to campaign-disclosure laws directed at political actors is itself an exception to the default rules that both content-based laws and laws discriminating between speakers trigger strict scrutiny. The question here is whether that narrow exception for direct participants in the political process should be extended to third-party platforms with far less motivation to endure burdens on political speech. The answer is no. As the dissenting justices correctly charged, "[t]he lead opinion adopts the exacting scrutiny standard for this new situation without really grappling with the distinctive burdens the FCPA places on the targeted platform or the speech-chilling effects it has on the platform and its potential users." App.74.

The lead opinion instead blithely insists that "voters benefit just as much from disclosure laws applied to platforms as they do from disclosure laws applied to candidates." App.19. But that is doubly wrong. Because laws targeting non-candidates are much more likely to suppress speech altogether, voters lose the benefit of the speech that is suppressed and gain nothing from disclosure, because without that speech occurring, there is nothing to disclose.

B. Washington's Third-Party Disclosure Regime Flunks Any Form of Exacting Scrutiny Worthy of the Name.

While the lead opinion was wrong to apply exacting scrutiny, Washington's regime does not come close to satisfying that still demanding standard either. This Court has repeatedly made clear in recent years that exacting scrutiny is not a misnomer; it is a "lesser but still rigorous standard of review." *Nat'l Republican Senatorial Comm. v. FEC* (*NRSC*), 609 U.S. 908, 920 (2026). Exacting scrutiny demands "a substantial relation between the disclosure requirement and a sufficiently important governmental interest." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021). While the state does not have to show that its law is the least restrictive means, it must demonstrate that the law is "narrowly tailored" to "avoid unnecessary abridgement" of First Amendment rights. *NRSC*, 609 U.S. at 920. Washington's regime flunks that test at every step.

At the outset, "[t]his Court has recognized only one permissible ground for restricting political speech: the prevention of '*quid pro quo*' corruption or its appearance." *Cruz*, 596 U.S. at 305; *accord NRSC*,

609 U.S. at 923. Yet much of the information Washington's law requires bears no relationship to that interest. For instance, Washington requires digital platforms to provide demographic information about the audiences "targeted and reached," the "total number of impressions" generated by an ad, and how the sponsor paid for the ad (e.g., debit or credit card). WAC 390-18-050(7)(g); RCW 42.17A.345(1)(c). Such information has nothing to do with exposing *quid pro quo* corruption. It is the source of money behind political speech, not the identity of the audience (let alone the method of payment), that helps constituents understand to whom their officials may feel beholden.

To the extent the state claims that its regime serves an important interest in combatting foreign interference in elections, that argument suffers from all the same flaws and more. Information about the audience hearing the speech does nothing to expose foreign interference. Nor does payment method. Again, the source of money behind the speech is what matters.[6] Regardless, the state must set forth "concrete evidence showing the chosen means warrants the accompanying First Amendment burdens." *McManus*, 944 F.3d at 521-22. Washington has not identified *any* actual evidence of foreign interference in state or local Washington elections, and the absence of comparable measures by the vast majority of states or the federal government undermines this asserted interest.

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[6] The lack of tailoring vis-a-vis this asserted interested is underscored by the fact that the law allows anyone (even a government official from Russia or China) to trigger the law's extensive disclosure obligations.

In the courts below, the state claimed an interest in "facilitating an informed electorate." App.22. It is hard to see why an informed electorate would care about how sponsors pay for the advertisements. But in all events, given that Washington's law has predictably led to the suppression of speech as digital platforms have exited the political advertising market altogether, it produces both less speech and less disclosure. Thus, to the extent increased disclosure purports to be its justification, Washington's law is counterproductive and flunks even exacting scrutiny by a wide margin.

The law is likewise not remotely narrowly tailored to advance the interests Washington asserts. Washington requires anyone who disseminates political speech to provide to any individual who asks for it a long list of details about others' political speech. Anyone in the world can request the covered information about any political ad(s) going back five years, and platforms must turn over all that data within 48 hours. Once again, this case perfectly illustrates the point as the requesters made the least tailored request imaginable. App.31 n.15. Not only does Washington's law invite that kind of blunderbuss request, but Washington used its prosecutorial "discretion" to seek the maximum penalties for partial non-compliance with those requests. Indeed, even banning political ads from its services in Washington did not save Meta from an enforcement action culminating in a $35 million penalty, the largest campaign finance penalty in U.S. history. In short, in both drafting this law and enforcing it, Washington has engaged in precisely the sort of "unskillful

tailoring" this Court just rejected. *NRSC*, 609 U.S. at 926.

On top of that, Washington has never explained why less burdensome alternatives would not equally serve its interests. The disclosure regime's "serious financial and technical burdens" would be "unduly burdensome" under any circumstance, App.78 (McCloud, J., dissenting), but they are particularly indefensible given that Washington *already requires candidates and political speakers* to disclose much of the same information, while not requiring those active political participants to disclose some other information that is equally within their ken, *see* App.24. That is the opposite of narrow tailoring. Washington requires candidates and political speakers to disclose the most important information it compels platforms to disclose: who is sponsoring the ad. App.24. That duplication "illustrate[s] that much of what [the state] wishes to accomplish through the Act can be done through better fitting means." *McManus*, 944 F.3d at 523. At the same time, Washington does not even bother to make candidates and political speakers disclose their method of payment or describe their targeted audience, presumably because it is irrelevant (albeit still burdensome for the digital platforms). Similarly, while the disclosure requirements Washington puts on candidates and political committees are limited to the immediate run up to elections, RCW 42.17A.260(1); RCW 42.17A.235(2), the burdens it places on third parties like Meta apply 365 days a year.

The court below waved all of that away, positing that "the State is allowed to require both parties to a

transaction to disclose overlapping information, even if other parties could disclose the same data." App.25. Whatever purchase that claim may have when it comes to other forms of speech, this Court has repeatedly cautioned that courts must be "particularly diligent" in guarding against a "prophylaxis-upon-prophylaxis approach" to regulating political speech. *McCutcheon v. FEC*, 572 U.S. 185, 218-21 (2014) (plurality op.). "Courts cannot simply say, 'what's the harm in allowing just one more regulation' when that regulation would limit freedom of speech." *NRSC*, 609 U.S. at 931.

At the very least, Washington could have lightened the load by requiring political speakers to provide digital platforms with the information they need to comply. The legislature considered a proposed amendment that would have done just that, but failed to enact it.[7] Alternatively, the state could have built its own ad archive, as New York has done. Wash.CP.7833; *cf. Holt v. Hobbs*, 574 U.S. 352, 369 (2015) (explaining that the "policies followed [by] other[s]" underscore the lack of "need for a particular type of restriction"). Washington apparently explored doing so as well. Wash.CP.7835-37. While the state may find it more convenient or efficient to demand that platforms provide all the information it wants the public to have, "the prime objective of the First Amendment is not efficiency." *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). That the state is unwilling to shoulder the burden itself undermines its claim that any permissible interest at stake here is sufficiently

[7] *See* S.7599.1, 66th Leg., Reg. Sess. (Wash. 2020), https://perma.cc/QJT2-2C3B (proposed amendment to H.B.2772).

important to justify such an extreme burden on First Amendment rights.

The Washington Supreme Court dismissed all of that as well, invoking *Americans for Prosperity* for the proposition that the existence of "alternative measures … alone is insufficient to find that the law fails exacting scrutiny." App.21. But while *Americans for Prosperity* made clear that exacting scrutiny does not require the single least restrictive means imaginable, it reiterated that a state must still "demonstrate its need for [the law] in light of any less intrusive alternatives." 594 U.S. at 613. And the fact that Washington stands alone in seeing fit to drive platforms for political ads out of the state entirely "raise[s] concern that [it] has too readily forgone options that could serve its interests just as well." *McCullen*, 573 U.S. at 490.

Indeed, far from being narrowly tailored to accomplish its asserted interest, Washington's law undermines the state's professed interest in "educat[ing] and keep[ing] the public informed." App.27. As noted, by making it financially irrational for platforms to disseminate political ads in Washington, the state has ensured that its residents will hear less speech, not more. Nor will that deficit in speech be counterbalanced by any interest in disclosure, as there is no disclosure possible regarding speech that never occurs. Washington cannot insist that political speech will simply migrate to more traditional media that will provide the requisite disclosure. The price of digital advertising is trivial compared to print or broadcast media. Thus, the unavoidable result of Washington's law is less political

speech *and* less disclosure, while the speech that does occur will be tilted in favor of the well-heeled and incumbents. In short, Washington's law is a perfect storm of First Amendment violations that cannot survive any meaningful form of heightened scrutiny.

II. The Decision Below Creates A Split With The Fourth Circuit.

The Washington Supreme Court's First Amendment analysis not only departs from this Court's precedent, but creates a clean split with the Fourth Circuit's decision holding a similar Maryland law unconstitutional.

In *McManus*, the Fourth Circuit faced a Maryland law that, like Washington's, required online platforms to make onerous disclosures about political ads on their services on demand. 944 F.3d at 511-12. Maryland's law was narrower than Washington's in several respects. First, Maryland's law required platforms to disclose the identity of the purchaser and the amount paid, *id.* at 511, not the payment method or personal addresses. Second, it required online platforms to store the information for only one year, *id.* at 512, not five. Third, it empowered only the Maryland State Board of Elections to request the relevant information, *id.*, not anyone in the world. Finally, Maryland's law put the onus on the ad sponsor to notify the platform that its ad qualified under the law, and to supply the platform with the necessary information to comply. *Id.* Despite all those ameliorating features, the Fourth Circuit held that the Maryland law violated the First Amendment.

The Fourth Circuit first observed that the law was "a compendium of traditional First Amendment

infirmities." *Id.* at 513. The law, it explained, triggers strict scrutiny three times over, since it is "content-based," "targets political expression," and "compels certain speech." *Id.* at 515. While the court acknowledged that this Court has sometimes applied exacting scrutiny to laws that require *political actors* to disclose information about their advertisements, it determined that "Maryland's law is different in kind." *Id.* Unlike "customary campaign finance regulations," it "burdens *platforms* rather than political actors." *Id.* And the court concluded that that distinction matters. Disclosure obligations are far less likely to chill the political expression of political actors. But the same cannot be said of the willingness of platforms to disseminate political speech. Onerous "platform-based campaign finance regulations" make it "financially irrational, generally speaking, for platforms to carry political speech when other, more profitable options are available" that do not "create freestanding legal liabilities and compliance burdens." *Id.* at 516. When platforms are "[f]aced with this headache, there is good reason to suspect many platforms would simply conclude: Why bother?" *Id.*

Although the Fourth Circuit stopped short of deciding that strict scrutiny applies, its analysis is incompatible with the Washington Supreme Court's. Indeed, the only reason the Fourth Circuit did not apply strict scrutiny was because it concluded that Maryland's law could not withstand "even the more forgiving standard of exacting scrutiny." *Id.* at 520. Maryland insisted that its law was narrowly tailored to serve its asserted interests in deterring foreign interference and informing the electorate. *Id.* The Fourth Circuit, however, concluded that Maryland's

law "falls short." *Id.* at 521. While the court acknowledged that it owed some deference to the state under exacting scrutiny, "deference ... does not obviate the need for concrete evidence showing the chosen means warrant the accompanying First Amendment burdens." *Id.* at 521-22. Many of the disclosures Maryland imposed on platforms, moreover, were "already required of ad purchasers operating in the state." *Id.* at 522-23; *see supra* 28. As the Fourth Circuit explained, this "duplication" proved that the Maryland law was not narrowly tailored because "Maryland can apply the [law's] substantive provisions to ad purchasers directly, rather than neutral third-party platforms." *Id.* at 523. The Fourth Circuit concluded that the Maryland law "burdens too much and furthers too little, and this one-sided tradeoff falls short of what the First Amendment requires." *Id.*

This Court should grant certiorari and resolve the split that the decision below creates by confirming that the Fourth Circuit got it right and the Washington Supreme Court got it wrong.

III. The Question Presented Is Exceptionally Important.

This case is profoundly important on multiple levels. "The First Amendment 'has its fullest and most urgent application precisely to the conduct of campaigns for political office.'" *Cruz*, 596 U.S. at 302. "Political speech is indispensable to decisionmaking in a democracy" and "must prevail against laws that would suppress it, whether by design or inadvertence." *Citizens United*, 558 U.S. at 340, 349. By shutting down critical forums for political speech, that is

precisely what Washington's regime does. Indeed, Meta is now facing the largest campaign-finance penalty in history just for failing to disclose information about third-party political speech on an irrationally tight two-business-day deadline. It is little surprise, then, that digital platforms do not want to disseminate political speech in Washington any more—yet Washingtonians are the ones who ultimately suffer.

Social media services have become the "central nervous system" of many political campaigns, which rely on it to "raise[] money, identif[y] supporters, buil[d] electoral coalitions, and br[ing] people in closer touch with the electoral process." Darrell West, *Ten Ways Social Media Can Improve Campaign Engagement and Reinvigorate American Democracy*, Brookings Inst. (June 28, 2011), https://perma.cc/8KX7-LFRV. While Washington's effective denial of access to this medium is intolerable for any political actor, it is especially problematic for new and low-budget candidates who cannot afford more expensive traditional advertisements. *See* App.78 (McCloud, J., dissenting). The "diversity" of social media advertising "has afforded strategic political communicators with a much greater variety of means for appealing to the public than during the broadcast era of American politics," and by "lower[ing] the costs of purchasing paid political speech," these platforms "allow[] a greater range of actors to engage in paid political advertising." Kreiss & Barrett, *supra*, at 497. When those avenues are closed, the inevitable result is to tilt the playing field away from grassroots candidates who depend on social media's "relatively unlimited, low-cost capacity for communication,"

Packingham v. North Carolina, 582 U.S. 98, 104 (2017), and toward big-money campaigns and incumbents, *see Cruz*, 596 U.S. at 304 (observing that the First Amendment's protections are "especially important for new candidates and challengers").

Laws that impose content- and speaker-based burdens on third-party platforms are intolerable no matter how heavy those burdens fall. But the unconstitutionality of Washington's disclosure regime is compounded by the staggering $35 million fine imposed on Meta—a penalty that "is grossly disproportionate to Meta's conduct." App.91 (McCloud, J., dissenting). Only three individuals requested information from Meta (for reasons unrelated to the state's purported interests), and no one disputes that Meta largely complied with Washington's requirements by providing most of the information it was required to disclose—including, most importantly, the identity of the ad sponsors. App.9; App.66 (McCloud, J., dissenting). Nor has anyone identified any actual harm caused by Meta's partial noncompliance. It is hard to conceive of a more technical violation. Nevertheless, the state sought—and the court imposed—the highest campaign finance violation penalty in U.S. history against Meta for failing to strictly follow the state's compelled-speech mandate.[8] That astonishingly large penalty for such meager conduct underscores the vast chilling effect of

[8] The court below managed to spin this partial non-compliance to three individuals' requests into a $35 million penalty only by treating each requested ad as a separate violation—even when two individuals requested information on the same ad. *See supra* 11-13.

Washington's third-party disclosure regime. This Court should not permit such a grossly disproportionate regime to remain in place.

To be sure, Washington's regime is (at least for now) uniquely burdensome with respect to the obligations it foists upon digital platforms. But that just underscores the need for this Court's intervention. This Court routinely reviews outlier state laws that threaten serious First Amendment harms—particularly when they threaten to distort the political process. *See, e.g.*, *Randall*, 548 U.S. at 249. And it routinely reviews campaign finance laws that threaten to distort the political process. *Id.* Moreover, leaving the decision below unreviewed will only encourage other states to follow suit. In fact, other states have already considered similar laws in recent years. *See, e.g.*, Noelle Wilson, *Alaska, Colorado, and Virginia Enact Sponsorship Disclosure Requirements for Online Political Advertisements*, Ctr. for Media L. & Pol'y (Feb. 9, 2022), https://perma.cc/YF5X-QNXT. Washington's "pioneering effort" to open a new frontier in political-speech regulation underscores the need for this Court's immediate review. *Brown v. Ent. Merch. Ass'n*, 564 U.S. 786, 806 (2011) (Alito, J., concurring).

CONCLUSION

This Court should grant certiorari.

Respectfully submitted,

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November 13, 2026

APPENDIX

TABLE OF APPENDICES

Appendix A

Opinion, Supreme Court of Washington, *Washington v. Meta Platforms*, No. 103748-1 (June 18, 2026)..... App-1

Appendix B

Order, Supreme Court of Washington, *Washington v. Meta Platforms*, No. 103748-1 (Aug. 20, 2026) App-105

Appendix C

Opinion, Court of Appeals for Washington, *Washington v. Meta Platforms, Inc.*, No. 84661-2-I (Dec. 2, 2024)..... App-107

Appendix D

Order, Superior Court of Washington, *Washington v. Meta Platforms, Inc.*, No. 20-2-07774-7 (Oct. 6, 2022)..... App-191

Appendix E

Order, Superior Court of Washington, *Washington v. Meta Platforms, Inc.*, No. 20-2-07774-7 (Oct. 6, 2022)..... App-194

Appendix F

Judgment, Superior Court of Washington, *Washington v. Meta Platforms, Inc.*, No. 20-2-07774-7 (Oct. 26, 2022)..... App-206

Appendix G

Relevant Constitutional Provision..... App-211

U.S. Const. amend. I..... App-211

Appendix A

SUPREME COURT OF WASHINGTON

No. 103748-1

STATE OF WASHINGTON,

Respondent,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Petitioner.

Filed: June 18, 2026

En Banc

OPINION

PER CURIAM[1] — This case concerns the application of the Fair Campaign Practices Act (FCPA), former ch. 42.17A RCW (2024), to petitioner Meta Platforms Inc. As explained below, the resolution favored by the majority of this court is to affirm the Court of Appeals with respect to Meta's liability for violating the FCPA. However, there is no majority view with respect to the resulting civil

[1] This court may issue a per curiam opinion summarizing the votes of the justices in a plurality decision, preceding the lead opinion. Wash. Sup. Ct. Internal R. II-8(B).

penalty. Therefore, the penalty judgment stands affirmed.

Members of the public requested information from Meta regarding certain political advertisements on its platforms. Meta does not dispute that its response to these requests violated the FCPA and its implementing regulations. The State of Washington brought this action against Meta, and both parties moved for summary judgment. The trial court granted summary judgment to the State, ruled that Meta was liable for violating the FCPA, and imposed a civil penalty. The Court of Appeals affirmed in a published opinion. *State v. Meta Platforms, Inc.*, 33 Wn. App. 2d 138, 560 P.3d 217 (2024).

On review in this court, Meta argues that (1) the ruling on liability should be reversed because the FCPA and its implementing regulations violate the First Amendment to the United States Constitution as applied, (2) the penalty calculation should be reversed because it is based on a misinterpretation of the relevant statutes, and (3) the penalty should be reversed because it violates the excessive fines clause of the Eighth Amendment to the United States Constitution.

As to the first issue, in the lead opinion, three justices (Justice Whitener, Chief Justice Stephens, and Justice Pro Tempore Yu) would apply exacting scrutiny, uphold the FCPA as applied, and affirm the ruling on liability. In the opinion concurring in part and dissenting in part, three justices (Justice Mungia, Justice González, and Justice Montoya-Lewis) would apply deferential scrutiny, uphold the FCPA as applied, and affirm the ruling on liability. In the

dissenting opinion, three justices (Justice Gordon McCloud, Justice Johnson, and Justice Pro Tempore Madsen) would reverse the ruling on liability and remand to the trial court for fact-finding on Meta's First Amendment claim. As a result, the lead opinion and the concurrence/dissent represent the majority view affirming the ruling on liability.

As to the second issue, the three-justice lead opinion would affirm the penalty and hold that the trial court correctly interpreted and applied the relevant statutes by counting each advertisement included in a request as a separate violation. The three-justice concurrence/dissent would reverse the penalty and hold that the number of violations should be based on the number of advertisements, regardless of the number of requests that were made for the same information. The three-justice dissent would hold that the trial court correctly interpreted the relevant statutes but does not join the lead opinion in affirming the penalty. As a result, there is no majority view to affirm or reverse on this issue and the judgment stands affirmed.

As to the third issue, the three-justice lead opinion would affirm the penalty and hold that it does not violate the excessive fines clause of the Eighth Amendment, assuming without deciding that the Eighth Amendment applies in this case. The three-justice concurrence/dissent joins the lead opinion on this issue, assuming without deciding that the Eighth Amendment applies. The three-justice dissent would reverse the penalty and hold that it violates the excessive fines clause of the Eighth Amendment. As a result, the lead opinion and the concurrence/dissent

represent the majority view that the penalty does not violate the Eighth Amendment.

Accordingly, the Court of Appeals' opinion is affirmed with respect to liability and the penalty judgment stands affirmed by a divided court.

SUPREME COURT OF WASHINGTON

No. 103748-1

STATE OF WASHINGTON,

Respondent,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Petitioner.

Filed: June 18, 2026

OPINION

WHITENER J. – Washington State has a long history of requiring parties to election-related communications to publicly disclose information about their advertisements to help voters make fully informed choices. To best promote this interest in election transparency, Washington amended the Fair Campaign Practices Act (FCPA), former ch. 42.17A RCW (2024),[1] to require digital communications platforms to publicly disclose some of the data they regularly collect on a small subset of their advertisements: "political advertising and

[1] Former chapter 42.17A RCW has since been recodified as Title 29B RCW, effective January 1, 2026. Former chapter 42.17A RCW will be referenced throughout as it applied to Meta at the time of the action.

electioneering communications" targeted at Washington State users.

Meta Platforms Inc., one of the wealthiest corporations in the world, controls platforms like Instagram, Facebook, WhatsApp, and Messenger. Billions of people across the globe consume content posted on Meta's platforms every day, including countless advertisements chosen specifically for them using "microtargeted advertising" based on their demographic information and browsing habits.

In this case, Meta asks this court to find the FCPA as applied to them is burdensome and violates their right to free speech as protected by the First Amendment to the U.S. Constitution. We hold that it does not.

FACTUAL AND PROCEDURAL BACKGROUND

This action concerns 12 separate requests for records from three members of the public: Eli Sanders, Tallman Trask, and Zach Wurtz. Clerk's Papers (CP) at 256- 64. Meta does not dispute that its response to the requests for records violated the disclosure law. CP at 5859-63. The Attorney General's Office filed a complaint in King County Superior Court in April 2020 and later amended it to include additional charges. CP at 1-16, 247-69. Following discovery, both parties moved for summary judgment in July 2022. CP at 379-412, 413-44. The superior court granted the State's motion for summary judgment. CP at 5571-79.

The disclosure law authorizes up to $10,000 in penalties for each violation, plus legal costs. Former RCW 42.17A.750(1)(c) (2019), .780 (2018). The superior court imposed the maximum penalty for each advertisement sought in a request, a total of 822

violations.[2] *State v. Meta Platforms, Inc.*, 33 Wn. App. 2d 138, 194, 560 P.3d 217 (2024). Additionally, finding that Meta intentionally violated the law, the superior court trebled both the civil penalties and legal fees as permitted by the statute. *State v. Meta Platforms, Inc.*, No. 20-2-07774-7 SEA, 2022 WL 20697995 (King County Super. Ct. Oct. 6, 2022); CP at 5571-79. The superior court assessed $24,660,000.00 in civil penalties and $10,522,159.59 in legal costs for a total of $35,182,159.59, plus granted the State's request for an injunction. CP at 5592-93, 5812.[3]

Meta argued to the Court of Appeals that the disclosure law violates the federal First Amendment and section 230 of the Communications Decency Act. Am. Appellant's Opening Br. at 19-60 (Wash. Ct. App. No. 84661-2-I (2023)). It further argued that the superior court's method of calculating damages was based on an improper reading of the statute because it authorizes a penalty only for each *request* Meta does not respond to, not each advertisement included in those requests. *Id.* at 60-66. Meta also claimed that the fine was so excessive as to violate the Eighth Amendment to the U.S. Constitution. *Id.* at 73-74. The Court of Appeals found in the State's favor on all issues. In its petition to this court, Meta renews its federal First and Eighth Amendment challenges, as

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[2] The superior court found that Meta committed 254 violations in response to two plaintiffs' 2019 requests, 157 violations in response to one plaintiff's 2021 request, and 411 violations in response to another 2021 request. CP at 5575.

[3] The injunction is currently stayed. *Meta*, 33 Wn. App. 2d at 146.

well as its statutory misinterpretation claim regarding the calculation of damages.

Meta, the parent company of social media sites Facebook, Instagram, and other platforms, sells advertising space to individuals and organizations. CP at 5858-59. Meta does not dispute that as a "digital communications platform" and a "commercial advertiser" it is subject to the disclosure law. WAC 390-18-050(7)(g); former RCW 42.17A.345 (2019); Am. Appellant's Opening Br. at 10 (Wash. Ct. App. No. 84661-2-I (2023)); *see also Meta*, 33 Wn. App. 2d at 152 n.7. Advertisers use Meta to target narrow groups of users based on traits like age, gender, and location, a concept known as "microtargeting." CP at 599-601, 6344-59, 7164, 7184. As microtargeted advertising has become more prevalent, some parties have raised concerns about how it will impact voters and election transparency. CP at 7214, 7218; *see also* Br. of League of Women Voters of Wash. et al. as Amici Curiae in Supp. of Resp't at 7-12. Potential risks include increased political polarization and the ease of spreading misinformation, risks now heightened by the rise of artificial intelligence. Br. of League of Women Voters of Wash. et al. as Amici Curiae in Supp. of Resp't at 7-12.

In December 2018, Meta received a $200,000 penalty for failing to respond fully to two requests under Washington's disclosure law. CP at 26-28. Shortly after, Meta announced it would no longer accept advertisements in Washington State that related to "candidates, elections or ballot initiatives." CP at 615. According to Meta, the disclosure law is so burdensome that there is no economic incentive to

carry political advertisements in the state. Suppl. Br. of Pet'r at 10. However, such advertisements have continued to appear on Meta platforms since the ban. CP at 5859, 5937-38, 5974, 6010-11, 6015, 6025-26.

In 2018, Meta created an "Ad Library" to comply with disclosure laws in multiple jurisdictions. CP at 606-07, 7008, 7305-06. The "Ad Library" is a free tool that allows anyone to view information about advertisements hosted on Meta platforms that concern "social issues, elections, or politics." CP at 7007-08. Available information may include approximate price and audience size, expressed as a percentage or range. *Id.* Information is added to the library within 24 hours of an advertisement's first impression, updated regularly, and retained for 7 years. CP at 5910, 7305-06. Here, neither party disputes that much of the information required by Washington's disclosure law is included in Meta's Ad Library, but not all. CP at 5859-60. Required information that is *not* featured in the Ad Library includes the (1) street address of the individual sponsor that paid for the advertisement, (2) payment dates, payment method, and exact cost per advertisement, (3) audience targeted, and (4) number of impressions. CP at 7394-95; WAC 390-18-050.

ISSUES

1. Do the FCPA (former RCW 42.17A.345) and its implementing legislation (WAC 390-18-050) together violate the First Amendment to the U.S. Constitution?
2. Did the superior court err by calculating Meta's penalty based on each advertisement

for which it failed to disclose the required information?

3. Did the superior court's civil penalty violate the Eighth Amendment to the U.S. Constitution?

ANALYSIS

Standard of Review

We review summary judgment decisions de novo. *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). Summary judgment is appropriate if "there is no genuine issue as to any material fact and … the moving party is entitled to a judgment as a matter of law." CR 56(c). In determining whether there is a "genuine issue as to any material fact," the court "must construe all facts and inferences in favor of the nonmoving party." *Ranger*, 164 Wn.2d at 552. "A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation." *Id.* "The moving party is entitled to summary judgment if it submits affidavits establishing it is entitled to judgment as a matter of law," unless the nonmoving party "'set[s] forth specific facts which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact.'" *Id.* (alteration in original) (quoting *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986)).

We review questions of law, including constitutional issues, de novo. *State v. Gresham*, 173 Wn.2d 405, 419, 269 P.3d 207 (2012). Questions of statutory interpretation are also reviewed de novo. *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007); *State v. Valdiglesias LaValle*, 2 Wn.3d 310,

317, 535 P.3d 856 (2023). The court's goal in interpreting a statute is to "ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The first step in statutory interpretation is to determine the statute's plain meaning, based on the text, context, related provisions, and the statute as a whole. *State v. Haggard*, 195 Wn.2d 544, 548, 461 P.3d 1159 (2020). If a statute "can be reasonably interpreted in more than one way," it is ambiguous, and the court may look to legislative history, case law, and statutory construction to determine legislative intent. *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 354, 144 P.3d 276 (2006). "A statute is ambiguous only if it can be reasonably interpreted in more than one way, not merely because other possible interpretations exist." *Id.* (citing *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004) (plurality opinion)). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).[4]

[4] Civil penalties imposed by a trial court "within the statutory limits" are reviewed "for an abuse of discretion." *State v. Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 525, 398 P.3d 1271 (2017). Here, because Meta challenges only the superior court's interpretation of the statute, we review the issue de novo.

1. The FCPA does not violate Meta's First Amendment right to free speech

The purpose of Washington's FCPA, which dates back to 1972, is to ensure that "political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided." Former RCW 42.17A.001(1) (2019). The FCPA also includes a command that "the provisions of this chapter shall be liberally construed to promote complete disclosure … [and] assure continuing public confidence of fairness of elections and governmental processes." Former RCW 42.17A.001(11). In 2011, the Washington State Legislature added an additional statement emphasizing the importance of full disclosure and transparency and declaring an intent to levy larger penalties against those who violate the law.

> The legislature finds that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy in which Washington's voters can judge for themselves what is appropriate based on ideologies, programs, and policies. Long-term voter engagement and confidence depends on the public knowing who is funding the multiple and targeted messages distributed during election campaigns.
>
> The legislature also finds that recent events have revealed the need for refining certain elements of our state's election campaign finance laws that have proven inadequate in preventing efforts to hide information from

> voters. The legislature intends, therefore, to promote greater transparency for the public by enhancing penalties for violations; regulating the formation of, and contributions between, political committees; and reducing the expenditure thresholds for purposes of mandatory electronic filing and disclosure.

Laws of 2011, ch. 145, § 1.

In 2018, the Public Disclosure Commission (PDC), the regulatory body charged with enforcing the FCPA, enacted WAC 390-18-050. This provision requires "digital communication platforms" to maintain records of the political advertisements they host. The records must be updated within 24 hours of the advertisement's first distribution and maintained for 5 years, and must include, among other things, a copy of the advertisement, the name of the candidate or ballot measure supported or opposed, the cost of the advertisement, and "a description of the major work components or tasks … that were required to provide the advertising." WAC 390-18-050(3), (6)-(7). Those "components or tasks" include

> (i) A description of the demographic information;
>
> (ii) The statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business;

> (iii) The total number of impressions generated by the advertisement or communication; and
>
> (iv) Any generative adversarial network techniques, artificial intelligence, or other digital technology, provided by the commercial advertiser to produce any 'synthetic media,' as defined under [former RCW 42.62.020 (2023)], for the advertisement or communication.

WAC 390-18-050(7)(g).

Regarding disclosure of the records, the 2018 updates further state:

> Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:
>
> (a) In person during normal business hours; or
>
> (b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:
>
> (i) By digital transmission, such as email, promptly upon request, but no later than two business days; or
>
> (ii) By online publication in one of the following formats:

> (A) On the advertiser's primary website; or
>
> (B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

WAC 390-18-050(4).

Prior to the 2018 additions, Meta was already subject to the FCPA under former RCW 42.17A.345(1), which requires that

> [e]ach commercial advertiser who has accepted or provided political advertising or electioneering communications during the election campaign shall maintain current books of account and related materials … that shall be open for public inspection during normal business hours during the campaign and for a period of no less than five years after the date of the applicable election.

Information required under this provision includes the names of parties who purchase political advertisements, plus the cost, manner of payment, and "the exact nature and extent of the services rendered." *Id*. Commercial advertisers must provide copies of the information to the PDC upon request. Former RCW 42.17A.345(2). Here, former RCW 42.17A.345 and its implementing legislation, WAC 390-18-050, do not violate Meta's First Amendment rights.

Campaign finance disclosure laws "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). However, they remain a "less restrictive alternative to more comprehensive regulations of speech" that allow states to pursue important interests like informing voters, deterring corruption, and monitoring elections without banning speech outright. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 369, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). Accordingly, the U.S. Supreme Court has consistently applied the less restrictive exacting scrutiny standard to campaign-related disclosure laws. Under exacting scrutiny, a disclosure law will be upheld if it is substantially related to a sufficiently important government interest and is narrowly tailored to serve that interest. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607, 141 S. Ct. 2373, 210 L. Ed. 2d 716 (2021).

The U.S. Supreme Court has repeatedly recognized the important role that disclosure laws play in informing voters about how money is spent to influence elections, finding that exacting scrutiny strikes the appropriate balance between upholding the First Amendment while pursuing the goal of election transparency. *Buckley*, 424 U.S. at 76 (upholding required disclosure of campaign contributions "to insure that the voters are fully informed and to achieve through publicity the maximum deterrence to corruption and undue influence possible"); *Citizens United*, 558 U.S. at 371 (upholding disclosure requirements for campaign advertisements because "disclosure permits citizens

and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages"); *John Doe No. 1 v. Reed,* 561 U.S. 186, 192, 199, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) (holding that public disclosure of referendum signatures "promotes transparency and accountability in the electoral process to an extent other measures cannot"); *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 224, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014) (plurality opinion) ("With modern technology, disclosure now offers a particularly effective means of arming the voting public with information.").[5] We have also reiterated that "'exacting scrutiny applies in the campaign finance disclosure context.'" *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 799, 432 P.3d 805 (2019) (quoting *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 994 (9th Cir. 2010)); *see also State v. Grocery Mfrs. Ass'n*, 198 Wn.2d 888, 893, 502 P.3d 806 (2022) (*GMA*) ("to guard against infringing on these First Amendment rights, laws mandating disclosure 'must survive exacting scrutiny'" (internal quotation marks omitted) (quoting *Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 482, 166 P.3d 1174 (2007))).

Meta argues that because Washington's "content-based" disclosure law restricts *platforms* rather than

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[5] The U.S. Supreme Court reiterated in 2021 that "[r]egardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny," expanding application of exacting scrutiny beyond merely campaign finance laws. *Ams. for Prosperity*, 594 U.S. at 608.

candidates or lobbyists, it must satisfy strict scrutiny to be constitutional. Suppl. Br. of Pet'r at 8, 10; *see Reed v. Town of Gilbert*, 576 U.S. 155, 163-64, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015). Meta essentially asks for an exception or a change to the exacting scrutiny rule specifically for advertising platforms. It claims that disclosure laws applied to platforms are more likely to suppress speech than disclosure laws aimed at political actors because political actors wish to "'succeed at the ballot box'" and are unlikely to curtail their speech in the face of disclosure laws, while economically motivated platforms will choose not to carry political advertising at all if disclosure obligations are too costly. Suppl. Br. of Pet'r at 10 (quoting *Wash. Post v. McManus*, 944 F.3d 506, 516 (4th Cir. 2019)).

Neither the Washington nor the U.S. Supreme Courts have previously determined which standard of review should apply to a political advertising disclosure law directed at a social media platform. In *McConnell v. Federal Election Commission*, the U.S. Supreme Court applied exacting scrutiny to a disclosure law aimed at broadcasters. 540 U.S. 93, 237-38, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003) (*overruled in part on other grounds by Citizens United*, 558 U.S. 310). The *McConnell* Court upheld the law because the Federal Communications Commission (FCC) needed the broadcasters' records to monitor compliance with the "fairness doctrine" and because the administrative burden was minimal.[6] *Id.* Even

[6] The "fairness doctrine" was an FCC rule that required broadcasters to offer a reasonable opportunity for speakers to

though *McConnell* predates and is not a perfect analogy for the modern Internet and broadcast digital platforms, *McConnell* shows that the rationale behind exacting scrutiny applies to nonpolitical entities as well as to political parties. The clear weight of precedent supports exacting scrutiny as the appropriate standard in this case.

The rationale behind exacting scrutiny has always been that disclosure laws are "a less restrictive alternative to flat bans on certain types or quantities of speech," allowing the government to pursue the important goal of informing voters without banning anyone from speaking. *McCutcheon*, 572 U.S. at 223. The courts do not have a history of carving out exceptions based on the type of actor sharing the speech, and voters benefit just as much from disclosure laws applied to platforms as they do from disclosure laws applied to candidates. This is true even when an entity voluntarily adjusts its business decisions to account for any costs associated with compliance. The disclosure law may impact Meta's motivation to host political speech, but it does not prevent Meta from hosting the political speech, and Meta's business decisions should not dictate the appropriate standard of review. Even if Meta chooses to curtail advertising opportunities, claims of market deterrence do not negate the underlying rationale behind exacting scrutiny. Therefore, exacting scrutiny is the correct standard for assessing the

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present opposing viewpoints. The doctrine was abolished. 74 Am. Jur. 2d *Telecommunications* § 113 (2026).

constitutionality of disclosure laws, including the FCPA.

The concurrence/dissent argues that deferential scrutiny, not exacting scrutiny, is the applicable standard of scrutiny here because Meta's transactions with advertisement purchasers are commercial speech. Concurrence/dissent at 10-11. However, "[i]n reviewing the trial court's decision, we confine ourselves to the issues the parties have raised and which the trial court considered." *Babcock v. State*, 116 Wn.2d 596, 606, 809 P.2d 143 (1991). "We may not speculate upon the existence of facts that do not appear in the record." *State v. Blight*, 89 Wn.2d 38, 46, 569 P.2d 1129 (1977). Neither Meta nor the State discussed deferential scrutiny in their briefs or at oral argument. Therefore, we will not address whether deferential scrutiny is appropriate in this case.

In addition, the FCPA satisfies exacting scrutiny as it requires "'a substantial relation between the disclosure requirement and a sufficiently important governmental interest.'" *John Doe No. 1*, 561 U.S. at 196 (internal quotation marks omitted) (quoting *Citizens United*, 558 U.S. at 366-67). Furthermore, the disclosure requirement is "narrowly tailored to the government's asserted interest." *Ams. for Prosperity*, 594 U.S. at 608.

Meta suggests "the State has failed to establish that less speech-suppressive alternatives would not work to advance its stated interest," and therefore the law must fail exacting scrutiny.[7] Suppl. Br. of Pet'r at

[7] Meta claims that other states have enacted "considerably less intrusive disclosure" laws that shift the burden from platforms to advertisers by requiring purchasers to identify an advertisement

20. This misrepresents *Americans for Prosperity*, which specifically states that the law need *not* "be the least restrictive means of achieving [the government's] ends." 594 U.S. at 608. While it is possible to identify alternative measures Washington could take to inform voters without inconveniencing Meta, that alone is insufficient to find that the law fails exacting scrutiny.

Furthermore, none of those alternative options are sufficient to provide full transparency as contemplated by the FCPA. Former RCW 42.17A.001. For example, Meta argues that Washington could limit disclosure obligations to certain periods of time, such as 21 days before the election. Suppl. Br. of Pet'r at 21. However, this will limit the scope of information voters have access to, especially given how long campaigns can run. Meta also argues that Washington could require Meta to disclose information only on those advertisements the purchaser self-identifies as political. *Id.* However, while it is not clear how many advertisements are mislabeled by the purchaser, there is certainly the potential for mislabeled advertisements to go unreported, thus limiting again the scope of information voters have access to. Meta also argues that Washington could require that Meta disclose information only to the State upon request, rather than allowing for individual requests from the public. Pet'r's Answer to Amicus Curiae Brs. at 21-23. However, the FCPA is intended most of all to protect Washington voters, and the legislature deemed it necessary to allow the public direct access to Meta's

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as political before the platform is required to disclose it. Pet'r's Answer to Amicus Curiae Brs. at 14-29.

data to achieve full transparency. Finally, *amicus* argues that the State could merely require Meta to label advertisements on their platforms as "political" to signal to users that they are viewing political content. Br. of Amicus Curiae Digit. Advert. All. at 32-37. However, this approach will provide almost no information because the label "political" will not necessarily tell users where the advertisement came from or why they were targeted by it.

No alternative option provides voters with the same scope of information as the disclosure law. The legislature reasonably concluded that the law as is best serves the FCPA's goal of transparency. As the State explains, "Our federalist system of government contemplates differences between states' laws," and the fact that other states have taken different approaches "does not make Washington's law 'dubious,' nor is there anything suspect about the overriding importance Washington voters placed on transparency when they adopted the FCPA." Resp't's Answer to Amici Curiae Brs. at 10. Washington's disclosure law is both substantially related to an important government interest and narrowly tailored to serve that interest. Therefore, it satisfies exacting scrutiny.

The "vital provision of information repeatedly has been recognized as a sufficiently important, if not compelling, governmental interest." *Hum. Life*, 624 F.3d at 1005-06. The State describes its "important governmental interest" as "achieving election integrity and transparency by requiring timely and detailed information disclosures about political ads, facilitating an informed electorate." Suppl. Br. of

Resp't at 13-14. Meta does not dispute that this is an important state interest, but it does challenge both the substantial relationship and narrow tailoring prongs of the exacting scrutiny analysis. Suppl. Br. of Pet'r at 13-14.

The State argues that the disclosure law is substantially related to voter education because "[i]nformation about sponsorship, targeting, and reach inform voters about an ad's intent, meaning, and impact, including if the ad intends to mobilize or demobilize through tactics like fear mongering or misinformation." Suppl. Br. of Resp't at 14; *see also* CP at 6344-59. According to one expert, the public can properly evaluate the meaning and impact of a political advertisement only by knowing who paid for it, what its content is, and who it targets. CP at 6348. Another expert explained that people may view a political advertisement differently if they knew why it was targeted at them and that knowing how an advertisement is targeted can make it easier to detect misinformation. CP at 6423, 6426. The State also established that only Meta has access to all pertinent information related to their use of microtargeted advertising services. CP at 6364-65. The State has shown that the FCPA is substantially related to the State's interest in achieving election transparency and fostering an informed electorate.

To satisfy the final step of an exacting scrutiny analysis, the disclosure law must "be narrowly tailored to the government's asserted interest." *Ams. for Prosperity*, 594 U.S. at 608. Here, the FCPA is narrowly tailored because only Meta can provide all relevant information related to political advertising on

its platforms. Meta makes four primary arguments as to why the disclosure law is so overly burdensome as to fail exacting scrutiny. Suppl. Br. of Pet'r at 12-22. First, the State can, and in some cases already does, obtain the desired information from other parties. *Id.* at 14. Second, Meta received only a few disclosure requests from members of the public. *Id.* at 7, 18. Third, the law disincentivizes platforms from hosting political advertisements, which leads to the sharing of *less* political information. *Id.* at 10, 15-17. Fourth, the State has not shown it is technically feasible for Meta to comply with the disclosure law. *Id.* at 18-19. Meta's arguments are unpersuasive.

First, Meta argues the FCPA requirement results in redundant disclosure. It may be true that much, though not all, of the information Meta is required to disclose must also be disclosed by the campaigns or groups that purchase political advertisements. *Meta*, 33 Wn. App. 2d at 162. However, as one expert explained, the platforms have information the purchasers do not, including demographic information, so applying the disclosure law to Meta yields information not otherwise available to the public. CP at 6366-68; *see also* Resp't's Answer to Amici Curiae Brs. at 29-30 ("When a particularly impactful or controversial political ad is observed, the FCPA's recordkeeping requirements for commercial advertisers allow the public and media to rapidly access detailed information about that ad from where it was seen or heard rather than having to wait until the next reporting deadline and a potential report that will include only the information available to the sponsor."). Despite two years of discovery, Meta has not offered sufficient evidence to show that advertisers

alone could provide the same information required of Meta. In addition, the State is allowed to require both parties to a transaction to disclose overlapping information, even if other parties could disclose the same data. In fact, this further promotes transparency because it gives the public a means of fact-checking.

Second, Meta highlights that in this case, three individuals made a total of 12 requests for political advertising information. CP at 256-64. Meta asserts that two of the individuals made the requests solely to test Meta's compliance and that a third made requests to support a consulting business. Suppl. Br. of Pet'r at 7; CP at 38-50, 5241, 7580-82. Meta argues that this type and level of use shows that the law is not substantially related to the goal of informing voters. However, this argument is unconvincing, given that journalists and academics may disseminate information widely even if they submit only one request. *Meta*, 33 Wn. App. 2d at 162.

Third, suggesting it would be "financially irrational" to host political advertisements while the disclosure law is in place, Meta banned political advertisements in Washington in 2018.[8] Pet. for Rev. at 2; CP at 615-16. Meta characterizes its decision as evidence that the law subverts, rather than serves, the State's interest in increasing access to political information. Suppl. Br. of Pet'r at 15-16; *see also* Pet'r's Answer to Amicus Curiae Brs. at 8-9 ("Meta and other major platforms had no realistic choice but to ban Washington political advertising on their

[8] Despite the ban, political advertisements have continued to run on Meta platforms in Washington since 2018. CP at 7328, 7335, 7372.

services."). Candidates, particularly those with fewer resources, may be impacted by Meta's ban because they rely on its low-cost targeted advertising.[9] CP at 5329-78, 7115-16, 7410-19; *see also* Br. of Amicus Curiae Inst. for Free Speech at 11-15.

Meta repeatedly cites *Washington Post*, in which the Fourth Circuit Court of Appeals struck down a Maryland law that required platforms, including newspapers, to disclose the purchaser and price of political advertisements displayed on their websites.[10] 944 F.3d at 514; Suppl. Br. of Pet'r at 20. The Fourth Circuit based their holding in part on their conclusion that Maryland's law discouraged online newspapers from selling political advertising space. *Wash. Post*, 944 F.3d at 515. However, the *Washington Post* court expressly limited their holding to news outlets and did not wish to "expound upon the wide world of social media and all the issues that may be pertinent thereto." *Id.* at 513.

The State counters that "Meta chose not to comply with the FCPA because it was inconsistent with its own stated priorities—not because the law is overly burdensome." Suppl. Br. of Resp't at 19; *see also* Resp't's Answer to Amici Curiae Brs. at 37. The superior court agreed, concluding that "'the only

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[9] Meta argued at the Court of Appeals that the law overly burdens both its own speech and the speech of its users. The Court of Appeals correctly rejected its argument as to third parties for lack of standing.

[10] The *Washington Post* court declined to determine whether strict scrutiny or exacting scrutiny should apply, instead concluding that the Maryland law failed to satisfy even exacting scrutiny. 944 F.3d at 520.

reason why Meta refuses to comply with the law is, to put it colloquially, they don't want to let the public see how the sausage is made.'" *Meta*, 33 Wn. App. 2d at 174 (quoting CP at 5630).

Meta's ban on advertising is self-imposed and does not impact this court's exacting scrutiny analysis. Enforcing disclosure requirements is an essential tool the State has available to educate and keep the public informed about how billions of dollars are spent to influence their votes. The State cannot account for internal corporate decisions. Therefore, some platforms may choose to reject political advertisements because they decide it is not in their interest to comply with the requirements of the FCPA. Meta's argument that the disclosure law reduces the amount of political speech available to the public misconstrues the purpose of the disclosure law, which is to facilitate election transparency, not to ensure a proliferation of political advertisements. FCPA is a disclosure requirement, and "disclosure requirements may burden the ability to speak, but they … 'do not prevent anyone from speaking.'" *Citizens United*, 558 U.S. at 366 (quoting *McConnell*, 540 U.S. at 201). Here Meta, not the State, chose to foreclose advertising opportunities for candidates.

Finally, whether to consider compliance costs as applied to this type of platform and, if we do so, how it is to be applied are issues of first impression for us. Meta does not dispute that it already collects the required information in its regular course of business yet claims that complying with the disclosure law is

overly and technically burdensome.[11] CP at 5861-62; *see also* CP 7167-74; Suppl. Br. of Pet'r at 18. Since *McConnell*, cases assessing ongoing costs associated with disclosure requirements in the FCPA context are few and technology has changed significantly. 540 U.S. 93. In *McConnell,* a broadcaster claimed that election-related recordkeeping and inspection requirements imposed a serious burden, but the Court rejected their argument because compliance required only about "six to seven hours of work per year" at the whole organization, a minor inconvenience. 540 U.S. at 235.

Here, the State's expert estimated that including a Washington-specific region in Meta's Ad Library would cost around $200,000, an overall "very inexpensive route" that would be "comfortably within Meta's capabilities."[12] CP at 6501, 6498, 6495. In response, Meta's expert witness stated in his report that "complying with the Washington Disclosure Law is not as simple or straightforward" as the State's experts alleged, explaining that it would be challenging for Meta to identify every political advertisement and would require ongoing human

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[11] Meta also argues that whether compliance is feasible or not is irrelevant because the burden is still disproportionate, citing *Americans for Prosperity*. That case, however, turned on the burden imposed on the associational and privacy rights of charitable donors. It does not speak to the issue of technical burdens. Suppl. Br. of Pet'r at 12-13; *Ams. For Prosperity*, 594 U.S. at 607.

[12] Meta is not required to comply with the law via its Ad Library, but this expert testified that modifying the Ad Library is the most cost-effective option. WAC 390-18-050(4); CP at 6495, 6501.

review. CP at 7859; *see also* Br. of NetChoice et al. as Amici Curiae in Supp. of Pet'r at 18-23. Additionally, updating the Ad Library would require "substantial changes to its carefully designed transparency tools" and responding to individual requests would be a "complex and burdensome process." CP at 7859, 7870-75, 7880-89; *see also* CP at 7007. However, Meta has created region-specific disclosure programs for other countries in its Ad Library. CP at 5933-36, 6289-91.

The superior court found that "Meta failed to provide evidence to create a genuine issue of material fact regarding its inability to comply, whereas the State presented sufficient evidence explaining both how and why Meta could comply." CP at 5575. The Court of Appeals agreed, finding that "[a]fter years of discovery, we know nothing more about the burden on Meta than high level, even 'speculative,' generalities that lack the 'specificity' to create a genuine issue of material fact." *Meta*, 33 Wn. App. 2d at 173-74. We also agree.

The dissent finds that Meta's general statements about the difficulties of compliance are sufficient to create a genuine issue of material fact, dissent at 22, but to overcome summary judgment, it is for Meta to "set forth *specific* facts which sufficiently rebut" the State's claims. *Meyer*, 105 Wn.2d at 852 (emphasis added). Meta has failed to do so. After more than two years of discovery, Meta has failed to provide specific details about what compliance with Washington's FCPA would actually cost, and its expert did not attempt to quantify the resources needed to comply, instead stating that some elements of the burden "probably are not subject to very precise

quantification." CP at 7026-27, 7033-54. In addition, at oral argument Meta conceded that it can comply with the law but finds it burdensome to do so and continued to provide only generalized statements about the burden. Wash. Sup. Ct. oral arg., *State v. Meta Platforms, Inc.*, No. 103748-1 (Oct. 28, 2025), at 9 min., 06 sec.; 11 min., 57 sec., *video recording by* TVW, Washington State's Public Affairs Network, https://tvw.org/video/washington-state-supreme-court-2025101109/. Meta's ability to comply with our FCPA and its claimed burdens and costs associated with compliance are vague and inconclusive only because Meta failed to provide necessary information that would allow our courts to meaningfully evaluate its claimed burden. Under the facts of this case, there is no genuine issue of material fact. Meta concedes that it can comply with the FCPA. Any issues of material facts regarding its burden are totally within Meta's control and exist because of Meta's refusal to clarify the details of that burden. Meta has complied with similar laws in other jurisdictions yet has failed to disclose requested information required by the FCPA. CP at 5861-62. Washington's FCPA disclosure requirement is narrowly tailored, and Meta has failed to prove that it is unduly burdensome. Accordingly, the disclosure law satisfies exacting scrutiny.

2. The superior court's per-advertisement penalty correctly upholds the FCPA's goal of full transparency

"A person who violates any of the provisions of [the FCPA] may be subject to a civil penalty of not more than ten thousand dollars for each violation."

Former RCW 42.17A.750(1)(c).[13] The FCPA defines a "violation" in the negative, as anything other than a "remediable violation, minor violation, or an error classified by the commission as appropriate to address by a technical correction." Former RCW 42.17A.005(54) (2025). There is no dispute that Meta committed general violations of WAC 390-18-050.

The superior court imposed the maximum penalty of $10,000 per violation, granted attorney fees and costs, and trebled all damages.[14] CP at 5791-93, 5814-17. It counted each advertisement included in a request as a separate violation. *Id.* To reach the total number of 822 advertisements, the court counted advertisements requested by the first two individuals, a total of 411, then doubled that number to account for the third individual's broad request.[15] CP at 5574, 5791-93. The total penalty is $35,182,159.59,

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[13] The FCPA lists 14 factors the court may consider in assessing a civil penalty, including "the respondent's compliance history," the organization's or individual's experience with campaign finance law and their available resources, the impact on the public, whether they "benefited politically or economically from noncompliance," and "[g]ood faith efforts to comply." Former RCW 42.17A.750(1)(d).

[14] The FCPA authorizes the award of "all reasonable costs of investigation and trial, including reasonable attorneys' fees" and treble damages (of both the penalty and the attorney fees) if the violation is intentional. Former RCW 42.17A.780.

[15] The third requester sought information on "'every political ad shown in Washington State since 2016,'" which included at least 1,600 advertisements, including every advertisement sought in the earlier two requests. CP at 5574. The superior court calculated the number of advertisements in the scope of the third request by adding together the number of advertisements sought in the two earlier requests.

including $24,660,000.00 in civil penalties and $10,522,159.59 in costs. CP at 5791-93, 5814-17.[16]

The FCPA is intended to be "liberally construed" to allow for maximum disclosure, and a per-advertisement calculation is best aligned with that objective. Former RCW 42.17A.001; *see also* former RCW 42.17A.904 (1973). Meta argues that the superior court should have assessed a penalty for each request it failed to adequately respond to (12) rather than for each advertisement included in those requests (822). Suppl. Br. of Pet'r at 22-23. It argues that "[a] platform satisfies its obligations under the disclosure law by making information available 'promptly *upon request*.'" *Id.* at 23 (quoting WAC 390-18-350(4)(b)(i)). Therefore, in Meta's view, the only violation it can be penalized for is the failure to respond to a request. The State argued, and the Court of Appeals agreed, that Meta, as a commercial advertiser, is required under former RCW 42.17A.345(1)-(2) to "'maintain *current* books of account and related material[]' that shall remain 'open' for public inspection" during normal business hours. Resp't's Suppl. Br. at 23. As a result, each

[16] At the summary judgment hearing, the judge stated that "enforcement penalties and so on—have to be limited to the requests ... [w]hen somebody makes a request and they don't produce it, then they're not complying with the law. But before … I don't think that's something I can enforce against them with—absent somebody making a request." *Meta*, 33 Wn. App. 2d at 195 (alterations in original) (quoting CP at 5526-27). In its final written order, the superior court calculated Meta's penalty on a per-advertisement basis. CP at 5575, 5587. Because its ultimate conclusion was correct, the superior court's initial thoughts on the matter are irrelevant.

advertisement for which Meta fails to provide the required information is a separate violation.[17]

We find the superior court's calculation of damages based on the number of advertisements where Meta failed to disclose the required information is correct and best supports the legislative intent. The legislature intends maximum disclosure, and to support this position every advertisement is subject to the disclosure requirements. Former RCW 42.17A.001.

Former RCW 42.17A.750 discusses penalties imposed on those who fail to file reports "as required by this chapter," referring to FCPA provisions requiring candidates, political committees, and lobbyists to file automatic disclosure reports. Former RCW 42.17A.345. "A person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation." Former RCW 42.17A.750(1)(c). The listed entities clearly commit a "violation" when they fail to file an accurate report. However, platforms like Meta are not obligated to file regular reports. Therefore, the moment at which they commit a "violation" is less

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[17] Meta cites a nonpublic document created by the PDC stating that "[b]asing the number of violations solely upon the number of ads referenced in a request could quickly lead to a penalty amount grossly disproportionate to other violations of RCW 42.17A." CP at 8011. The Court of Appeals dismissed the document as "hardly convincing" and correctly pointed out that under a de novo review, they are not required to interpret the law in accordance with unofficial commentary. *Meta*, 33 Wn. App. 2d at 199-200. We are also under no obligation to do so and do not find this document, which represents the opinion of one PDC staffer, persuasive.

clear.[18] To comply with the FCPA, Meta is required to do three things. First, Meta must "maintain current books of account and related materials as provided by rule that shall be open for public inspection during normal business hours during the campaign and for a period of no less than five years after the date of the applicable election." Former RCW 42.17A.345(1). Second, "[a]t the request of the commission," Meta "shall provide to the commission copies of the information that must be maintained and be open for public inspection." Former RCW 42.17A.345(2). Third, Meta is required to disclose additional information in the following manner:

> (4) Until such time as the PDC provides an open access platform on its website for this information, which will replace the following methods of inspection for all required information, such information must be available for public inspection by any person, and provided:
>
> (a) In person during normal business hours; or

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[18] Both parties cite *Bittner v. United States* in which the U.S. Supreme Court decided whether a person who has failed to file annual disclosure statements about their foreign bank accounts may be assessed a $10,000 penalty per faulty annual *report* or per each *account* they failed to disclose. 598 U.S. 85, 89, 143 S. Ct. 713, 215 L. Ed. 2d 1 (2023). There, because each individual had the obligation to file only one annual report regardless of how many foreign bank accounts they had, the court favored the per-report reading. *Id.* Similarly, in *GMA*, this court considered penalties for political actors who were obligated to file automatic reports. 198 Wn.2d at 894. Neither case is analogous here because both scenarios involved regular required reports.

> (b) Electronically, in machine readable format and structured in a way that enables the data to be fully discoverable and useable by the end user:
>
> (i) By digital transmission, such as email, promptly upon request, but no later than two business days; or
>
> (ii) By online publication in one of the following formats:
>
> (A) On the advertiser's primary website; or
>
> (B) On a website controlled by the advertiser, created for purposes of publishing the information required by this section, if a link is prominently displayed on the advertiser's primary website directing users to the website on which the information is provided.

WAC 390-18-050. This third provision gives Meta four disclosure options, including but not limited to providing information "promptly upon request." WAC 390-18- 050(4)(b)(i).

The FCPA contains a "Declaration of Policy." The legislature's purpose in enacting the law is "[t]hat political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided." Former RCW 42.17A.001(1). The law "shall be liberally construed" to promote its goals. Former RCW 42.17A.001(11); *see also* former RCW 42.17A.904. In sum, the Court of Appeals concluded, this language demonstrates an "intent to preserve and sunlight relevant data of each individual ad on Meta's social media platforms, without any requirement that any particular voter or the

government step into the sunlight to inspect the records." *Meta*, 33 Wn. App. 2d at 197. Additional language in the statute reaffirms "that timely and full disclosure of election campaign funding and expenditures is essential to a well-functioning democracy" and that the legislature "intends, therefore, to promote greater transparency for the public by *enhancing* penalties for violations." Laws of 2011, ch. 145, § 1 (emphasis added). We agree that the disclosure law, taken as a whole, shows that the legislature intended that Meta be held accountable for each advertisement it fails to disclose to the public when a request is made.

Meta is correct that this procedure means the State will have no opportunity to assess a penalty until a request is made. However, under Meta's interpretation, the failure to disclose information related to 1 advertisement in response to one request will receive the same penalty as the failure to disclose information related to 100 advertisements sought in one request. Resp't's Suppl. Br. at 25-26. This interpretation is unpersuasive because each advertisement that is not disclosed deprives voters of relevant information about how and by whom campaign finance dollars are spent.

The disclosure law clearly and repeatedly promotes maximum disclosure of campaign finance information. It creates a right of "public inspection by any person," WAC 390-18-050(4), and it seeks to ensure that information is "fully disclosed to the public." Former RCW 42.17A.001(1). The Court of Appeals aptly explained:

> [O]ur courts, in a variety of different but related settings, have reiterated the Washington's campaign finance laws' intent to ensure full disclosure of individual records. … These statements of intent do not rely on the voter prompting or availing themselves of such transparency.

Meta, 33 Wn. App. 2d at 198. Consequently, each advertisement that is *required* to be disclosed but is not should be considered a separate violation. This interpretation best supports the legislature's intent to promote maximum disclosure of all election finance information that contributes to voter education. It also aligns with the legislature's intent to enhance public penalties to promote greater transparency.[19] Furthermore, the statute permits *up to* $10,000 in penalties per violation, but the trial judge has considerable discretion in determining a penalty and is authorized to consider multiple factors, such as a history of compliance, available resources, and good faith efforts. Former RCW 42.17A.750(c), (d). Here, the court faced a willful repeat offender with vast resources that conceded it is able to comply with FCPA requests but chose not to provide nonspeculative reasons for its decision not to do so. The trial court's decision to impose the maximum penalty was appropriate, but just because hundreds of advertisements may be included in a request does not mean a penalty will always lead to a "grossly

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[19] Meta asks this court to apply the rule of lenity because the meaning of "violation" is ambiguous. Suppl. Br. of Pet'r at 28-29. We do not find the meaning of "violation" ambiguous. Therefore, the rule of lenity is not appropriate here.

disproportionate" penalty. It is one of many factors the court considers as the court here did.

3. The superior court's penalty does not violate the Eighth Amendment prohibition against excessive fines

The Eighth Amendment prohibits "cruel and unusual punishments," which includes a prohibition against "excessive fines." U.S. Const. amend. VIII, *see also* Wash. Const. art. I, § 14.[20] Fines are excessive if they are "grossly disproportional to the gravity of a defendant's offense," as determined by "(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused." *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998); *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1122 (9th Cir. 2004); *see also City of Seattle v. Long*, 198 Wn.2d 136, 173, 493 P.3d 94 (2021). For the purposes of this analysis, we assume without deciding that the Eighth Amendment's prohibition against "excessive fines" protects corporate entities such as Meta.

The penalty assessed to Meta here is not excessive as it is not "grossly disproportional" to the gravity of Meta's offense. First, Meta is a sophisticated, well-resourced platform that willfully violated the FCPA

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[20] The Court of Appeals declined to consider Meta's federal Eighth Amendment argument because Meta did not address it in detail in its brief. *Meta*, 33 Wn. App. 2d at 207 n.37 (reasoning that "'[p]assing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration'" (quoting *Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413 (1996))).

after previously being held accountable for prior noncompliance. CP at 5859, 5861-62, 5956-60. Meta has not shown a good-faith effort to comply with the disclosure law, even though after two years of discovery it admits it has the capability to comply, and the court received information that Meta has updated its Ad Library to meet requirements of other jurisdictions. CP at 6289-91. Meta is being penalized for willfully violating the disclosure law at least 822 times, not for "abstract concerns about election integrity," as the dissent claims. Dissent at 41. The "nature and extent" of Meta's violations are significant. *Bajakajian*, 524 U.S. at 334. Meta finally disclosing *some* of the required information does not change the fact that it intentionally withheld information the requesters were entitled to receive.

In *GMA*, this court upheld an $18 million penalty against a trade group that failed to file required disclosure reports and funneled $11 million through a "strategic account" with the purpose of sheltering political donors from disclosure requirements. 198 Wn.2d at 894. The dissent distinguishes this case from *GMA* by giving Meta credit for disclosing at least the purchaser and cost of advertisements via its Ad Library. Dissent at 43. However, Meta's disclosure of the cost and the identity of the purchaser does not necessarily decrease the severity of the infraction. The disclosure law seeks to shed light on the *methods* Meta uses to disseminate political advertisements, specifically through microtargeting, and Meta's limited disclosure fails to meet the related requirements that serve that purpose under the disclosure law. Meta's failure to disclose the purchasers' identities might have made the infraction

worse, but the fact that Meta did disclose some information does not mean the penalty must be reduced. The dissent indicates that *GMA*'s violations were more severe than Meta's, but even taking that assertion as true, *GMA* does not set a ceiling on appropriate penalties. Dissent at 44. Meta's actions show a willful and repeated disregard for the disclosure law, and the nature and extent of its violations justify the penalty.

The second and third *Bajakajian* factors are not relevant here as neither side argues that Meta's activities relate to other legal violations or that other penalties (save for an injunction) may be imposed.[21]

Meta argues that the fourth *Bajakajian* factor, the "extent of the harm," is limited only to the three individuals whose requests went unfulfilled. Suppl. Br. of Pet'r at 30-31. In *GMA*, this court emphasized the importance our disclosure law places on transparency and how the trade group's conduct directly flouted that purpose. The *GMA* reasoning is applicable here. Meta did not outright hide the identity of political contributors, but its repeated failures to disclose required information similarly defy the FCPA's strong goal of promoting transparency. Reducing the penalty would undercut the disclosure law's clearly worded intent to enhance penalties for

[21] The dissent argues that "[t]he fact that Meta's activities do not relate to other violations actually weighs in favor of Meta here." Dissent at 45. We disagree. Meta's violations of the disclosure law here alone provide a sufficient basis on which to impose a penalty whether it is part of a "larger plot" to "undermine election transparency" or not. *Id.* Meta should not get credit for not participating in additional illegal activities.

violators. Plus, the disclosure law is written in such a way that it allows any member of the public to request information from Meta and do with it what they wish, including publishing and disseminating that information widely. Meta's failure to disclose the required information thus constructively denies all members of the public the opportunity to access information the legislature has deemed important to the law's purpose. In our view, that harm is extensive.

Finally, "judgments about the appropriate punishment for an offense belong in the first instance to the legislature." *Bajakajian*, 524 U.S. at 336. The legislature here authorized a $10,000 maximum per violation and the trebling of all damages, and the superior court within its discretion sustainably imposed the penalty. Accordingly, the amount of the penalty did not violate Meta's federal Eighth Amendment rights.

CONCLUSION

We affirm the Court of Appeals.

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Whitener, J.

WE CONCUR.

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Stephens, C.J.

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Yu, J.P.T.

MUNGIA, J. (concurring in part, dissenting in part)—I concur and I dissent.

I concur with the lead opinion that there is no First Amendment violation here. U.S. Const. amend. I. However, the lead opinion imposes a stricter level of scrutiny for the State's regulation than is allowed by the United States Constitution. Precedent requires that we review this statute using a deferential, not exacting, level of scrutiny.

I dissent from the lead opinion's conclusion as to what constitutes "each violation" under the statute. "Each violation" is not what Meta Platforms Inc. asserts: that "each violation" is limited to each request for information, regardless of the number of advertisements covered by that request. Nor is "each violation" calculated as the lead opinion says: by compounding per-advertisement violations by the number of requests for the same information.[1] Instead, the statute imposes a penalty for Meta not making certain information available about each advertisement. Accordingly, the violation is limited to just that: each advertisement with undisclosed information.

Accordingly, I would uphold the trial court's ruling that Meta's First Amendment rights were not violated but would reverse as to the amount of the penalty.

[1] This was the trial court's calculation as well.

I

THE FAIR CAMPAIGN PRACTICES ACT REQUIRED META TO KEEP AND MAKE AVAILABLE TO THE PUBLIC FACTS ABOUT POLITICAL ADVERTISEMENTS HOSTED ON ITS PLATFORM

The Fair Campaign Practices Act (FCPA) required Meta to keep and make available to the public certain facts about each political advertisement it hosted on its platform. Former RCW 42.17A.345 (2019);[2] *see also* WAC 390-18-050. Meta complied with most of the requirements by posting the required information on its "Ad Library." Clerk's Papers at 5573. The use of the Ad Library allowed Meta to comply with the statute without requiring people who wanted that information to make individual requests. Likewise, Meta would not need to respond to individual requests. However, Meta failed to include the following required information in its Ad Library:

- The street address of the individual sponsor that paid for the advertisement;
- The payment dates, payment methods, and exact cost per advertisement;
- The targeted audience; and
- The number of impressions per advertisement.

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[2] Former chapter 42.17A RCW (2024) has since been recodified as Title 29B RCW, effective January 1, 2026. LAWS OF 2024, ch. 164, §103. Former chapter 42.17A RCW will be referenced throughout as it applied to Meta at the time of the action.

From 2019 to 2021, three individuals requested information about political advertisements that Meta displayed in Washington State: Eli Sanders (two separate requests), Tallman Trask (one request), and Zach Wurtz (nine separate requests).

The trial court found that

- 254 separate 2019 advertisements displayed by Meta were responsive to the 2019 Sanders and Trask requests.
- At least 157 separate advertisements displayed by Meta were responsive to Sanders' 2021 request.
- At least 411 advertisements were responsive to Wurtz's July 2021 requests, which it found by counting all the same advertisements that were covered by the other requests.

The trial court found a violation for each advertisement where Meta did not provide the required information, calculating 411 separate advertisements with undisclosed information. In addition, the trial court found a violation occurred each time a person asked for the required information about a particular advertisement. The trial court then double counted the same 411 advertisements that went undisclosed between the separate requests, concluding there was a total of 822 violations. The trial court fined Meta $10,000.00 for each violation and, as allowed by statute, trebled the fines. Accordingly, the court imposed a civil penalty of $24,660,000.00 and entered an additional $10,522,159.59 in attorney fees and costs.

II

THE FCPA'S DISCLOSURE REQUIREMENTS REGULATE COMMERCIAL SPEECH THAT DOES NOT INVOLVE ASSOCIATIONAL RIGHTS. ACCORDINGLY, THIS COURT SHOULD REVIEW THE STATUTE USING DEFERENTIAL, NOT EXACTING, SCRUTINY

We review constitutional questions de novo. *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 456, 461 P.3d 334 (2020). At issue is whether the disclosure requirements violate Meta's First Amendment rights.[3] The First Amendment to the United States Constitution protects freedom of speech and freedom of assembly. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 605, 141 S. Ct. 2373, 210 L. Ed. 2d 716 (2021). The protections for speech apply to noncommercial and commercial speech. *Chong Yim v. City of Seattle*, 194 Wn.2d 651, 677, 451 P.3d 675 (2019). However, the First Amendment provides less protection to commercial speech than it does to

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[3] Appellate courts retain wide discretion in determining which issues must be addressed to properly decide a case on appeal. *Clark County v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 177 Wn.2d 136, 146, 298 P.3d 704 (2013). Appellate courts may consider and apply constitutional mandates or established precedent not raised by the parties when necessary for a decision. *Id*. Here, the parties raised the issue of the proper standard of review for this First Amendment challenge. While the parties did not argue deferential review should apply, courts must apply the law correctly even if the parties failed to present a proper view. *See Hall v. Am Nat'l Plastics, Inc.*, 73 Wn.2d 203, 205, 437 P.2d 693 (1968) (noting that "[c]ourts frequently decide crucial issues which the parties themselves fail to present"). Determining the proper level of scrutiny for this challenge is essential to resolving the First Amendment issue before the court.

noncommercial speech. *Id.* at 677-78. This dispute involves the State's regulation of commercial speech.

When reviewing governmental regulation of speech, courts apply varying standards of review ranging from strict to deferential depending on the type of speech involved. Generally, regulations that burden content-based speech, like restrictions on political speech, are subject to strict scrutiny. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 340, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010). However, when the government compels the disclosure of facts, a lower standard of review applies. As the lead opinion notes, we have not, nor has the United States Supreme Court, determined which standard of review should be used when reviewing the government's regulation of political advertisements on social media platforms. Lead opinion at 14.

A. Exacting Scrutiny Applies When Reviewing Disclosure Requirements That Burden Associational Rights

When a government regulation requires the disclosure of facts that may also burden associational rights, then courts review those regulations under an exacting scrutiny standard. *Ams. for Prosperity*, 594 U.S. at 616 ("Exacting scrutiny is triggered by 'state action which *may* have the effect of curtailing the freedom to associate,' and by the '*possible* deterrent effect' of disclosure." (quoting *Nat'l Ass'n for Advancement of Colored People v. Alabama ex rel. Patterson*, 357 U.S. 449, 460-61, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958))). While these types of regulations burden speech, they are subject to a less-than-strict scrutiny because they "'do not prevent anyone from

speaking'" and "'impose no ceiling'" on associational activities. *Citizens United*, 558 U.S. at 366 (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003), *overruled in part on other grounds by Citizens United*, 558 U.S. 310); *Buckley v. Valeo*, 424 U.S. 1, 64, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976). However, exacting scrutiny is still a heightened standard of review. A regulation survives exacting scrutiny if the government shows it is substantially related to a sufficiently important government interest. *Id.* at 366-67.

There are numerous examples of courts applying exacting scrutiny to election-related disclosure and disclaimer requirements that burden associational rights. *See, e.g.*, *Buckley*, 424 U.S. at 63-64 (law requiring political committees and candidates to keep detailed records and make reports providing personal identifying information of their campaign contributors, subject to public inspection and copying); *Citizens United*, 558 U.S. at 366-71 (law requiring those funding televised electioneering communications to include a clear disclaimer of who is responsible for the content, and also requiring them to file disclosure statements with the Federal Election Committee identifying who made the expenditures and to which election the communication was directed); *Doe v. Reed*, 561 U.S. 186, 196, 130 S. Ct. 2811, 177 L. Ed. 2d 493 (2010) (Washington law compelling disclosure of signatory information on referendum petitions); *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010) (Washington law requiring an entity to disclose information about its sponsorship of political advertisements and make certain reports); *Grocery*

Mfrs. Ass'n, 195 Wn.2d at 461 (Washington law requiring a trade association requiring it to disclose who made contributions to it); *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 798-99, 432 P.3d 805 (2019) (campaign finance disclosure requirement imposed on entities providing pro bono legal services to support election efforts). These cases highlight that exacting scrutiny applies when (1) groups must disclose information about those that choose to associate with them or (2) groups or individuals must disclose with whom they choose to associate.

Before the United States Supreme Court began using the term "exacting scrutiny," the Court consistently applied this type of heightened scrutiny to safeguard associational freedoms that were burdened as a result of compelled disclosure requirements. As the Court stated:

> It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . [an] effective . . . restraint on freedom of association . . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

Nat'l Ass'n for Advancement of Colored People, 357 U.S. at 462.

In sum, exacting scrutiny does not automatically apply whenever the government requires the disclosure of facts relating to political information. Instead, the disclosure requirement must also burden associational freedoms. *See Voters Educ. Comm. v. Pub. Disclosure Comm'n*, 161 Wn.2d 470, 482, 166 P.3d 1174 (2007) ("[C]ompelled disclosure may encroach on First Amendment rights by infringing on the privacy of association and belief." (citing *Buckley*, 424 U.S. at 64)).

Accordingly, depending on whether a disclosure regulation infringes on associational rights, a court's level of review may be deferential instead of exacting.

B. Deferential Scrutiny Generally Applies to Commercial Disclosure Requirements

Our level of review for commercial speech depends on whether the government regulation restricts commercial speech or merely requires an entity to provide factual disclosures. *Chong Yim*, 194 Wn.2d at 678.

In contrast to laws burdening associational rights, laws requiring commercial speakers to provide purely factual disclosures are generally subject to deferential review. "[I]f the law merely requires factual disclosures by commercial speakers, review is deferential because a person's 'constitutionally protected interest in *not* providing any particular factual information in [their] advertising is minimal.'" *Id.* (quoting *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651, 105 S. Ct. 2265, 85 L. Ed. 2d 652 (1985)).

The deferential scrutiny inquiry asks whether the disclosure requirements are reasonably related to the

State's interest in preventing the deception of consumers. *Id.* Even then, if the restriction is unjustified or unduly burdensome, it cannot survive deferential review. *Id.*

The *Zauderer* Court applied deferential review to a state's regulation of attorney advertising. The regulation required attorneys who advertised that their fees were contingent to provide information that clients were responsible for litigation costs. *Zauderer*, 471 U.S. at 650-51. The Court reasoned that the law did not prohibit commercial speakers from conveying any information to the public but, instead, "only required them to provide somewhat more information than they might otherwise be inclined to present." *Id.* at 650.

We have followed this reasoning in reviewing similar factual disclosure requirements imposed on commercial actors. For instance, in *Chong Yim*, we applied deferential review to a requirement that landlords provide facts about their rental criteria to prospective tenants. 194 Wn.2d at 679. The requirement survived deferential review because it was directly connected to the city's interest in ensuring the same rental criteria applied to all applicants, combating bias in Seattle's rental housing market. *Id.* at 679-80. We emphasized that landlords were required to disclose only the rental criteria that they set for themselves. The regulation imposed only a minimal burden on landlords and allowed landlords to exercise their free speech rights in other ways. *Id.* at 680.

Recently, the Supreme Court in *Moody v. NetChoice, LLC*, 603 U.S. 707, 144 S. Ct. 2383, 219 L.

Ed. 2d 1075 (2024), suggested that the deferential review standard from *Zauderer* applies to government regulations imposed on social media platforms that require them to disclose certain information to their users. The Court's opinion illuminates how social media disclosures fit into the commercial speech context.

In *NetChoice*, the Court reviewed circuit court decisions surrounding the constitutionality of Florida and Texas laws imposing speech-related requirements on social media platforms. Those two states adopted regulations requiring social media platforms to disclose to affected users their reasoning for removing content. *NetChoice, LLC v. Att'y Gen., Fla.*, 34 F.4th 1196, 1230 (11th Cir. 2022), *vacated and remanded sub nom.*, *NetChoice, LLC*, 603 U.S. 707; *NetChoice, LLC v. Paxton*, 49 F.4th 439, 485 (5th Cir. 2022), *vacated and remanded sub nom.*, *NetChoice, LLC*, 603 U.S. 707. Both the Eleventh and Fifth Circuit Courts of Appeal held that the individualized-explanation requirements required disclosure only of purely factual information about social media platforms' conduct toward users and the terms under which their services were available. *NetChoice*, 34 F.4th at 1227; *NetChoice*, 49 F.4th at 485. Therefore, those two circuit courts applied the lower-level deferential scrutiny from *Zauderer* to the requirements. *NetChoice*, 34 F.4th at 1230; *NetChoice*, 49 F.4th at 485.

Following these decisions, the *NetChoice* Court reviewed the First Amendment facial challenges to the various laws. The Court did not decide whether the laws violated the First Amendment. Instead, the

Court provided guidance regarding the applicable standards of review. The *NetChoice* Court suggested *Zauderer*'s deferential review was the standard for reviewing the individualized-explanation provisions. *NetChoice*, 603 U.S. at 725.

The regulations at issue here are similar to the individualized-explanation requirements at issue in *NetChoice*. Washington's FCPA provisions require social media platforms to disclose facts about the content it hosts on its platform for the purpose of informing users of its operations. Therefore, the deferential standard of review is the correct standard to apply here.

C. Deferential Scrutiny, Not Exacting Scrutiny, Should Apply Here

Because the FCPA does not burden associational rights, and instead only regulates the disclosure of facts related to platforms' content, this court should review the provisions under a deferential standard.

The lead opinion applies exacting scrutiny because the disclosure requirements are election-related.[4] However, while exacting scrutiny often

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[4] The lead opinion asserts that while "not a perfect analogy," the United States Supreme Court's review of political disclosure laws aimed at broadcasters supports applying exacting scrutiny here. Lead opinion at 15 (citing *McConnell*, 540 U.S. at 237-38). However, the *McConnell* Court did not explicitly apply exacting scrutiny to the disclosure requirements there. *See* 540 U.S. at 245 ("Given the FCC regulations and their history, the statutory requirements must survive a *facial* attack under any potentially applicable First Amendment standard, including that of heightened scrutiny."); *Hum. Life of Wash. Inc.*, 624 F.3d at 1004 ("The *McConnell* Court did not explicitly describe the level of scrutiny applied to the disclosure requirements, stating only that

applies in reviewing election-related disclosure requirements, this level of review does not apply merely because the disclosure requirement is election related. As discussed above, associational rights must also be burdened.

Associational rights were burdened in all the leading election-related cases that applied exacting scrutiny. In *Buckley*, the Court applied exacting scrutiny in reviewing the Federal Election Campaign Act's disclosure provision requiring political committees to keep detailed records of contributions and expenditures. 424 U.S. at 64 ("[W]e have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment."). The challengers were several individual candidates for federal office, as well as political parties and organizations who feared the regulation would chill people from associating with them. *Id.* at 65-69.

In *Citizens United*, exacting scrutiny applied when a nonprofit organization that funded a campaign video challenged laws that required those who funded electioneering communications to disclose their identities. 558 U.S. at 319, 366. The organization argued that such disclosure requirements could chill donations to an organization and cause its members to face retaliation by making their support publicly known. *Id.* at 370.

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the requirements were supported by 'important state interests.'" (quoting *McConnell*, 540 U.S. at 196)). Given the clear weight of case law that applies exacting scrutiny only when a disclosure requirement burdens associational freedoms, I am not convinced *McConnell* is the right analogy here.

This court also applies exacting scrutiny where disclosure requirements burden associational freedoms. In *Grocery Manufacturers Association*, a trade association challenged Washington's FCPA disclosure and registration requirements after it failed to disclose which of its members contributed financially to a political committee. 195 Wn.2d at 448. Exacting scrutiny applied because the regulation burdened the group's associational freedoms by requiring it to make disclosures about its supporters. *Id.* at 461 ("'[C]ompelled disclosure may encroach on First Amendment rights by infringing on the privacy of association and belief.'" (quoting *Voters Educ. Comm.*, 161 Wn.2d at 482)).

In contrast to all these cases, the disclosure requirements here do not burden Meta's, the challenger's, associational freedoms. Although the FCPA requirements may relate to political or election advertisements, that alone does not trigger exacting scrutiny.

Meta is not an association espousing any ideas or beliefs in this context. Meta does not have associational rights burdened by having to provide information for all political advertisements it hosts on its platforms, regardless of affiliation. In addition, advertisement sponsors are not chilled from associating with Meta's ideas or beliefs because of the disclosure requirements. This case does not fit into our nation's exacting scrutiny precedent. Heightened scrutiny does not apply to this challenge.

Instead, the disclosure laws here merely require a commercial platform to disclose facts related to its

commercial services—hosting paid advertisements on its sites.

In sum, the FCPA and its implementing legislation deal with factual disclosures in the commercial speech context. Just because the advertisements relate to elections does not mean that exacting scrutiny is the correct standard of review. Instead, because associational rights are not burdened here, deferential review applies, just like in other commercial speech disclosure cases.

I concur with the lead opinion that the requirements would survive even under a heightened standard of review. However, the State does not need to meet this higher burden.

III

META ADMITS THAT IT VIOLATES THE FAIR CAMPAIGN PRACTICES ACT. ACCORDINGLY, IT IS SUBJECT TO PENALTIES FOR "EACH VIOLATION"

Meta agrees that it violated the FCPA. Suppl. Br. of Pet'r at 2, 22, 25. However, Meta challenges the way the trial court calculated damages.

Former RCW 42.17A.750(1)(c) (2019) provides that "[a] person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation." Our goal is to discern the legislature's intent behind the penalty statute. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The legislature did not define what the term "each violation" means except by defining what it is not: a "violation" is "not a remediable violation, minor

violation, or an error classified by the commission as appropriate to address by a technical correction." Former RCW 42.17A.005(54) (2025).

Meta argues that when a person makes a request, that request, no matter how many advertisements it is seeking information for, will result in only one violation. That does not follow the legislative intent manifested in the statutory scheme.

This statute requires Meta to keep certain information about each political advertisement that it runs. A violation occurred each time Meta failed to make available all the required information for any particular advertisement. Under Meta's view, the penalty would be the same whether the request seeks information for a single advertisement or 100. This goes against the statutory scheme, which is intended to promote transparency surrounding political advertisements. The legislature intended that certain information be publicly available for each advertisement. As the Court of Appeals stated, and with which the lead opinion agrees, the statutory scheme shows an "intent to preserve and sunlight relevant data of each individual ad . . . without any requirement that any particular voter or the government step into the sunlight to inspect the records." *State v. Meta Platforms, Inc.*, 33 Wn. App. 2d 138, 197, 560 P.3d 217 (2024). When that required information is not made publicly available for an advertisement, there is a violation. Violations run per advertisement, not per request.

The lead opinion views it differently. It holds that the total number of violations is calculated by multiplying the number of advertisements with

undisclosed information by the number of requests for that information. Lead opinion at 33. The legislature could have included language that would have resulted in imposing penalties per request, but it did not. Instead, the legislative scheme requires social media platforms to make information available for each political advertisement. A failure to make that information publicly available results in one violation for each advertisement, regardless of the number of requests for that same information.

The lead opinion argues that the legislature intended the statute to be liberally construed to provide for maximum disclosure. That is true. However, a liberal construction does not allow us to exceed the legislature's intent. Indeed, the legislative intent behind the penalty provision is to maximize the disclosure of information, not to maximize the penalty amount. Therefore, the court should not strain to construe the provision to maximize penalties. As discussed above, calculating violations per advertisement, instead of per request, is in line with a liberal construction of the provision.

While I disagree with the lead opinion's conclusion that the trial court properly calculated the penalties, I agree that the judgment of $35,182,159.59 is not an excessive fine that violates the Eighth Amendment to the United States Constitution, assuming without deciding that the Eighth Amendment applies here.

IV

CONCLUSION

The Fair Campaign Practices Act required Meta to maintain and make publicly available facts about

advertisements hosted on its platform. Meta, an entity that has experience with public disclosure requirements and has the resources to ensure that it complies with disclosure laws, intentionally failed to make available the following information about the political advertisements it ran:

- The street address of the individual sponsor that paid for the advertisement;
- The payment dates, payment methods, and exact cost per advertisement;
- The targeted audience; and
- The number of impressions.

The disclosure of this information does not burden Meta's associational rights nor does it burden the associational rights of those paying for the political advertisements. Because this is commercial speech that does not burden associational rights, we should apply a deferential, not exacting, standard of review. However, even applying the exacting standard of review, I agree with the lead opinion that there is no First Amendment violation.

The FCPA requires that a social media platform must make certain information available to the public regarding political advertisements. When a social media company fails to provide all the required information, that is a violation of the act. The number of requests for the same information does not result in additional violations.

I accordingly would affirm the trial court's conclusion that there is no First Amendment violation but reverse on the amount of penalties it imposed. I instead would direct it to calculate violations based on

each advertisement for which Meta failed to transparently disclose required information.

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Mungia, J.

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González, J.

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Montoya-Lewis, J.

GORDON McCLOUD, J. (dissenting)—Political advertising is political speech.[1] Whether we like the content of that speech or not, it is entitled to the highest protection.[2] For that reason, laws (like the FCPA[3]) that burden political speech violate the First Amendment unless those laws further a compelling state interest by the least restrictive means possible.[4] U.S. Const. amend. I.

In this case, all parties agree that the FCPA serves an important or even compelling state interest: shedding light on Washington state campaign funding and targeting. But the parties disagree about whether the FCPA has chosen a permissible means or, instead, a means that unduly burdens the digital platform involved here— Meta Platforms Inc.—with oppressive

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[1] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 339-40, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) ("The First Amendment 'has its fullest and most urgent application to speech uttered during a campaign for political office.'" (internal quotation marks omitted) (quoting *Eu v. S.F. County Democratic Cent. Comm.*, 489 U.S. 214, 223, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989))).

[2] *Id.*

[3] Fair Campaign Practices Act, former ch. 42.17A (2024). Former chapter 42.17A has since been recodified as Title 29B RCW, effective January 1, 2026. Former chapter 42.17A RCW will be referenced throughout as it applied to Meta at the time of the action.

[4] *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011) ("'Laws that burden political speech are' accordingly 'subject to strict scrutiny, which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.'" (quoting *Citizens United*, 558 U.S. at 340)).

costs and business interference. In fact, the parties submitted competing proof about the extent of the costs and interference that the FCPA imposed. When that happens, a jury is supposed to decide who to believe. The lead opinion, however, affirms the trial court's decision to believe the State over Meta.

I disagree. I would remand to the trial court for fact-finding on the competing proof that the two sides have offered about the FCPA's burdens.

The lead opinion then turns to the sanction. The Eighth Amendment bars the State from imposing monetary sanctions that are grossly disproportionate compared to the illegal conduct.[5] U.S. Const. amend. VIII. When making this comparison, courts must consider the defendant's actual, concrete, illegal actions; courts cannot consider the possible impact of all such conduct on general societal values in the abstract.[6] In this case, the trial court found that Meta committed partial reporting violations unconnected to any underlying illegal conduct. Nevertheless, the trial court imposed a sanction totaling $35 million—the highest sanction ever in the history of this state or this country for noncompliance with reporting laws. The lead opinion affirms.

Again, I disagree. Under controlling Supreme Court precedent on the application of the Eighth

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[5] *United States v. Bajakajian*, 524 U.S. 321, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998).

[6] *Id.*; *Thomas v. Humboldt County*, 124 F.4th 1179, 1193 (2024) ("'It is critical . . . that the court review the specific actions of the violator rather than by taking an abstract view of the violation.'" (quoting *Pimentel v. City of Los Angeles*, 974 F.3d 917, 922 (9th Cir. 2020))), *cert. denied*, 146 S. Ct. 27 (2025).

Amendment to reporting violations, we must consider Meta's conduct at a concrete level of specificity, not a high level of generality about societal values. Here, Meta committed partial reporting violations combined with broad disclosure of other requested information and no allegations of other, underlying illegalities. That does not support the highest penalty ever imposed for partial violations of administrative reporting rules in the history of this state or this country.[7]

I therefore respectfully dissent.

FACTUAL AND PROCEDURAL BACKGROUND

I. The FCPA and the 2018 Regulation

The FCPA requires a "commercial advertiser" who has "accepted or provided political advertising or electioneering communications during the election campaign" to "maintain current books of account and related materials as provided by rule." Former RCW 42.17A.345(1) (2019).[8] Those documents and books of account "shall specify" the names and addresses of persons from whom the commercial advertiser

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[7] Press Release, Wash. State Off. of Att'y Gen. (Oct. 26, 2022) (the penalty imposed on Meta "represents the largest campaign finance penalty anywhere in the country—ever") https://www.atg.wa.gov/news/news-releases/judge-grants-ag-ferguson-s-requestmaximum-246m-penalty-against-facebook-parent [https://perma.cc/247H-LFMC].

[8] A "commercial advertiser" is "any person that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public . . . for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign." Former RCW 42.17A.005(10) (2025).

accepted political advertising or electioneering communications, the exact nature and extent of the services rendered, and the total cost and the manner of payment for the services. *Id.* Those documents and books of account "shall be open for public inspection during normal business hours during the campaign and for a period of no less than five years after the date of the applicable election." *Id.*

The legislature delegated the task of adopting regulations to implement and enforce the FCPA to the Public Disclosure Commission (PDC). Former RCW 42.17A.110(1) (2019), .345(1). This case involves one of the regulations that the PDC adopted: WAC 390-18-050. That regulation provides the details of commercial advertisers' responsibilities under former RCW 42.17A.345.

In 2018, the PDC updated that regulation to specify that digital communication platforms that host political advertisements count as "commercial advertisers." Former WAC 390-18-050(1) (2018).[9] That updated regulation provided that the "information and books of account" that commercial advertisers must keep open for public inspection under former RCW 42.17A.345 must also include the name of the candidate or ballot measure supported, opposed, or otherwise identified, and whether the ad supports or opposes the candidate or ballot measure; the name and address of the sponsors or persons paying for the advertising or electioneering communication; the advertisement's "total cost" or

[9] The rule has been amended numerous times since 2018. Some of its requirements remain the same. For clarity, I identify which version of the rule I cite.

"initial cost estimate if the total cost is not available upon initial distribution or broadcast," as well as "how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used"; and the dates the commercial advertiser rendered service. Former WAC 390-18-050(5)(a)-(d); WAC 390-18-050(6).

In addition to that information, the regulation also provides that the "materials and books of account open for public inspection" must include the advertisement or electioneering communication itself, as well as "a description of the major work components or tasks . . . that were required to provide the advertising or communications services." Former WAC 390-18-050(6); WAC 390-18-050(7).

At the time of the requests in this case, those "work components or tasks" included (for digital communication platforms like Meta) "[a] description of the demographic information (e.g., age, gender, race, location, etc.) of the audiences targeted and reached, to the extent such information is collected by the commercial advertiser as part of its regular course of business, and the total number of impressions generated by the advertisement of communication." Former WAC 390- 18-050(6)(g).[10]

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[10] This was the language used in versions of the rule effective between December 31, 2018, and March 6, 2022, which encompassed the time period when the three individuals in this case made their requests. The current version of the rule imposes more detailed requirements for what information must be included in the "description of the major work components or tasks." WAC 390-18-050(7).

The regulation also provides detailed requirements about how commercial advertisers must keep their current books of account and related materials open for public inspection. Both the current and former versions require that this information "must be available for public inspection by any person" and accessible in person during normal business hours or electronically. WAC 390-18-050(4); former WAC 390-18-050(3). The version of the regulation in effect when requests were made in this case provided that an advertiser must either digitally transmit the records to the requestor "promptly upon request" or publish the records online on its primary website or on a website created for the purpose of publishing the information. Former WAC 390-18-050(3)(b).[11] It also requires that "[i]nformation contained in books of account must be updated within 24 hours of the time when an advertisement or communication initially has been publicly distributed or broadcast, and within 24 hours of any update or change to such information." WAC 390-18-050(3).

II. Meta Bans Washington Political Advertisements in 2018

Prior to the updated regulation, Meta hosted Washington political advertisements on its platforms. Meta contends that "digital advertising on platforms like Facebook is especially important for smaller campaigns that lack the resources to reach voters

[11] The current version of the rule states that the information must be provided "promptly upon request, but no later than two business days." WAC 390-18-050(4)(b)(i).

through more expensive and traditional means." Clerk's Papers (CP) at 399.

But in response to the updated regulation, Meta announced that beginning December 28, 2018, it would no longer accept advertisements "that relate to Washington's state or local elected officials, candidates, elections or ballot initiatives." CP at 615. Meta was concerned with the technical feasibility and financial burden of compliance with the law. CP at 390.

Despite the ban, political advertisements have appeared on Meta platforms since 2018 in violation of Meta's policy. "Meta uses multiple levels of both automated and human review to block prohibited ads in Washington." CP at 393. However, "because Facebook uses a self-service advertising portal, unauthorized ads sometimes slip through Facebook's screening processes." Pet. for Rev. at 9 (citing CP at 7452).

III. Meta Creates Ad Library In 2018, Which Displays Some But Not All Of The Information Required To Be Disclosed By The FCPA

In 2018, Meta launched a publicly accessible "Ad Library." It provides certain information about ads relating to "social issues, elections, or politics" across multiple jurisdictions. CP at 7007-08. As the lead opinion notes, "neither party disputes that much of the information required by Washington's disclosure law is included in Meta's Ad Library, but not all." Lead opinion at 5 (citing CP at 5859-60). Specifically, the Ad Library does not include "street addresses of sponsors, exact cost per advertisement, payment dates, payment

method, precise audience targeted, and exact of number of impressions (though the Ad Library contains number of impressions expressed as a range)." CP at 390.

Meta concedes that it collects and maintains all that information in its regular course of business. Suppl. Br. of Pet'r Meta Platforms, Inc. at 25. However, as discussed below, it disputes the State's assertion that it would be simple and inexpensive to alter the Ad Library to display all that information or to individually gather the information in response to individual requests.

IV. Three Individuals Request Information About Washington Political Ads Hosted on Meta; PDC Investigates

This case concerns a total of 12 requests for records made by three members of the public. In February 2019, journalist Eli Sanders requested information relating to four Seattle city council races and a ballot measure. CP at 256. In July 2019, Tallman Trask requested information about advertising relating to numerous Seattle political campaigns and city council candidates. CP at 8067. In July 2021, Sanders requested all information for all Washington political ads hosted by Meta from January 1 to July 12, 2021. CP at 7587. Sanders and Trask filed complaints with the PDC when Meta failed to timely and completely comply with their requests. CP at 256-57.

The PDC investigated the complaints. CP at 258. During the investigation, Meta "admitted that it does not make publicly available all of the information required by [former] RCW 42.17A.345 and WAC 390-

18-050 for Washington political advertisements found on its platform." CP at 12. The PDC voted to refer the Sanders and Trask complaints to the attorney general for enforcement pursuant to former RCW 42.17A.755(4) (2019).

In April 2020, the State sued Meta for violating the FCPA by failing to disclose the political ad information requested by Sanders and Trask. CP at 1. The State amended the complaint when it learned that between 2019 and 2021, another member of the public, Zach Wurtz, had made nine requests for information about a variety of Washington political ads from Meta. CP at 425. Wurtz's final request asked "'to inspect the public file for every political ad shown in Washington State since 2016.'" CP at 5574. Meta failed to timely and completely comply with the requests. CP at 258.

V. Superior Court Grants Summary Judgment in Favor of State

Both parties moved for summary judgment. In October 2022, the trial court granted the State's motion for summary judgment and denied Meta's motion for summary judgment. CP at 5571.

The trial court determined that Meta violated the FCPA 822 times. CP at 5575, 5784. It counted 411 advertisements responsive to Sanders' and Trask's requests for which Meta failed to provide complete information. CP at 5575. It then doubled that number to reflect the fact that Wurtz's requests also covered those same ads (although Wurtz's requests actually covered far more than 411 ads). CP at 5574-75.

The trial court entered judgment in favor of the State. CP at 5783. It imposed the maximum statutory

penalty of $10,000 per violation on each violation, then trebled that total under former RCW 42.17A.780 (2018) because it determined the violations were intentional, for a total fine of $24,660,000.00. CP at 5578, 5784-85. The trial court also awarded $3.5 million in attorney fees and costs, which it trebled to $10,522,159.59 pursuant to former RCW 42.17A.780. CP at 5812. The total fine and costs assessed against Meta amount to $35,182,159.59—the highest campaign finance violation penalty in United States history.[12]

On appeal, Meta argued that the FCPA and its implementing regulations violate the First Amendment as applied to Meta; that the superior court erred in interpreting the statute to permit the imposition of a penalty for each advertisement included in the requests, rather than a penalty for each request; and that the fine was so excessive that it violated the Eighth Amendment. The Court of Appeals rejected Meta's arguments and affirmed. *State v. Meta Platforms, Inc.*, 33 Wn. App. 2d 138, 560 P.3d 217 (2024). We accepted review and we must address the same questions. 4 Wn.3d 1020 (2025).

ANALYSIS

I. Genuine Issues of Material Fact Preclude Summary Judgment on the First Amendment Issue, Regardless of Whether Strict or Exacting Scrutiny Applies

Meta argues that the disclosure requirements imposed by the FCPA and its implementing regulations (together, the "disclosure law") violate its

[12] Press Release, *supra* n.7.

First Amendment rights. It argues that the court must apply strict scrutiny to its First Amendment claim because the disclosure law is a content-based regulation that targets political speech. Meta also argues that the existence of genuine issues of material fact related to the extent of the law's burden on its First Amendment rights made summary judgment inappropriate.

The lead opinion disagrees. It adopts exacting scrutiny as the correct standard to evaluate Meta's First Amendment claim.

Meta is probably correct that strict scrutiny applies to its First Amendment claim, as discussed below. But even if exacting scrutiny applies, the lead opinion still errs in holding that the costs and burdens that the FCPA imposes on Meta are insignificant and, hence, that they satisfy that test's "narrow tailoring" requirement. Lead opinion at 19-20. Instead, the record shows that Meta establishes genuine issues of material fact concerning the burden that the law imposes on Meta's First Amendment rights and, hence, on whether that law is "narrowly tailored" enough to satisfy the First Amendment.

I would therefore reverse the trial court's decision to grant summary judgment to the State.

A. The lead opinion does not meaningfully consider the distinctions between disclosure laws that target political speakers and disclosure laws (like the FCPA) that target neutral third-party platforms (like Meta); the latter place far more burdens on speech, are more suspect, and hence must be subject to strict scrutiny (the more speech-protective standard)

Meta argues that the disclosure law is subject to strict scrutiny because it is a content-based regulation of speech: it applies only to political speech. *Reed v. Town of Gilbert*, 576 U.S. 155, 165, 135 S. Ct. 2218, 192 L. Ed. 2d 236 (2015) ("A law that is content based on its face is subject to strict scrutiny regardless of the government's benign motive, content-neutral justification, or lack of 'animus toward the ideas contained' in the regulated speech." (quoting *Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 429, 113 S. Ct. 1505, 123 L. Ed. 2d 99 (1993))). To survive strict scrutiny, the State must show that the law "'furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Id.* at 171 (internal quotation marks omitted) (quoting *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 734, 131 S. Ct. 2806, 180 L. Ed. 2d 664 (2011)). Under strict scrutiny, a law is "narrowly tailored" when it is the least restrictive alternative for achieving the State's goal. *McCullen v. Coakley*, 573 U.S. 464, 478, 134 S. Ct. 2518, 189 L. Ed. 2d 502 (2014).

The lead opinion disagrees that strict scrutiny is appropriate. It holds that exacting scrutiny—a less

speech-protective standard—applies because the law is a campaign-related disclosure law that does not burden speech that much. To survive exacting scrutiny, the State must show that the law (1) bears a substantial relation to a sufficiently important government interest and (2) is narrowly tailored to accomplish that interest. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 611, 141 S. Ct. 2373, 210 L. Ed. 2d 716 (2021). Under exacting scrutiny, the narrow tailoring requirement requires a "'reasonable'" fit between the State's interest and the means used to accomplish that interest, though it need not be the "'least restrictive means'" of achieving the state's important interest. *Id.* at 609-10 (internal quotation marks omitted) (quoting *McCutcheon v. Fed. Election Comm'n*, 572 U.S. 185, 218, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014) (plurality opinion)). This means- end fit requirement means that a state "is not free to enforce *any* disclosure regime that furthers its interests." *Id.* at 613.

Thus, the costs and burdens of compliance with a law are highly relevant to determining whether the law is narrowly tailored to achieve an important government interest. *Smith v. Helzer*, 95 F.4th 1207, 1217 (9th Cir.) (considering the financial and time-based burdens of a disclosure law on campaign contributors as part of the exacting scrutiny narrow tailoring requirement), *cert. denied sub nom.*, *Smith v. Stillie*, 145 S. Ct. 567 (2024). And when the regulated entity is a business, the way the costs and burdens of the law affect the entity's business decisions are naturally relevant to considering the law's means-end fit.

To be sure, both the United States Supreme Court and this court have applied the exacting scrutiny standard to other campaign finance disclosure laws. *E.g.*, *Buckley v. Valeo*, 424 U.S. 1, 63, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976) (campaign finance law required political committees and candidates to disclose information); *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 366, 130 S. Ct. 876, 175 L. Ed. 2d 753 (2010) (campaign finance law required political action committees to disclose information); *State v. Grocery Mfrs. Ass'n*, 198 Wn.2d 888, 893, 502 P.3d 806 (2022) (*GMA* II) (FCPA requires candidates and political committees to disclose campaign finance information). As the lead opinion recognizes, the Supreme Court has explained that exacting scrutiny is the appropriate standard for evaluating the constitutionality of campaign finance disclosure laws because such laws "'do not prevent anyone from speaking,'" as opposed to laws that place a ceiling on political speech (like campaign contribution limits), which do limit speech and hence which receive strict scrutiny. *Citizens United*, 558 U.S. at 366 (quoting *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201, 124 S. Ct. 619, 157 L. Ed. 2d 491 (2003), *overruled in part on other grounds by Citizens United*, 558 U.S. 310).

But none of those decisions analyzed campaign finance-disclosure laws that targeted third-party platforms that host political ads, like Meta does (as opposed to targeting the candidate or the campaign). And, as the lead opinion acknowledges, neither the United States Supreme Court nor this court has decided what level of scrutiny applies to this situation. Lead opinion at 14.

The lead opinion adopts the exacting scrutiny standard for this new situation without really grappling with the distinctive burdens the FCPA places on the targeted platform or the speech-chilling effects it has on the platform and its potential users. But those considerations are important—under controlling precedent, the extent of the law's burden on free speech basically determines the level of scrutiny the law must receive. *Buckley*, 424 U.S. at 67-68 (considering speech-chilling effect of campaign finance disclosure law on campaign contributors); *Ams. For Prosperity*, 594 U.S. at 610 (considering extent to which law requiring charities to report top donors to state attorney general had potential speech-chilling effect on donors); *see also Collier v. City of Tacoma*, 121 Wn.2d 737, 752, 854 P.2d 1046 (1993) (in analyzing whether yard sign regulation violated state constitutional free speech protections, court considered that the regulation tended to benefit the well-known incumbent at the expense of "[t]he underfunded challenger . . . who relies on the inexpensive yard sign to get his message before the public").

Given the critical importance of the extent of the law's burden on free speech to determining the applicable standard of scrutiny, we must pay careful attention to the fact that the FCPA and its implementing regulation are not ordinary campaign finance disclosure laws. As the Fourth Circuit Court of Appeals explained in *Washington Post v. McManus*, "While ordinary campaign finance disclosure requirements do not 'necessarily reduce[] the quantity of expression,' the same cannot be said for platform-based laws." 944 F.3d 506, 517 (4th Cir. 2019)

(alteration in original) (citation omitted) (quoting *Buckley*, 424 U.S. at 19).

Washington Post dealt with a Maryland campaign finance disclosure law that, like the instant law, applied to third-party platforms.[13] The Fourth Circuit declined to decide whether strict or exacting scrutiny applied because it held that the law failed even exacting scrutiny. The court began by considering the distinct consequences of the platform-based law on political speech. It explained that "[b]ecause political actors and neutral third-party platforms operate under markedly different incentives, the consequences of a disclosure law vary starkly depending on where its burdens are placed." *Id.* at 517. The "organic desire" of political groups to succeed at the ballot box "generally offsets, at least in part, whatever burdens are posed by disclosure obligations." *Id.* at 516. By contrast, "platform-based campaign finance regulations like the one here make it financially irrational, generally speaking, for platforms to carry political speech when other, more profitable options are available." *Id.* Thus, "when the

[13] The lead opinion says that *Washington Post* does not apply here because it did not specifically address issues related to social media platforms. To be sure, *Washington Post* dealt with a challenge to the disclosure law as applied to newspapers that hosted online advertisements, not to social media platforms like Meta. But *Washington Post*'s discussion of the distinct burdens imposed by a platform-based disclosure law was not limited to that context. *See Wash. Post*, 944 F.3d at 517 (stating that the law's First Amendment problems discussed above "are compounded" by the application of the law to newspapers); *cf.* lead opinion at 23 (mischaracterizing the entirety of *Washington Post* as applying only to newspapers).

onus is placed on platforms, we hazard giving government the ability to accomplish indirectly via market manipulation what it cannot do through direct regulation—control the available channels for political discussion." *Id.* at 517 (citing *Reed*, 576 U.S. at 168). The court noted that the risk of a chilling effect on political speech had already begun, as Google had announced it would stop hosting political ads in the state. *Id.* at 516-17.

In short, the *Washington Post* court took seriously the fact that the platform-based disclosure law had a chilling effect on political speech. And it took this into account when considering whether the law was narrowly tailored under the exacting scrutiny analysis. That approach aligns with United States Supreme Court precedent. After all, exacting scrutiny requires a reasonable fit between the means and ends of a law, such that a state "is not free to enforce *any* disclosure regime that furthers its interests" at any cost. *Ams. For Prosperity*, 594 U.S. at 613. A court applying exacting scrutiny must carefully consider the extent of those costs in determining whether a law is narrowly tailored.

The lead opinion takes the opposite approach. It concludes that Meta's decision to ban Washington political ads is irrelevant—that it "does not impact this court's exacting scrutiny analysis." Lead opinion at 24; *see also id.* at 25, 25 n.11. It does not explain why such an obvious burden on political speech is irrelevant.

The lead opinion also fails to acknowledge that the means-ends analysis does not end with the determination that it is literally possible for Meta to

comply with the law, regardless of the burden on its finances or business model. *Id.* at 25-26 (framing the question as whether Meta presented a genuine issue of material fact regarding "its inability to comply"). Rather, the question is whether there is a reasonable fit between the State's goal of election transparency and the means the State uses to attain that goal. If the result of the law is that a platform shuts down opportunities for political speech that it used to provide, there is a strong argument that the law is not narrowly tailored—even if compliance with the law is literally possible. *See Washington Post*, 944 F.3d at 517 ("Government policies that foreclose channels for political speech or simply crowd out too much political speech . . . pose especially serious constitutional dangers." (citing *Watchtower Bible & Tract Soc'y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 167-68, 122 S. Ct. 2080, 153 L. Ed. 2d 205 (2002))). After all, "[t]he First Amendment guards against 'any action of the government by means of which it might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens.'" *Id.* (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 249-50, 56 S. Ct. 444, 80 L. Ed. 660 (1936)).

In sum, the lead opinion fails to acknowledge that "[d]isclosure obligations applied to neutral-third party platforms are . . . , from a First Amendment perspective, different in kind from conventional campaign finance regulations." *Id.* at 516. It is important to consider these distinctions when analyzing whether a platform-targeted disclosure law is narrowly tailored.

But here as in *Washington Post*, it is unnecessary for us to decide which level of scrutiny applies. That's because even under the less-demanding exacting scrutiny standard, Meta identifies material issues of fact that preclude summary judgment on the issue of whether the law is narrowly tailored.

B. Even if exacting scrutiny applies, Meta has set forth facts sufficient to establish a genuine issue of material fact about whether the disclosure law is unduly burdensome

As discussed above, the extent of the burden that the law places on Meta is highly relevant to determining whether that law is narrowly tailored to achieve the State's goal of an informed electorate.

In this case, Meta argues that the FCPA fails the narrow tailoring requirement because it is unduly burdensome for such a third-party platform to comply. In fact, the law imposes such serious financial and technical burdens, and such steep potential penalties for violations, that Meta has concluded it is financially irrational to continue hosting Washington political ads on its platforms. The result is that a major platform for political speech is no longer accessible. Meta provided evidence that this particularly affects "smaller campaigns that lack the resources to reach voters through more expensive and traditional means" like television or radio. CP at 399 (Def.'s Mot. for Summ. J.) (quoting declarations from Washington politicians and campaign managers).

The State presented expert evidence that it would be inexpensive and technically uncomplicated for Meta to comply with the law. Meta presented

conflicting expert evidence that it would be expensive and technically complex to comply with the law.

The lead opinion concludes that Meta's evidence amounts to "'"speculative" generalities which lack the "specificity" to create a genuine issue of material fact.'" Lead opinion at 26 (quoting *Meta*, 33 Wn. App. 2d at 173-74). The lead opinion primarily reaches this conclusion because it says that Meta failed to "provide specific details about what compliance with Washington's FCPA would actually cost." *Id.* at 26-27.

The record does not support this characterization. In fact, Meta has provided detailed and specific explanations about why compliance is burdensome. Meta presented specific evidence to substantiate its arguments that, among other things, (1) identifying which ads are covered by the law is technically and financially burdensome and (2) reporting the data to the requester, particularly within 48 hours, is unduly burdensome. It's true that Meta has not quantified its burden with a specific dollar figure. But the lead opinion points to no authority imposing such a requirement.

i. Meta provided nonspeculative facts to rebut the State's argument that it can cheaply and easily identify Washington political ads

The State argues that determining whether an ad is covered by the disclosure law is not an unnecessary burden because "Meta already knows how to and does identify political ads based on a definition." Resp't State of Wash.'s Answer to Pet. for Rev. at 16 n.3.

Meta has set forth nonspeculative facts that show that there is a genuine dispute about how technically

difficult and expensive it would be to comply with the law. That difficulty begins with identifying which advertisements are covered by the law. Meta's expert, Dr. Steven Weber, provided a detailed explanation of why and how it is difficult for Meta to identify which ads are covered by the law. CP at 7869- 80.

First, the law does not require purchasers of an ad to flag whether the ad is a Washington political ad when placing it on the platform. CP at 7859. Even if it did, Meta would still need to implement a process to accurately determine which ads are covered by the law to ensure compliance in cases where a purchaser fails to correctly indicate the ad's status. To accurately determine whether an ad is covered, Meta would need to know the full set of candidates and ballot propositions at any given time in Washington—a challenging task. CP at 7872. Nearly 7,000 candidates filed for office at the state, judicial, and county level in 2020, not including candidates who subsequently withdrew. *Id.* There were 47 statewide ballot initiatives proposed, and even more at the county and subcounty levels. CP at 7872-73. No currently existing database compiles all this information. CP at 7869.

Even if Meta could create a real-time, updated database of all Washington candidates and ballot propositions, it would still face challenges in identifying Washington political ads because of the breadth of the statutory definition of "political advertisement." CP at 7873. An advertisement constitutes "political advertising" if it "directly or *indirectly*" appeals for "financial or *other support*" in a Washington election. Former RCW 42.17A.005(40) (2025) (emphasis added). The FCPA also applies to

"electioneering communications," which includes ads that "identif[y] the candidate without using the candidate's name." Former RCW 42.17A.005(21)(a)(i). These broad definitions mean that it can be challenging even for the PDC to identify whether an ad is a Washington political ad: "For example, the Executive Director of the PDC cited an advertisement that merely asked voters to call their political representatives on a particular issue, without suggesting a stance on that issue, as an example of a 'gray area' under the law's definition." CP at 7874 (citing deposition of Peter Lavallee (PDC executive director) (May 7, 2021)).

Meta already uses machine learning as part of its general ad review system, including using it to identify ads that relate to "'social issues, elections or politics.'" CP at 7878. However, Dr. Weber explained that Meta's current "machine learning system cannot serve as the exclusive solution to classify whether an advertisement falls under the Washington Disclosure Law specifically." *Id.* Creating an algorithm to classify advertisements would "require substantial human input to build, and the computer's prediction will not necessarily be accurate, including in situations where humans themselves struggle to categorize differences or the categories are inherently highly similar." CP at 7876. "[A] significant amount of coding work and system development is required to write and refine algorithms that are efficient and accurate." *Id.*

Machine learning models must be "trained" with large batches of training data to help the system "learn" to properly classify information. *Id.* Training data consist of manually labeled examples—on the

scale of thousands or even millions of manually labeled images. CP at 7876-77. Dr. Weber explains the complexity of training a machine learning model to specifically recognize Washington political ads given the broad statutory definition of a political ad combined with the limited data set available: "The need to identify *Washington* elections, candidates, and ballot propositions in particular means that very specific examples would have to be used in the training data in order to teach the machine to distinguish Washington Political Ads from other types of political advertising. But a candidate or ballot proposition in the State of Washington may only have a handful of ads, making it unlikely for there to be a sufficiently large corpus of training data." CP at 7879. Further, it is difficult even for humans to precisely identify which ads, for example, "'indirectly'" appeal for "'financial or other support'" in a Washington election. CP at 7873 (quoting former RCW 42.17A.005(40)). "[E]ven attempting to create this set [of training data] would take a large amount of time (for example, to have multiple humans review and debate the instances that are challenging to classify) with no guarantee of it being successful or stable." CP at 7879.

"Meta can leverage the large number of advertisements that run on Facebook to create relatively stable training data that can then be used to develop machine learning classification algorithms to identify ads about 'social issues, elections or politics.'" CP at 7880. "This process could not easily be replicated for the identification of Washington Political Ads specifically" because "the difficulties with creating an initial, stable set of data for

classifying Washington Political Ads is augmented by the necessity of having the machine constantly learn new information while 'forgetting' information that quickly becomes irrelevant as (for example) candidates drop out of local and statewide races." *Id.* Thus, Dr. Weber opined that "using machine learning to identify Washington Political Ads specifically would be far more challenging to implement than Meta's current process to use machine learning to identify ads about 'social issues, elections or politics.'" *Id.*

In addition to Dr. Weber's declaration, Meta presented additional evidence to rebut the State's assertion that it could easily alter its Ad Library to display the requested information. Deposition testimony from Ani Vanesyan explained that the financial and technical burden of altering Meta's Ad Library to display the required information for Washington political ads would be "substantial and significant" and "nontrivial." CP at 8370. Moreover, altering the Ad Library "could also challenge the stability of the tool, because the more complex the code becomes on the back end, the more unstable the tool is." *Id.*

At the summary judgment stage, we view the evidence in the light most favorable to the nonmoving party. Here, nonmoving party Meta has provided evidence that it cannot identify covered ads without significant and ongoing expenditures of time and money. It has provided evidence that using machine learning—alone or with other review systems—to identify Washington political ads is not feasible. These facts—which conflict with the State's assertions—are highly relevant and material to whether the burden

the law places on Meta's First Amendment rights and the chilling effect the law has on political speech are justified.

ii. Meta has set forth nonspeculative facts that responding to requests within 48 hours is unduly burdensome

Meta has also provided sufficiently specific evidence to support its argument that responding to disclosure requests within 48 hours—no matter how many ads the request covers, and no matter who requests the ad and for what purpose—is not narrowly tailored and is unduly burdensome.

Dr. Weber explained that producing responsive data upon request under the timelines imposed by the FCPA "requires the use of considerable resources" within Meta and through external contractors. CP at 7881. Determining "the universe of ads for which data is being requested" is difficult because requesters are not required to specifically identify the ads for which they seek information. CP at 7882-83. Meta employees and outside contractors must then formulate a query to retrieve the requested ads and review the retrieved ads to ensure that they really are Washington political ads and that they really do contain the relevant information; this is "a time-intensive process, especially because the results of the data query can sometimes constitute hundreds of pages for a single advertiser." CP at 7884. Next, contractors review the compiled data "to identify sensitive data or any information outside the scope of the Washington Disclosure Law, and then redact[] such data." *Id.* The

legal team engages in a final review of the data and sends it to the requester. CP at 7885.

Meta has presented sufficiently specific evidence that doing all of this within the FCPA's timeline (48 hours under the current version of the regulation) is burdensome, in conflict with the State's claim that Meta could easily and inexpensively comply with the law.

The lead opinion does not address this argument, concluding instead that Meta loses because it did not "quantify the resources needed to comply" with the law. Lead opinion at 26-27. Even though Meta has not assigned specific dollar amounts to the burden it faces in complying with the disclosure law, it has described those burdens with sufficient detail to survive summary judgment. The disputed evidence regarding the burden on Meta should be resolved by a fact finder.

II. The Lead Opinion's "Per Ad, Per Request" Approach To Calculating the Number of FCPA Violations Correctly Recognizes That the Law Requires Platforms to Collect, Maintain, and Disclose Information About Individual Ads and Disclose That Information in Response to Specific Requests

The next issue is one of statutory interpretation: what counts as a "violation" under former RCW 42.17A.750(1)(c) (2019)? We review questions of statutory interpretation de novo, with a "fundamental objective" to ascertain and carry out the legislature's intent. *Ass'n of Wash. Spirits & Wine Distribs. v. Wash. State Liquor Control Bd.*, 182 Wn.2d 342, 350, 340 P.3d 849 (2015); *Dep't of Ecology v. Campbell &*

Gwinn, LLC, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). We "discern[] legislative intent from the plain language enacted by the legislature, considering the text of the provision in question, the context of the statute in which the provision is found, related provisions, amendments to the provision, and the statutory scheme as a whole." *Ass'n of Wash. Spirits & Wine Distribs.*, 182 Wn.2d at 350 (citing *Campbell & Gwinn*, 146 Wn.2d at 9-10). We may turn to other tools of statutory interpretation if the statute's plain meaning is ambiguous. *Five Corners Fam. Farmers v. State*, 173 Wn.2d 296, 306, 268 P.3d 892 (2011).

The penalty provision of the disclosure law provides that a "person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation." Former RCW 42.17A.750(1)(c) (2019). The superior court may treble damages if "the violation is found to have been intentional." Former RCW 42.17A.780.

That's a significant potential penalty per violation. But the law does not define what constitutes a "violation." Instead, it specifies what does not constitute a violation by excluding "a violation of this chapter that is not a remediable violation, minor violation, or an error classified by the [PDC] as appropriate to address by a technical correction." Former RCW 42.17A.005(54).

The lead opinion, concurrence/dissent, and Meta each present different interpretations of the statutory term "violation." While I think this is a close question, I agree with the lead opinion that the most reasonable interpretation of the statute is that a violation of the

disclosure law occurs each time a platform fails to make required information about an advertisement available to a requester. That is the interpretation that best comports with the text and the legislature's stated intent to maximize disclosure and incentivize compliance.

The language of the law obligates Meta to collect, maintain, and disclose information about *each* covered advertisement. Former RCW 42.17A.345(1) (advertiser must maintain current books of account and related materials and make them available for public inspection); WAC 390-18-050 (contents of books of account include information about each specific advertisement). Thus, it makes sense to conclude that Meta violates the law *each time* it fails to disclose information about any particular ad in response to a request.

The lead opinion also persuasively reasons that its interpretation best supports the legislature's repeatedly stated intent to ensure full disclosure of campaign expenditures and its mandate to construe the FCPA "liberally" to promote that goal. Former RCW 42.17A.001(1), (11) (2019). The lead opinion also points out that a statement of intent related to former RCW 42.17A.005 states that the legislature intends "to promote greater transparency for the public by enhancing penalties for violations." Laws of 2011, ch. 145, §1. If the harm is deprivation of information about an ad, that harm occurs each time a platform fails to disclose the information in response to a request; allowing the platform to be penalized each time this harm occurs seems to comport with legislative intent.

Meta argues that the disclosure law requires it to make information available "promptly upon request," former WAC 390-18-050(3), so that each time it fails to promptly comply with a bundled request counts as a single violation. Thus, Meta argues that in this case, the court should have counted a maximum of 12 violations, corresponding to each separate request made by the three individuals. Meta's interpretation can be described as counting the violations "per request."

The concurrence/dissent focuses on the law's requirement that platforms maintain specific information about each advertisement, prior to and independent of any later request for that information. It concludes that this means that the legislature made a platform's failure to disclose the required information "result[] in one violation for each advertisement, regardless of the number of requests for that same information." Concurrence/dissent at 15. The concurrence/dissent concludes that the disclosure law does not impose penalties "per request." *Id.*

In my view, both Meta and the concurrence/dissent fail to acknowledge all parts of the disclosure law. Meta's approach ignores the law's requirement that platforms maintain and disclose information about each advertisement. The concurrence/dissent ignores the law's requirement that the platform must make the information available each time it is requested.

The correct interpretation must acknowledge that the law requires platforms to both maintain specific information *and* to make that information available for public inspection. Further, as the lead opinion

points out, the legislature repeatedly emphasized its intent to maximize disclosure. Taken together, the most reasonable interpretation of the law is that the harm (depriving voters of required campaign finance information) occurs each time a platform fails to disclose the information upon request.[14]

Thus, I agree that the lead opinion's "per ad, per request" interpretation is probably the most

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[14] This "per ad/per request" approach is how I interpret the lead opinion's statement that a platform commits a violation "for each advertisement it fails to disclose to the public when a request is made." Lead opinion at 33. The lead opinion says that its approach aligns with the way the superior court calculated the number of violations, which it describes as being "based on the number of advertisements where Meta failed to disclose the required information." *Id.* at 30. But that's an incomplete explanation of what the superior court did. Instead, the superior court counted the number of advertisements for which Meta failed to disclose the required information and multiplied that by the number of requests for the same information. The superior court reached its total of 822 violations by counting 411 violations relating to ads covered by Sanders' and Trask's requests, then doubling that number because Wurtz's requests also covered those same 411 ads. CP at 5801. This reflects a "per ad/per request" approach. However, the superior court's calculation was underinclusive because Wurtz's request covered far more than the 411 ads also covered by the two other individuals' requests. *See* CP at 5574 (order) (in July 2021, Wurtz requested to inspect the file for "'every political ad shown in Washington state since 2016,'" and the State established that since 2018, the number of Washington political ads included in Meta's Ad Library "exceeds 1,600"). The lead opinion notes this discrepancy, but provides no explanation as to why the superior court chose to calculate violations this way or how the superior court's approach serves legislative intent instead of being arbitrary or underinclusive. Lead opinion at 28 n.15.

reasonable way to interpret the penalty statute.[15] Here, even if the superior court correctly totaled the number of violations at 822, that still leaves open the question of whether the penalty imposed in this case violates the Eighth Amendment's prohibition on excessive fines. As I discuss next, under controlling Supreme Court precedent, the penalty imposed in this case—the highest one ever for a campaign disclosure violation—clearly violates the Eighth Amendment's bar on excessive fines.

III. The Trial Court's Imposition of a $35 Million Penalty on Meta for Partial Reporting Violations Violates the Eighth Amendment's Prohibition on Excessive Fines

The Eighth Amendment to the United States Constitution prohibits excessive fines. A fine is "excessive" if it is "grossly disproportional to the gravity of a defendant's offense." *United States v. Bajakajian*, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998). To determine gross disproportionality, we consider the factors set forth in the seminal United States Supreme Court case on excessive fines, *Bajakajian*: "'(1) the nature and extent of the [violation], (2) whether the violation was related

[15] A statute is ambiguous "if it can be reasonably interpreted in more than one way. However, it is not ambiguous simply because different interpretations are conceivable." *State v. Watson*, 146 Wn.2d 947, 954-55, 51 P.3d 66 (2002) (citing *State v. Keller*, 143 Wn.2d 267, 276, 19 P.3d 1030 (2001)). For the reasons above, in light of the language and context of the law, the per ad/per request approach is reasonable, and the competing interpretations are not. Even if the law were truly ambiguous, application of the rule of lenity here would not shed much light on the legislative intent.

to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused.'" *State v. Grocery Mfrs. Ass'n* (*GMA* I), 195 Wn.2d 442, 476, 461 P.3d 334 (2020) (quoting *United States v. $100,348.00 in U.S. Currency*, 354 F.3d 1110, 1122 (9th Cir. 2004) (citing *Bajakajian*, 524 U.S. at 337-40)); *see also City of Seattle v. Long*, 198 Wn.2d 136, 163, 493 P.3d 94 (2021) (courts apply the *Bajakajian* analysis to punitive civil fines).

Meta argues that the $35 million judgment here—the largest in the history of the state by a wide margin—is excessive and disproportional to the gravity of its disclosure violations under the *Bajakajian* factors. The lead opinion disagrees.

The lead opinion, however, fails to properly consider the *Bajakajian* factors. First, the lead opinion provides little analysis of the "nature and extent" of Meta's violations and characterizes Meta's misconduct at far too high a level of abstraction. Second, the lead opinion treats the fact that Meta's violations were unrelated to other legal violations as irrelevant—but instead, that factor actually weighs in favor of finding the penalty excessive. Third, the lead opinion also states that *Bajakajian*'s third factor, the other penalties that may be imposed for the violation, is irrelevant—but, instead, that factor also weighs in favor of finding the penalty excessive. Finally, the lead opinion fails to consider the extent of the harm caused by Meta's violations, again viewing the harm at an erroneously extreme level of abstraction.

Under a proper analysis of the *Bajakajian* factors, the $35 million penalty is grossly disproportionate to Meta's conduct: failing to disclose *some of* the required

information about political advertisements while disclosing much of the rest of the required information in its well-organized, conspicuously posted Ad Library. But before addressing each *Bajakajian* factor, I begin by reviewing some key cases on excessive fines.

A. A fine is excessive under the Eighth Amendment if it is grossly disproportionate to the gravity of the offense

In *Bajakajian*, Hosep Bajakajian attempted to leave the country without reporting that he was transporting more than $10,000 in currency, as required by federal law. 524 U.S. at 324-25. Because he willfully violated that reporting requirement, the entire sum he was carrying—over $350,000—was subject to forfeiture. *Id.* at 325 (citing 18 U.S.C. § 982(a)(1)). The United States Supreme Court ruled that full forfeiture of Bajakajian's money would be grossly disproportionate to the gravity of the willful reporting offense he committed.

The Court considered several facts in reaching that conclusion. First, Bajakajian's "crime was solely a reporting offense." *Id.* at 337. Second, the violation was "unrelated to any other illegal activities"; Bajakajian obtained the money legally and planned to use it to pay a lawful debt. *Id.* at 337-38.

Next, the Court considered Bajakajian's exposure under the federal sentencing guidelines: he could receive a maximum criminal sentence of six months, and a maximum fine of $5,000. *Id.* at 338. The Court compared this relatively low fine and low sentence to the maximum penalties authorized under the statute:

"a maximum fine of $250,000 plus five years' imprisonment for willfully violating the statutory reporting requirement." *Id.* at 339 n.14. The Court concluded that the penalties Bajakajian actually faced, compared to the potential penalties for the worst offenders, "confirm a minimal level of culpability." *Id.* at 338-39.

Finally, the Court considered the harm Bajakajian caused. It rejected the government's contention that there was a correlation between the amount forfeited (over $350,000) and the harm the government would have suffered had the crime gone undetected. The Court instead focused on the actual harm caused by the defendant's violation: he deprived the government of the information that $357,144 had left the country, but he did not deprive the government of the money itself. *Id.* at 339. Requiring forfeiture of that amount "bears no articulable correlation to any injury suffered." *Id.* at 339-40.

Bajakajian did not establish a rigid test for determining whether a fine is excessive under the Eighth Amendment. *Long*, 198 Wn.2d at 167 (citing *United States v. Mackby*, 339 F.3d 1013, 1016 (9th Cir. 2003)). This court adopted the Ninth Circuit's approach, which distilled the factors discussed in *Bajakajian* into the following nonexclusive list: """(1) the nature and extent of the crime, (2) whether the violation was related to other illegal activities, (3) the other penalties that may be imposed for the violation, and (4) the extent of the harm caused."" *Id.* at 167 (quoting *GMA* I, 195 Wn.2d 476 (quoting *$100,348.00 in U.S. Currency*, 354 F.3d at 1122)).

We applied that analysis in *GMA* II. 198 Wn.2d 888. GMA, a trade group, created a segregated account to hold and disburse funds from its members to oppose an initiative that required GMO labels on packaged food. GMA ultimately collected over $14 million for this purpose. *Id.* at 894. GMA did not register as a political action committee or make any reports to the PDC until after the State filed a lawsuit against it for FCPA violations.

After a bench trial, the court found that GMA had intentionally violated Washington's campaign finance laws. *Id.* at 895. It found that GMA intended "'to shield the contributions made from GMA members from public scrutiny'" and to bypass the FCPA's requirement to publicly disclose GMA members' contributions on state campaign finance disclosure reports. *Id.* (quoting court papers). The trial court imposed a base penalty of $6 million under former RCW 42.17A.750(1)(f) (2013), and, since the violation was intentional, trebled the damages under former RCW 42.17A.780. That resulted in a penalty of $18 million, at the time the largest campaign finance violation penalty in state history.

GMA argued that the penalty was unconstitutionally excessive. This court affirmed the penalty after applying the *Bajakajian* factors. *Id.* at 899.

As to the first factor, we explained that the nature and extent of GMA's violation was "'intentionally concealing the true source of over $10 million in campaign spending' and directly violating the core principles of the FCPA." *Id.* (quoting court papers). While GMA's violation was a reporting offense, it

differed significantly from the individual reporting offense in *Bajakajian*. We found that GMA's "decision to conceal the identities of its campaign contributors struck at the core of open and transparent elections" because "voters have the right to 'know of the financing of political campaigns.'" *Id.* at 901 (quoting former RCW 42.17A.001(10)). Thus, the "grave nature and broad extent of GMA's offense suggest[ed] the penalty is not grossly disproportional." *Id.* at 902.

As to the second factor, "GMA's conduct involved several illegal activities that together amounted to failing to register and intentionally concealing the true source of donations." *Id.* at 903. This also weighed in favor of a conclusion that the penalty was not grossly disproportionate.

Next, we considered the maximum penalties authorized by the legislature. *Id.* The FCPA had always permitted a base penalty for the amount concealed, as well as treble damages for intentional violations of campaign finance disclosure laws. *Id.* The maximum potential penalty that the court could have imposed on GMA under the statutes was thus "more than $43 million." *Id.* at 904. The fact that the court only imposed $18 million on GMA after considering mitigating factors also weighed in favor of finding that the penalty was not grossly disproportionate. *Id.*

Finally, we considered the extent of the harm caused. We rejected GMA's argument that "concealing its contributors caused minimal harm because voters knew that grocery manufacturers opposed the initiative." *Id.* Instead, we found the harm was "substantial and struck at the heart of the principles embodied in the FCPA" because "[v]oters are entitled

to know who is contributing to political committees and paying for political campaigns by name, not just by category." *Id.* (citing former RCW 42.17A.001). We concluded that the penalty was not grossly disproportionate to GMA's bad conduct.

The principles derived from *Bajakajian* and applied in *GMA* II compel the conclusion that this $35 million fine is grossly disproportionate.

B. Applying the Bajakajian factors, the $35 million penalty is grossly disproportionate to Meta's conduct and the actual harm caused

"The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the [fine] must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334, 336-37 ("[C]ourts . . . must compare the amount of the [penalty] to the gravity of the defendant's offense."). Meta's violations stem from its failure to disclose some of the required information about Washington political ads as requested by three individuals across 12 requests. Under *Bajakajian*, the penalty must be *proportional to those violations*, not to abstract concerns about election integrity.

i. Factor (1): The nature and extent of the violation

The lead opinion's Eighth Amendment analysis takes an abstract view of the violation. In fact, the lead opinion hardly mentions the specifics of Meta's violation at all in its Eighth Amendment analysis. Lead opinion at 35-38. It notes generally that Meta's actions "def[ied] the FCPA's strong goal of promoting

transparency." *Id.* at 38. But that would be true of *any* violation of the FCPA; violating the act naturally defies the act's goals. The lead opinion says nothing about the proportionality of this fine in relation to Meta's specific conduct: its failure to fully disclose some, but not all, of the required information about the ads requested.

Instead, *Bajakajian* requires us to consider the specific conduct giving rise to the violation. 524 U.S. at 337; *see also Thomas v. Humboldt County*, 124 F.4th 1179, 1193 (2024) ("'It is critical . . . that the court review the specific actions of the violator rather than by taking an abstract view of the violation.'" (quoting *Pimentel v. City of Los Angeles*, 974 F.3d 917, 922 (9th Cir. 2020))), *cert. denied* 146 S. Ct. 27 (2025); *State v. Timbs*, 169 N.E.3d 361, 373 (Ind. 2021) (explaining that "focusing on the specific harms of specific acts," rather than "general statements" about the severity of a category of crime, aligns with *Bajakajian*'s analysis, which "pointed out that currency-reporting crimes might generally include serious violations by 'tax evaders, drug kingpins, or money launderers' but did not impute to the defendant the offenses of others and rather considered what specific harms his specific acts had caused"); *Commonwealth v. 1997 Chevrolet & Contents Seized from Young*, 639 Pa. 239, 265, 160 A.3d 153 (2017) ("In judging the gravity of the offense, we look to the culpability of the defendant rather than the severity of the crime in the abstract." (citing *Commonwealth v. Real Prop. and Improvements Commonly Known as*

5444 Spruce St., 574 Pa. 423, 432, 832 A.2d 396 (2003))).[16]

In this case, the "nature and extent" of Meta's violations show that a $35 million civil fine is grossly disproportionate.

If the superior court's calculation is correct, Meta failed to disclose *some* information about Washington political ads 822 times. But even so, Meta did provide *most* of the required information on its Ad Library, which is free and publicly available. The information that Meta disclosed on the Ad Library as well as in its responses to individuals' requests included the name of the ad purchaser and at least an estimate of the amount expended on the ad, as well as many other pieces of data that the law requires to be disclosed.

These facts immediately distinguish the case from *GMA* II. The nature and extent of GMA's violation was that of a political action committee intentionally, and completely, concealing the *identities* of campaign donors and the amounts of their contributions. 198 Wn.2d at 904. We found that this "decision to conceal the identities of its campaign contributors struck at the core of open and transparent elections" because

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[16] There is a circuit split as to what level of abstraction is appropriate to apply when considering the nature and extent of the violation. *See* Pet. for Writ of Cert. to the Sup. Ct. of Alaska at 15-27, *Jouppi v. Alaska*, No. 25-246 (Aug. 29, 2025) (describing the split of authority), https://www.supremecourt.gov/DocketPDF/25/25-246/373224/20250829124919814_Jouppi%20v.%20State%20-%20Petition.pdf [https://perma.cc/55DK-MKX8]. But this court has already adopted the Ninth Circuit's approach, which rejects examining the *Bajakajian* factors at a high level of abstraction.

"voters have the right to 'know of the financing of political campaigns.'" *Id.* at 901 (quoting former RCW 42.17A.001(10)).

The nature of Meta's violations is much less severe, given that Meta did not conceal the identities of ad purchasers or the cost of advertisements and that it willingly disclosed most of the required information on a public website. Further, Meta stated that one reason it refused to disclose all the required information was that it was concerned about its users' privacy. *See* Am. Appellant's Opening Br. at 24-25 (Wash. Ct. App. No. 84661-2-I (2023)) (discussing privacy implications of disclosing location information for its users who view ads); *see also Bajakajian*, 524 U.S. at 326, 337 n.12 (noting the trial court's finding that respondent failed to report the currency due to "distrust of the government"—though that reason isn't mitigating, it is relevant, because it shows Bajakajian did not have a nefarious purpose in failing to report). This distinguishes Meta's conduct from GMA's: here, there is no indication that Meta intentionally concealed information about campaign donors and expenditures in order to shield them from public scrutiny.

And though the lead opinion criticizes Meta for failing to make a good-faith effort to comply with the law, Meta did take action to avoid violating the law. It completely banned political ads in Washington, given its expectation about how difficult it would be to comply with the law.

Any violation of the FCPA hampers the FCPA's goals. But we must consider the specific conduct that constitutes the violation to determine whether the

penalty is disproportionate. Here, Meta's failure to provide some of the information required to be disclosed differs greatly from GMA's intentional shielding of donor identity. This *Bajakajian* factor weighs in favor of finding the $35 million fine disproportionate to Meta's conduct.

ii. Factor (2): Whether the violation was related to other illegal activities

The lead opinion asserts that "the second . . . factor[] [is] not relevant here as neither side argues that Meta's activities relate to other legal violations." Lead opinion at 37. The lead opinion is wrong. The fact that Meta's activities do not relate to other violations actually weighs in favor of Meta here. Just as in *Bajakajian*, Meta's violation was purely a reporting violation. If it had disclosed the required information, there would have been no problem with Meta running the ads. And there is no suggestion that Meta refused to disclose the required information in connection with a larger plot (and other unlawful acts) by Meta to undermine election transparency in Washington, as was the case in *GMA* II. 198 Wn.2d 903. Because Meta's violations are isolated and not related to other legal violations, this factor weighs in favor of concluding that a $35 million penalty is grossly disproportionate to its conduct.

iii. Factor (3): The other penalties that may be imposed for the violation

The lead opinion asserts that the third factor is "not relevant here as neither side argues . . . that other penalties (save for an injunction) may be imposed." Lead opinion at 37.

This is incorrect. The FCPA penalty statute authorizes referral for criminal prosecution for certain violations. For example, "A person who, with actual malice, violates a provision of this chapter is guilty of a misdemeanor under chapter 9.92 RCW." Former RCW 42.17A.750(2)(a) (2019). A misdemeanor is punishable by only 90 days in prison, or a fine of up to just $1,000, or both. RCW 9.92.030.

No one argues that Meta should be subject to criminal prosecution for its violations, presumably because its culpability falls below "actual malice." The potential criminal penalty for violating the statute—reserved for the most culpable offenders—is limited to 90 days in jail and/or a $1,000 fine. RCW 9.92.030. And yet Meta faces a $35 million penalty for a comparatively less culpable violation.

Another consideration is the fact that the trial court imposed the maximum statutory penalty ($10,000 per violation, trebled for an intentional violation) on each violation. But Meta's violations consisted of failing to disclose *some* required information, not withholding or concealing all information. And, as discussed above, Meta did not conceal the identities or expenditure amounts of ad purchasers, a key reason why this court found GMA's conduct so objectionable.

To be sure, the fact that a lesser penalty exists does not necessarily show that a fine is disproportionate. *GMA* II, 198 Wn.2d at 904 (citing *$100,348.00 in U.S. Currency*, 354 F.3d at 1122). But Meta's violations are less significant than the conduct at issue in *GMA*; hence, this factor tends to show that the fine was excessive.

iv. Factor (4): The extent of the harm caused

The final factor is the extent of the harm caused. The lead opinion describes that harm in the most generic terms possible. It acknowledges that "Meta did not outright hide the identity of political contributors" like GMA did, but it concludes without further analysis that Meta's actions "similarly defy the FCPA's strong goal of promoting transparency." Lead opinion at 37-38.

But when conducting a proportionality analysis, "generic considerations of harm" are "largely unhelpful" because "all crimes have a negative impact in some general way to society." *1997 Chevrolet*, 639 Pa. at 299. As mentioned above, any disclosure-related violation of the FCPA will of course hinder the FCPA's goal of promoting disclosure. But to determine whether the penalty is grossly disproportionate, we must look closely at the actual harm caused by Meta's violations of the FCPA.

In this case, that actual harm is minimal, especially compared with the conduct in *GMA*. In *GMA* II, we held that the organization's intentional concealment of donor identities and amounts "was substantial" because "[v]oters are entitled to know who is contributing to political committees and paying for political campaigns by name." 198 Wn.2d at 904. Here, Meta did not withhold identities of ad purchasers or information about the cost of the ads. It published that information (with the cost represented as a range) on its Ad Library, available to the public. The extent of the harm caused by Meta's conduct is

clearly significantly lower than the harm caused by GMA's conduct.

And while I disagree with Meta that the extent of the harm is "limited" to the three individuals whose requests were unfulfilled, the fact that only three people were deprived of requested information bears on the extent of the harm Meta caused. *See* lead opinion at 37 (quoting Suppl. Br. of Pet'r Meta Platforms, Inc. at 30-31).

Considering each of the *Bajakajian* factors, Meta's failure to disclose some, but not all, of the required information about political advertisements, even 822 times, is grossly disproportionate to the $35 million penalty. That is the State's—and country's—largest campaign finance penalty ever. But this is certainly not the State's—or the country's—largest campaign finance violation ever. It is not even a crime.

CONCLUSION

Political advertising is political speech. Whether we like the content of that speech or not, it is entitled to the highest protection. But even under the lead opinion's lower exacting scrutiny standard, a law like the FCPA that targets campaign speech must be narrowly tailored to serve an important government interest. One of the key factors we must examine in deciding whether the law is narrowly tailored is the burden that the law places on the regulated entity and the speech-chilling effects of the law more broadly. Here, Meta shows a genuine issue of material fact relating to the extent of the burden imposed by the disclosure law. I would therefore reverse the trial court's grant of summary judgment in favor of the State.

And even if the trial court correctly calculated the number of Meta's FCPA violations at 822, its $35 million civil penalty is grossly disproportionate to the offense and violates the Eighth Amendment.

I therefore respectfully dissent.

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Gordon McCloud, J.

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Johnson, J.

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Madsen, J.P.T.

Appendix B

SUPREME COURT OF WASHINGTON

No. 103748-1

STATE OF WASHINGTON,

Respondent,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Petitioner.

Filed: Aug. 20, 2026

ORDER

The Court considered "RESPONDENT STATE OF WASHINGTON'S MOTION FOR CLARIFICATION, OR IN THE ALTERNATIVE, RECONSIDERATION," "PETITIONER META PLATFORMS, INC.'S ANSWER TO RESPONDENT STATE OF WASHINGTON'S MOTION FOR RECONSIDERATION," "RESPONDENT STATE OF WASHINGTON'S MOTION TO LIFT STAY OF PERMANENT INJUNCTION," "PETITIONER META PLATFORMS, INC.'S ANSWER TO RESPONDENT STATE OF WASHINGTON'S MOTON TO LIFT SAY OF PERMANENT INJUNCTION," and "RESPONDENT STATE OF

WASHINGTON'S REPLY IN SUPPORT OF MOTION TO LIFT STAY OF PERMANENT INJUNCTION."

It is hereby

ORDERED:

That the motion for reconsideration and motion to lift stay of the permanent injunction are both denied.

Dated at Olympia, Washington this 20th day of August, 2026.

For the Court

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CHIEF JUSTICE

Appendix C

COURT OF APPEALS OF WASHINGTON

No. 84661-2-I

STATE OF WASHINGTON,

Respondent,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Appellant.

Filed: Dec. 2, 2024

Before, Díaz, Hazelrigg, A.C.J., and Mann, J.

OPINION

DÍAZ, J.—"[A] well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life." *Gaspee Project v. Mederos*, 13 F.4th 79, 95 (1st Cir. 2021). In this case, that foundational principle runs up against a social media conglomerate's First Amendment rights, as well as other federal and state statutory concerns.

The State sued Meta Platforms, Inc. (Meta) for violating relatively new provisions of Washington's Fair Campaign Practices Act and its implementing legislation, namely, RCW 42.17A.345 and WAC 390-

18-050 (together, the disclosure law). The disclosure law requires Meta to maintain certain records of the political advertisements it hosts on its platforms and, when requested, to permit inspection of, or to disclose, such records to those seeking such information.

The superior court granted the State's motion for summary judgment on both liability and damages, denied Meta's cross-motion, and entered a $35 million judgment against Meta, two-thirds of which consisted of a civil penalty and one-third of which was an award of the State's attorney fees and costs.

Meta appeals and argues that the disclosure law violates the First Amendment to the United States Constitution and is preempted by the federal Communications Decency Act, 47 U.S.C. § 230 (Section 230). Alternatively, Meta argues the superior court miscalculated the damages it imposed. For the reasons below, we affirm the superior court in whole.

I. BACKGROUND

A. Overview of the Factual Background

The parties do not dispute the following factual background. Meta is the parent company of Facebook, Inc., and other international online social media networking platforms, serving over 2 billion monthly users. In pertinent part, Meta allows people and organizations to purchase advertisements directed to Meta's general membership or selected parts of their membership. These advertisements have included political topics, such as promoting candidates for local and state elections. As will be discussed in more detail below, Meta allows advertisers to target their ads to specific users or groups of users, encompassing a wide range of demographic traits, through a self-service

tool. These demographic traits include Meta users' age, race, ethnicity, gender, location, interests, and more.

In approximately May 2018, Meta created an "Ad Library." The Ad Library includes advertisements Meta identifies as "political," which it commits to retain for seven years. Meta also retains information necessary to identify each advertiser. Meta further captures each advertiser's intended audience and its demographics, amounts spent, number of "impressions" generated by the advertisements, and more. The Ad Library is publicly viewable online.[1] It is undisputed that Meta's Ad Library contains much but not all of the information required by the disclosure law.

In June 2018, the State sued Meta for the first time for failing to comply with the disclosure law. In its complaint, the State alleged that at least two members of the public requested information from Meta about political ads hosted on its platforms, and Meta did not provide the information the disclosure law required.[2] In December 2018, Meta entered into a stipulated judgment, where it agreed to pay $200,000 in damages.

On December 28, 2018, Meta announced that it would no longer accept ads related to Washington electoral campaigns. Despite the ban, however, ads related to political campaigns in Washington still

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[1] Meta Ad Library, http://www.facebook.com/ads/library (last accessed May 24, 2024).

[2] The complaint alleged violations that occurred before the 2018 creation of the Ad Library.

appeared on Meta's platforms and in its Ad Library. For example, through Meta's self-service portal, advertisers placed approximately 1,600 ads related to Washington's 2019 elections on Meta's platforms.

In 2019, two requesters observed political ads on Meta's platforms and contacted Meta by email, requesting information about the ads pursuant to the disclosure law. Both requestors filed complaints with the Public Disclosure Commission (PDC) after receiving incomplete information from Meta. After investigating, the PDC referred the matter to the Washington Attorney General's Office (AGO).

Later and separately, a third requestor also viewed political ads on Meta's platforms, but did not see the same ads in Meta's Ad Library. Between 2019 and 2021, this requestor unsuccessfully attempted to request information about various ads from Meta. Unlike the previous requestors, this person also visited Meta's facilities in-person, requesting to review their records. Unsatisfied, the requestor filed a complaint with the AGO, who forwarded it to the PDC, which returned the matter to the State to litigate.

B. Superior Court History

In April 2020, the State filed a complaint in the King County Superior Court. The State alleged, among other things, that Meta hosted ads on its platforms, but did not provide full or timely information to the three requestors in violation of the disclosure law.

After substantial discovery, including depositions of the parties' experts, Meta and the State each moved for summary judgment in July 2022. As told by the trial court, "Meta has now [asked] the Court to find

the statute and regulations unconstitutional, and the State has brought a cross motion for enforcement of those elements of the law."

The superior court granted the State's and denied Meta's motion for summary judgment in October 2022. The superior court also granted the State's motion to enter judgment against Meta, awarding $24,660,000.00 in civil penalties and $10,522,159.59 in attorney fees and costs. The court arrived at these totals by imposing the $10,000 statutory maximum for each of the 822 violations, and trebling both it and the $3.5 million in attorney fees and costs sought by the State because the court found Meta's violations were intentional. The court also granted the State's request for an injunction, which in pertinent part required Meta to satisfy the judgment in 30 days.

C. Appellate History

Meta appeals from the orders on both the summary judgment motions and the judgment, as well as the injunction embedded in each. In November 2022, Meta filed an emergency motion for a stay of the superior court's injunction before a commissioner of this court. The commissioner granted Meta's motion for a stay of the injunction, concluding that reasonable minds could differ about the application of new

relevant federal caselaw, and denied the State's motion for a bond.[3] [4]

II. ANALYSIS

A. Summary Judgment

As this is an appeal of the orders on summary judgment, we review whether "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *see Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008). A "material fact" is one upon which the outcome of the litigation depends. *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977). "A genuine issue of material fact exists where reasonable minds could differ on the facts controlling the outcome of the litigation." *Ranger Ins. Co.*, 164 Wn.2d at 552. We

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[3] The State moved for modification of the commissioner's order on the stay, which was denied by a panel of judges, and then sought discretionary review of that decision by our Supreme Court, which was also denied. In its opening brief, the State asked this court very much in passing to lift the stay, should we rule favorably for the State. That question may be fully briefed and addressed by this court's commissioner following this decision. RAP 12.2 (the court may "take any other action as the merits of the case and the interest of justice may require").

[4] We permitted the filing of two amicus briefs in this appeal. The first was from several organizations representing technology platforms (Chamber of Progress, TechNet, and NetChoice), and the second from a consortium of organizations promoting voting rights (League of Women Voters of Washington, Fix Democracy First, the Brennan Center for Justice, and the Campaign Legal Center; together voting rights amici).

conduct our review de novo, performing the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). We consider the facts and the inferences in the light most favorable to the nonmoving party. *Id.*

"Summary judgment 'is subject to a burden-shifting scheme.'" *Welch v. Brand Insulations, Inc.*, 27 Wn. App. 2d 110, 114, 531 P.3d 265 (2023) (quoting *Bucci v. Nw. Tr. Servs., Inc.*, 197 Wn. App. 318, 326, 387 P.3d 1139 (2016)). "The moving party meets its initial burden by submitting evidence demonstrating that it is entitled to a judgment as a matter of law." *Bucci*, 197 Wn. App. at 326. "The burden then shifts to the nonmoving party to set forth '*specific facts* which sufficiently rebut the moving party's contentions and disclose the existence of a genuine issue as to a material fact.'" *Id.* (quoting *Ranger Ins. Co. v. Pierce County*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008)) (emphasis added).

Summary judgment gauges whether the nonmoving party has met their "burden of production to create an issue" of material fact. *Rice v. Offshore Sys., Inc.*, 167 Wn. App. 77, 89, 272 P.3d 865 (2012). To meet this burden, the nonmoving party "may not rely on speculation [or] argumentative assertions that unresolved factual issues remain." *Bucci*, 197 Wn. App. at 326 (alteration in original) (quoting *Ranger Ins. Co.*, 164 Wn.2d at 552). Thus, for Meta to survive the State's summary judgment motion, it would have to provide "specific" evidence, and not mere "argumentative assertions," to rebut the State's claim it is entitled to a judgment as a matter of law. *Id.* at 326.

Meta challenges the disclosure law only as it violates its First Amendment rights and because it is preempted by Section 230. We address each in order.

B. First Amendment

"[T]he Government may not suppress political speech on the basis of the speaker's corporate identity." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 365, 130 S. Ct. 876, 898, 175 L. Ed. 2d 753 (2010).

1. Overview of the Disclosure Law

Given the unique nature of Washington's disclosure law, and the gravity of the various constitutional interests at stake in this case, we first endeavor to provide the necessary historical and procedural framework of the challenged laws.

a. Origins of the Disclosure Law

More than 50 years ago, a bipartisan coalition of nonprofit organizations, political officials, and prominent media figures formed a group which drafted Initiative 276 (I-276). Hugh A. Bone & Cindy M. Fey, *The People's Right to Know: An Analysis of the Washington State Public Disclosure Law* 1-2 (1978). The purpose of I-276 was to promote transparency in government and political campaign practices, following new levels of social engagement as manifested by the "protest movement" in the 1960s and "growing alienation and disaffection with legislatures and other political institutions." Bone & Fey, *supra*, at 1-2.[5]

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[5] Washington's initiative process, first enacted in 1911 as a constitutional amendment, allows voters to propose initiative

The promotional materials for I-276 set forth its purpose of promoting the people's "right to know" by providing the public with a greater access to information about elections, stating: "Our whole concept of democracy is based on an informed and involved citizenry. Trust and confidence in governmental institutions is at an all time low. . . . Initiative 276 brings all of this out into the open for citizens and voters to judge for themselves." *State of Washington Voters Pamphlet, General Election* 10 (Nov. 7, 1972). As later summarized by our Supreme Court, I-276 sought "to enlarge the information based upon which the electorate makes its decisions. The right of the electorate to know most certainly is no less fundamental than the right of privacy." *Fritz v. Gorton*, 83 Wn.2d 275, 298, 517 P.2d 911 (1974) (plurality opinion).

In 1972, voters approved I-276 with a 72.01% margin, carrying every county in Washington. Bone & Fey, *supra*, at 3. I-276 "established the PDC and formed the basis of Washington's campaign finance laws." *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 790, 432 P.3d 805 (2019). Among other things, "I-

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measures directly and approve or reject them at the polls. Const. art. II, § 1(a) (amend. 7). In effect, the initiative process designates the electorate as the "fourth element" of the government and expresses "the people['s]" "right to assert [their] will over the legislative department of the government." *State ex rel. Brislawn v. Meath*, 84 Wn. 302, 318, 147 P.11 (1915), *abrogated in part on other grounds in Yim v. City of Seattle*, 194 Wn.2d 682, 691, 451 P.3d 694 (2019); see also Bone & Fey, *supra*, at 1-2 ("The 1972 open government-public disclosure law continued the historic process of change and reform by direct action of the voters.").

276 established reporting requirements for anyone supporting or opposing a 'ballot proposition.'" *Id.* (quoting Laws of 1973, ch. 1, §§ 2(2), 10(1)); *see also* Laws of 1973 §§ 3-11 (I-276 provisions establishing sundry reporting requirements). These provisions were consistent with one of the major purposes of I-276; namely, the "public disclosure of where campaign money comes from, who gets it and how much." *State of Washington Voters Pamphlet, General Election* 10 (Nov. 7, 1972).

In 1973, Washington enacted the Fair Campaign Practices Act (FCPA), which codified I-276. *Evergreen Freedom Found.*, 192 Wn.2d at 790; Laws of 1973, ch. 1. In adopting the purposes of I-276, the FCPA declares as the public policy of Washington:

> (1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided. . . .
>
> (5) That public confidence in government at all levels is essential and must be promoted by all possible means. . . .
>
> (10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

Laws of 1973, Ch. 1, § 1; RCW 42.17A.001.

In enacting the disclosure law, the legislature gave a twice repeated command that its provisions shall be "liberally construed" to effectuate its policies—"to promote complete disclosure of all

information respecting the financing of political campaigns and lobbying . . . so as to assure continuing public confidence in fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." Laws of 1973, Ch. 1, §§ 1, 47; RCW 42.17A.001, .904.

b. Substantive Requirements of the Disclosure Law

With the above historical and statutory context in mind, we turn to what the disclosure law currently requires in pertinent part.[6]

RCW 42.17A.345(1) requires a "commercial advertiser" who accepts or provides "political advertising or electioneering communications during an election campaign" to "maintain current books of account . . . that shall be open for public inspection during normal business hours during the campaign . . . no less than five years after the date of the applicable election."

A commercial advertiser is "any person that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public . . . used for the purpose of appealing, directly or indirectly, for

[6] In 2024, the legislature passed Substitute Senate Bill 5857 which aims to reorganize and "make technical amendments to certain codified statutes that involve campaign disclosure and contribution" such as the FCPA. Laws of 2024, ch. 164, § 101. These "changes . . . should be interpreted as technical in nature and not interpreted to have any substantive, policy implications." *Id.*

votes or for financial or other support in any election campaign." RCW 42.17A.005(10).

The statute directs that "The documents and books of account" in question must include: "(a) The names and addresses of persons from whom it accepted political advertising or electioneering communications; (b) The exact nature and extent of the services rendered; and (c) The total cost and the manner of payment for the services." RCW 42.17A.345(1).

RCW 42.17A.345(2) also requires a commercial advertiser "to . . . provide to the [PDC] copies of the information that must be maintained and be open for public inspection pursuant to subsection (1) of this section."

The legislature further delegated authority to the PDC to implement the statute by promulgating and defining through rule making what it means to "maintain current books" and "make open for inspection." RCW 42.17A.110(1), RCW 41.17A.345(1)(b), WAC 390-18-050.

In 2018, the PDC updated its existing regulations for disclosures by "digital communications platforms," such as Meta,[7] which are a subset of "commercial advertisers." WAC 390-18-050.[8] The rule the PDC ultimately implemented requires advertisers, among

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[7] The parties agree "digital communications platforms," as defined in WAC 390-18-050(7)(g), include platforms such as Meta, Google, TikTok, and other similar entities.

[8] Wash. St. Reg. 18-24-074 (effective Dec. 31, 2018), https://lawfilesext.leg.wa.gov/law/wsr/2018/24/18-24-074.htm [https://perma.cc/2LY7-HBWA]

other obligations discussed below, to maintain several pieces of information open for inspection or for disclosure "upon request," including by way of summary:

> (a) The name of the candidate or ballot measure supported or opposed;
>
> (b) A copy of the advertisement or communication;
>
> (c) The name and address of the sponsoring person or persons actually paying for the advertisement or electioneering communication;
>
> (d) The total cost of the advertising or electioneering communication; and
>
> (e) The date(s) the commercial advertiser rendered service.

WAC 390-18-050(4), (6)(a)-(e).

The PDC further specified that all commercial advertisers who accept or provide political advertising must update their books of account within 24 hours of when an ad has been distributed and, if requested, to provide the above information electronically within 24 hours. WAC 390-18-050(3).

Moreover, the rule requires that *digital* communications platforms in particular must maintain in their books and be prepared to disclose "[a] description of the demographic information, the statistical characteristics of a population (e.g., age, gender, race, location, etc.), of the audiences targeted and reached, *to the extent such information is collected by the commercial advertiser as part of its regular course of business*, and the total number of

impressions generated by the advertisement or communication." WAC 390-18-050(7)(g) (emphasis added).

Meta argues that the foregoing provisions violate its First Amendment rights and begins by claiming that we must examine the disclosure law with strict scrutiny.[9]

2. Applicable Level of Scrutiny

Regulations that burden political speech must typically withstand strict scrutiny, which "requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest." *Citizens United*, 558 U.S. at 340. This presumption has been applied to many types of election-related regulations. *See, e.g.*, *id.* at 339; *Fed. Election Comm'n v. Wisc. Right To Life, Inc.*, 551 U.S. 449, 465-66, 127 S. Ct. 2652, 168 L. Ed. 2d 329 (2007).

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[9] In prior briefing to this court's commissioner, Meta suggested it was challenging the very constitutionality of the disclosure law. Specifically, Meta suggested it was bringing an as applied challenge. We review the constitutionality of a statute de novo. *Evergreen Freedom Found.*, 192 Wn.2d at 789. And, indeed, "[i]n the First Amendment context, the asserting party may allege that a statute is either facially invalid or invalid as applied. In an as applied challenge, the statute must be considered in light of the facts of the specific case before the court." *Id.* at 796. However, Meta's appellate briefing—other than a few stray references to the disclosure law being "unconstitutional"—undertakes the facial analysis we conduct herein, and does not even mention an "as applied challenge." Having failed to engage in an as applied analysis in briefing or at oral argument before this court, that challenge is abandoned as insufficiently argued.

That said, "unlike," for example, "limits on election-related *spending*[10]—election-related *disclosure* and disclaimer requirements 'impose no ceiling on campaign-related activities.'" *Gaspee*, 13 F.4th at 85 (quoting *Citizens United*, 558 U.S. at 366) (emphasis added). In other words, "disclosure requirements are constitutional because they 'd[o] not prevent anyone from speaking.'" *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 201, 124 S. Ct. 619, 693, 157 L. Ed. 2d 491 (2003), *overruled on other grounds by Citizens United*, 558 U.S. at 310 (quoting Brief for FEC in Opposition in No. 01-582 et al. (DC), p. 112). This is so because, "disclosure and disclaimer regimes are cut from different cloth" than other burdens on political speech. *Gaspee*, 13 F.4th at 85. Both federal and our state courts have explored what this distinction means for purposes of the intensity of the review we apply.

Federal courts have applied exacting scrutiny to election-related *disclosure* requirements for decades. *Buckley v. Am. Constitutional Law Found., Inc.*, 525 U.S. 182, 199, 119 S. Ct. 636, 645, 142 L. Ed. 2d 599 (1999) (considering compelled disclosure of election-related spending). Examples include disclosure requirements for televised political advertisements (*Citizens United*, 558 U.S. at 366-67), for referendum petitions (*Human Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010)), and for referendum petition signatures (*John Doe No. 1 v. Reed*, 561 U.S. 186, 192 & 199, 130 S. Ct. 2811, 2820, 177 L. Ed. 2d 493 (2010)). A plurality of the United States Supreme

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[10] Election-related spending has been deemed a type of search. *See, e.g.*, *Citizens United*, 558 U.S. at 365 (discussing corporate independent expenditures on political speech).

Court recently recounted this history and held that, "*[r]egardless of the type of association*, compelled disclosure requirements are reviewed under exacting scrutiny." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 608, 141 S. Ct. 2373, 2383, 210 L. Ed. 2d 716 (2021) (emphasis added).[11]

Washington courts also have applied exacting scrutiny to Washington registration and disclosure requirements, including for political committees. *State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 461, 461 P.3d 334 (2020) (*Grocery Mfrs. Assn. I*) (regarding a trade association's registration and disclosure requirements); *Evergreen Freedom Found.*, 192 Wn.2d at 799.

Most recently, in *Evergreen Freedom Found.*, our Supreme Court examined separate provisions of the FCPA, which required the disclosure of financial information of entities providing pro bono legal services in furtherance of efforts to influence elections. There, the Evergreen Freedom Foundation "created sample municipal ordinances and ballot propositions for citizens to use to advance certain causes to their local city councils or commissions." *Evergreen Freedom Found.*, 192 Wn.2d at 786. Evergreen Freedom Foundation attorneys would then litigate against jurisdictions on behalf of citizens to place these measures on the ballot. *Id.* at 787. Our Supreme Court held simply and directly that the "government 'may regulate corporate political speech through . . .

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[11] "A plurality opinion is often regarded as highly persuasive, even if not fully binding." *Koenig v. Pierce County.*, 151 Wn. App. 221, 231, 211 P.3d 423 (2009) (citing *Texas v. Brown*, 460 U.S. 730, 737, 103 S. Ct. 1535, 75 L. Ed. 2d 502 (1983)).

disclosure requirements . . .” and “exacting scrutiny applies in the campaign finance disclosure context.” *Id.* at 798-99 (quoting *Brumsickle*, 624 F.3d at 994).

Here, the parties do not dispute that the law at the center of this appeal is a disclosure requirement. Nonetheless, Meta argues that we should examine the disclosure law under strict scrutiny for two reasons, neither of which is persuasive.

First, relying on *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 135 S. Ct. 2218, 2226, 192 L. Ed. 2d 236 (2015), Meta avers that the disclosure law warrants strict scrutiny because the statute “is a *content-based* regulation of speech since it ‘applies to particular speech *because of the topic discussed*’—namely, Washington politics.” (Emphasis added).

This argument flies in the face of each federal and state case reviewed herein, all of which dealt with “political topics” and none of which deemed such a disclosure to be “content-based” regulation. This conclusion is particularly apt here because, unlike in *Reed*, where the challenged statute “single[d] out specific subject matter for deferential treatment,” the disclosure law attaches potential liability to *any* advertisement *categorized as* “political” without regard to an ad’s specific partisan or other content. *Reed*, 576 U.S. at 163; RCW 42.17A.345 (covering “political advertising or electioneering communications”).

Second, Meta argues that the rationale behind applying exacting scrutiny to disclosure laws *for candidates* does not apply aptly to platforms. Namely, Meta avers that disclosure laws applied to candidates are less likely to reduce the quantity and diversity of their political speech because candidates have a

strong interest in complying with disclosure requirements because they have an equally strong interest in winning elections. Meta claims such logic does not hold "where a disclosure law burdens *third-party platforms* because they have no comparable interest offsetting burdens imposed by the law." (Emphasis added).

Meta, however, offers no authority in support of the proposition that candidates and non-candidates' disclosure obligations should be analyzed differently. On the contrary, the Supreme Court in Bonta held that "*[r]egardless of the type of association*, compelled disclosure requirements are reviewed under exacting scrutiny." 594 U.S. at 608. What's more, our Supreme Court applied exacting scrutiny to the claims presented by Evergreen Freedom Foundation, which was a firm that provided pro bono legal services and was not an electoral candidate. *Evergreen Freedom Found.*, 192 Wn.2d at 801.

Further, third-party platforms are indeed strongly motivated to comply with disclosure laws; namely, in order to continue receiving advertising revenue from candidates and political action committees and to avoid sanction. The television stations who broadcast political advertisements, discussed in Citizens United, 558 U.S. at 366-67, provide proof of such motivation, despite the disclosure requirements imposed upon them.[12]

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[12] Meta also attempts to distinguish this matter from cases such as *McConnell*, arguing that (1) the statute in question there only required recordkeeping and not disclosure, and (2) broadcasters operate in a different constitutional framework because they are government licensees relying on limited

Thus, we must apply exacting scrutiny to the disclosure law.

3. Exacting Scrutiny Analysis

"[A] campaign finance disclosure requirement is constitutional if it survives exacting scrutiny," which means that the disclosure requirement is (a) "substantially related to a sufficiently important governmental interest[,]" *Brumsickle*, 624 F.3d at 1005, and (b) "narrowly tailored to the interest it promotes." *Bonta*, 594 U.S. 611 (citing *Shelton v. Tucker*, 364 U.S. 479, 81 S. Ct. 2471, 5 L. Ed. 2d 231 (1960)). In other words, as Meta agrees,[13] exacting scrutiny is a twostep analysis: first, whether there is a sufficiently important government interest that bears a substantial relationship to the statute and then whether the disclosure law is sufficiently narrowly tailored. *Gaspee*, 13 F.4th at 96.

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broadcast access. However, Meta points to nothing in the McConnell opinion that suggests that the Supreme Court relied on such distinctions in its analysis. There is no allusion in the Court's ultimate holding between a "mere records" requirement and a disclosure requirement, that its holding turned on the specific medium of the advertiser's business.

[13] Wash. Ct. of Appeals oral argument, *State of Washington v. Meta Platforms, Inc.*, No. 84661-2-I at 4 min., 08 sec., through 4 min., 56 sec., *video recording by* TVW, Washington State's Public Affairs Network, https://tvw.org/video/division-1-court-of-appeals-2024011507/?eventID=2024011507 (where Meta agrees it is a two-step analysis).

a. Substantially Related to a Sufficiently Important Government Interest

We hold, as a matter of law, that RCW 42.17A.345 and WAC 390-18-050 meet the first step of the exacting scrutiny analysis: the requirements of the disclosure law are substantially related to the sufficiently important government interest of informing the electorate in a timely manner about who advertisers are reaching and how advertisers are attempting to influence an election.

i. Sufficiently Important Government Interest

The State asserts various governmental interests advanced by the required disclosures in the challenged law. We focus only on one: the need to timely inform the electorate about who is expending money to influence an election in our state and how that money is being spent.

Both federal and state courts have long recognized the importance of fostering an educated electorate. The United States Supreme Court in *Citizens United* held that laws requiring disclosure of campaign expenditures enable "the electorate to make informed decisions and give proper weight to different speakers and messages." 558 U.S. at 371. Further, in *McConnell*, the Court ultimately upheld one of the requirements for *timely* disclosure of advertiser data considered there because, "[g]iven the relatively short timeframes in which electioneering communications are made, the interest in assuring that disclosures are made promptly and in time to provide relevant information to voters is unquestionably significant."

540 U.S. at 200. The Court held that disclosure requirements "perform an important function in informing the public about various candidates' supporters *before* election day." *Id.* at 201. Even more broadly, the Court upheld another disclosure requirement because "the important state interests that prompted the *Buckley* Court to uphold [the Federal Election Campaign Act]'s disclosure requirements—[including] providing the electorate with information—apply in full to [the Bipartisan Campaign Reform Act]." *Id.* at 196.

Similarly, our state Supreme Court has held that with "I-276, the people declared that it would be the public policy of the State of Washington:

> (1) That political campaign and lobbying contributions and expenditures be *fully disclosed to the public* and that *secrecy is to be avoided.*
>
> . . .
>
> (10) That *the public's right to know* of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates *far outweighs* any right that these matters remain secret and private. . . .

Evergreen Freedom Found., 192 Wn.2d at 790-791 (some emphasis added) (quoting Laws of 1973, ch. 1, § 1 and RCW 42.17A.001(1)).

With that intent in mind, and with respect to the kinds of disclosures at issue here, "Political Advertising and Electioneering Communications," our legislature explicitly found that "the state has a compelling interest in providing voters information

about electioneering communications in political campaigns concerning candidates for state, local, or judicial office so that voters can be fully informed as to the: (i) Source of support or opposition to those candidates; and (ii) identity of persons attempting to influence the outcome of state, local, and judicial candidate elections." RCW 42.17A.300(1)(c).

In turn, Washington courts have consistently held that the State has an important interest in ensuring transparency in elections as "the public, acting as legislators on ballot propositions . . . has the right to know who is lobbying for their votes . . . [a]s such, courts have repeatedly recognized a sufficiently important government interest in as-applied challenges to campaign finance disclosure laws." *Grocery Mfrs. Assn. I*, 195 Wn.2d at 463 (citing *Brumsickle*, 624 F.3d at 1006-07).

Our Supreme Court's decision in *Evergreen Freedom Found.* is again instructive. There, the court held that "[t]he people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate." *Evergreen Freedom Found.*, 192 Wn.2d at 800 (quoting *First Nat'l Bank v. Bellotti*, 435 U.S. 765, 791-92, 98 S. Ct. 1407, 55 L. Ed. 2d 707 (1978)). It also expressly held that "'Washington State has a substantial interest in providing the electorate with valuable information about who is promoting ballot measures and why they are doing so.'" *Id.* at 800-01 (quoting *State ex rel. Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wn. App. 277, 284, 150 P.3d 568 (2006)).

When courts have considered and upheld election-related disclosure laws under the exacting scrutiny standard, they stress—often in sweeping terms—that transparent elections not only further an important government interest but sustain democracy itself. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 14-15, 96 S. Ct. 612, 632, 46 L. Ed. 2d 659 (1976) ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential"); *Reed*, 561 U.S. at 199 ("[p]ublic disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot"); *Gaspee*, 13 F.4th at 95 ("a well-informed electorate is as vital to the survival of a democracy as air is to the survival of human life.").

The State meets its initial burden of establishing a "sufficiently important governmental interest," and Meta does not seriously challenge that an educated electorate is an important interest.[14] Instead, it argues that the three other interests the State offers in support of the law are merely "speculative."[15] We need

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[14] At oral argument before this court, Meta appeared to concede that knowing who pays for political advertising is an important interest. Wash. Ct. of Appeals oral argument, *supra*, at 8 min., 20 sec., through 8 min., 45 sec. Meta instead argued that we must consider whether a law's burdens are proportionate to its benefits when examining if the law is substantially related to the government's interest, citing to *Buckley*, 525 U.S. at 198. We do not interpret *Buckley* to hold that an educated electorate is not a sufficiently important governmental interest to meet exacting scrutiny. Meta simply appears to be slipping into the second step of the analysis prematurely.

[15] The State offers at least three more interests advanced by the disclosure law: (1) preventing quid pro quo corruption; (2) enforcing campaign finance laws; and (3) combatting foreign

not reach whether these other interests are "sufficiently important" governmental interests, and rely on the well-established line of cases holding that an educated populace is, not only an important government interest, but vital for democracy to function well. *Brumsickle*, 624 F.3d at 1005.

Thus, we hold the State has established that an educated populace is a "sufficiently important governmental interest," which Meta has not offered any evidence to rebut. *Id.*

ii. Substantial Relationship

We next consider whether the requirements of the disclosure law bear a "substantial relationship" to that important governmental interest.

In support of its motion for summary judgment, the State offered testimony that it was necessary for Meta to provide information such as the advertiser's address, target audience, and payment method to capture the fullest picture of an advertiser's identity and intent. It so met its initial burden on summary judgment.

In response, Meta argues there is no substantial relationship between the government's interest in an educated electorate and the disclosure law because *some* provisions of the statute require disclosure of unnecessary information, such as the payment method of the advertisement. We disagree.

Meta offers no authority that this type of analysis—where it attempts to cherry pick certain

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interference. As noted above, we need not address Meta's rebuttal of these additional interests.

provisions—is the proper way to analyze a statutory scheme or can be used to undermine the overall substantial connection between the disclosure law and its purpose. *State v. Loos*, 14 Wn. App. 2d 748, 758, 473 P.3d 1229 (2020) ("When a party provides no citation to support an argument, this court will assume that counsel, after diligent search, has found none."). On the contrary, when interpreting regulations, we construe the act as a whole, giving effect to all of the language used. *Durant v. State Farm Mut. Auto. Ins. Co.*, 191 Wn.2d 1, 8, 419 P.3d 400 (2018).

Meta next argues the disclosure law's requirements do not further the government's goal of educating the electorate because, according to Meta, only three people requested information from Meta under the disclosure law. Meta also asserts the information the disclosure law requires is already available by other means, whether its own Ad Library or disclosures required by other laws. These arguments fail for two important reasons.

First, Meta cites no authority that a certain number of voters or only individual voters must use the disclosure law to inform their own personal vote. Indeed, we are aware of no other covered entity that has made an argument on de minimis use by voters. Further, as the voting rights amici argue, it is commonly known that journalists, academics, or other interested parties acquire such information for a variety of initial purposes. Some, such as journalists or academics, then disseminate such information to inform the electorate. *Brumsickle*, 624 F.3d at 1007 ("Access to reliable information becomes even more

important as more speakers, more speech—and thus more spending—enter the marketplace."). Meta offers no evidence to the contrary.

Similarly, and second, Meta offers no authority for the proposition that a given law may not be partially duplicative of any other law, or it risks lacking a substantial relationship to the established interest. And there is no evidence in the record that *all* the information required by the disclosure law is available by other means. While it is true that some voters may obtain some information about who purchases advertisements via a given candidate's disclosures or even Meta's Ad Library, there is no dispute that Meta and only Meta retains *all* the information required by the disclosure law including, e.g., the method of payment.

By way of further context, practices such as the micro-targeting of advertisements means no one online audience member can know the full range of advertisements by a candidate or organization because the algorithm may filter ads away from or to a voter based on their personal preferences or demographics. In other words, only Meta holds the information that would answer the public's questions about who is purchasing ads on behalf of candidates and organizations, how, and for what purpose. The voting rights amici emphasize this point, asserting:

> These unique features of digital advertising pose new threats to democracy. The practice of micro-targeting means that online audiences have little understanding of the full range of advertising run by a candidate or advocacy group, including the different

> messages other voters are being shown. This new ability to secretively direct a range of specially tailored, and perhaps even conflicting, messages to different audiences is incompatible with the core legitimizing aspects of democratic society—such as "publicity and transparency for the deliberative process."

(Quoting Jürgen Habermas, *Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research*, 16 Comm'ns Stud. 411, 413 (2006)).

Remarkably, as explained by State's expert, Dr. Shannon McGregor, a professor of journalism and media at the University of North Carolina, even advertising agencies and campaigns themselves do not have access to the full targeting data, meaning it would not be entirely captured in the campaign's own disclosures that are required by other laws. In full, Dr. McGregor explained:

> [S]ay I want to target people with an interest in native gardening with this ad. And [Meta] sends it out . . . to some people. But if it seems to be doing really well with white women in particular areas, there are other type of native gardener interests. But it seems to be doing particularly well there.
>
> Then the [Meta] ad auction system, the way I understand it when it's being explained to me by [Meta] employees who work on it, is that when those people who engaged or expressed interest in it will get more of it. Right?

> Because, like, more people like them—right—will get more of it. And that will help ensure that the ad is both seen by lots of people, but by people especially who want to engage with it. That's the benefit. Right? For the—for [Meta], in terms of engagement. And it's a benefit for the ad buyer in terms of they have engaged people, right, in their ads.
>
> But that changes who's being targeted. Right? Because there's like the initial targeting list. And then it's like how that's shaped by the auction. And then that's when we end up with the final reach or impression numbers. And I think that middle part is not really known, to my knowledge, to the consultancy or campaign placing the ad. What change that made.

Dr. McGregor summarized by explaining, "if a campaign or consultancy uploads a lookalike file for a lookalike audience to be created, based on, they have that information." However, "they will never have the information about the actual targets of that ad campaign that was based on the lookalike audience that was created by [Meta]."

The evidence in the record, including Dr. McGregor's sworn testimony, shows that the disclosure law's "requirements specify information about individual political ads that is readily available to advertising platforms, but may not be available to campaigns." Indeed, Meta itself stresses this advantage to potential advertisers because Meta collects such detailed information about its members. Clerk's Papers (CP) at 7163-65 ("Your audience is on

Facebook"). Meta otherwise does not put forth evidence that there is not substantial relationship between, on the one hand, the disclosure law and, on the other hand, an informed electorate. The only evidence in the record supports the State's position on this point.

Thus, Meta has not created a genuine issue of material fact that the disclosure law does not bear a substantial relationship with the government's interest in fostering an informed electorate.

b. Sufficiently Narrowly Tailored

We hold that Meta did not create a genuine issue of material fact that RCW 42.17A.345 and WAC 390-18-050, operating together, are not sufficiently narrowly tailored to achieve their governmental aim because, inter alia, Meta does not present "specific facts" showing how the disclosure law unnecessarily burdens its own or others' First Amendment rights. Bucci, 197 Wn. App. at 326.

i. No Genuine Issue of Material Fact as to Unnecessary Burdens on Meta's First Amendment Rights

"While exacting scrutiny does not require that disclosure regimes be the *least restrictive* means of achieving their ends, it does require that they be narrowly tailored to the government's asserted interest." *Bonta*, 594 U.S. at 608 (emphasis added). "[A] reasonable assessment of the burdens imposed by disclosure should *begin* with an understanding of the extent to which the *burdens are unnecessary,* and that requires narrow tailoring." *Id.* at 611 (emphasis added). In other words, the "[t]ouchstone for exacting

scrutiny [under the First Amendment] is whether there is a '*fit* [between the chosen means and the purported ends] that is not necessarily perfect, but *reasonable*.'" *Washington Post v. McManus*, 944 F.3d 506, 523 (4th Cir. 2019) (emphasis added) (quoting *McCutheon v. Fed. Election Comm'n*, 572 U.S. 185, 218, 134 S. Ct. 1434, 188 L. Ed. 2d 468 (2014)).

In *Bonta*, for example, the Supreme Court concluded that a mandatory state collection of charitable donation forms was not sufficiently narrowly tailored to offset the potential privacy concerns of donors. 594 U.S. at 615-16. The Court concluded the mandatory collection requirement compromised donors' First Amendment right of free association. *Id.* at 616-17. Meta makes no such argument here. More relevantly, the Court was unconvinced the government needed to collect that quantity of data to combat charity fraud. *Id.* (characterizing the requirement as "indiscriminately sweeping up the information of every major donor").

Thus far, Washington cases applying exacting scrutiny to other disclosure laws have not examined, in detail, what constitutes a "narrow tailoring" and "unnecessary burdens." *Bonta*, 594 U.S. at 611.

Again, "[t]he party moving for summary judgment bears the initial burden of showing that there is no disputed issue of material fact." *Haley v. Amazon.com Servs., LLC*, 25 Wn. App. 2d 207, 216, 522 P.3d 80 (2022). "The burden then shifts to the nonmoving party to present evidence that an issue of material fact remains." *Id.* We will conduct this step of the analysis

with reference to the superior court's granting of the State's motion for summary judgment.[16]

(a) The State's Initial Showing

At its most general level, the State argues in briefing that the disclosure law is sufficiently narrowly tailored to achieve its purpose of informing the electorate because the "transparency" it generates "assists the public in understanding the context for why a group is advocating for or against a position in an election." In other words, "[t]he law provides the public 'with the information with which to assess the various messages vying for their attention in the marketplace of ideas.'" Br. of Resp't at 47 (quoting *Brumsickle*, 624 F.3d at 1008).

To explain why it is necessary to disclose information identifying all the discrete pieces of data the disclosure law requires, Dr. McGregor explained:

> The value ad that Meta has is the ability to target along very specific lines that is different than other types of advertising. In different mediums.

And when asked what the "basis" for making that assertion was, Dr. McGregor responded:

> Because that is the reason that people advertise on Meta and other digital

[16] At oral argument, Meta acknowledged that the result would be the same if we were to conduct our analysis with reference to the court *denying* Meta's summary judgment. Wash. Ct. of Appeals oral argument, *supra*, at 3 min., 23 sec., through 3 min., 59 sec.

> platforms. Is because it is lower cost and more precise.

According to the State, "[t]argeting is the primary service of a product rendered by Meta for sponsors of political ads and is essential to understanding the purpose and meaning of political ads appearing on that platform." And each piece of data required by the disclosure law supports the requestor's understanding of the nature of the targeting involved in a given ad.

Thus, we hold that the State has put forth competent evidence that there is, not just a reasonable "fit" with the government's goals, but that the goal is perfectly aligned with the data required by RCW 42.17A.345 and WAC 390-18-050. *McManus*, 944 F.3d at 521. That is, the disclosure law is tailored to pull into the light of day the most essential and unique aspects of modern social media political advertising: micro-targeting.

Moreover, the State argues that determining whether the content of an ad is "political" is not an unnecessary burden, or as challenging as Meta claims, because "Meta already knows how to and does identify political ads based on a definition."[17] Specifically, the State avers Meta is not burdened unnecessarily by the disclosure law, but is simply refusing to filter the ads that it already tracks nationally and internationally. *See* Wash. Ct. of Appeals oral argument, *supra*, at 17 min., 2 sec., through 17 min., 26 sec.

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[17] The State argues that Meta's "broader definition" of political ads already captures Washington political ads, which means Meta can maintain records for a broader set than technically required.

In support, the State proffers documents related to the online "Meta Business Help Center," which previously defined "[a]ds about social issues, elections or politics" as:

> (1) Made by, on behalf of, or about a candidate for public office, a political figure, a political party, a political action committee, or advocates for the outcome of an election to public office; or
>
> (2) About any election, referendum, or ballot initiative, including "go out and vote" or election campaigns; or
>
> (3) About social issues in any place where the ad is being placed; or
>
> (4) Regulated as political advertising.

Finally, as another State expert, Dr. Laura Edelson, a postdoctoral researcher an New York University whose expertise is in Facebook political advertising, testified, Meta's alternate path to providing the same data (training a new sorting model, which will be discussed further below) was "[d]efinitely one of the more expensive options." Dr. Edelson recommended, instead, that Meta "set up Washington state as its own region within the Ad Library," which again is already collecting ad data and would cost approximately $200,000. In arriving at this estimate, Dr. Edelson reasoned that "to make the change itself would probably—you need one engineer—I'm going to be really, really conservative and say a quarter. And obviously, you need to—you know, a few other people like a tester; you need a product manager to sort of oversee things." Regardless of the precise cost, Dr. Edelson opined that this option

would be a "very inexpensive route to comply with the Washington State [disclosure law]."

Dr. Edelson's recommendation was based in part on her own experience "buil[ding] a topic model for elections that covered state and local elections," but not specifically for Washington, and on the undisputed fact that Meta has already altered its Ad Library to accommodate the election laws of other nations, for example, the United Kingdom and Canada. Dr. Edelson explained that "[Meta] made additional data about the advertiser, including the address, available through the ad library, and I believe to be in compliance with—with U.K. law" around the time of the 2019 election.

Dr. Edelson testified in detail as to Meta's assertion of an unnecessary burden and concluded that Meta "can comply with these regulations" as it is "[s]omething that is well within—very comfortably within Meta's capabilities; it wouldn't strain it as a business." We hold the State has met its initial burden to show a "fit" that is neither ill tailored to the government's goal or otherwise unnecessarily burdensome on Meta's rights.

(b) Meta's Response

As an initial response, Meta argues the State's assertion that it could easily comply, such as by modifying the existing Ad Library, were "premised on guesswork and erroneous assumptions." Such a "conclusory" statement does not defeat the foregoing evidence offered by the State at this stage of the summary judgment burden shifting. *Grimwood v. Univ. of Puget Sound, Inc.*, 110 Wn.2d 355, 359-60, 753 P.2d 517 (1988), *abrogated on other grounds by*

Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County, 189 Wn.2d 516, 527, 404 P.3d 464 (2017).

More generally, Meta argues that the "marginal benefit" of the disclosure law is "easily outweighed by the severe burdens [it] places on platforms." Specifically, Meta makes three major categories of arguments.

First, Meta asserts it is indeed burdensome to determine which ads are political. As told by Meta, the disclosure law makes identifying ads challenging because the term "political advertising" broadly includes any ad "used for the purpose of appealing, directly or indirectly, for votes or financial or other support or opposition to any election campaign." Meta avers the challenge is compounded by the term "electioneering communication," which it asserts covers any ad that "clearly identifies a candidate" even if it does not include the candidate's name. According to Meta, determining whether an ad meets the above definition "often requires not just [1] initial screening by an algorithm, but also [2] subsequent human review."

As to the human review argument, Meta cited to the testimony of its employee, Frank Antzoulis, a program manager, describing how Meta's "markets team" conducted "sweeps" to "identify any ads that our normal models couldn't catch." In an attempt to comply with the disclosure, Mr. Antzoulis testified that "those sweeps were performed at a biweekly cadence," although the sweeps later were reduced from biweekly to monthly.

Mr. Antzoulis explained that, as part of their research, the teams identify which candidates are

running in Washington, then check if they appear in ads by undertaking the following process:

> We have a couple of different steps for them within our protocol where they essentially run a query to try to identify any ads that our normal models couldn't catch. They also do a *little bit of research* on who the current politicians are that are running in the Washington State, and they take a look at their pages to see if there's any ads that may be running that our machines didn't catch, things like that.
>
> Q: And you said that these sweeps are done by people?
>
> A: Yes. They're done by employees of Meta.
>
> Q: And do the employees have the discretion to craft queries?
>
> A: They do, if they have that capability. It's not a necessity for them to be able to craft a query, but if—we have queries that we created for them that they can use to take a look at, but they're investigators. They have the ability to track things down, and they know how to use our internal tooling.
>
> Q: What is your internal tooling? . . .
>
> A: We have various tools that the business integrity team uses to understand what kind of ads people have running, what kind of advertiser they are, what violations they've experienced in the past, the ability to run queries . . . .

(Emphasis added).

In short, an unknown number of persons on a team do a "little bit of research" and may or may not craft queries or use other tools, on a bi-weekly to monthly basis, to catch ads the algorithm may not catch.

As to the argument regarding the algorithm, Meta offered the testimony of an expert witness, Dr. Steven Weber, professor at the School of Information at the University of California Berkeley, who opined that a "machine learning system cannot serve as the exclusive solution to classify whether an advertisement falls under the Washington Disclosure Law" because:

> Algorithms are primarily written by people, and a *significant amount of coding work and system development* is required to write and refine algorithms that are efficient and accurate. In addition to the algorithm, machine learning systems in settings of this kind depend upon "training data." A set of training data typically consists of manually labeled examples of the classification that the system is being asked to perform.

(Emphasis added). Dr. Weber elaborated that:

> the classification required by the Washington Disclosure Law is a difficult one, even for humans to implement. It is not clear how a human would create such labeled data with a consistently high degree of accuracy, given that whether an ad is "political" is a *complex* determination that often requires input from multiple individuals. Moreover, even attempting to create this set would take *a*

> *large amount of time* (for example, to have multiple humans review and debate the instances that are challenging to classify) with no guarantee of it being successful or stable.
>
> Creating a sufficiently robust set of training data would be challenging for an additional reason. The need to identify Washington elections, candidates, and ballot propositions in particular means that very specific examples would have to be used in the training data in order to teach the machine to distinguish Washington Political Ads from other types of political advertising. But a candidate or ballot proposition in the State of Washington may only have a handful of ads, making it unlikely for there to be a sufficiently large corpus of training data.

(Emphasis added and omitted.) Further, Dr. Weber contrasted "ads about 'social issues, elections, or politics,' was a broader category than that of "ads about Washington state and local elections." Thus, it would be "much *easier* to create a high-quality training data set for these ads" because "there are far more examples available of ads that relate to 'social issues, elections, or politics.'" (Emphasis added).

In short, Meta's position is that it would take an unspecified but "significant amount of coding work and system development," followed by an equally unspecified "large amount of" human debate time to address this "complex" definitional challenge.

Finally, Meta offered testimony from Ani Vanesyan, a manager of business integrity for Meta,

that it had designed its ad identification system on a country-by-country basis. And, Meta argues that adding a Washington state-specific component to that system would include a "*substantial and significant amount of work*" that would "challenge the stability of the tool." (Emphasis added).

Even so, Ms. Vanesyan in the same deposition admitted modifying the Ad Library would still be "technically feasible."

> The way that the tool is written on the back end in terms of code is done in a particular way. Currently, it's done at the country level with all the fields. To create a whole new flow, while it could be *technically feasible* given some amount of time and certain number of engineers, et cetera, it would include substantial and significant amount of work to make this.
>
> It could also challenge the stability of the tool, because the more complex the code becomes on the back end, the more unstable the tool is. It would also entail quite a few new flows being created to differentiate ads, Washington State versus the rest of the advertising. So this would be nontrivial, and the time spent on this will also potentially be time away from more scalable solutions from extending political authenticity and transparency globally, et cetera.
>
> Q: So it would be costly; is that fair?
>
> A: Not just *costly in the sense of, you know, time and resources*. I think this would be complex. Again, it would challenge the

> stability of the tool, which doesn't really deal with cost but could *potentially jeopardize our commitments of authenticity and transparency* if the tool was, let's say, frequently not working as well as potentially delay our plans to provide these solutions to more countries.

(Emphasis added).

In sum, as to the burden imposed, Meta asserts that the disclosure law contains several that are unnecessary because revisions to the algorithm would take a "significant amount of work" and the human review would be "complex" and "costly" in "time and resources," even as it acknowledges that the former is "technically feasible" and Meta's market teams have undertaken a version of the latter process with a "little bit of research" and some queries.

Although Meta has put forth evidence that complying with the law would be unappealing in some sense, it has failed to establish a genuine issue of material fact because it has not provided evidence that supports an "understanding of the extent to which the burdens are unnecessary, and that requires narrow tailoring." *Bonta*, 594 U.S. at 611.

Specifically, Meta's argument fails to quantify how "significant" the revisions to the algorithm would be, how much more "time and resources" it would take for human review, or even how much any change in its practices would cost. After years of discovery, we know nothing more about the burden on Meta than high level, even "speculative," generalities which lack the "specificity" to create a genuine issue of material fact. *Bucci*, 197 Wn. App. at 326. Although Meta provided

evidence about two steps it would need to take, and alludes that it would need to hire multiple employees to, among other things, identify ads for retention and disclosure, nowhere does it identify the specific cost or number of employees required to do so.

Moreover, none of Meta's cited evidence indicates that it cannot comply; rather, the evidence only shows, as the State phrases it, that it would be inconsistent with Meta's corporate priorities to do so. Meta does not contest, or offer competing evidence to counter, this point. As the superior court found, "[i]n essence, the only reason why Meta refuses to comply with the law is, to put it colloquially, they don't want to let the public see how the sausage is made."

Finally, the question is whether the burdens, however steep, are unnecessary and require narrow tailoring. *Bonta*, 594 U.S. at 611. Meta's argument on these issues addresses none of the provisions of the disclosure law in question, let alone shows how any particular provision may create an unnecessary or untailored burden and thus the argument misses the mark at a more fundamental level.

For Meta to survive summary judgment, it must "set[] forth specific facts which sufficiently rebut the moving party's contentions" and not mere "argumentative assertions." *Ranger Ins. Co.*, 164 Wn.2d at 552 (quoting *Meyer v. Univ. of Wash.*, 105 Wn.2d 847, 852, 719 P.2d 98 (1986)). This first argument fails in that regard.

This conclusion leads us to Meta's second argument, which contends at a more granular level that the disclosure requirements of RCW 42.17A.345 and WAC 390-18-050 are unnecessarily burdensome

because they require communications platforms (a) to "disclose massive amounts of information"[18] (b) to anyone without a known purpose,[19] (c) on an "expedited timeframe,"[20] (d) all year long,[21] which (e) must be maintained for unnecessary amount of time[22] and (f) where few people have actually

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[18] Meta avers the disclosure law requires far more information than necessary, including, among other things, the address and payment method of the advertiser, neither of which furthers the State's interests.

[19] Meta contends it is too burdensome to permit anyone to request ads for any reason, instead of just Washington voters, and "[p]ermitting requests from people other than Washington voters bears no relation" to the State's interest in informing *its* voters. Meta otherwise does not indicate what purpose *would* render a request legitimate.

[20] Meta argues it is unreasonably burdensome for it to respond to requests within two business days. Even if it stipulated that it already collects the ad information, Meta avers that sorting what to disclose is time-consuming, and two days is insufficient and unnecessarily quick.

[21] Meta posits that the disclosure law's requirement that it respond to information requests throughout the entire year is unnecessary. In support, Meta avers that, because other Washington advertising disclosure laws require ad sponsors to disclose advertising information for only 21 days before an election instead of year-round, this disclosure law should do the same. Meta does not cite authority that suggests these other statutes control its compliance with the disclosure law, but simply argues that the State bore the burden to prove the year-round disclosures were necessary.

[22] Meta argues the disclosure law is not sufficiently narrowly tailored because it requires it to retain the ad data for five years. Meta does not explain how the five-year retention requirement is burdensome, it merely compares the WAC 390-18-050 with a statute from another state.

requested this data.[23] For Meta, the disclosure law creates a burden that, in the form of "death by a thousand cuts," is not sufficiently narrowly tailored to serve the State's interests.

In response to Meta's assertion that requiring the disclosure of information such as the advertiser's payment method is unnecessary, the State expands on its argument that such information is necessary to help voters understand who pays for advertising to persuade them. Dr. McGregor explained, "if we are talking about digital political ads, to understand it . . . someone would need to know the source; the cost; the content of the ad; and the targeting parameters." This information is necessary, Dr. McGregor says, "[b]ecause giving only one part of that and not the other part at the same time could lead to, you know, a deep misinterpretation of what the nature of advertising that was actually happening on the platform was."

For example, as explained by another State witness, Dr. Travis N. Ridout, the Director of the School of Politics, Philosophy, and Public Affairs at Washington State University, a candidate may attempt to either encourage its supporters to participate or discourage their opposition from participating. It is not enough to know that "I use a political ad that makes people angry. If I'm aiming that at supporters of my campaign—or presumed supporters of my campaign, that can be used to mobilize." Alternatively, Dr. Ridout explained, "if I use

[23] Meta contends that, while anyone can request this data for any purpose, noting that not many people have actually requested the ad data in the first place.

that same ad that makes people angry, but aimed that at people who are not my supporters, that can actually serve to—to demobilize." As such:

> when there is misinformation contained within political ads, I think having that targeting information can help to diagnose that and see whom that information is aimed at.[24]

We agree with the State that gathering and providing the advertiser's identity, intended audience, and the source of their funding, for example, is closely tailored to the State's goal of helping a voter to evaluate *why* they received a certain ad. It is true that a particular piece of the data required by the disclosure law in a given situation may not always align perfectly with the State's goals; perhaps the payment method may not be that illuminative to understand a given ad. However, the "[t]ouchstone for exacting scrutiny [under the First Amendment] is whether there is a 'fit [between the chosen means and the purported ends] *that is not necessarily perfect*, but reasonable.'" *McManus*, 944 F.3d at 523 (emphasis added) (quoting *McCutcheon*, 572 U.S. at 218). Exacting scrutiny simply does not require a law use the least restrictive means. *Bonta*, 594 U.S. at 608.

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[24] In another example unrebutted by Meta, the State noted at oral argument before this court that the disclosure law revealed some advertisers in the 2016 election had bought political ads through Meta purchased the ads with rubles. Wash. Court of Appeals oral argument, *supra*, at 21 min., 51 sec. through 22 min., 18 sec. Thus, the payment information may inform a voter how to appropriately weigh the ad's persuasive value.

And there is no genuine issue of material fact that the fit is reasonable.

As to Meta's claim that non-Washington residents may request this data for any reason, the State again avers that oftentimes journalists, academics, activists, and others who may not reside in Washington are in the best position to disseminate information about ad data. In many cases, as the State asserts in its brief, "[t]he public relies on third parties to become informed," including academic researchers, in this case, testifying on behalf of the State. Meta does not dispute this claim. Thus, we agree with the State that Meta does not establish a genuine issue of material fact that the "fit" between who can request information, why they may do so, and the State's goal is unnecessarily burdensome. *McCutcheon*, 572 U.S. at 218.

Meta next contends that it is overly burdensome to have to comply with information requests within two business days,[25] but the Supreme Court in

[25] For its part, the State asserts that the disclosure law actually only requires Meta to maintain such records within two business days. And the State argues that that timeframe is not burdensome because Meta already has the information in its Ad Library within 24 hours. That is acknowledged. *See* Clerk's Papers (CP) at 7305 (in Meta's answer to an interrogatory, it stated "[g]enerally, an ad will appear in the Ad Library within 24 hours from the time it gets its first impression. Any changes or updates made to an ad are typically reflected in the Ad Library within 24 hours."). Moreover, a 48-hour email transmission is only one way of making the record open for "public inspection;" other options include having the record available in person during normal business hours. WAC 390-18-050(4). But that answer does not go to the core question as to whether the requirement is an unnecessary burden.

McConnell considered a requirement for *timely* disclosure of advertiser data and concluded that, "[g]iven the relatively short timeframes in which electioneering communications are made, the interest in assuring that disclosures are made promptly and in time to provide relevant information to voters is unquestionably significant." 540 U.S. at 200. We agree with the State that Meta has failed to establish a genuine issue of material fact that a 48-hour requirement sufficiently narrowly tailored, even if not a perfect fit in all cases, given the well-known dynamic nature of campaigns.

In response to Meta's contention that requiring it to respond to disclosure requests year-round is overly burdensome, the State argues that, in fact, advertisers purchase ads for political purposes outside of the 21-day period before an election, which is a standard laid out in other disclosure laws. And, as noted, the State has shown that Meta already collects this information in its usual course of business throughout the year. Even if there may be time periods where fewer political ads are posted, we agree with the State that Meta has not established a genuine issue of material fact that a year-round requirement is insufficiently fitted to the government's purposes or otherwise unnecessarily burdensome. *McCutcheon*, 572 U.S. at 218.

Meta also avers that a five-year retention period is overly long, but fails to offer a reason, let alone evidence, to show why retaining ad data for five years is burdensome. Moreover, the sworn testimony of Ms. Vanesyan establishes that Meta's Ad Library retains

this targeting information as part of its regular business for "at least" seven years:

> Q: So the targeting information that is selected by the advertiser, that is not in the Ad Library correct?
>
> A: Yes, that's correct.
>
> Q: And is that—that's not in the Ad Library report; correct?
>
> A: My understanding at this time and recollection is that it's also not in the Ad Library report.
>
> Q: But that information is retained by [Meta] for seven years; is that correct?
>
> A: At least seven years, yes.

Meta, thus, does not establish a genuine issue of material fact as to whether the retention period required under the disclosure law is unnecessarily burdensome.

Finally, as to Meta's claim that few people have actually requested this data, there is no authority requiring that there be a minimum number of requestors before any given person or the PDC itself avail itself of the disclosure law. *See* RCW 42.17A.345(2) (requiring platforms to provide the PDC copies of the ads on demand). And, it offers no authority to suggest that the court must consider the number of requestors or how such a determination factors into a ruling on summary judgment, given the constraints of the procedural posture presented in this case.

We conclude that Meta does not prevail on even its more granular arguments either because it has failed to demonstrate any genuine issue of material fact that certain specific provisions of the disclosure law are not narrowly tailored or are unnecessarily burdensome, or because controlling authority does not support these various positions.

As to its third category of arguments, Meta asserts that it is burdened because it faces severe penalties if it fails to comply with the disclosure law.[26] In arguing the fees are burdensome, Meta compares the Washington disclosure law with a statute from another state, which does not control here. Meta further argues that even an inadvertent error on its part can open it to expensive sanctions in perpetuity. Meta offers no binding authority for the proposition that the enforcement mechanism of an otherwise constitutional statute creates is unnecessarily burdensome. And Meta does not create a genuine issue of material fact by simply speculating about future possibility of further enforcement action. *Bucci*, 197 Wn. App. at 326.[27]

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[26] Part of its contention here turns on whether Meta would be sanctioned for violations per undisclosed ad versus per failure to respond to requests. We will address the calculation of damages and penalties per violation in Part C.

[27] Furthermore, when Meta was asked at oral argument before this court what the best evidence was that the disclosure law burdened Meta, its counsel referred to its own self-imposed ban and decision to leave political advertising in Washington, rather than comply with the law. Wash. Court of Appeals oral argument, supra, at 30 min., 48 sec., through 32 min., 15 sec. Meta's seemingly circular reasoning does not create a genuine issue of material fact and thus is also unavailing.

We conclude that Meta has not met its burden "to present evidence that an issue of material fact remains" as to whether the disclosure law is insufficiently narrowly tailored to its stated purpose. *Haley*, 25 Wn. App. 2d at 216. In turn, the trial court did not err in concluding the disclosure law withstood the second step of the exacting scrutiny analysis, at least with respect to Meta's *own* claimed burdens.

ii. Standing to Raise Burden on the Rights of Others

Meta next argues that the disclosure law unconstitutionally burdens not only its own First Amendment rights, but also those or other rights of at least two other classes of persons; namely, the privacy interests of the purchaser and viewers of ads, and the free speech rights of upstart, grassroots candidates.

As a preliminary matter, explored at oral argument,[28] we have serious doubts that Meta has standing to assert even the constitutional portions of its claims. Although the parties did not brief this issue, an appellate court may raise the issue of standing sua sponte at any time, even if a party has not raised it. RAP 2.5(a); *In re Recall of West*, 156 Wn.2d 244, 248, 126 P.3d 798 (2006).

It is axiomatic that "[e]very action shall be prosecuted in the name of the real party in interest." CR 17(a). And the issue of standing is reviewed de novo by appellate courts. *Knight v. City of Yelm*, 173 Wn.2d 325, 336, 267 P.3d 973 (2011). The question is whether, under the established rules of third party

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[28] *See* Wash. Court of Appeals oral argument, *supra*, at 23 min., 19 sec., through 23 min., 51 sec.

standing: (1) the litigant has suffered an injury-in-fact; (2) the litigant has a close relationship to the third party; and (3) there exists some hindrance to the third party's ability to protect their own interests. *Mearns v. Scharbach*, 103 Wn. App. 498, 512, 12 P.3d 1048 (2000); *see also Powers v. Ohio*, 499 U.S. 400, 410-11, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991) ("recogniz[ing] the right of litigants to bring actions on behalf of third parties, *provided* three important criteria are satisfied") (emphasis added).

Focusing only on the third element of prudential third party standing, Meta fails to establish that, nor can we envision how, there is some "hindrance to the third party's ability to protect their own interests." Meta does not present any evidence or offer any authority indicating that ad purchasers, viewers, or political campaigns cannot litigate their own First Amendment claims. Indeed, political campaigns and actors in Washington have vigorously pursued their own right to free speech in our state and, in fact, have specifically alleged that the FCPA infringed upon their First Amendment rights with respect to political ads. *See, e.g.*, *Wash. State Republican Party v. Public Disclosure Comm'n*, 141 Wn.2d 245, 4 P.3d 808 (2000); *Rickert v. Public Disclosure Comm'n*, 161 Wn.2d 843, 168 P.3d 826 (2007). Thus, while there is no authority on point, we hold, on this record and on the briefing before us, that Meta lacks standing to asserts such claims.

As to the non-constitutional third-party privacy rights allegedly violated here, it is clear that Meta has no third party standing to raise its constitutional claims based on the right to privacy of another. *See,*

e.g., *State v. Farmer*, 116 Wn.2d 414, 805 P.2d 200 (1991) (denying standing where a defendant convicted of sexual exploitation of a minor and patronizing a juvenile sex worker challenged the governing criminal statute for violating the victim's First Amendment); *Keepers, Inc. v. City of Milford*, 807 F.3d 24 (2d Cir. 2015) (same).

Accordingly, we decline to consider Meta's arguments regarding the rights, constitutional or otherwise, of third parties.

4. McManus Does Not Control

The authority Meta most relies on is *McManus*, which it claims "explains why the [] Disclosure Law is unconstitutional." We conclude that *McManus* is distinguishable.

In *McManus*, the Fourth Circuit struck down, stated generally, "a Maryland law [that required] newspapers, among other platforms, *to publish on their websites*, as well as retain for state inspection, certain information about the political ads they decide to carry." 944 F.3d at 510 (emphasis added).[29] Specifically, in some similarity to the disclosure here, the Maryland law there required the covered entities, "within 48 hours of an ad being purchased . . . [to] display somewhere on their site the identity of the purchaser, the individuals exercising control over the purchaser, and the total amount paid for the ad." *Id.* at 511. Further, the Maryland law required platforms

[29] The Maryland legislature revised its disclosure laws to more clearly include online political advertising to, among other reasons, address the rise in foreign election interference targeting its residents. *McManus*, 944 F.3d at 510-11.

to "keep [the ad] information online for at least a year following the relevant election" for voters to review upon request. *Id.*

Several news outlets sued to enjoin the Maryland law from becoming effective because its "publication and inspection requirements violated the First Amendment—both facially, as a regulation that targets neutral third-party platforms, and also as-applied, as a law encompassing *news outlets*." *Id.* at 512.

The court concluded that the Maryland act's disclosure and publication requirements were "compelled speech." *Id.* at 514. The court held that a core problem with Maryland's law was that it made "certain political speech more expensive to host than other speech because compliance costs attach to the former and not to the latter." *Id.* at 516.

Meta argues in its opening brief that "*McManus*'s logic applies with 'even greater force' here because the Disclosure Law places heavier burdens on platforms and thus is more likely to result in closing off avenues for political speech." In reply, Meta asserts that the holding in *McManus* does not turn on the fact that the Maryland statute imposed disclosure requirements upon newspapers. This argument is unpersuasive.

The Court in *McManus* decided the case at least in part because "the [Maryland] Act forces *news outlets* to publish certain information on their websites and, if they fail to do so, empowers the state to seek a court order to have content pulled from these platforms. This brings with it *yet another* First Amendment infirmity." *McManus*, 944 F.3d at 517-18 (emphasis added).

Meta differs significantly from a newspaper. For purposes of the service in question, Meta is comparable to a billboard where advertisers pay, not only to display their messages, but for Meta to decide where to place the billboard, and thus target a particular group of viewers. There is nothing in the record that demonstrates that Meta exercises editorial control over the content, as a newspaper does. Unlike billboards, "[t]he [Supreme] Court has made clear that news products are of a part with parades, political leaflets, fundraising pitches, or similar *expressive* endeavors." *Id.* at 520 (emphasis added).

Moreover, the court in *McManus* repeatedly emphasized that "*the core problem* with this provision of the Act is that it lacks any readily discernable limits on the ability of *government* to supervise the operations of the newsroom." *Id.* at 518-19 (emphasis added). "Not only does [the Maryland act] compel the Publishers to turn over information to state regulators, it also brings the state into an unhealthy entanglement with news outlets," by requiring that they alter the content of a news product. *Id.* at 518-19. The court held, "[t]he Supreme Court has made clear that when the government tries to interfere with the content of a newspaper or the message of a news outlet, the constitutional difficulties mount." *Id.* at 517. No such editorial entanglement occurs here with Meta.

Finally, in *McManus*, one of the requirements of the Maryland law was that newspapers display information to the public at large in their product, *id.* at 514, while the Washington laws only require Meta to disclose the required data to *individual requesters*

in a variety of formats. RCW 42.17A.345; WAC 390-18-050(4)(a)-(b). The speech at issue here, to the extent there is any, is simply transmittal of data Meta already keeps in a form separate and apart from its product platform, and, thus, is not "compelled" in the same way.

In sum, we conclude *McManus* is distinguishable because it arises from a materially different type of legal framework within a different state statutory scheme as applied to a different type of entity. *McManus* was not presented with some of the differentiating facts that appear in the case before us, where the requirement (a) is one of only record-keeping and disclosure or inspection of data Meta is already keeping, (b) does not apply to newspapers and their unique and complex constitutional rights, and (c) does not involve the government in editorial decisions, as there are none.

Thus, Meta has not carried its burden, as the nonmoving party on summary judgment, "to create an issue" of material fact. *Rice*, 167 Wn. App. at 89. Ultimately, Meta's response is simply an "argumentative assertion[] that unresolved factual issues remain." *Bucci*, 197 Wn. App. at 326 (quoting *Ranger Ins. Co.*, 164 Wn.2d at 552).

B. Express Federal Preemption

Meta next avers that the disclosure law is expressly preempted by federal law. Under the Supremacy Clause of the United States Constitution, "the laws of the United States ... shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding." U.S.

Const. art. VI, cl. 2. As such, state laws that conflict with federal law are "without effect." *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S. Ct. 2114, 68 L. Ed. 2d 576 (1981).

A given federal law may avail itself of this well-known principle and preempt a state law expressly or implicitly. *Kissan Berry Farm v. Whatcom Farmers Coop.*, 23 Wn. App. 2d 490, 500, 516 P.3d 821 (2022). Namely, "[i]f 'Congress expressly withdraws specified powers from a state through a statutory provision,' there is express preemption." *City of Woodinville v. Eastside Cmty. Rail, LLC*, 22 Wn. App. 2d 121, 127, 510 P.3d 355 (2022) (quoting *Beatty v. Fish & Wildlife Comm'n*, 185 Wn. App. 426, 454, 341 P.3d 291 (2015)).

Courts gauge a federal law's preemptive effect by "'focus[ing] on the plain wording of [a given federal statute's preemption] clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'" *Commonwealth of Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 125, 136 S. Ct. 1938, 195 L. Ed. 2d 298 (2016) (quoting *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594, 131 S. Ct. 1968, 179 L. Ed. 2d 1031 (2011)).

"'We must interpret an express preemption clause narrowly but fairly.'" *Woodinville*, 22 Wn. App. 2d at 127 (quoting *Kitsap County v. Kitsap Rifle & Revolver Club*, 1 Wn. App. 2d 393, 404, 405 P.3d 1026 (2017)). That is, express preemption is found "when Congress has 'unmistakably . . . ordained,' that its enactments alone are to regulate a part of commerce, [and thus] state laws regulating that aspect of commerce must fall." *Jones v. Rath Packing Co.*, 430 U.S. 519, 525, 97 S. Ct. 1305, 51 L. Ed. 2d 604 (1977) (quoting *Florida*

Lime & Avocado Growers, Inc. v. Paul, 373 U.S. 132, 142, 83 S. Ct. 1210, 10 L. Ed. 2d 248 (1963)).

Consistent with this authority, our Supreme Court has held that there is a strong presumption against preemption. *Nw. Wholesale, Inc. v. Pac Organic Fruit, LLC*, 184 Wn.2d 176, 184, 357 P.3d 650 (2015) ("'any consideration of preemption issues starts with the assumption that the historic police powers of the States are not to be superseded by ... Federal Act unless that is the clear and manifest purpose of Congress.'") (quoting *Hue v. Farmboy Spray Co., Inc.*, 127 Wn.2d 67, 78, 896 P.2d 682 (1995)) (internal quotation marks and alterations omitted).

"The meaning of the presumption against preemption is twofold." *Hue*, 127 Wn.2d at 79. "First, where Congress expressly addresses state authority in a federal law, the preemptive scope of the federal law should not be extended any further by resort to an implied preemption analysis." *Id.* Second, "'Congress' enactment of a provision defining the pre-emptive reach of a statute implies that matters beyond that reach are not preempted.'" *Id.* (quoting *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 517, 112 S. Ct. 2608, 120 L. Ed. 2d 407 (1992)).

"Preemption is a question of law we review de novo." *McKee v. AT&T Corp.*, 164 Wn.2d 372, 387, 191 P.3d 845 (2008).

1. Section 230 of the Communications Decency Act

Section 230 of the federal Communications Decency Act states, in pertinent part, that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any

information provided by another information content provider." 47 U.S.C. § 230(c)(1). And, in its preemption clause, the statute declares that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* at (e)(3).

"Section 230 was prompted by a state court case holding Prodigy [an online platform] responsible for a libelous message posted on one of its financial message boards." *Fair Hous. Council of San Fernando Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1163 (9th Cir. 2008) (discussing *Stratton Oakmont, Inc. v. Prodigy Servs. Co.*, No. 31063/94, 1995 WL 323710, 1995 N.Y. Misc. LEXIS 229 (Sup. Ct. May 24, 1995) (unpublished)). The *Roommates.com* court observed that, in *Stratton Oakmont*, "Prodigy had become a 'publisher' under state law because it voluntarily deleted some messages from its message boards 'on the basis of offensiveness and bad taste' and therefore was legally responsible for the *content* of defamatory messages that it failed to delete." *Id.* (emphasis added) (internal quotation marks omitted) (citing *Stratton Oakmont*, 1995 WL 323710 at *4). In that situation, "[u]nder the reasoning of *Stratton Oakmont*, online service providers that voluntarily filter some messages become liable for all messages transmitted, whereas providers that bury their heads in the sand and ignore problematic posts altogether escape liability." *Id.* "In passing section 230, Congress sought to spare interactive computer services this grim choice." *Id.*

More broadly, Section 230 preemption seeks "two parallel goals[:] . . . 'to promote the free exchange of

information and ideas over the internet and to encourage voluntary monitoring for offensive or obscene material'" by shielding platforms from liability. *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1099-1100 (9th Cir. 2009) (quoting *Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003)).

Section 230 preemption intuitively applies to actions sounding in tort, such as defamation, but courts have made clear that its scope may apply to all civil cases as "many causes of action might be premised on the publication or speaking of what one might call 'information content.'" *Id.* at 1101 (quoting 47 U.S.C. § 230(c)(1)). "Thus, what matters is not the name of the cause of action . . . what matters is whether a cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Id.* at 1101-02 (quoting 47 U.S.C. § 230(c)(1)).

The Ninth Circuit created a three-part Section 230 preemption test in *Barnes*. *Id.* Under this test, Section 230 "only protects from liability (1) a provider or user of an interactive computer service (2) *whom a plaintiff seeks to treat, under a state law cause of action, as a publisher or speaker* (3) of information provided by another information content provider." *Id.* (emphasis added).

In the present appeal, the parties only contest the second prong of *Barnes*, as there is no dispute that Meta is an "interactive computer service" and that third parties generate the "information content" of the political ads.

By way of a brief taxonomy, courts have held that a plaintiff treats a defendant as a publisher, and thus preemption applies, in two relevant scenarios consistent with the *Barnes* test. First, preemption may occur when "'a service provider [is held] liable for *its exercise of a publisher's traditional editorial functions*—such as deciding whether to publish, withdraw, postpone or alter content.'" *Schneider v. Amazon.com, Inc.*, 108 Wn. App. 454, 463, 31 P.3d 37 (2001) (emphasis added) (quoting *Zeran v. America Online, Inc.*, 129 F.3d 327, 330 (4th Cir. 1997)).

Second, a state law is preempted when it "would *necessarily require* an internet company *to monitor* third-party *content*." *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 682 (9th Cir. 2019) (emphasis added). *HomeAway* concerned a municipal ordinance prohibiting short-term rental platforms, such as Airbnb and HomeAway, from processing rental transactions for properties not listed in an official city registry of such properties. *Id.* at 680. HomeAway argued Section 230 preempted the ordinance because "it implicitly require[d] them 'to monitor the content of a third-party listing and compare it against the City's shortterm rental registry before allowing any booking to proceed." *Id.* at 682.

The court in *HomeAway* upheld the city ordinance, reasoning that the "booking transaction-content that, while *resulting from* the third-party listings, is distinct, internal, and nonpublic." *Id.* "While keeping track of the city's registry is 'monitoring' third-party content in the most basic sense, such conduct cannot be fairly classified as 'publication' of third-party content" as the platforms

"have *no editorial control* over the registry whatsoever." *Id.* at 683 (some emphasis added).

The court also held that Section 230 does not "suggest that [its] immunity attaches any time a legal duty *might* lead a company to respond with monitoring or other publication activities." *Id.* at 682 (emphasis added). "[I]t is not enough that the third party [content is] a 'but-for' cause of such internal monitoring." After all, "[t]o provide broad immunity 'every time a website uses data initially obtained from third parties would eviscerate [the disclosure law].'" *Id.* (quoting *Barnes*, 570 F.3d at 1100).

Moreover, a "'service provider remains liable for *its own speech*' and *for its own unlawful conduct*." *Airbnb, Inc. v. City of Boston*, 386 F. Supp. 3d 113, 119 (D. Mass. 2019) (emphasis added) (quoting *Universal Commc'n Sys., Inc. v. Lycos, Inc.*, 478 F.3d 413, 419 (1st Cir. 2007)). In contrast, liability does not attach for "publication," which "involves reviewing, editing, and deciding whether to publish or to withdraw from publication *third-party* content." *Barnes*, 570 F.3d at 1102 (emphasis added). As such, if a "provision is aimed at regulating [the defendant's] *own conduct*, and not punishing it for content provided by a third party, [Section 230] does not preempt it." *Airbnb, Inc.*, 386 F. Supp. 3d at 120 (emphasis added).

In short, a law is preempted under Section 230 if it "(1) makes the defendant liable for publishing certain information to third parties, and (2) seeks to impose liability based on that information's improper content." *Henderson v. Source for Public Data, L.P.*, 53 F. 4th 110, 120-21 (4th Cir. 2022) (emphasis added).

2. Application of Section 230 to Meta

Meta urges us to hold that Section 230 expressly preempts Washington's disclosure law. Specifically, Meta argues the disclosure law is "preempted twice over because a defendant's being a publisher and engaging in publication are both elements of a claim under the law." As to the former, Meta avers that the disclosure law defines "commercial advertisers" effectively as publishers in that they must "sell[] the service of communicating messages or producing material for *broadcast or distribution* to the general public or segments of the general public." (Emphasis added). As to the latter, Meta claims liability under the disclosure law is triggered, and preempted, only when an ad is "publicly distributed or broadcast;" when a publisher is engaging in the act of publishing.

Meta fundamentally mischaracterizes the two main aims of RCW 42.17A.345 and WAC 390-18-050, namely, recordkeeping and disclosure. The disclosure law, indeed, does regulate online platforms that have "accepted or provided political advertising or electioneering communications during the election campaign" and distributed such content. RCW 42.17A.345(1). But the fact of distribution alone does not end the inquiry. "[I]t is not enough that the third party [ads] are a '*but-for*' cause of" the basis of liability. *HomeAway*, 918 F.3d at 682 (where the court was considering the meaning of "internal monitoring") (emphasis added). Instead, the State must be treating Meta as a publisher by either penalizing its exercise of a publisher's traditional editorial functions, or forcing Meta to monitor third party content.

Here, as explained in more detail above, entities covered by the disclosure law are obligated to "maintain current books of account and related materials as provided by rule." RCW 42.17A.345(1). The disclosure law then tasks platforms with preserving numerous pieces of data underlying these political ads for public inspection during normal business hours or disclosure. *Id.* at (1)(a)-(c); WAC 390-18-050(6)-(7). In sum, these record keeping obligations are independent of Meta's "broadcasting" services, even if we were to assume "broadcasting" is tantamount to "publication."

The disclosure law does not create liability for the actual publication of ads or, crucially, the actual content of an advertisement. Instead, the disclosure law imposes liability squarely for Meta's own conduct, namely whether it "maintain[ed] current books of account" that can be "open for public inspection." RCW 42.17A.345(1). And if a "provision is aimed at regulating [the defendant's] own conduct, and not punishing it for content provided by a third party, [Section 230] does not preempt it." *Airbnb*, 386 F. Supp. 3d at 120.

Meta next argues the disclosure law improperly treats Meta as a publisher by "requir[ing] the platform to review third-party content posted on its site." Specifically, Meta avers that the disclosure law's "nuanced definition of 'political advertising'" necessarily requires Meta to monitor third-party content in violation of *HomeAway*.

Even if we were to assume the disclosure law requires Meta to review ads, any more than it already does voluntarily, it "does not proscribe, mandate, or

even discuss the content of the" ads beyond identifying the broad, high-level categories of "political advertising or electioneering communications during the election campaign." *HomeAway*, 918 F.3d at 683 (emphasis added); RCW 42.17A.345(1). As the Fourth Circuit held, Section 230 "applies only when the claim depends on the content's impropriety." *Henderson*, 53 F.4th at 125 (emphasis added). The disclosure law is not concerned with the impropriety of any actual specific content of any political ad. In that sense, the disclosure law is content-neutral and nonpartisan. And for that reason, this argument fails.

At most, the disclosure law merely tasks Meta with placing ads into "political" and "non-political" categories to facilitate future inspection or disclosure, which it has attempted to do for several years anyway through its Ad Library. The disclosure law does not require Meta to "publish, withdraw, postpone or alter *content*" contained within those groupings. *Schneider*, 108 Wn. App. at 463 (quoting *Zeran*, 129 F.3d at 330) (emphasis added). In other words, while categorization may be monitoring "in the most basic sense, such conduct cannot be fairly classified as 'publication' of third-party content" as Meta has "*no editorial control* over" the ads "whatsoever." *HomeAway*, 918 F.3d at 682-83. As such, Meta "face[s] no liability for the content" of political ads. *Id.* at 684 (emphasis added). In turn, the second prong of the three-part test in *Barnes* is not met.

The prior analysis resolves the question as a matter of law. However, as a practical matter, it is noteworthy that the disclosure law defines the terms "political advertising or electioneering

communications" in a way that simplifies even such minimal monitoring. The definitions target advertisements which "appeal directly or indirectly for . . . support or opposition in any election *campaign*" or "[c]learly identifies a *candidate* for a state, local, or judicial office." RCW 42.17A.005(21)(i), (40) (emphasis added). In other words, instead of covering every conceivable political issue or debate on its platform, the disclosure law narrows its focus to ads related to two readily identifiable entities: campaigns and candidates.

Such ads are readily identifiable because the Washington Secretary of State provides a public and searchable online database of filed candidates, initiatives, and referenda for both past and upcoming elections.[30] This database largely covers the disclosure law's definition of "candidates." RCW 42.17A.005(8)(a)-(d).[31] Thus, covered platforms may crosscheck political ads it identifies with these easily

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[30] *VoteWA*, Wash. Sec'y of St., https://voter.votewa.gov/CandidateList.aspx (last visited Apr. 30, 2024); *Initiatives and Referenda Filed in 2024*, Wash. Sec'y of St., https://apps.sos.wa.gov/elections/initiatives/referenda.aspx (last visited Apr. 30, 2024); *Past Initiatives & Referenda*, Wash. Sec'y of St., https://apps.sos.wa.gov/elections/initiatives/statistics.aspx (last visited Apr. 30, 2024).

[31] The disclosure law defines "candidate" to include more than those that have officially "file[d] for office." RCW 42.17A.005(8)(b). The definition also includes one who "[r]eceives contributions or makes expenditures or reserves space or facilities with intent to promote the individual's candidacy . . . announces publicly [their campaign] . . . [p]urchases commercial advertising space . . . to promote [their] candidacy" or "[g]ives consent to another person" to do any of the above actions on their behalf. *Id.* at (8)(a)-(d).

searchable lists of elected positions, candidates, and ballot initiatives, which is a process similar to the registry at issue in *HomeAway*. 918 F.3d at 683-84.

In *HomeAway*, platforms merely had to ensure they were not "completing any booking transaction for properties not licensed and listed on the City's registry." *Id.* at 680. Similarly, Meta can compare the ads against Washington's publicly available list of elections and candidates, and then preserve and prepare the information related to such ads for inspection and possible disclosure. In neither case does such "monitoring" constitute "publication" under Section 230.

For these reasons, we hold that Section 230 does not preempt the RCW 42.17A.345 and WAC 390-18-050. The disclosure law does not treat Meta as a publisher of political ads, impose liability for the content of individual ads, or truly require Meta to monitor ads. Instead, it imposes liability for Meta's own conduct; failure to identify, preserve, and disclose political ads and some of its underlying data. At a minimum, Meta has not overcome the "presumption against preemption." *Hue*, 127 Wn.2d at 79.

Thus, Meta's two substantive challenges to the disclosure law have failed and the court did not err in finding the State was "entitled to a judgment as a matter of law." CR 56(c).

Next, we turn to whether the superior court properly assessed the penalties and fees it did.

C. Penalties

The penalty provision of the disclosure law provides that a "person who violates any of the

provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each violation." RCW 42.17A.750(c). The penalty provision then lists 14 factors to guide the court's decision, including a catch all, permitting a court to consider "[o]ther factors relevant to the particular case." *Id.* at (d)(i)-(xiv). A superior court may then treble damages if "the violation is found to have been intentional." RCW 42.17A.780.

Meta challenges the superior court's $24,660,000.00 civil penalty for 822 violations of the disclosure law. Meta substantively presents three arguments. First, it argues the number of violations should have been calculated on a per-request basis instead of a per-ad basis. Second, it argues the court improperly imposed the statutory maximum penalty of $10,000 for each violation. Third, it argues the court improperly trebled damages after finding Meta's violations were intentional. These arguments are unpersuasive.

1. Per-Ad or Per-Request

The disclosure law permits a court to impose a penalty "for each violation." RCW 42.17A.750(c). However, it does not affirmatively define the term "violation" or provide a specific method for calculating the number of violations in a particular case. Rather, the disclosure law negatively defines the term, in the sense that it excludes "a violation of this chapter that is not a remediable violation, minor violation, or an error classified by the [PDC] as appropriate to address by a technical correction." RCW 42.17A.005(54). Such exclusions include ads costing less than the minimum amount defined in RCW 42.17A.405(2), violations that

did not materially harm the public interest, or situations where entities took sufficient corrective action. RCW 42.17A.005(46). Neither party asserts Meta committed an excluded violation.

At the summary judgment hearing, the superior court initially stated Meta's violations would be based on the number of requests. The judge explained that:

> enforcement penalties and so on—have to be limited to the requests . . . when somebody makes a request and they don't produce it, then they're not complying with the law. But before . . . I don't think that's something I can enforce against them with—absent somebody making a request.

However, the court's subsequent written order based Meta's violations on the number of undisclosed advertisements. The court did not elaborate as to why it changed its method of calculation, but the effect was to increase the number of violations from 12 to 822. As such, the total penalty increased from $120,000 to $8,220,000.00 which the superior court then trebled to $24,660,000.00.

Both parties rely on *Bittner v. United States*, 598 U.S. 85, 143 S. Ct. 713, 215 L. Ed. 2d 1 (2023), in support of their respective positions. The U.S. Supreme Court in *Bittner* examined the federal Bank Secrecy Act, which requires disclosure of certain financial information to "assist the government in everything from criminal and tax to intelligence and counterintelligence investigations." 598 U.S. at 98. The Court ultimately calculated the number of violations per-report rather than for each account listed within said reports. *Id.* at 103-04.

Bittner provides a helpful analytical framework for examining two competing penalty calculation methods in that it systemically examined (a) the text and legislative history of the statute, (b) the "contextual clues," such as government documents, which reveal the "the consistency of an agency's views," and (c) the rule of lenity. *Bittner*, 598 U.S. at 101. We address each in turn.

a. Text and Legislative History

"When interpreting a statute, the court's fundamental objective is to ascertain and give effect to the legislature's intent. We begin with the plain meaning of the statute. . . . If the meaning of the statute is plain on its face, then we must give effect to that meaning as an expression of legislative intent." *Leander v. Dep't. of Ret. Sys.*, 186 Wn.2d 393, 405, 377 P.3d 199 (2016) (citations omitted); *Belleau Woods II, LLC v. City of Bellingham*, 150 Wn. App. 228, 240, 208 P.3d 5 (2009) (in gauging a statute's plain meaning, "it is appropriate to look at the language in the context of the statutory scheme as a whole."). We review questions of statutory interpretation de novo. *Utter ex rel. State v. Bldg. Indus. Ass'n of Wash.*, 182 Wn.2d 398, 406, 341 P.3d 953 (2015).

Meta makes two textual-based arguments. Meta first argues that a plain language interpretation of the disclosure law supports a per-request standard, pointing to its requirement that the data "shall be *open for public inspection*," which means "the relevant 'violation' is a failure to respond to a request for 'public inspection.'" Relatedly, and echoing the superior court's initial ruling, Meta avers that it is not logical to fix the measure of violations as anything but

requests because "[w]ithout a request for public inspection, there can be no violation." In other words, Meta claims both the language and logic of the disclosure law mandate that the proper metric of the violation is the number of requests. We disagree with this cramped view of the disclosure law for four reasons.

Meta's argument is belied first by the FCPA and disclosure law's overall plain intent to ensure *full* disclosure of certain *records*, namely, "contributions and expenditures" of advertisements on its social media platforms. Specifically, the disclosure law states in its introductory provision that "political campaign and lobbying contributions and expenditures be *fully disclosed* to the public and that secrecy is to be avoided." RCW 42.17A.001(1) (emphasis added). Again, the first obligation the disclosure law imposes on commercial advertisers to meet this goal is to maintain records, "books of account and related material," that shall remain "open" for public inspection, without any requirement that anyone actually requests to inspect such records. RCW 42.17A.345(1). Further, the second obligation the disclosure law imposes on commercial advertisers is to be prepared to provide the PDC copies of those records described in (1) of the statute and the *requests* of those records, even if the PDC never actually demands such records or requests. RCW 42.17A.345(2).

The plain language of the disclosure law evidences its intent to preserve and sunlight relevant data of each individual ad on Meta's social media platforms, without any requirement that any particular voter or the government step into the

sunlight to inspect the records. In this way, Meta's discrete serial obligation, to preserve and prepare for inspection or "full disclosure" every individual "contribution[] and expenditure[]," is distinct from any individual request for such disclosure and is the proper metric for violations of this tool of transparency. RCW 42.17A.001(1).

Further, we may not ignore the legislature's twice repeated command that the disclosure law "*be liberally construed* . . . so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected." RCW 42.17A.001(11) (emphasis added); RCW 42.17A.904 ("The provisions of this act are to *be liberally construed* to effectuate the policies and purposes of this act.") (emphasis added). Where the purpose of the disclosure law is to avoid secrecy and ensure confidence in our elections, liberal construction of its penalty provision is to assess penalties for violations of the failure to preserve or permit inspection of individual political advertisements, without *additionally* requiring someone or some agency to request such records.

Indeed, our courts, in a variety of different but related settings, have reiterated the Washington's campaign finance laws' intent to ensure full disclosure of individual records. *See, e.g.*, *State v. Econ. Dev. Bd. for Tacoma-Pierce County*, 9 Wn. App. 2d 1, 11, 441 P.3d 1269 (2019) (quoting *Evergreen Freedom Found.*, 192 Wn.2d at 790) ("The FCPA is designed, in part, 'to provide the public with full disclosure of information about who funds initiative campaigns and who seeks to influence the initiative process.'") (quoting Laws of

1973, ch. 1); *see also State v. Eyman*, 24 Wn. App. 2d 795, 815, 521 P.3d 265 (2022) (quoting *State v. Grocery Mfrs. Ass'n*, 198 Wn.2d 888, 892, 502 P.3d 806 (2022) (*Grocery Mfrs. Assn. II*)) ("'The FCPA is an attempt to make elections and politics as fair and transparent as possible.'"). These statements of intent do not rely on the voter prompting or availing themselves of such transparency.

Returning to *Bittner*, there, the Bank Secrecy Act "[did] not speak of accounts or their number. The word 'account' does not even appear. Instead, the relevant legal duty is the duty to file reports." 598 U.S. at 93. That is, the Bank Secrecy Act's "statutory obligation is binary. Either one files a report 'in the way and to the extent the Secretary prescribes,' or one does not." *Id.*

In contrast, while the penalty provision in the disclosure law does not explicitly reference "political advertising" and "electioneering communications[,]" related provisions of the disclosure law and its accompanying regulations expressly reference both units of measurement multiple times. *See* RCW 42.17A.750 (damages provision); RCW 42.17A.345(1); WAC 390-18-050(2)-(3), (5)-(7). Perhaps most notably, unlike the challenged law in *Bittner*, the disclosures required here "must include the political advertisement or electioneering communication itself." WAC 390-18-050(7). In other words, the disclosure law specifically requires a social media platform to provide individualized copies of each advertisement to the receiving party.

Finally, even if we were to hold that the legislature intended that a violation should be

calculated on a per-request basis, a requestor would need only file a separate request for each individual advertisement, which would easily circumvent Meta's proposed legislative intent. We do not interpret statutes to permit such absurd results. *Jespersen v. Clark County*, 199 Wn. App. 568, 578, 399 P.3d 1209 (2017) (courts must "construe a statute to avoid absurd results.").

The plain language of RCW 42.17A.345 and WAC 390-18-050, and the statutory scheme as a whole, supports the superior court's imposition of a per-ad metric for the calculation of damages.

b. "Contextual Clue"

Meta next argues that one "contextual clue" provides support for its claim that the proper measure of damages is to calculate damages per unfulfilled request. Specifically, Meta cites to a document which summarized the PDC's initial findings as follows: "[Meta] failed to respond to *two* requests for information, violating RCW 42.17A.345 on *two* occasions." (Emphasis added). Meta argues this document betrays an inconsistency in the agency's views. This singular piece of evidence is hardly convincing.

Even assuming arguendo that this document represents the official position of the PDC, "the government's guidance documents do not control our analysis and cannot displace our independent obligation to interpret the law," which we conducted de novo above. *Bittner*, 598 U.S. at 97; *Utter*, 182 Wn.2d at 406.

Moreover, this statement does not undermine the consistency of the PDC or the State's views. As

explained by the State, and not disputed by Meta,[32] this document arose from a "proposed stipulation and recommendation that was *rejected by the PDC*, the latter of which was prepared by an assistant attorney general charged with representing PDC staff (not the State, nor the [Attorney General's Office], nor even the PDC and its Commissioners)." This non-public, and ultimately rejected, PDC document is a far cry from the record before the court in *Bittner*, where a variety of "warnings, fact sheets, and instructions" established that "the government seemed to tell the public that the failure to file a report represents a single violation." 598 U.S. at 97 (citing a "number" of such government documents). There is no such record here reflecting any kind of pattern of inconsistency.

Meta's asserted single contextual clue does not weigh in its favor under *Bittner*'s three-part framework

c. Rule of Lenity

Meta argues that, at a minimum, the disclosure law is ambiguous, requiring an application of the rule of lenity.

Under the rule of lenity, *"[i]f after applying rules of statutory construction* we conclude that a statute is ambiguous, 'the rule of lenity requires us to interpret the statute in favor of the defendant absent legislative intent to the contrary.'" *State v. Baker*, 194 Wn. App. 678, 684, 378 P.3d 243 (2016) (emphasis added) (quoting *City of Seattle v. Winebrenner*, 167 Wn.2d

[32] In reply, Meta's simply acknowledges that this document represented "how PDC staff *initially* read the Law" during their internal deliberations. (Emphasis added).

451, 462, 219 P.3d 686 (2009)). The rule of lenity only applies if a civil penal statute is "reasonably susceptible of at least two meanings." *Kahler v. Kernes*, 42 Wn. App. 303, 308, 711 P.2d 1043 (1985). However, "[i]t is important to bear in mind that the rule of lenity does not apply anytime a statute is determined to be ambiguous." *Winebrenner*, 167 Wn.2d at 469 (Madsen, J., concurring). That is, "[t]he rule of lenity applie[s] only when the Legislature's intent is lacking." *Pers. Restraint of Bowman*, 109 Wn. App. 869, 875-76, 38 P.3d 1017 (2001).

Here, the disclosure law is clearly a civil penal statute as it authorizes "sanctions" and "penalties" for violations. RCW 42.17A.750. However, for the reasons stated in Part C.1.a., the legislature's intent in passing the disclosure law, to ensure full disclosure of certain records independent of a later request, is clear. That is, the legislative intent is not "lacking" nor, in turn, is the disclosure law reasonably susceptible to two meanings. Thus, we need not appeal to the rule of lenity.

Therefore, under the *Bittner* framework, the proper method of calculation is, as a matter of statutory interpretation, by advertisement.[33]

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[33] Each party contrasts or compares the disclosure law with the Washington's Public Records Act ("PRA"). Meta analogizes to *Yousoufian v. King County Executive*, 152 Wn.2d 421, 98 P.3d 463 (2004), to support a per-request metric. In response, at oral argument, the State cited to *Wade's Eastside Gun Shop, Inc. v. Dep't of Labor & Indus.*, 185 Wn.2d 270, 372 P.3d 97 (2016), to argue that the PRA, and by extension the disclosure law, grants superior courts broad discretion in fashioning penalties. Wash. Ct. of Appeals oral argument, *supra* at 26 min., 14 sec. through

2. Statutory Maximum Penalties

Under the disclosure law, the statutory maximum penalty is ten thousand dollars per violation. RCW 42.17A.750(c). "When assessing a civil penalty, the court *may* consider the nature of the violation and *any relevant circumstances*." *Id.* at (d) (emphasis added). The statute contains numerous factors to guide the superior court, including a catch-all for all "[o]ther factors relevant to the particular case." *Id.* at (d)(i)-(xiv). The legislature did not, however, mandate *how* a court should weigh the factor or that any one factor is greater than any other.

"We review the trial court's assessment of civil penalties within the statutory limits for an abuse of discretion." *State v. Mandatory Poster Agency, Inc.*, 199 Wn. App. 506, 525, 398 P.3d 1271 (2017). A court abuses its discretion if "its decision is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons." *Gildon v. Simon Prop. Grp., Inc.*, 158 Wn.2d 483, 494, 145 P.3d 1196 (2006). "An abuse of discretion is found if the trial court relies on *unsupported facts*, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law." *Id.*

On appeal, Meta faults the superior court for "not credit[ing] a single one of those factors" enumerated in RCW 42.17A.750(d). Further, in its briefing, Meta claims the following eight facts "warranted a penalty at the bottom of the statutory range. . .":

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26 min., 51 sec. As these arguments are not fully developed, we will not consider the comparison further.

> First, Meta has promoted political transparency in Washington, sometimes exceeding Washington's requirements. . . .
>
> Second, Meta undisputedly disclosed much of the required information immediately on request. . . .
>
> Third, there is no dispute that for some of the requests at issue, Meta produced two and sometimes three additional categories of required information. . . .
>
> Fourth, Meta established a formal process to efficiently respond to requests under the [disclosure law]. . . .
>
> Fifth, it is undisputed that none of the requests at issue in this case were made for the core purposes that animate [the disclosure law]—informing voters and ensuring election integrity. . . .
>
> Sixth, during the PDC's investigation of Mr. Sanders's and Mr. Trask's 2019 complaints, it is undisputed that Meta extensively consulted and cooperated with PDC Staff. . . .
>
> Seventh, Meta never intentionally or knowingly skewed Washington's political process by favoring one candidate or cause over another. . . .
>
> Eighth, penalties in similar cases are significantly lower than the Superior Court's penalty.[34]

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[34] The final mitigating factor appears to be referencing two settlements between the State and Google where the latter paid

(Emphasis omitted.)

In its response brief, the State asserts that the following facts justified the court's decision.

> First, Meta has a history of noncompliance. In 2018, the State filed its first lawsuit for Meta's failure to have complied with the law since at least 2013, which resulted in a stipulated judgment. . . .
>
> Second, Meta is the largest social media company in the world, and a significant part of its business model is to sell advertising across its platforms in the United States and in more than 160 countries around the world. . . .
>
> Third, Meta is extensively involved in campaign finance activity by providing and facilitating the targeting of political ads intended to influence elections in Washington. . . .
>
> Fourth, Meta did not act in good faith and refused to take responsibility for its violations. Despite stipulating to a judgment in 2018, Meta repeatedly continued to violate the [disclosure law]. . . .
>
> Finally, the superior court correctly recognized Meta's brazen behavior. Meta continues now to arrogantly justify its

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$200,000 and $400,000 respectively for violations of the disclosure law. However, our Supreme Court recently upheld a $18 million disclosure law penalty for a different type of violation for "intentionally concealing the source of political contributions." *Grocery Mfrs. Assn. II*, 198 Wn.2d at 892.

> pattern of intentional violations by arguing—without any factual support—that its own business model and decisions made compliance "impossible."

(Emphasis omitted.)

The court explained its reasoning for imposing the $10,000 statutory maximum penalty at length. First, it found Meta "didn't really make a significant effort to try and comply, either in terms of providing any targeting information, which is clearly required by the law, or in terms of making a serious attempt to comply in a timely fashion." Second, the court found it "would be very easy for [Meta] to simply organize the information in a way that would make it readily available" as "[it] had to take it all in digitally in the first place in order to get the ad." Additionally, the court considered "Meta's compliance history" which included a "pattern of knowing and repeated violations" as well as "Meta's extensive experience with campaign finance law." Finally, the court noted "Meta's lack of good faith and failure to acknowledge and take reasonability for its violations."

Again, the language of the disclosure law's penalty provision is highly discretionary. RCW 42.17A.750. Specifically, it states the court "may" consider numerous factors, but also allows courts to consider all "[o]ther factors relevant to the particular case." *Id.* at (d)(i)-(xiv). Stated otherwise, these factors are meant to guide, not restrict, the court. We hold that the five facts adduced by the State and the superior court's express findings are consistent with the factors the legislature meant to guide the exercise of the court's discretion.

Notably, Meta does not argue that the record was entirely devoid of such evidence, instead it claims that the "Superior Court did not credit a single one of [Meta's] factors." Meta offers no authority that a trial court must credit any particular factor under the disclosure law or announce on the record how it was weighing its decision vis-à-vis the factors. We decline the invitation to create such a requirement here. *DeHeer v. Seattle Post-Intelligencer*, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

Ultimately, we review a superior court's decision to impose a penalty within the statutory limits for an abuse of discretion. *Mandatory Poster*, 199 Wn. App. at 525. In similar circumstances, we "accept the trial court's resolution of credibility and conflicting substantial evidence, and its choice of possible reasonable inferences." *Kreidler v. Cascade Nat'l. Ins. Co.*, 179 Wn. App. 851, 861, 321 P.3d 281 (2014). While another judge may have considered the factors and evidence differently, Meta failed to establish the superior court abused its discretion as it did not show its factual findings were unsupported by the record. *Gildon, Inc.*, 158 Wn.2d at 494.

Thus, we affirm the superior court's decision to assess the $10,000 statutory maximum penalty for each violation.[35]

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[35] Meta also asserts that the disclosure law violates its Fifth Amendment due process rights to the extent it measures damages as per-ad and if a court may impose the statutory maximum penalty of $10,000 in circumstances such as these.

3. Treble Damages

The disclosure law provides that if "the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, *may* be trebled as punitive damages." RCW 42.17A.780 (emphasis added). "We review the trial court's assessment of civil penalties within the statutory limits for an abuse of discretion." *Mandatory Poster*, 199 Wn. App. at 525. A court's decision is based on untenable grounds if the factual findings are unsupported by the record. *Gildon*, 158 Wn.2d at 494.

Our Supreme Court has held that "[w]hether treble damages should be imposed is thus clearly a discretionary decision for the trial court, which can be made only after the court determines that a violation was intentional." *Grocery Mfrs. Assn. I*, 195 Wn.2d at 473. The meaning of "intentional" is not defined in the disclosure law, meaning we must apply its "usual and ordinary meaning" unless context dictates otherwise or the ordinary meaning would lead to absurd results. *Id.* at 471. Our Supreme Court, in examining the FCPA, has held that "[t]he ordinary meaning of intentional, in both civil and criminal contexts,

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Indeed, under the Fifth Amendment, "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *FCC v. Fox Television Studios, Inc.*, 567 U.S. 239, 253, 132 S. Ct. 2307, 183 L. Ed. 2d 234 (2012). Here, however, Meta's half-page Fifth Amendment argument is undeveloped and conclusory. "[N]aked castings into the constitutional sea are not sufficient to command judicial consideration and discussion." *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 14, 721 P.2d 1 (1986) (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th Cir. 1970)). As such, we need not and will not consider this argument further.

requires intent to accomplish an unlawful act, but not subjective knowledge that the act is unlawful." *Id.*

Meta argues the superior court improperly imposed treble damages and improperly determined its violations were "intentional" under RCW 42.17A.780. Meta essentially repeats previous arguments, claiming that the various mitigating factors of RCW 42.17A.750(d) present here, the "contextual clue" document, and its 2018 self-imposed ban on displaying political ads prove its lack of subjective intent to violate the law.

The superior court did not abuse its discretion by trebling damages. At a minimum, the court's decision is tenably based on at least the following two intentional acts, each of which flatly contravened unambiguous provisions of the disclosure law.

First, Meta admitted it unilaterally issued a "Request for Information from Facebook, Inc. Regarding Washington Political Advertising" form to requestors, which stated that a request "cannot exceed one year and must begin January 1, 2019 or later." These limitations plainly violate the disclosure law, which has no such temporal restrictions and, instead, requires that platforms retain the pertinent records "for a period of no less than five years after the date of the applicable election." RCW 42.17A.345. The court would not have abused its discretion by basing its decision on a finding that such a unilateral curtailment of the disclosure law's plain provisions showed an "intent to accomplish an unlawful act." *Grocery Mfrs. Assn. I*, 195 Wn.2d at 471.

Second, and equally substantively, the superior court found that Meta "intentionally redacted

required information from the records it provided in response to requests." This finding is adequately supported by the record. A Meta employee testified to his personal knowledge that that Meta did not "provide any targeting lower than the state level." An email sent by Meta's counsel to one of the requestors confirmed that testimony, when it stated that "any granular geographic targeting (e.g., city or zip code) has been redacted and that we have provided that information on a state-level instead." Further, in response to the State's requests for admission, Meta admitted to "redact[ing] more specific location targeting information from some business records." As such, Meta's response to requests for targeting data, even where that data was available quite easily, was purposefully incomplete. These redactions were in direct contravention of the disclosure law, which clearly requires commercial advertisers to provide data on the "audiences targeted and reached" by ads, and which do not permit an advertiser to provide only statewide data. WAC 390-18-050(7)(g)(ii).[36]

The superior court did not abuse its discretion in finding that Meta's violations were intentional and in awarding treble damages on that basis, as those decisions are supported in the record. *Gildon*, 158 Wn.2d at 494.[37]

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[36] The legislature amended WAC 390-18-050, effective June 2024. Because these amendments do not affect the legal arguments of this case, we cite the current version.

[37] Meta also argues the penalty imposed was an unconstitutionally excessive fine, in violation of the Eighth Amendment. Meta's half-page argument generally alleges the penalty is "grossly disproportionate[,]" under factors laid out in

Accordingly, we hold that the superior court did not err in imposing the penalty in the manner and substance it chose.

D. Attorney Fees

"If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review . . . the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court." RAP 18.1(a). Specifically, "[t]he party must devote a section of its opening brief to the request for fees or expenses." RAP 18.1(b).

The disclosure law provides that "[i]n any action brought under this chapter, the court may award to the commission all reasonable costs of investigation and trial, including reasonable attorneys' fees to be fixed by the court." RCW 42.17A.780. Further, "[i]f the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages." *Id.* Alternatively, "[i]f the defendant prevails, [they] shall be awarded all costs of trial and may be awarded reasonable attorneys' fees to be fixed by the court and paid by the state of Washington." *Id.* We review whether there is a basis for awarding attorney fees de

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United States v. Bajakajian, 524 U.S. 321, 334, 118 S. Ct. 2028, 141 L. Ed. 2d 314 (1998), but without any specific discussion of said factors or application to the facts of this case. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *Palmer v. Jensen*, 81 Wn. App. 148, 153, 913 P.2d 413 (1996). Thus, we will consider this argument no further.

novo. *Gander v. Yeager*, 167 Wn. App. 638, 647, 282 P.3d 1100 (2012).

In the trial court, the State requested, and was granted, its costs and reasonable attorneys' fees pursuant to RCW 42.17A.780, based on the findings reviewed herein. On appeal, the State appropriately briefed its request for fees on appeal compliant with RAP 18.1(b). Neither in its opening brief nor in its reply does Meta contest the superior court's award or this additional fee request on appeal.

Thus, we grant the State's request for its fees and costs on appeal. The State may perfect its request before the commissioners of this court consistent with our rules of appellate procedure.

III. CONCLUSION

We affirm.

[handwritten: signature]

WE CONCUR:

[handwritten: signature] [handwritten: signature]

Appendix D

SUPERIOR COURT OF WASHINGTON

No. 20-2-07774-7

STATE OF WASHINGTON,

Plaintiff,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Defendant.

Filed: Oct. 6, 2022

ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER came on for hearing before the Court on Friday, September 2, 2022, on Defendant's Motion for Summary Judgment. Before ruling, the Court considered the arguments of counsel as well as the records and pleadings in this case, including but not limited to:

1. Defendant's Motion for Summary Judgment;

2. Declaration of Tracie Bryant in Support of Defendant's Motion for Summary Judgment, with Exhibits 1-62;

3. Declaration of Dr. Steven Weber in Support of Defendant's Motion for Summary Judgment, with Exhibit A;

4. Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment;

5. Declaration of Dr. Travis Ridout in Support of Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment, with Exhibits A-B;

6. Declaration of Tony Perkins in Support of Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment, with Exhibits 1-9;

7. Declaration of Elana S. Matt in Support of Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment, with Exhibits A-RRR;

8. Defendant's Reply in Support of Motion for Summary Judgment;

9. Third Declaration of Tracie Bryant in Support of Defendant's Reply in Support of Motion for Summary Judgment, with Exhibits 93-94;

10. The prior pleadings, briefing, and evidence filed in this case, including motions, their supporting declarations, and their supporting documents.

Accordingly, now, therefore, it is hereby ORDERED that:

1. Defendant's Motion for Summary Judgment is **DENIED.**

DATED this [handwritten: 6th] day of [handwritten: October] 2022.

[handwritten: signature]

THE HONORABLE
DOUGLASS A. NORTH

Appendix E

SUPERIOR COURT OF WASHINGTON

No. 20-2-07774-7

STATE OF WASHINGTON,

Plaintiff,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Defendant.

Filed: Oct. 6, 2022

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

THIS MATTER came on for hearing before the Court on Friday, September 2, 2022, on Plaintiff State of Washington's Motion for Summary Judgment. The Court considered the arguments of counsel, for both the Plaintiffs and Defendant's Motions for Summary Judgment, as well as the records and pleadings in this case, including, but not limited to:

1. Plaintiff State of Washington's Motion for Summary Judgment;

2. First Declaration of S. Todd Sipe in Support of Plaintiff State of Washington's

Motion for Summary Judgment, with Exhibits A-HH;

3. First Declaration of Tony Perkins in Support of Plaintiff State of Washington's Motion for Summary Judgment, with Exhibits 1-22;

4. First Declaration of Phil Stutzman in Support of Plaintiff State of Washington's Motion for Summary Judgment, with Exhibits A-C;

5. Declaration of Zach Wurtz, with Exhibits A-W (filed September 3, 2021);

6. Defendant's Motion for Summary Judgment;

7. Declaration of Tracie Bryant in Support of Defendant's Motion for Summary Judgment, with Exhibits 1-62;

8. Declaration of Dr. Steven Weber in Support of Defendant's Motion for Summary Judgment, with Exhibit A;

9. Defendant's Opposition to Plaintiffs Motion for Summary Judgment;

10. Second Declaration of Tracie Bryant in Support of Defendant's Opposition to Plaintiffs Motion for Summary Judgment, with Exhibits 63-92;

11. Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment;

12. Declaration of Dr. Travis Ridout in Support of Plaintiff State of Washington's

Response to Defendant's Motion for Summary Judgment, with Exhibits A-B;

13. Declaration of Tony Perkins in Support of Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment, with Exhibits 1-9;

14. Declaration of Elana S. Matt in Support of Plaintiff State of Washington's Response to Defendant's Motion for Summary Judgment, with Exhibits A-RRR;

15. Plaintiff State of Washington's Reply in Support of Motion for Summary Judgment;

16. Second Declaration of S. Todd Sipe in Support of Plaintiff State of Washington's Motion for Summary Judgment, with Exhibits II-KK;

17. Second Declaration of Tony Perkins in Support of Plaintiff State of Washington's Motion for Summary Judgment;

18. Declaration of Dr. Laura Edelson in Support of Plaintiff State of Washington's Motion for Summary Judgment, with Exhibits A-B;

19. Defendant's Reply in Support of Motion for Summary Judgment;

20. Third Declaration of Tracie Bryant in Support of Defendant's Reply in Support of Motion for Summary Judgment, with Exhibits 93-94; and

21. The prior pleadings, briefings, and evidence filed in this case, including motions,

their supporting declarations, and their supporting documents.

The Court hereby grants Plaintiffs Motion for Summary Judgment.

I. Absence of Genuine Issues of Material Fact

Based on the foregoing, the Court determines that there are no genuine issues of material fact, including regarding the following:

1. Meta Platforms, Inc., formerly doing business as Facebook, Inc., (Meta) is an international online social media and social networking service company that sells the service of communicating messages for distribution to the general public or segments of the general public through paid internet or digital communications, for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any campaign in support of, or in opposition to, a candidate for election to public office and any campaign in support of, or in opposition to, a ballot proposition in Washington (collectively, "Washington Political Advertising" or "Washington Political Advertisement").

2. Meta collects, in the regular course of its business, the information required for digital commercial advertisers under RCW 42.17A.345 and WAC 390-18-050 (Commercial Advertiser Law). This information includes demographic information (i.e., age, gender, race, and location) of the audiences targeted and reached and the total number of impressions generated.

3. Meta launched the Ad Library (then known as the Ad Archive) in May 2018. Meta does not display,

through the Ad Library or otherwise, all information required to be made available for public inspection under the Commercial Advertiser Law.

4. This is the second enforcement action brought by the State of Washington (State) against Meta for violations of the Commercial Advertiser Law. The first case, which resulted in a stipulated judgment against Meta, was filed in 2018. At all relevant times for this case, Meta was therefore fully aware of the requirements of the Commercial Advertiser Law.

5. In 2018, Meta announced that it would no longer accept Washington Political Advertising. Despite its announced "ban" on Washington Political Advertising, Meta continued to knowingly display Washington Political Advertising on its platform. Meta not only continued to solicit Washington Political Advertisements, but Meta was aware that its announced "ban" would not, and did not, stop all such advertising from continuing to be displayed on its platform.

6. Meta received at least the following requests under the Commercial Advertiser Law for information about Washington Political Advertising appearing on Meta's platform: on February 12, 2019 and July 12, 2021, from Eli Sanders (Sanders); on July 23, 2019, from Tallman Trask (Trask); on October 16, 2019, October 19, 2020, October 30, 2020, November 20, 2020, November 24, 2020, December 31, 2020, January 4, 2021, March 1, 2021, and July 19, 2021, from Zach Wurtz (Wurtz).

7. Meta never provided all of the required information in response to any of these requests. In the instances that Meta provided some information

beyond what is publicly available in the Ad Library, Meta's response often took weeks or months and was incomplete when provided. Meta also intentionally redacted required information from the records it provided in response to requests.

8. In response to investigative requests from the Washington Public Disclosure Commission (PDC), Meta identified 254 separate 2019 Washington Political Advertisements displayed on Meta that were responsive to the 2019 Sanders and Trask requests.

9. Based on documents produced by Meta during discovery, there were at least 157 separate Washington Political Advertisements displayed on Meta that were responsive to the 2021 Sanders request.

10. Meta refused to provide Wurtz with any records in response to his 2020 and 2021 requests (and in response to Wurtz's 2019 request, provided incomplete information approximately nine months after the request was made). Notably, Wurtz's July 19, 2021, request was "to inspect the public file for every political ad shown in Washington State since 2016." This request therefore included Washington Political Advertisements displayed in the Ad Library since 2018, which the State has established exceeds 1,600. Even at minimum, this request alone covered at least: (1) the 157 separate Washington Political Advertisements responsive to Sanders' 2021 request, which sought information about Washington Political Advertisements from between January 1, 2021 to July 12, 2021; and (2) the 254 Washington Political Advertisements responsive to the 2019 Sanders and Trask requests.

11. Since at least April 14, 2020, the date of the Original Complaint in this case, Meta implemented a new process for handling inspection requests made under the Commercial Advertiser Law. The process involves a Kirkland and Ellis attorney emailing to a requestor a Meta-sanctioned form with the file name "WA Resident Request Form.pdf" (Form). Kirkland and Ellis attorneys also instruct the requestor in writing to complete and return the Form "if they are a resident of Washington and would like to request information regarding political advertising in Washington pursuant to the [Commercial Advertiser Law]."

12. The Form contains the following language: "If you are a resident of Washington state and would like to request information regarding political advertising in Washington, please fill out the form below and submit it via email" and "Date Range Requested (cannot exceed one year and must begin January 1, 2019 or later)."

13. As part of this process, Meta also makes manual redactions of location targeting information more specific than state level (i.e., Washington State) in any records provided to requestors.

14. Although Meta argued that it could not comply with the Commercial Advertiser Law, Meta failed to provide evidence to create a genuine issue of material fact regarding its inability to comply, whereas the State presented sufficient evidence explaining both how and why Meta could comply.

II. Conclusions of Law

The Court makes the following Conclusions of Law:

1. Meta is a commercial advertiser as that term is defined by RCW 42.17A.005.

2. Meta is a "digital communications platform" for purposes of WAC 390-18-050.

3. The Commercial Advertiser Law requires the commercial advertiser to timely make available, to each requestor, all required information for each Washington Political Advertisement requested.

4. Meta committed 254 violations of RCW 42.17A.345 and WAC 390-18-050 by failing to timely make available for inspection all required information for 254 Washington Political Advertisements covered by Sanders' and Trask's 2019 inspection requests.

5. Meta committed an additional 157 violations of RCW 42.17A.345 and WAC 390-18-050 by failing to timely make available for inspection all required information for 157 Washington Political Advertisements covered by Sanders' July 2021 inspection request.

6. Meta committed an additional 411 violations of RCW 42.17A.345 and WAC 390-18-050 by failing to timely make available for inspection all required information covered by Wurtz's July 2021 inspection requests.

7. Meta's violations of RCW 42.17A.345 and WAC 390-18-050 set out herein were committed intentionally for purposes of RCW 42.17A.780 and support trebling the base judgment amount assessed against Meta, including the State's attorneys' fees and costs, as punitive damages. The intentional nature of Meta's violations, along with other factors, is based on: (1) Meta's compliance history, which includes Meta's

pattern of knowing and repeated violations of RCW 42.17A and WAC 390-18-050 despite enforcement actions by the State related to Meta's conduct; (2) Meta's extensive experience with campaign finance law and procedures and the substantial resources at Meta's disposal for compliance with such requirements; and (3) Meta's lack of good faith and failure to acknowledge and take responsibility for its violations.

8. Meta failed to demonstrate a legal basis or the existence of genuine issues of material fact for its affirmative defenses that would preclude entry of judgment for the State.

III. Injunction

The State has also established its entitlement to an injunction, which the Court will enter in substantially the following form, as part of a final judgment:

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 30 days of the final judgment and into the future that:

Meta shall come into full compliance with the requirements of RCW 42.17A.345 and WAC 390-18-050 for any and all political advertising and electioneering communications that pertain to Washington state or local elections and ballot measures (Washington Political Advertisements) that have appeared or will appear on any of Meta's platforms. These requirements, include, but are not limited to, (1) timely responding to all inspection requests Meta receives from any member of the public for information about Washington Political Advertisements that Meta is required to maintain

under RCW 42.17A.345 and/or WAC 390-18-050; and (2) timely making available for public inspection all information that Meta is required to maintain under RCW 42.17A.345 and/or WAC 390-18-050.

Meta is permanently enjoined from conditioning, limiting, or otherwise restricting its compliance with RCW 42.17A.345 and/or WAC 390-18-050 to requests that (a) identify the requestor's citizenship or residency status; (b) that include a timeframe less than authorized by RCW 42.17A.345 or WAC 390-18-050; (c) that limit the number or scope of advertisements to less than authorized by RCW 42.17A.345 or WAC 390-18-050; or (d) are otherwise limited or burdened in a manner not authorized by RCW 42.17A.345 or WAC 390-18-050. Furthermore, 30 days after the entry of the final judgment, Meta shall file with this Court a sworn certification signed by a person or persons authorized to attest for Meta that Meta has come into full compliance with the terms of this injunction set forth herein.

A violation of the Court's injunction will constitute a violation of RCW 42.17A.345 [handwritten strikethrough: ~~and, absent compelling extenuating circumstances and based on the findings made herein, pursuant to RCW 42.17A.750(i), Meta will be assessed a penalty of $10,000.00 for each Washington Political Advertisement within such violation, which will be subject to trebling in appropriate circumstances, and such other remedies as allowed by law.~~] [handwritten: D.A.N.]

For the purposes of effectuating the injunction entered in this matter, the Court will retain jurisdiction over the parties and the subject matter

herein after entry of final judgment, as well as the implementation, enforcement, and performance of the terms included in this injunction.

IV. Order

Based on these determinations, it is HEREBY ORDERED as follows:

1. The State's Motion for Summary Judgment is GRANTED. Defendant Meta Platforms, Inc. is determined to have committed the violations of RCW 42.17A.345 and WAC 390-18-050 as identified in the Conclusions of Law herein.

2. Pursuant to RCW 42.17A.750, Defendant Meta Platforms, Inc. is assessed a civil penalty for the violations identified herein in an amount that will be determined based on a motion for entry of judgment to be filed by the State.

3. Pursuant to RCW 42.17A.780, Defendant Meta Platforms, Inc. shall reimburse the State its costs of investigation and trial, including all reasonable attorneys' fees incurred in an amount that will be determined based on a separate cost bill to be filed by the State.

4. Based on the Court's finding that Defendant Meta Platforms, Inc.'s violations were intentional pursuant to RCW 42.17A.780 and in consideration of the factors set forth in RCW 42.17A.750(d), the base judgment amount, consisting of the total of the civil penalty assessed against Meta: and the amount of Meta's reimbursement of the State's costs and fees, will be trebled as punitive damages.

5. Pursuant to RCW 42.17A.750(i), the Court will enter, as part of the final judgment, the injunctive

relief set out above in order to compel Defendant Meta Platforms, Inc.'s compliance with RCW 42.17A.345 and WAC 390-18-050.

DATED this [handwritten: 6th] day of [handwritten: October] 2022.

[handwritten: signature]

THE HONORABLE
DOUGLASS A. NORTH

Appendix F

SUPERIOR COURT OF WASHINGTON

No. 20-2-07774-7

STATE OF WASHINGTON,

Plaintiff,

v.

META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.,

Defendant.

Filed: Oct. 26, 2022

JUDGMENT AGAINST META PLATFORMS, INC.

I. Judgment Summary (RCW 4.64.030)

A. Judgment Creditor:	Plaintiff STATE OF WASHINGTON
B. Judgment Debtor	META PLATFORMS, INC., formerly doing business as FACEBOOK, INC.
C. Principal Judgment:	$24,660,000.00 civil penalty ($8,220,000.00 penalty trebled)
D. Costs and Fees:	To be determined by separate order following entry of final judgment

	(costs and fees amount trebled)
E. Interest:	No prejudgment interest is owed. Interest will accrue on total judgment amount (principal plus costs and fees) at 12% per year starting from the date the payments are due.
F. Attorneys for Judgment Creditor:	* * *
G. Attorneys for Judgment Debtor	* * *

II. Judgment

THIS MATTER came before the Court for hearing on cross-motions for summary judgment on September 2, 2022. Plaintiff State of Washington (State) appeared by and through its counsel, Assistant Attorneys General S. TODD SIPE, ELANA S. MATT, and PAUL M. CRISALLI. Defendant Meta Platforms, Inc., formerly doing business as Facebook, Inc. (Meta), appeared by and through its counsel K. WINN ALLEN, TRACIE BRYANT, and GABRIELLE BELZIL, of Kirkland & Ellis LLP, and ROBERT M. MCKENNA and MARKS. PARRIS, of Orrick Herrington & Sutcliffe LLP.

The Court, having considered the parties' briefing and arguments, along with the prior records and files in this case, and having issued an oral ruling on September 2, 2022, and written orders on October 6, 2022, granting the State's Motion for Summary Judgment and denying Meta's Motion for Summary

Judgment, and additionally having considered the State's Motion for Entry of Judgment, Meta's Response, and the State's Reply, and being otherwise fully advised in the premises, now therefore enters Judgment as follows:

A. Judgment Amount

1. Meta shall be assessed a civil penalty under RCW 42.17A in the amount of $24,660,000.00 for 822 violations of Washington's Commercial Advertiser Law, as set forth in the Court's September 2, 2022 oral ruling and October 6, 2022 order, inclusive of trebling ordered by the Court as punitive damages in its October 6, 2022 order for Meta's intentional violations of state law.

2. Meta shall pay the amount awarded in Paragraph 1 by wire transfer, pursuant to instructions that will be provided by the State of Washington, or by check or money order made payable to the Washington State Treasurer and sent to the Public Disclosure Commission, PO Box 40908, Olympia, WA 98504-0908 within 30 days from the date of the entry of this Judgment. Payment should reference/identify the case number and Defendant's name for reference.

3. Costs and attorneys' fees previously awarded to the State of Washington in the October 6, 2022 order shall be in an amount determined by separate order.

4. Pursuant to the Court's October 6, 2022 order, the amount of costs and attorneys' fees awarded in Paragraph 3 of this Order shall also be trebled as punitive damages for Meta's intentional violations of state law.

5. Meta shall pay the amounts awarded for costs and attorneys' fees by wire transfer, pursuant to instructions that will be provided by the State of Washington, or by check or money order made payable to the Washington State Treasurer and sent to the Public Disclosure Commission, PO Box 40908, Olympia, WA 98504-0908 within 30 days from the date of the Court's order determining the amount of costs and attorneys' fees awarded to the State. Payment should reference/identify the case number and Defendant's name for reference.

B. Injunction

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 30 days of this final judgment and into the future that:

Meta shall come into full compliance with the requirements of RCW 42.17A.345 and WAC 390-18-050 for any and all political advertising and electioneering communications that pertain to Washington state or local elections and ballot measures (Washington Political Advertisements) that have appeared or will appear on any of Meta's platforms. These requirements, include, but are not limited to, (1) timely responding to all inspection requests Meta receives from any member of the public for information about Washington Political Advertisements that Meta is required to maintain under RCW 42.17A.345 and/or WAC 390-18-050; and (2) timely making available for public inspection all information that Meta is required to maintain under RCW 42.17A.345 and/or WAC 390-18-050.

Meta is permanently enjoined from conditioning, limiting, or otherwise restricting its compliance with

RCW 42.17A.345 and/or WAC 390-18-050 to requests that (a) identify the requestor's citizenship or residency status; (b) that include a timeframe less than authorized by RCW 42.17A.345 or WAC 390-18-050; (c) that limit the number or scope of advertisements to less than authorized by RCW 42.17A.345 or WAC 390-18-050; or (d) are otherwise limited or burdened in a manner not authorized by RCW 42.17A.345 or WAC 390-18-050.

Furthermore, 30 days after the entry of the final judgment, Meta shall file with this Court a sworn certification signed by a person or persons authorized to attest for Meta that Meta has come into full compliance with the terms of this injunction set forth herein.

A violation of the Court's injunction will constitute a violation of RCW 42.17A.345.

For the purposes of effectuating the injunction entered in this matter, the Court will retain jurisdiction over the parties and the subject matter herein after entry of final judgment, as well as the implementation, enforcement, and performance of the terms included in this injunction.

IT IS SO ORDERED.

DATED this [handwritten: 26th] day of [handwritten: October] 2022.

[handwritten: signature]

THE HONORABLE
DOUGLASS A. NORTH

Appendix G

RELEVANT CONSTITUTIONAL PROVISION

U.S. Const. amend. I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.