No. 103748-1

In the Supreme Court of the State of Washington

STATE OF WASHINGTON, RESPONDENT

v.

META PLATFORMS, INC., FORMERLY DOING BUSINESS AS FACEBOOK, INC., PETITIONER

BRIEF FOR NETCHOICE, CHAMBER OF PROGRESS, COMPUTER & COMMUNICATIONS INDUSTRY ASSOCIATION, AND TECHNET AS *AMICI CURIAE* IN SUPPORT OF PETITIONER META PLATFORMS, INC.

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INTRODUCTION AND IDENTITY AND INTEREST OF THE *AMICI CURIAE*

Washington is one of just three States that require "digital communication platforms" to monitor and disclose political advertising by their users. Within two business days of a request—from anyone, anywhere—such platforms must make a litany of disclosures about any ad even remotely pertaining to Washington politics.

Washington stands alone among all 50 States, however, in imposing these requirements on online platforms without requiring their users both to notify the platforms when they post regulated ads and to provide the platforms with the information that must be disclosed to the State. It also stands alone in imposing ruinous fines—here, $30,000 per ad—for achieving anything less than perfect compliance. In short, Washington's law is "truly exceptional" (*McCullen v. Coakley*, 573 U.S. 464, 490 (2014))—a "danger sign[]" that the law "fall[s] outside tolerable First Amendment limits." *Randall v. Sorrell*, 548 U.S. 230, 253 (2006) (plurality op.).

Every other State achieves its interests in transparent online political advertising without burdening political speech so heavily. As these widespread practices confirm, the asserted interest here—"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," State's Supp. Br. 13—can be satisfied through disclosures from the ad buyers rather than the platforms. Thus, under either strict or exacting scrutiny, the law cannot withstand the First Amendment's demand that it be "narrowly tailored to the interest it promotes." *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 610 (2021).

The State's demand that platforms make complex factual and legal judgments perfectly and almost instantaneously across millions of ads, on pain of draconian fines, has chilled core political speech and shut down forums for participation in the democratic process. Faced with the impossible task of perfect compliance, leading platforms—including Meta, Google, and Yahoo—have endeavored to avoid violating the law by banning Washington

state political ads. CP7867. If the disclosure requirements and enforcement mechanisms could be complied with, these platforms would willingly carry this vitally important speech—as they do in other States and for Washington federal elections—and Washington citizens could use the platforms to place low-cost ads. But because Washington penalizes only *platforms* for non-compliance, some citizens still place ads, illicitly and in violation of the platforms' bans. Meta is paying the price for failing to disclose prohibited ads that it knew nothing about and made every effort to block.

Amici NetChoice, Chamber of Progress, Computer & Communications Industry Association, and TechNet—leading not-for-profit trade organizations that promote innovation and free speech on the Internet—file this brief to urge this Court to reverse the Court of Appeals' decision upholding the law. *Amici* recognize that services like Meta's are protected by the First Amendment as the "internet-age successors" of "those who print[ed] pamphlets" at the time of the American Founding.

United States v. Lierman, __ F.4th __, 2025 WL 2371034, at *1 (4th Cir. Aug. 15, 2025). The First Amendment forbids Washington from pursuing its interest through an overbroad law that shuts down an entire channel for core political speech and diminishes the voice of its citizens in Washington elections.

STATEMENT OF THE CASE

Since 2018, the Washington Platform Disclosure Law has required "digital communication platforms" to disclose information about the content, purchaser, and viewers of "political advertising"—vaguely defined as any ad "used for the purpose of appealing, *directly or indirectly*, for votes or for financial *or other* support or opposition in any election campaign." RCW 42.17A.005(40) (emphasis added); *see also* RCW 42.17A.345, WAC 390-18-050 (collectively, the "Platform Disclosure Law"). And unlike the handful of other States that require platforms to make similar disclosures, Washington places the burden entirely on the platforms—ad buyers have no statutory obligation to tell platforms that they have posted a covered ad, let alone to provide

platforms with the information needed to meet their disclosure obligations.

If platforms display a covered ad, they must retain information about it for five years following an election cycle. WAC 390-18-050(3). Throughout that period, anyone, anywhere can request the information; if they do, platforms must drop everything and respond within two business days. WAC 390-18-050(4)(b)(i). That deadline applies no matter how many ads the request references—it could apply to every covered ad in the last five years. If a platform cannot make the disclosures for every covered ad, or responds in three days instead of two, the law imposes a $10,000 fine per "violation," which is trebled for "intentional" violations. RCW 42.17A.780.

Washington sued Meta for allegedly not complying with 12 requests within the statute's then-24-hour timeline. CP247-318. The superior court ruled for the State, imposing the maximum $10,000 penalty for each violation. CP5574; CP5576; CP5784-85. Despite the statute's provision for *per-request* fines, the

court imposed liability on a *per-ad* basis—turning 12 violations into 822 and exponentially increasing the statute's chilling effect. Further, despite Meta's extensive efforts to avoid violating the law—including implementing a ban on Washington political ads—the court declared these 822 violations "intentional," trebled the damages to $24,660,000, and awarded $10,522,159.59 in attorney fees and costs. *Id*. The Court of Appeals affirmed.

ARGUMENT

I. Washington's Platform Disclosure Law, which burdens speech more severely than any other disclosure law nationwide, cannot satisfy First Amendment scrutiny.

Meta has persuasively shown (Br. 20-30) that Washington's Platform Disclosure Law imposes greater burdens on political speech than the Maryland law struck down in *Washington Post v. McManus*, 944 F.3d 506 (4th Cir. 2019). But it is far worse than that: Washington's extreme law imposes much greater burdens on digital political advertising than the law of *any* State.

The vast majority of States—40—do not single out political advertising on websites for any additional regulation beyond that imposed on other media.

The remaining States (except Washington) uniformly require the political ad *buyer* to take steps that make it far more feasible for self-serve platforms—some of which receive millions of posted ads daily—to comply. Most importantly, these States uniformly require ad buyers to disclose to the platform whether the posted ad is regulated, and they uniformly provide "good faith" or similar exceptions that subject platforms to liability only when they have actual knowledge of the posted ad and fail to report on ads that they know are regulated.

Washington law contains none of these protections. Worse, anyone anywhere can make requests for disclosures of covered ads as broad and vague as "any political ads related to 2019 elections in Washington state." CP7870. The Attorney General asserts the right to collect up to $30,000 *per undisclosed ad*. That

too is unprecedented—the Maryland law in *McManus*, for example, authorized only injunctive relief. 944 F.3d at 514.

Washington thus stands alone in requiring such extensive disclosures of platforms and imposing such draconian penalties—its law is "truly exceptional." *McCullen v. Coakley*, 573 U.S. 464, 490 (2014). And where, as here, core political speech is at stake, the State must explain "what makes [Washington] so peculiar that it is virtually the only State to determine that such [disclosures and penalties are] necessary." *Eu v. S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 214-15 (1989). That no other State uses Washington's approach is proof positive that its asserted interests and means of achieving them are "dubious." *Americans for Prosperity*, 594 U.S. at 614.

A. Few States specifically regulate online political advertising, and those that do take measured approaches.

Only ten States regulate political advertising online in a manner different from how they regulate political advertising on other media. *See* Victoria Smith Ekstrand & Ashley Fox, *Regulating the Political Wild West: State Efforts to Disclose Sources*

of Online Political Advertising, 47 J. OF LEGIS. 81, 86 (2021). Moreover, the few States that do impose additional regulations on online platforms take one of three approaches—a disclaimer model, a candidate-based record-keeping model, or a commercial-advertiser-based record-keeping model—that burden far less speech than does Washington's law. In short, Washington is an outlier twice over—it is one of just ten States to impose additional burdens on online political advertising, and among those States its regulations are easily the most severe.

1. The disclaimer model

Four States (Colorado, Louisiana, Vermont, and Wyoming) prescribe additional regulations for online political advertisements, but require only posting certain disclaimers on those advertisements. This way, all required information is found in the ad itself and can easily be viewed—without any formal request from voters or placing burdensome recordkeeping obligations on platforms.

What's more, these required disclaimers uniformly pertain only to the ad's *purchaser*. Colorado, Louisiana, and Wyoming require only a "paid for by" disclaimer that lists the purchaser's name. Colo. Rev. Stat. §§ 1-45-108.5(5), 1-45-108.3; La Stat. Ann. § 18:1463(E)(3); Wyo. Stat. Ann. § 22-25-110. Vermont requires the purchaser's name and address, as well as top donor information if bought by or on behalf of a political committee or party. Vt. Stat. Ann. tit. 17, § 2972.

2. The candidate-based record-keeping model

Three other States—Virginia, California, and New York—use a candidate-based record-keeping model. Specifically, these States typically require ad buyers to notify a platform that they are posting a covered political ad, while providing platforms with "good faith" (or similar) exemptions from liability when ad buyers fail to provide the required notification.

In Virginia, before "purchasing" an online political ad, "a person shall identify himself to the online platform as an online political advertiser." Va. Code Ann. § 24.2-960(A). This obligates

the purchasers, not the platforms, to identify both themselves and their regulated content.

If an ad buyer fails to provide information or provides inaccurate information, moreover, Virginia does not punish the *platform*. Rather, "[a]n online platform may rely in good faith on the information provided by online political advertisers." *Id*. § 24.2-960(C). This relieves platforms of the massive task of monitoring posted ads and trying somehow to ensure that advertisers made the required disclosures.

California regulates online platforms, but exempts many social media advertisements from disclosure. Cal. Gov't Code § 84504.3(h). When ads *are* covered, California requires that ad buyers both "expressly notify the online platform" that "the advertisement is [a regulated] advertisement," and provide the platform with the other information needed to satisfy its disclaimer and recordkeeping requirements. *Id*. § 84504.6(c)-(e). Unlike in Washington, therefore, platforms need not search for needles in a haystack; those behind the ad must supply platforms with the

relevant information. Moreover, California, like Vermont, allows platforms to rely on that information in "good faith." *Id.* § 84504.6(e).[1]

New York requires platforms to make disclosures only to state regulators, and those disclosures are limited to information contained in a registration form that the purchaser has already submitted. N.Y. Elec. Law 14-107-b.

3. The commercial-advertiser-based disclosure model

Finally, three States—New Jersey, Maryland, and Washington—use a commercial-advertiser-based model to impose disclosure requirements on platforms that provide online commercial advertising. Under this model, the disclosure mandates imposed on "commercial advertisers"—defined to include platforms that host political ads, including online platforms—resemble those imposed on candidates. Of the three models, therefore, this

[1] Further, California's recordkeeping obligations last just 12 months (*id.* § 84504.6(d)(1)) versus an unprecedented 60 months in Washington (RCW 42.17A.345(1)).

model imposes the most severe burdens on platforms. But of the three States that take this approach, Washington is by far the most extreme.

For example, New Jersey requires commercial advertisers to record all posted advertisements, together with the ad buyer's name and address, but not information about such ads' viewers. N.J. Rev. Stat. § 19:44A-22.3(d). These records must be available for inspection for two years following the election (*id*.), unlike the five years required by Washington.

Most importantly, however, New Jersey law directs the platform to require the ad buyer to notify the platform that its ad is a regulated political ad under state law by providing "a copy of the statement of registration required to be filed with the Election Law Enforcement Commission." *Id.* This provision enables platforms to identify up front which ads must be disclosed.

Maryland's disclosure law, which failed even exacting scrutiny in *McManus*, was likewise far less burdensome than Washington's. *See* 944 F.3d at 513, 523. Maryland's law contained

two main components (Md. Code Ann., Elec. Law § 13-405(b))—a publication requirement that required platforms to record the purchaser's identity, the identity of anyone exercising control over the purchaser, and the amount paid for the ad (*id.* § 13-405(b)(6)), and an inspection requirement that required platforms to "retain those records" so "the Maryland Board of Elections c[ould] review them upon request" (*McManus*, 944 F.3d at 512).

Although the "onus" of the Maryland law "f[ell] on the web-sites themselves, not the political speakers," the digital platforms were aided in complying by other statutory requirements imposed on ad buyers. *Id.* at 511. Specifically, "both [the 'publication' and the 'inspection'] requirements attach[ed] when (i) the buyer notifie[d] a platform that its ad constitutes a 'qualifying paid digital communication[]' under the Act, and (ii) supplie[d] the platform with the necessary information that it w[ould] then have to post and retain as required by the publication and

inspection parts of the Act." *Id*. at 512 (quoting Md. Code Ann., Elec. Law §§ 13-405(a)(1), § 13-405(d)(1)).

Maryland political ad buyers thus had to "provide the online platform that disseminates the qualifying paid digital communication with the information necessary … to comply." Md. Code Ann., Elec. Law § 13-405(d)(1). If that information turned out to be inaccurate, online platforms were further protected by a provision entitling them to "rely in good faith on the information." *Id*. § 13-405(d)(2). As in New York, records had to be made available only to the State, not the public—and for only one year (*id*. § 13-405(c)), not five, as in Washington. Finally, violations were remediable only by injunctions, not fines—let alone draconian fines. *McManus*, 944 F.3d at 514.

Not even these limitations—scope of information, time of retention, who can inspect the records, penalties, and platform actions taken in good-faith reliance on ad buyers who possess the relevant information—could save Maryland's law from being invalidated under the First Amendment. *See id.* at 513, 523. As

the Fourth Circuit observed, "Maryland's law is different in kind from customary campaign finance regulations because the Act burdens *platforms* rather than political actors," and such laws have "chilling effects"—they both "make it financially irrational, generally speaking, for platforms to carry political speech" and "create freestanding legal liabilities and compliance burdens that independently deter hosting political speech." *Id*. at 515-16.

The court of appeals went on to elaborate that "the Act fails even the more forgiving standard of exacting scrutiny" because "the disparity between Maryland's chosen means and purported ends is so pronounced." *Id*. at 520. Specifically, "what Maryland wishes to accomplish … can be done through better fitting means"—"Maryland can apply the Act's substantive provisions to ad purchasers directly, rather than neutral third-party platforms, or expand its existing campaign finance laws to cover donors." *Id*. at 523.

On these grounds, the court invalidated Maryland's law for lack of narrow tailoring even though it (1) required political ad

buyers both to self-identify and to provide the required information to online platforms, (2) further protected platforms that relied in good faith on that information, and (3) imposed only injunctive relief—all features absent here. This Washington law thus suffers from greater constitutional infirmities than the Maryland law invalidated in *McManus*—and indeed the disclosure laws of any other State.

B. The Washington Platform Disclosure Law, the broadest of its kind anywhere in the nation, burdens and chills far more speech than the disclosure law of any other State.

This Washington law's unprecedented breadth and severity unsurprisingly lead to more severe chilling effects on political speech in Washington than are experienced by the citizens of any other State. This raises serious First Amendment concerns, as burdens on political speech are "especially suspect." *McManus*, 944 F.3d at 513. Worse, Washington's law is essentially unprecedented in three key ways, each of which confirms its unconstitutionality.

1. Washington requires platforms to figure out for themselves whether an ad is regulated—an impossible task.

First, unlike any other State, Washington does not require ad buyers to notify online platforms when they post political ads. For self-serve platforms like Meta, this leaves ad buyers free to violate the platforms' disclosure policies with impunity. Meanwhile, platforms must shoulder the massive burden of perpetually monitoring every ad on their sites to find wrongfully undisclosed advertising, posted in violation of their policies. Instead of addressing the ad sponsor's wrongdoing, Washington punishes platforms for what, practically speaking, amounts to a failure to be omniscient.

It is no answer for the State to say that online entities can simply use algorithms to identify the subject ads from among the millions that run daily on their platforms—that, as the superior court put it, Meta "already collect[s]" the needed information and can comply "essentially [by] press[ing] a button." CP5628-29. That assertion is disputed—which should preclude summary

judgment—and it ignores the statute's expansive text and the attendant difficulties of identifying the covered ads. *Amici*'s members can attest that the superior court's assumptions lacked any grounding in the practical realities—which is why many have withdrawn from Washington's political advertising market.

Second, the statute requires disclosure of ads even if they do not use a candidate's name, provided the State deems the ad "identif[ying]." RCW 42.17A.005(21). Further, the statute covers not only candidate ads but ads for referenda—which means the subject of covered ads is essentially limitless. And if the Attorney General and the superior court were correctly reading the statute (they are not), platforms that inadvertently fail to identify even one offending *ad* that has slipped through (versus failing to submit one required *report*) would be subject to hefty fines. CP7073-93; CP7875.

Even if automated systems are supplemented by human review—a costly, labor-intensive process—platforms still cannot identify all covered ads. For example, there are some 91 places

(including 34 cities) in the United States named "Washington." Wikipedia, *List of the most common U.S. place names*.[2] Nearly all of these places are beyond Washington State's jurisdiction—but that does not eliminate the burden of having to sort through ads, referenda, and candidacy lists to determine whether the subject ads relate to a campaign or referenda somewhere *outside* the State.

To boot, many elections are local, where the burden of complying with Washington's regulations is even greater. According to the U.S. Census Bureau, Washington has 1,890 local governments. *See 2022 Census of Governments—Organization*, UNITED STATES CENSUS BUREAU (2022).[3] Many of those locations, however, bear the same names as counties, cities, towns, and villages in States other than Washington. For example, Washington has a city named Arlington. So do 21 other States.

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[2] https://en.wikipedia.org/wiki/List_of_the_most_common_U.S._place_names.

[3] https://www.census.gov/data/tables/2022/econ/gus/2022-governments.html.

Jackson Knapp, *There Are Actually 21 Places in the US Named Arlington*, WASHINGTONIAN (Jan. 14, 2016).[4] Making matters worse, 31 States (not including Washington) have a Washington County. Deidre McPhillips, *What's in a Name: Community Health and America's Most Common County*, U.S. NEWS & WORLD REPORT (Apr. 4, 2019).[5]

All of this confirms that combining human and algorithmic review to determine what constitutes a Washington political ad is no simple task, and certainly involves more than "press[ing] a button." CP5628-29. Instead, Washington is demanding that platforms comb through every single ad to determine whether the location information (if any) *could* correspond to a location in Washington State. Then the platform must determine if that location is *actually* in Washington, or just one of many common

[4] https://www.washingtonian.com/2016/01/14/there-are-actually-21-places-us-named-arlington/.

[5] https://www.usnews.com/news/healthiest-communities/articles/2019-04-04/washington-most-common-county-name-in-us.

place names that exist both inside and outside that State. This intensive ad-by-ad analysis of 91 places named "Washington" nationwide simply cannot yield the perfect accuracy that Washington requires, placing platforms in an impossible situation.

Further complicating matters, the definition of "political advertising" is broad and open-ended, encompassing anything that "directly or *indirectly*" appeals for "financial or *other support or opposition*" to a candidate or proposition. RCW 42.17A.005(40) (emphasis added). Ads can have unclear relationships to candidates or propositions. In one ad here, a candidate simply thanked a podcast host for being invited onto the podcast, without any reference to a Washington election: "Thank you to @jasonrighden for inviting me to @talktoseattle ! Listen free on @itunes …." CP7873. Another ad mentions "historically low voter turnout rate" and urges people to "vote now," but never specifically mentions any candidate or ballot proposition. CP7873. The analysis is even murkier for ballot propositions, which often relate to broad social issues like climate change, gun rights, or

marriage equality, making it difficult to assess whether the ad "indirectly" calls for "support" in an election.

That full compliance is genuinely impossible is underscored by the fact that Meta, Google, and Yahoo have withdrawn from the market, outright banning Washington state-level political ads from their platforms—something they have not done in any other State or for Washington federal elections.[6] But while this step *ought* to eliminate their compliance obligations, the platforms continue to face liability—here, $24.6 million—including for "intentional" violations. CP5784-85. Why? Because, for the same reasons that platforms cannot perfectly identify covered ads in trying to comply with the law, they cannot perfectly *enforce* their bans. And even though sponsors are best positioned to know whether their ads are covered, Washington focuses its ire on the platforms, who often do not know that covered ads were

[6] CP7449-50; https://adspecs.yahooinc.com/pages/policies-guidelines/yahoo-ad-policy.

posted and actively sought to block them. These incentives are backwards.

2. Washington provides no "good faith" exception that protects platforms when they receive inaccurate information.

The first difficulty with the Washington law is exacerbated by a second: Washington provides no "good faith" or similar exception that limits liability to situations where the platform has actual knowledge of what is posted. Even New Jersey—the only other State with a commercial advertiser-based disclosure law that has not been invalidated—requires disclosure only of information known to the platform. N.J. Rev. Stat. § 19:44A-22.3(d) (e.g., the identity and address of the purchaser, a copy of the communication, and a statement of the number of copies made or dates and times of transmittal). Washington, by contrast, requires platforms to disclose information—e.g., who sponsored the ad—even when the ad buyer did not disclose that sponsorship information to the platform. WAC 390-18-050(6)(c).

This explains why platforms that would otherwise encourage political advertising in Washington elections—having no notice from ad buyers that their posted ad was regulated, and no realistic ability to obtain information not disclosed—have little choice but to withdraw from the market by banning Washington political ads. That these entities would not make this decision unless they had to is confirmed by the fact that they continue to permit online political advertising in every other State. And this "short history of [Washington's] law shows that [its] chilling effects are not theoretical." *McManus*, 944 F.3d at 516-17.

3. Washington imposes penalties far harsher than those of any other State.

Third, Washington's penalties for violations are exponentially more severe than anywhere else. In Maryland, for example, noncompliance was subject only to "injunctive relief to require removal of the ad" (*id.* at 514), whereas Washington's penalty is, according to the court below, $10,000 per ad (RCW 42.17A.750(1)(c), 42.17A.755(3)(b))—or $30,000 for violations deemed "intentional" (RCW 42.17A.780), which evidently

includes even ads posted in violation of platform policies. That up-to-$30,000-per-ad penalty imposes a crushing burden and chilling effect on low-cost, readily accessible, and oft-used digital advertising. Suffice it to say, *McManus* involved nothing like the $24.6 million judgment below, but that did not deter the Fourth Circuit from striking down Maryland's more modest remedial scheme.

In short, Washington's law is "truly exceptional" (*McCullen*, 573 U.S. at 490)—a "danger sign[]" that the law "fall[s] outside tolerable First Amendment limits." *Randall*, 548 U.S. at 253 (plurality op.). Washington forces platforms to play a high-stakes game of whack-a-mole with millions of ads, knowing they risk incurring a five-figure fine if they miss even one covered ad.[7]

[7] As noted (at 6), RCW 42.17A.345's text imposes liability on a per-"request" rather than per-*ad* basis. In concluding otherwise, the superior court turned 12 violations into 822.

C. As the laws of 49 States confirm, this Washington law is not narrowly tailored to the State's interest in ensuring transparency in political advertising.

No State other than Washington requires online platforms to perfectly identify covered ads without making exceptions for good faith efforts and to make broad disclosures to any requester within two business days, all under pain of hefty per-ad fines.

That every other State satisfies its interests through less burdensome means underscores that Washington has "too readily forgone options that could serve its interests just as well, without substantially burdening" speech. *McCullen*, 573 U.S. at 490. Indeed, when a State stands alone in imposing burdensome requirements, that indicates that its asserted interest is at best "dubious." *Americans for Prosperity*, 594 U.S. at 614. And even assuming, *arguendo*, that Washington law serves some compelling interest, the fact that Washington "is virtually the only State to determine that [its broad disclosure requirements and penalties are] necessary" forecloses the conclusion that Washington law is narrowly tailored to that interest. *Eu*, 489 U.S. at 214-15.

To take only the most obvious examples, Washington can obtain the very same information by either (1) relying on existing disclosures from the candidates and speakers themselves or (2) requiring those candidates and speakers to notify the platform when they buy regulated political advertising and then requiring the platform to disclose only what it learns from those disclosures. As the State's own expert admitted, if existing disclosures are insufficient or untimely, Washington can require "more" and "faster disclosure of information by campaigns or candidates." CP8364-65. To ignore these alternative channels and instead burden third parties with no stake in the outcome of the elections is an unconstitutional means of pursuing greater transparency.

Indeed, Washington law already requires just before elections each ad sponsor to file a special report within 24 hours of the ad's publication. RCW 42.17A.260. This report must include the sponsor's and platform's contact information, a description (and the amount) of the expenditure, publication dates, and the candidate being supported or opposed. RCW 42.17A.260(1)-(3). As

in *McManus*, the State has not "show[n] why the marginal value of the small amount of new information … justif[ies] the weighty First Amendment burdens imposed." 944 F.3d at 523 n.5.

The Washington law's massive penalties on platforms magnify the burden and chilling effect on speech. As one state legislator explained, "[a] Facebook ad can cost less than five dollars." CP7418. Yet the court below imposed a penalty of $30,000 *per ad*—over $24 million in total. That disproportionate penalty dwarfs candidates' own expenditures in the State's costliest statewide elections, such as the $5.5 million spent on the 2020 Attorney General race, and is orders of magnitude greater than the amounts spent on local elections.[8] Not surprisingly, platforms have attempted to ban Washington political ads, concluding that the costs of allowing them far outweigh the benefits. *See* Eric Goldman, *The Constitutionality of Mandating Editorial Transparency*, 73 Hastings L.J. 1204, 1219-20 (2022)

[8] https://www.pdc.wa.gov/political-disclosure-reporting-data/record-setting-campaigns#other%20statewide%20offices.

(discussing *McManus*'s conclusion that "campaign finance disclosure" laws like Maryland's "economically distort[] publishers' editorial decisions" and calling it "a false equivalency" to treat this "as just another business compliance cost").

II. Washington's law unconstitutionally chills speech and restricts participation in the democratic process.

Washington pretends that this law "do[es] not prevent or interfere with speech" (State Br. 1), but it is an inexorable fact that as "additional rules are created for regulating political speech, any speech arguably within their reach is chilled." *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 334 (2010). That is especially true for laws, like Washington's, that burden platforms. "Because political actors and neutral third-party platforms operate under markedly different incentives, . . . when the 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." *McManus*, 944 F.3d at 517. Indeed, burdening speech by regulating "intermediaries" raises

special "constitutional concerns" in part because it "allows government officials to be more effective in their speech-suppression efforts." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 198 (2024); *accord Smith v. People of the State of California*, 361 U.S. 147, 154 (1959) ("The bookseller's self-censorship, compelled by the State, would be a censorship affecting the whole public, hardly less virulent for being privately administered.").

And make no mistake, this law suppresses not just the speech of platforms (who are unable to host political ads that they welcome in other States), but also the speech of Washington candidates, campaigns, and voters. As Washington state legislators on both sides of the aisle have testified, these online ads are "often the most effective way for candidates and campaigns to communicate with voters and constituents" and "to raise money from individual donors." CP7410; *see* CP7410-14 (Rep. Stokesbary); CP7416-19 (Sen. Mullet).

"[P]articularly problematic" are laws—like this one—that "inevitably favor[] certain groups of candidates over others,"

Collier v. City of Tacoma, 121 Wash. 2d 737, 752 (1993). Online ads are "especially useful for local candidates and campaigns," as they allow for local targeting that TV, radio, and newspaper ads do not, and for non-incumbent challengers relying on "grass-roots organizing and small individual donations." CP7412-13, 7417. These candidates and campaigns would advertise online if they could, but Washington law—by imposing impossible burdens and ruinous fines on platforms—effectively bars that speech. The State supposedly wishes to promote transparency, but its law promotes only silence. In a world where the First Amendment requires giving "the benefit of any doubt to protecting rather than stifling speech," this law cannot possibly survive First Amendment scrutiny. *Citizens United*, 558 U.S. at 327.

CONCLUSION

The Court should reverse the judgment below.

Respectfully submitted,

/s/ Steffen N. Johnson

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Dated: September 12, 2025

/s/ Tyre L. Tindall
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DECLARATION OF SERVICE

I hereby certify that I caused the foregoing Brief for NetChoice, Chamber of Progress, Computer & Communications Industry Association, and TechNet as *Amici Curiae* in Support of Petitioner Meta Platforms, Inc. to be served on counsel for all other parties in this matter via this Court's e-filing platform.

Dated: September 12, 2025

/s/ Tyre L. Tindall
Tyre L. Tindall
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