No. 103748-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

META PLATFORMS, INC. formerly d/b/a/ FACEBOOK, INC.,

Petitioner.

BRIEF OF LEAGUE OF WOMEN VOTERS OF WASHINGTON, FIX DEMOCRACY FIRST, THE BRENNAN CENTER FOR JUSTICE, AND CAMPAIGN LEGAL CENTER AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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INTERESTS OF *AMICI CURIAE*

Amici curiae are nonprofit, nonpartisan groups working to create a fair, transparent democracy accessible to all voters, including by supporting effective public disclosure laws, like RCW 29B.30.090 (the "Disclosure Law") that Petitioner Meta Platforms challenges here.

The **League of Women Voters of Washington (LWVWA)** is a nonpartisan, grassroots organization within Washington State committed to protecting voting rights, empowering voters, and defending democracy. LWVWA promotes political responsibility through informed and active participation in government and acts on selected governmental issues.

Fix Democracy First is a nonprofit, nonpartisan organization that works to strengthen democracy in Washington State and nationally, including efforts in campaign finance reform and disclosure, public funding of elections, ranked choice

voting and proportional representation, expanding voting access, and increasing civic participation.

The Brennan Center for Justice at NYU School of Law ("Brennan Center") is a nonprofit, nonpartisan law and public policy institute that seeks to strengthen, revitalize, and defend our systems of democracy and justice. The Brennan Center promotes reasonable campaign finance and disclosure policies that help perfect the ideal of self-government through fuller civic participation and a better-informed electorate.[1]

Campaign Legal Center is a nonprofit, nonpartisan organization that works to strengthen and defend campaign finance, political disclosure, and other election laws in litigation, administrative proceedings, and legislative policymaking.

INTRODUCTION AND STATEMENT OF THE CASE

Amici submit this brief to address Meta's First Amendment challenge to Washington's Disclosure Law and to discuss the

[1] This brief does not purport to convey the position of the New York University School of Law.

widely recognized informational interests advanced by such transparency measures. Many decades of federal and Washington precedents recognize the importance of "prompt disclosure of expenditures" to provide "citizens with the information needed to hold . . . elected officials accountable for their positions and supporters." *Citizens United v. FEC*, 558 U.S. 310, 370-71 (2010). *See also Voters Educ. Comm. v. Washington State Pub. Disclosure Comm'n*, 161 Wash. 2d 470, 479, 166 P.3d 1174, 1179 (2007) (noting importance of informing voters about "the identity of and financing behind political speakers"). Because the Disclosure Law provides the public with critical information about who is financing campaign spending, it promotes rather than burdens First Amendment values.

Although the importance of electoral transparency is undisputed, Meta complains that the Disclosure Law is not narrowly tailored, questioning whether the information it requires from digital platforms specifically—such as an ad's target audience or the impressions it generates—is sufficiently

related to the informational interest. Meta Suppl. Br. at 14. But spending for digital political advertising has exploded and developments in emerging technologies, such as artificial intelligence ("AI"), are revolutionizing the content and targeting of online communications. Disclosure about the financing and functioning of digital political advertising is essential to informed electoral decision-making in this new landscape.

Against this backdrop, the Disclosure Law ensures that Washington's election system addresses developing technologies while arming voters with the crucial information they need to evaluate digital electioneering and combat false or confusing electoral messages online. The judgment of the Court of Appeals should be affirmed.

ARGUMENT

I. Voters Benefit from Knowing Who Finances Election Messaging—Particularly in Digital Environments.

The Supreme Court has repeatedly recognized that democracy functions better when the interests funding election campaigns are disclosed. *See*, *e.g.*, *Citizens United*, 558 U.S. at

339. Transparency is even more important in the context of online political advertising—where anonymity and technological innovations such as microtargeting, corporate harvesting of users' personal data, and AI tools enable advertisers to finely target campaign advertising to carefully curated voter groups with little if any transparency.

A. Political campaigns have dramatically increased their advertising online.

Digital political advertising has surged in recent years both in national campaigns and in Washington. *See* Tech for Campaigns, *2020 Political Digital Advertising Report* (2020), https://www.techforcampaigns.org/impact/2020-political-digital-advertising-report (noting political digital advertising between 2018 and 2020 grew by 460%). In 2008, U.S. presidential candidates collectively spent $22.25 million on online political ads. Lata Nott, *Political Advertising on Social Media Platforms*, ABA (Jun. 25, 2020), https://www.americanbar.org/groups/crsj/publications/human_ri

ghts_magazine_home/voting-in-2020/political-advertising-on-social-media-platforms/. By the 2020 federal elections, the total spending on digital political ads leapt to $1.6 billion. Juli Wasson, *Tracking online political ads improves with new research methodology*, WASH. STATE UNIV. (Aug. 28, 2023) https://research.wsu.edu/news/tracking-online-political-ads-improves-with-new-research-methodology. In the 2024 elections, online political spending rose to at least $1.9 billion. Ian Vandewalker, et al., *Online Ad Spending in 2024 Election Totaled at Least $1.9 Billion*, Brennan Ctr. for Justice (July 2, 2025), https://www.brennancenter.org/our-work/analysis-opinion/online-ad-spending-2024-election-totaled-least-19-billion.

Digital advertising has followed a similar trend in Washington. In the 2016 election—prior to clarification of the regulation at issue here, WAC 390-28-050(3)(a)-(b)—candidates and political committees in Washington reported spending approximately $5 million on digital advertising in state and local

races.[2] In the years since the 2018 rulemaking, online campaign expenditures have hardly been chilled. The state's Public Disclosure Commission's database reveals that digital advertising more than doubled from 2020 ($7 million) to 2024 ($15 million). *See infra* n.2.

The rise in online political advertising impacts the public not only because of its exploding volume, but also because digital communications are fundamentally different from traditional advertising delivery and pose unique risks. Platforms use "targeting" or "behavioral advertising," which track users' online behavior to deliver ads based on algorithmic predictions of users' receptiveness to different messages. Federal Trade Commission, *FTC Staff Report: Self-Regulatory Principles For*

[2] While amici's search of the Washington State Public Disclosure Commission's database for "online ads" or "digital ads," https://www.pdc.wa.gov/political-disclosure-reporting-data/browse-search-data/expenditures, is imprecise—likely under- and over-counting the relevant pool of expenditures—repeated over multiple elections (beginning with $5 million in 2016), it provides a rough estimate of spending trends.

Online Behavioral Advertising (Feb. 2009), https://www.ftc.gov/sites/default/files/documents/reports/federal-trade-commission-staff-report-self-regulatory-principles-online-behavioral-advertising/p085400behavadreport.pdf. And as platforms have amassed exponentially larger amounts of user data, they have increasingly fine-tuned their ad targeting capacity.

B. The increase in digital political advertising presents new challenges to democracy.

These unique features of political digital advertising—and the rise of AI technologies—pose new threats to democracy.

The practice of AI-enhanced 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 they are showing other voters. *See* Michael Harker, *Political advertising revisited: digital campaigning and protecting democratic discourse*, 40 LEGAL STUD. 151, 153-57 (2020). This new ability to secretively direct 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." *See* Jürgen Habermas, *Political Communication in Media Society: Does Democracy Still Enjoy an Epistemic Dimension? The Impact of Normative Theory on Empirical Research*, 16 COMMC'N THEORY 411, 413 (2006). Studies have found that algorithmically driven political information reinforces anti-democratic sentiment, Brian Judge, *The birth of identity biopolitics: How social media serves antiliberal populism,* 26 NEW MEDIA & SOCIETY 3273 (2024), decreasing citizens' trust in democracy, Jorge Matthes, et al., *Understanding the democratic role of perceived online political micro-targeting: longitudinal effects on trust in democracy and political interest*, 19 J. OF INFO. TECH. & POL. 435 (2022).

Along with driving mistrust, this political hyper-targeting polarizes audiences—and reinforces an already-siloed social media ecosystem where algorithms filter content based on users' predicted responsiveness. Targeting political advertising

according to age, gender, race, and education level ensures that different people receive different messages based on their identity, creating inequality in political engagement and divisions between demographics. Young Mie Kim, *Algorithmic Opportunity: Digital Advertising and Inequality in Political Involvement*, 14 THE FORUM 471 (2016). This results in a dangerous echo-chamber that "creates an antidemocratic space in which people are shown things with which they already associate and agree, leading to nondeliberative polarization." Kate Klonick, *The New Governors: The People, Rules, and Processes Governing Online Speech*, 131 HARV. L. REV. 1598, 1666–67 (2018). Indeed, highly effective algorithms like those employed by TikTok, Facebook, and Instagram have not only polarized audiences, but also created a breeding ground for extremism and hate speech by amplifying such content among users likely to respond to it. JENNI JAAKKOLA, ET AL., QUALITATIVE APPROACHES TO THE SOCIAL PSYCHOLOGY OF POPULISM: MULTIMODAL PERSUASION IN RIGHT-WING POPULIST

TIKTOK DISCOURSE 92 (2025), *available at* https://library.oapen.org/bitstream/handle/20.500.12657/96945/9781040318881.pdf?sequence=1; Dominik Bär, et al., *Systematic discrepancies in the delivery of political ads on Facebook and Instagram*, 3 PNAS NEXUS 247 (2024).

Artificial intelligence tools have also already been used to create and micro-target realistic false content, including political deepfakes, to mislead the public regarding candidate positions and to spread disinformation about election processes. *See* Heejun Lee & Chang-Hoan Cho, *Digital Advertising: present and future prospects*, 39 INT'L J. OF ADVERT. 332, 336 (2020). The 2024 federal election cycle is replete with examples, including a notorious robocall to thousands of New Hampshire voters shortly before that state's presidential primary in which a voice convincingly imitating then-President Joseph Biden instructed voters not to vote. Doc Louallen, *Fake Biden robocall prompts state probe, ratchets up concerns about AI in 2024 election*, USA Today (Jan. 24, 2024),

https://www.usatoday.com/story/news/politics/2024/01/24/fake-biden-robocall-investigation/72343944007/. By October 2024, fake voice clips purporting to be recordings of presidential candidates Donald Trump and Kamala Harris were so prevalent that the Washington Post published an interactive story to teach voters how to distinguish fabricated media from real content. Pranshu Verma, et al., *AI is spawning a flood of fake Trump and Harris voices. Here's how to tell if they're real*, Wash. Post (Oct. 16, 2024), https://www.washingtonpost.com/technology/interactive/2024/ai-voice-detection-trump-harris-deepfake-election. The public has quickly recognized the threat, with 57% of Americans in September 2024 stating they were extremely or very concerned that AI would be used to create misleading content in the upcoming November election. Shanay Gracia, *Americans in both parties are concerned over the impact of AI on the 2024 presidential campaign*, Pew Research Center, https://www.pewresearch.org/short-reads/2024/09/19/concern-over-the-impact-of-ai-on-2024-presidential-campaign/.

C. The rise in political spending online underscores the critical need for transparency in internet-based electioneering.

Requiring disclosure of who is paying for digital political ads as well as how such ads target specific audiences is key to addressing the problems posed by online electioneering.

1. Disclosure laws counteract online misinformation and confusion.

Disclosure helps voters make reasoned decisions. *See* Jennifer A. Heerwig & Katherine Shaw, *Through a Glass, Darkly: The Rhetoric and Reality of Campaign Finance Disclosure*, 102 GEO. L.J. 1443, 1471-72 (2014). Scholars find that campaign funding disclosures are among the most important information voters use to determine who to support, second only to partisanship.[3] Indeed, studies find that voters provided only with information about a ballot initiative's supporters were able

[3] Abby K. Wood, *Learning from Campaign Finance Information*, 70 EMORY L.J. 1091 (2021), https://scholarlycommons.law.emory.edu/elj/vol70/iss5/2; Michael Kang, *Campaign Disclosure in Direct Democracy*, 97 MINN. L. REV. 1700, 1718 (2013).

to vote according to their policy preferences as accurately as voters who had full information about the initiative. Elizabeth Garrett & Daniel A. Smith, *Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy*, 4 ELECTION L.J. 295 (2005).

The flip side is also true. In the absence of disclosure requirements, studies show that ads from anonymous groups are more effective than ads run by candidates. Travis N. Ridout, et al., *Sponsorship, Disclosure, and Donors: Limiting the Impact of Outside Group Ads*, 68 POL'Y RSCH. Q. 154 (2015). But "it is largely differences in *backlash*, not persuasion" that provide this undeserved boost to anonymous groups' ads. Deborah Jordan Brooks & Michael Murov, *Assessing Accountability in a Post-Citizens United Era: The Effects of Attack Ad Sponsorship by Unknown Independent Groups*, 40 AM. POL. RSCH. 383, 403 (2012) (emphasis added). This is because, unlike when viewing ads from recognized candidates or sponsors, voters have no means of critically assessing or holding accountable anonymous

groups who finance negative ads. *See* Ridout at 164, *supra*. Unsurprisingly, most negative advertisements are funded by anonymous, difficult-to-trace organizations. Shomik Jain & Abby K. Wood, *Facebook Political Ads and Accountability: Outside Groups Are Most Negative, Especially When Hiding Donors*, 18 Procs. of the Int'l AAAI Conf. on Web and Soc. Media 717, 718 (2024), https://ojs.aaai.org/index.php/ICWSM/article/view/31346/33506.

Transparency in advertising counters these effects. Studies reflect that disclosing the donors sponsoring an attack ad reduced the negative impact on the attacked candidate. Conor M. Dowling & Amber Wichowsky, *Does It Matter Who's Behind the Curtain? Anonymity in Political Advertising and the Effects of Campaign Finance Disclosure*, 41 AM. POL. RSCH. 965, 982 (2013). And, "[a]lthough disclosure only weakens—and does not undermine—the impact of [anonymous] ads . . . disclosure does seem to ameliorate the structural imbalance that favors 'dark

money' advertising." Ridout at 163-64, *supra*. Consequently, disclosure of the funders of campaign advertisements increases voter trust in the universe of political advertising, which reduces the extent to which they tune-out political advertisements as a whole. Keith E. Schnakenberg, et al., *Dark Money and Voter Learning*, J. OF POLITICS (Aug. 2025, Ahead of Print), *available at* https://econpapers.repec.org/paper/osfsocarx/r562d.htm.

Finally, disclosure not only aids voters *directly*, but also helps them indirectly—by supporting political reporting, which in turn supports civic education and voting decisions. Indeed, studies show that in addition to ensuring that reporters have access to reliable information, disclosure laws may *increase* reporting on campaign finance matters overall. Travis N. Ridout, *The Impact of New Transparency in Digital Advertising on Media Coverage*, 41 POL. COMMC'N 335 (2024), *abstract available at* https://doi.org/10.1080/10584609.2024.2303159. Therefore, even when individual voters do not request information, the Disclosure Law encourages reporting on local

elections, ensuring public oversight over election-related advertising in Washington.

2. Jurisdictions nationwide have joined Washington in enacting disclosure to shine a light on election spending.

Although federal law contains extensive disclosure requirements for election ads in print and broadcast media, *see* 52 U.S.C. §§ 30104, 30120, the federal government has been slow to respond to campaigns' shift to digital advertising. Congress has not yet updated disclosure requirements for digital political ads. And while the Federal Election Commission finally updated its 2006 regulations for internet ad disclaimers in 2022, it left many forms of digital political advertising unregulated. *See* 87 Fed. Reg. 77467 (Dec. 19, 2022); 71 Fed. Reg. 18589 (Apr. 12, 2006), https://sers.fec.gov/fosers/showpdf.htm?docid=776

In light of this anemic federal effort, state legislatures have stepped in to fill the void. Over 35 states have enacted reporting and disclaimer laws requiring political spenders to disclose

information about who is funding their online campaign advertising.[4]

[4] Ala. Code § 17-5-12; Alaska Stat. §§ 15.13.090, 15.13.400; Ariz. Rev. Stat. Ann. §§ 16-901, 16-925; Ariz. Admin. Code § R2-20-805; Cal. Gov't Code §§ 84501, 84504.3, 84504.6; Cal. Code Regs. tit. 2, § 18450.1; Colo. Rev. Stat. §§ 1-45-107.5, 1-45-108.3; 8 Colo. Code Regs. § 1505-6:22; Conn. Gen. Stat. §§ 9-601b, 9-621; Del. Code Ann. tit. 15, §§ 8002, 8021; 15 Del. Admin. Code § 100-7.4.4; D.C. Code Ann. § 1-1163.15; Fla. Stat. §§ 106.011, 106.071, 106.143; Haw. Rev. Stat. Ann. §§ 11-302, 11-391, 11-393; Haw. Code R. § 3-160-49; 10 Ill. Comp. Stat. 5/9-1.14, 5/9-9, 5/9-9.5; Iowa Code §§ 68A.401A, 68A.405; Kan. Stat. § 25-4156; La. Stat. Ann. § 18:1463; Me. Stat. tit. 21-A, § 1014; Md. Code Regs. 33.13.21.04; Md. Code Ann., Elec. Law §§ 1-101, 13-306, 13-307, 13-401, 13-405; Mass. Gen. Laws ch. 55, § 18G; 970 Mass. Code Regs. 2.20; Mich. Comp. Laws § 169.247; Minn. R. 4503.2000; Minn. Stat. §§ 211B.01, 211B.04; Miss. Code Ann. § 23-15-897; Mont. Code Ann. §§ 13-1-101, 13-35-225; Mont. Admin. R. 44.11.601; Neb. Rev. Stat. §§ 49-1474.01, 49-1474.02; Nev. Rev. Stat. § 294A.348; N.H. Rev. Stat. §§ 664:2, 664:14; N.J. Stat. Ann. § 19.44A-22.3; N.J. Admin. Code §§ 19:25-10.10, -13.1, -13.2, -13.3; N.M. Stat. Ann. §§ 1-19-26, 1-19-26.4; N.Y. Elec. Law § 14-106, 14-107, 14-107-b; N.Y. Comp. Codes R. & Regs. tit. 9, § 6200.10; N.D. Cent. Code § 16.1-10-04; Ohio Rev. Code Ann. § 3517.20; Ohio Admin. Code 111:2-4-18; Okla. Ethics Comm'n R. 2.55; Or. Rev. Stat. § 260.266; Or. Admin. R. § 165-012-0525; R.I. Gen. Laws §§ 17-25-3, 17-25.3-3; S.C. Code Ann. §§ 8-13-1300, 8-13-1354; S.D. Codified Laws §§ 12-27-1, 12-27-16.1; Tenn. Code Ann. § 2-19-120; Tex. Elec. Code §§ 251.001, 255.001; Utah Code §§ 20A-11-101, 20A-11-901; Vt. Stat. Ann. tit. 17, §§

Meta and its *amici* attempt to wave off this growing consensus by arguing that these laws tend to regulate political speakers, not third-party platforms like Facebook. Meta Suppl. Br. at 21-22; NetChoice, et al., Br. at 4-7.

But this ignores that several states—including California,[5] Maryland,[6] New Jersey,[7] New York,[8] and Virginia[9]—have joined Washington in enacting disclosure requirements for platforms hosting political ads, including maintaining records of online ads.

Although Meta and its *amici* attempt to distinguish these archive laws as less "burdensome," NetChoice Br. at 14-16, they

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2901, 2972, 2973; Va. Code Ann. § 24.2-955; Wis. Stat. §§ 11.0101, 11.1303; Wyo. Stat. Ann. §§ 22-25-101, 22-25-110.

[5] Cal. Bus. & Prof. Code §§ 17940–43; Cal. Gov't Code §§ 84503–10.

[6] Md. Code Ann., Elec. Law § 13-405 (as amended by Acts 2021, c.109, § 1, (April 13, 2021)).

[7] N.J. Stat. Ann. §§ 19:44A, 19:44B.

[8] *See, e.g.*, N.Y. Elec. Law §§ 14-107(5-a), 14-107-B.

[9] Va. Code Ann. § 24.2-960(A).

selectively highlight certain features of these law such as their supposed requirement that "ad buyers . . . flag covered ads for platforms," Meta Suppl. Br. at 21—while ignoring provisions that are more extensive than what Washington's Law requires.

For instance, New Jersey makes commercial publishers responsible for ensuring that potential advertisers submit a copy of their official statement of registration if they seek to run covered political ads. N.J. Stat. Ann. § 19:44A-22.3(d). NetChoice characterizes this requirement as "enabling platforms" to identify covered ads, but this obligation falls on the publisher, not the ad buyers.[10] NetChoice Br. at 13-14. New Jersey also requires the publisher to maintain for public inspection records of all such ads and a "statement of the number of copies made or the dates and times that [each] communication

[10] Nothing in Washington's law would prevent Meta from likewise asking all ad purchasers up front whether their ads would be subject to the Disclosure Law; Washington leaves this practice to the discretion of the platform, instead of making it mandatory.

was broadcast or otherwise transmitted." N.J. Stat. Ann. § 19:44A-22.3(d).

California also imposes significant requirements on platforms hosting online advertisements. Cal. Gov't Code § 84504.6(a)(2). Meta and its *amici* completely ignore, for instance, that unlike Washington, California requires such platforms to place disclaimers on political ads with sponsorship information or create a button linking to a webpage containing this information. *Id*. § 84504.6(c). Further, when a committee has spent more than $500 on ads from the platform in a year, the platform is required to keep records about those ads and make them publicly accessible. *Id*. § 84504.6(d)(1). These records must include copies of the ad, the number of impressions the ad received, the dates and times the ad was first and last displayed, and the candidate or ballot measure that is the subject of the ad. *Id*.[11]

[11] NetChoice mistakenly states that California's recordkeeping requirement is only "12 months," NetChoice Br. at 12 n.1, but

Thus far from suggesting that Washington is an outlier, a survey of state laws demonstrates instead that lawmakers and voters nationwide recognize that digital political advertising raises unique threats and are exploring a range of approaches to ensuring transparency in online electioneering.

II. Washington's Disclosure Law Is Consistent with the First Amendment.

Multiple provisions of Washington's Fair Campaign Practices Act have been upheld under exacting scrutiny[12] by a

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this is part of the monetary *threshold* for disclosure, *see* Cal. Gov't Code § 84504.6(d)(1) (covering committees paying "[$500] or more in advertisements on the online platform during the preceding 12 months"), not the platform's recordkeeping requirement, *see id*. § 84504.6(d)(2) (requiring information to be "retained by the online platform for no less than four years").

[12] Although the Supreme Court recently reaffirmed that disclosure laws are subject to "exacting scrutiny," *Am. for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021), Meta continues to advocate for strict scrutiny because Washington regulates third-party publishers, rather than the political speakers themselves. Meta Suppl. Br. at 10 (citing *McManus*, 944 F.3d at 516). But *Bonta* explicitly disavowed the idea of a variable standard of review. There, two 501(c)(3) groups challenged a California regulation that required charities to report their large donors to the California Attorney General. 594 U.S. at 624. The Court applied exacting scrutiny, rejecting the theory advanced by

range of courts; Meta provides no reason why the sections it challenges should not likewise be affirmed by this Court under exacting scrutiny. *See, e.g.*, *State v. Grocery Mfrs. Ass'n (GMA)*, 195 Wash. 2d 442, 461, 461 P.3d 334, 346 (2020); *State ex rel. Wash. State Pub. Disclosure Comm'n v. Permanent Offense*, 136 Wash. App. 277, 284, 150 P.3d 568, 571 (2006), *as modified on denial of reconsid.* (Dec. 20, 2006); *see also Hum. Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990 (9th Cir. 2010).

A. Disclosure serves important governmental interests and advances core First Amendment principles.

The Supreme Court has reiterated that laws like Washington's serve at least three important interests: (1) providing "citizens with the information needed to hold . . . elected officials accountable for their positions and supporters," *Citizens United*, 558 U.S. at 370-71; (2) deterring actual and

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the *Bonta* plaintiffs—and Meta here—that the standard of review should vary depending on the activities of the reporting group. *Id.* at 608 (declining to cabin exacting scrutiny to electoral context: "[r]egardless of the type of association, compelled disclosure requirements are reviewed under exacting scrutiny.").

apparent political corruption, *Buckley v. Valeo*, 424 U.S. 1, 66-68 (1976); and (3) gathering the data necessary to detect violations of the law, *id*. The first of these interests, the public's informational interest, is "alone . . . sufficient to justify" disclosure laws. *Citizens United*, 558 U.S. at 369.

Meta errs in urging that the Disclosure Law be reviewed only in terms of the putative *burdens* it imposes on speech. First, the record in this case shows that burdens faced by Meta are minimal, given findings below that Meta in the "regular course of business" already collects the information required by the Law. State Suppl. Br. at 6-7.

More fundamentally, Meta also ignores the role campaign finance disclosure plays in facilitating democratic discourse. *See supra* Part I.C. The U.S. Supreme Court has made clear that disclosure *advances* First Amendment freedoms, criticizing, for instance, the plaintiffs challenging a federal disclosure law for "ignor[ing] the *competing First Amendment interests* of individual citizens seeking to make informed choices in the

political marketplace." *McConnell v. FEC*, 540 U.S. 93, 197 (2003) (emphasis added) (quotation marks omitted). *See also Brumsickle*, 624 F.3d at 1005 ("Providing information to the electorate is vital to the efficient functioning of the marketplace of ideas, and thus to advancing the democratic objectives underlying the First Amendment."). As the Court of Appeals recognized, "transparent elections not only further an important government interest but sustain democracy itself." Slip op. at 20.

To exercise their "right to full and effective participation in the political process[]," however, voters need enough information to determine which constituencies and interests are served by candidates and ballot referenda. *Reynolds v. Sims*, 377 U.S. 533, 565 (1964). "The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it." *Citizens United*, 558 U.S. at 339. *See also GMA*, 195 Wash. 2d at 462 (reasoning that the "right to receive information is the fundamental counterpart of the right of free

speech") (quotation omitted). Because the Disclosure Law provides the public with critical information about the funding of Washington political advertising, as well as its targeting and reach, it promotes the values that animate the First Amendment.

B. The Disclosure Law is narrowly tailored to provide key information to voters.

As the Court of Appeals affirmed, slip op. at 17, Washington's Disclosure Law passes muster because it is "substantially related to a sufficiently important governmental interest," *Brumsickle*, 624 F.3d at 1005, and "narrowly tailored to the interest it promotes," *Bonta*, 594 U.S. at 611.

Meta's first objection to the Law's tailoring is to claim that "the platform-oriented disclosure obligations do little to advance [the informational] interest." Meta Suppl. Br. at 14. But, of course, "ad targeting and reach information" about digital communications, *id*. at 14, is precisely the data necessary to counteract the disaggregated and siloed nature of online electioneering, providing voters the information they need to

judge the credibility of political speakers and to fully understand their positions. *See supra* Section I.B.1. As one commentator has explained, "demographic and targeting information . . . serves a particularly important informative function for digital political advertising":

> [M]icrotargeted ads . . . make it more difficult for the public to hold politicians accountable and access full information about advertising because microtargeting all but ensures that at least some voters will never see at least some ads purchased during an election. Similarly, journalists seeking to investigate claims made during campaigns and to inform the public about the veracity of those claims may find themselves struggling to access the ads and information about them.

Tallman Trask, *Digital Advertising and State-Level Political Advertising Disclosure Schemes After McManus*, 17 WASH. J.L. TECH. & ARTS 46, 58-59 (2022) (internal quotations omitted). *See also* Slip. at 28 (noting that 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").

Meta next posits that information about an ad's microtargeting and reach might be gleaned from the political

advertisers themselves, without burdening platforms. But Meta makes no attempt to explain how the average political advertiser would have this technical knowledge. As the court below noted, "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." Slip op. at 23.

At base, Meta is contending that a "platform-oriented" disclosure law *can*not be narrowly tailored. Its main authority is *Washington Post v. McManus*, 944 F.3d 506 (4th Cir. 2019), but the Fourth Circuit there did not reach any such categorical rule, and the Maryland law differed dramatically from the Disclosure Law here.

Washington's Law operates as an "open books" obligation, requiring covered media, including online platforms, to provide information about political advertising upon request by a member of the public. Although the Maryland law included a somewhat analogous requirement that covered platforms allow the state Board of Elections to "inspect" their records upon

request, *McManus,* 944 F.3d at 512,[13] its principal mandate was that platforms collect, maintain, and *host* information on their own website about the political advertisements they ran. The Fourth Circuit considered this "hosting" requirement a form of compelled speech, reasoning that it "intru[des] into the function of editors and forces news publishers to speak in a way they would not otherwise." *Id*. at 518 (quotation marks omitted).

The Washington Law contains no analogous hosting requirement. Meta attempts to minimize this crucial distinction between the two state laws, claiming that Maryland law also included an inspection requirement, *but see infra* n.14, and was overall "less burdensome," Meta Suppl. Br. at 20. But it was the perceived burden of compelling "publication" of the required

[13] The Fourth Circuit's principal critique of Maryland's *inspection* requirement was not that it "compelled" speech, but that it failed to establish "discernable limits on the ability of government to supervise the operations of the newsroom." 944 F.3d at 518-19.

information that the Fourth Circuit deemed a constitutional infirmity in Maryland's law—which is entirely absent here.[14]

Meta also invokes *McManus* to argue that a "platform oriented" law makes it "financially irrational" for platforms to disseminate political advertising, thereby suppressing speech. Meta Suppl. Br. at 15. But Meta does not even attempt to prove that Washington's law reduces political speech, a claim that is inconsistent with the apparent substantial rise in Washington electoral advertising online in recent elections. *See supra* Section I.A. Further, Meta's conception of "speech" in this context is unreasonably narrow, ignoring the speech-*enhancing* effects of disclosure—both in terms of the information it generates for

[14] Meta also overlooks that the Fourth Circuit considered the hosting requirement only "as applied" to the plaintiff *newspapers* there. 944 F.3d at 513. It refrained from "expound[ing] upon the wide world of social media and all the issues that may be pertinent thereto," *id*., thus declining to extend the reasoning of its ruling to social media companies like Meta.

public debate and the more extensive journalism it supports. *See supra* Sections I.C.1 & II.A.

Thus Meta does not even attempt to show a general "speech-suppressive" effect of the Disclosure Law, but instead relies on its choice to reduce the Washington election communications it carries on its platform. The parties debate at length both the cost to Meta of making the disclosures required by Washington and the extent to which Meta has in fact stopped hosting Washington election ads. *See* Slip op. at 28-35. But much of this dispute is beside the point—because the U.S. Supreme Court has never suggested that only "zero burden" disclosure laws survive narrow tailoring review, as Meta effectively contends. To the contrary, the U.S. Supreme Court has long recognized that the "public disclosure of contributions . . . deter[s] some individuals who otherwise might contribute" and creates "not insignificant burdens on individual rights." *Buckley*, 424 U.S. at 68. But, "weighed carefully against the interests which Congress has sought to promote," the Court nonetheless

has consistently upheld campaign finance disclosure laws as "the least restrictive means of curbing the evils of campaign ignorance and corruption . . . found to exist." *Id*. Here, Meta is one of the largest public companies *worldwide* by market cap[15] and already archives many of the political ads that are subject to Washington's law in the ordinary course of business. As found in *Buckley*, the burdens allegedly suffered by Meta are clearly outweighed by the important informational interests that these disclosures advance.

CONCLUSION

The decision of the Court of Appeals should be affirmed.

[15] MarketCapWatch, https://www.marketcapwatch.com/company/meta-platforms-marketcap.

Respectfully submitted,

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Dated: September 11, 2025

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s/ *Jesse Wing*
Jesse Wing

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