NO. 103748-1

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

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

Petitioner.

RESPONDENT STATE OF WASHINGTON'S ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

The Fair Campaign Practices Act has long required advertisers to disclose information about who is trying to influence Washington's elections. Newspapers, TV and radio stations, and online platforms have complied with the law without difficulty, and the statute has helped inform voters about who is seeking to sway their votes. The required disclosures do not prevent or interfere with speech, and such disclosures have never been more important, as foreign actors and others aggressively spread election disinformation, especially through digital media.

Meta Platforms, Inc., the world's largest social media company, repeatedly and intentionally violated the FCPA by refusing to disclose information about political advertisements it sold, even though Meta maintained this infomation in the ordinary course of its business. After extensive discovery, the trial court granted summary judgment to the State and issued an appropriate civil penalty, rejecting Meta's ipse dixit argument

that the law is unconstitutionally burdensome. The Court of Appeals closely reviewed the record below and applied precedent to hold that Meta failed to meet its burden on summary judgment. The Court of Appeals also carefully looked at the text and structure of the FCPA to affirm the imposition of penalties for each undisclosed ad. And the court correctly declined to consider Meta's contention that the penalty was unconstitutionally excessive because Meta failed to adequately brief it.

Nothing in the Constitution requires that Meta be excluded from the State's campaign finance law and evade accountability. There is no reason for this Court to review the Court of Appeals' careful decision.

II. COUNTERSTATEMENT OF THE ISSUES

1. The FCPA serves important governmental interests of providing voters access to information that educates them about their votes, and its disclosure requirements about who buys political ads and who is targeted by those ads are substantially

related to those interests. Did the Court of Appeals correctly decide that the FCPA satisfies exacting scrutiny?

2. The FCPA requires commercial advertisers to maintain current books of account, without reference to requests, and commands liberal construction of the statute. Did the Court of Appeals correctly affirm penalties that were imposed for each ad for which Meta did not disclose full information?

3. Meta failed to adequately brief whether the civil penalty imposed is unconstitutionally excessive. Did the Court of Appeals correctly conclude that Meta waived the issue?

III. COUNTERSTATEMENT OF THE CASE

A. The Fair Campaign Practices Act

Over 50 years ago, Washingtonians passed the FCPA, to promote and ensure transparency in the funding and expenditures of Washington elections. The FCPA requires commercial advertisers that accept or provide political advertising to maintain records for those advertisements open for public inspection during normal business hours. RCW 42.17A.345(1).

These records must include "(a) [t]he names and addresses of persons from whom it accepted political advertising or electioneering communications; (b) [t]he exact nature and extent of the services rendered; and (c) [t]he total cost and the manner of payment for the services." *Id.* Commercial advertisers must maintain these records open for public inspection five years. *Id.*

In 2018, the Public Disclosure Commission (PDC) clarified the information that commercial advertisers, including digital communication platforms, must maintain and disclose, and provided flexibility in how that information may be provided. Commercial advertisers' records must be available for public inspection in person during normal business hours; and if requested electronically, in machine readable format. WAC 390-28-050(3)(a)-(b).[1] The rule permits disclosure by digital transmission, such as email, or by online publication. *Id.*

[1] Citations to this WAC are to the 2018 version when Meta received the requests.

Information regarding political advertising or electioneering communications must be made available within 24 hours of the advertisement's initial distribution or broadcast, and within 24 hours of any change to such information. WAC 390-18-050(4). For digital communications platforms, the exact nature and extent of the services rendered includes a description of the demographic information of the audiences targeted and reached, to the extent such information is collected in the regular course of business. WAC 390-18-050(7)(g). The commercial advertiser must also include the total number of impressions generated by the ad or communication. *Id.*

B. Meta Repeatedly Violated the FCPA

In 2018, the State sued Meta for the first time for failing to provide requested information about political ads hosted on its platforms. Meta entered into a stipulated judgment and paid $200,000 in penalties. Op.3.

Since May 2018, Meta has voluntarily maintained an Ad Library, which digitally stores for seven years all ads Meta

identifies about social issues, elections, or politics. CP5945, 5910-17, 606-07. Meta designed the Ad Library to include all advertisements, sorted by category (including one titled "issues, elections, politics"), that are displayed in the United States and in other countries. CP6641, 7000-15. The Ad Library displays different types of information for different types of ads in different locations. CP6995-97, 7327-28, 7339-48, 7366. This is, in part, because "[r]equirements vary by country." CP7371-76. Meta "proactively detect[s] or reactively review[s] possible social issues, electoral or political ads in 220+ countries" for compliance. CP7321-25. Meta's "ad review system is designed to review all ads before they go live." CP7334-37. The Ad Library displays information within 24 hours of an ad delivering its first impression (and within 24 hours of any update).

Although one, non-exclusive way Meta could comply with the FCPA is through its Ad Library, Meta chose not to display information required by the FCPA in the Ad Library even though

it collects and retains that information in its regular course of business. CP6633 (targeting), 6635 (cost and payment data), 6637, 6640 (reach), 6647 (impressions), 6642-45. Meta intentionally omitted the missing information from its Ad Library for strategic reasons. CP7036-50, 7051-54.

In December 2018, Meta announced that it would no longer accept ads relating to Washington elections. CP615-16. The State did not demand or request this policy. Meta half-heartedly implemented the ban, relying heavily on a keyword process and largely contracting the process to a vendor whose low-cost contract Meta repeatedly allowed to lapse. CP6745-47, 6781, 6963-67, 6970, 6776-78, 6792-808, 6836-52, 6811-29, 6855-919, 6784-85, 7286-97. Meta continued to accept Washington political ads on its platform. CP5859, 5904-06, 5966-72, 5998-6003. Meta even continued to solicit for Washington political ads during its purported ban. CP450. And some sponsors purchased political ads on Meta unaware that any ban was in place. CP6022-26, 6038-45, 6030. From the

announcement date through September 24, 2021, users viewed at least 1,600 Washington political ads on Facebook. CP448-50.

Meta never analyzed how to bring its systems into compliance and never identified the costs or technical challenges associated with compliance. CP6988-90, 6649-50, 6652, 6662, 6947-50, 6979-80, 6991-94, 7026-27, 7033-36, 7057-112. The State's expert testified that doing so is not only technically feasible and relatively inexpensive, but it is precisely the work data scientists and engineers employed by Meta do all the time. CP6494-589.

After seeing Washington political ads on Meta's platforms, despite the purported ban, three requestors between 2019 and 2021 made multiple inspection requests about those ads. After complaints for those violations were filed with the PDC, the PDC referred them to the Attorney General's Office for enforcement. Op.4.

C. The Trial Court Entered Judgment for the State and the Court of Appeals Affirmed

After extensive discovery and cross-motions for summary judgment, the trial court entered summary judgment against Meta. CP5571-79. The court ruled Meta violated the law 822 times and imposed penalties at the top of the range. And because of Meta's longstanding pattern of intentional misconduct, the court trebled the judgment. The court ordered $24.6 million in civil penalties and $10.5 million in attorney fees and costs, and entered injunctive relief to compel Meta's future compliance with the FCPA. *Id.*

In a comprehensive 75-page decision, the Court of Appeals affirmed the trial court.

IV. REASONS WHY THE COURT SHOULD DENY REVIEW

A. The Court of Appeals Correctly Applied Precedent to Uphold the FCPA

1. Disclosure cases apply exacting scrutiny

The Court of Appeals faithfully applied precedent from this Court and the U.S. Supreme Court holding that disclosure

laws are subject to exacting scrutiny—not strict scrutiny as Meta seeks to impose. Meta ignores a wall of precedent to argue the FCPA is subject to strict scrutiny because it is supposedly a content-based regulation that applies only to "political speech." *See* Pet.12. The Court of Appeals soundly rejected this argument and the inapposite cases on which Meta relies; none applied strict scrutiny to a disclosure requirement. *See* Op.15 ("[Meta's] 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 is because election-related disclosure requirements impose no ceiling on campaign-related activities and do not prevent anyone from speaking. Disclosure requirements are considered a "less restrictive alternative to more comprehensive regulations of speech," and are therefore subject to the less intense standard of constitutional review, exacting scrutiny. *Citizens United v. FEC*, 558 U.S. 310, 369 (2010).

The exacting scrutiny standard follows decades of precedent. *See, e.g.*, *Buckley v. Valeo*, 424 U.S. 1, 68 (1976); *Citizens United*, 558 U.S. at 366-67 (disclosure requirement for TV political ads); *John Doe No. 1 v. Reed*, 561 U.S. 186, 202 (2010); *Hum. Life of Wash. Inc. v. Brumsickle*, 624 F.3d 990, 1005 (9th Cir. 2010) (campaign finance disclosure requirement); *Family PAC v. McKenna*, 685 F.3d 800, 805-06 (9th Cir. 2012). Exacting scrutiny requires a law be narrowly tailored to serve a sufficiently important governmental interest. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 608 (2021). Narrow tailoring "require[s] a fit that is not necessarily perfect, but reasonable[.]" *Id.* at 609 (cleaned up).

Exacting scrutiny continues to apply even when disclosure requirements rest on a third party, including one that hosts political advertising. *See McConnell v. FEC*, 540 U.S. 93, 234-37 (2003), *overruled in part on other grounds by Citizens United*, 558 U.S. 310 (upholding recordkeeping and public inspection obligation imposed on third-party broadcasters under exacting

scrutiny); *Reed*, 561 U.S. at 191 (applying exacting scrutiny to uphold a Washington Public Records Act requirement that compelled the state (a neutral third party) to produce referendum petition forms revealing information about the supporters).

The Court of Appeals relied on well-settled law in holding exacting scrutiny applied. Op.12-17.

2. The FCPA readily satisfies exacting scrutiny

The FCPA undisputedly promotes important state interests. The Court of Appeals correctly applied federal and state precedent to identify those interests: "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." Op.18. Courts routinely recognize these as important and even compelling government interests. *See, e.g.*, *Brumsickle*, 624 F.3d at 1005-08; *State v. Evergreen Freedom Found.*, 192 Wn.2d 782, 799 (2019); *Reed*, 561 U.S. at 197-99.

The FCPA's requirements are substantially related to these important government interests. *See* CP6344-59, 6366-67,

6369-71, 6421-29. Information about sponsorship, targeting, and reach inform voters about a political ad's intent, meaning, and impact, including if the ad intends to mobilize or demobilize through tactics like fear mongering or misinformation. *Id.* The State's experts testified about the unique role of digital advertising, which can be tailored precisely and ephemerally to users based on private information the platform has on individuals. *Id.* And a message can have different meanings if targeted at different groups of people. *See* CP6604-05 (ads about women's gun programs targeted to men), 6351-52 (ads about increased Black home ownership rates targeted to conservative, white district), 6425-26 (ads can be used to mobilize supporters or demobilize non-supporters). This information allows the public to understand ads and to see who political spenders are trying to influence. The FCPA acknowledges the importance of precisely this type of information, which provides the public "with the information with which to assess the various messages

vying for their attention in the marketplace of ideas." *Brumsickle*, 624 F.3d at 1008.

In addition, the law's disclosure requirements are substantially related to and narrowly tailored to achieve their purposes. The FCPA serves an essential role in achieving the State's important interests in election integrity and transparency by requiring timely and detailed information disclosures about advertisement expenditures, which facilitates an informed electorate by making it easier to access information about a specific ad the public may have seen. The FCPA recognizes that the public must know through disclosure the communications' source and the State's ability to enforce campaign finance laws (through tracing payments, their amount, and contacting sponsors).

Providing access to information about who paid and how much was paid for a political ad furthers the important interests of educating voters and preventing corruption. CP6344-59, 6366-67, 6369-71, 6421-29. This information helps voters

understand who is behind a particular ad and how much money they are spending to influence their vote. *Id.* Information about payment method also allows voters to appropriately weigh the messages they see.[2]

Meta repeats the same arguments the Court of Appeals rejected about why the law isn't narrowly tailored, but no evidence supports those arguments.

For example, while Meta claims that some of the information it must disclose would already be disclosed by others, those other disclosures often provide no information about where or how money was spent, let alone the specific advertisement the money purchased. Many advertisers use intermediaries, such as brokers, digital marketplaces, and advertising services to purchase political advertisements.

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[2] Russian interference in the 2016 election has been linked to a trail of ruble payments. *Testimony of Colin Stretch, General Counsel, Facebook*, Hearing Before the U.S. Senate Committee on the Judiciary Subcommittee on Crime and Terrorism (Oct. 31, 2017), https://www.judiciary.senate.gov/imo/media/doc/10-31-17%20Stretch%20Testimony.pdf.

CP6722-23, 7115-16, 7212-20. Advertisers might not know the required information or be able to disclose it as quickly as the immediacy and flexibility of digital media advertising demands, particularly during the period when Washington voters cast their ballots. CP5329-78, 6724, 7116.

Finally, the Court of Appeals rightly disposed of Meta's arguments regarding its First Amendment defense and the purported undue burden it posed, deeming that contention "speculative" and lacking "specificity" despite years of discovery. Op.35 (citation omitted).[3] Based on its scrupulous review of the record, the Court of Appeals explained: "Meta's argument fails to quantify how 'significant' the revisions to the algorithm would be, how much more 'time and resources' it

[3] Meta's complaint that it is too difficult to determine what constitutes a Washington political ad is untenable where Meta's own ad policies and use of political advertisement categories in its Ad Library demonstrate that Meta already knows how to and does identify political ads based on a definition. Meta's broader definition for "issues, elections, [and] politics" *includes* Washington political ads, which means that Meta could maintain records for a broader set than technically required. CP7371-76.

would take for human review, or even how much any change in its practices would cost." Op.35. The Court of Appeals also correctly held that "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." *Id.*

In sum, the Court of Appeals correctly recognized the State's important interest in ensuring transparency in elections and that the FCPA has been crafted to promote that purpose.

3. The Court of Appeals correctly distinguished *McManus*

The Court of Appeals rightly determined that *Washington Post v. McManus*, 944 F.3d 506 (4th Cir. 2019), is not controlling. Op.44-47. In distinguishing *McManus*, the Court of Appeals explained that the case was predicated in part on the challenged Maryland law forcing *news outlets* to publish certain information on their websites and set forth no discernable limits on the ability of government to supervise operations of

newsrooms. Op.46. The Court of Appeals then wrote that in contrast "Meta differs significantly from a newspaper" because Meta does not "exercise[] editorial control over the content" and as such Washington's law with respect to Meta involves "[n]o such editorial entanglement . . . . " Op.46-47. The Court of Appeals also emphasized that the FCPA, unlike the Maryland statute in *McManus*, does not compel any public display by newspapers or any other entity, but instead allows a variety of options for sharing required information with individual requestors. *Id.*

In short, *McManus* is inapposite and doesn't create a conflict to warrant this Court's review.

B. The Court of Appeals Correctly Held that Violations of the FCPA Are Assessed Per Ad—Not Per Request

The real thrust of Meta's argument about penalties is about the statutory application of the FCPA—not the Eighth Amendment. *See* Pet. 20-27. The Court of Appeals correctly looked to the plain language of the FCPA and the

statutory scheme as whole to affirm the superior court's decision to assess a violation for each ad that Meta failed to maintain or provide required records on, rather than limit the violations to just one per request regardless of the numbers of ads involved. This meant the trial court was correct to find Meta violated the law 822 times, covering the ads within the 12 requests for which full information was not disclosed. The trial court's finding is supported by text, the statutory scheme as a whole, and common sense.

First, looking to the FCPA's text, the law requires commercial advertisers to "maintain *current* books of account and related material[]" that shall remain "open" for public inspection. RCW 42.17A.345(1) (emphasis added). As the Court of Appeals observed, this obligation does not contain any requirement that anyone actually requests to inspect such records. Op.61. The PDC's regulation further underscores this requirement by requiring current books of account to "be updated within 24 hours of the time when an advertisement or

communication initially has been publicly distributed or broadcast[.]" WAC 390-18-050(3). The FCPA also requires that commercial advertisers be prepared to share this information with the PDC, "even if the PDC never actually demands such records or requests." Op.61 (citing RCW 42.17A.345(2)). The plain language of the FCPA plates "discrete serial obligation[s]" on commercial advertisers to ensure they preserve and maintain records for inspection for political ads—which is "distinct from any individual request for such disclosure . . . . " Op.62.

Second, as the Court of Appeals noted, the FCPA commands that its provisions 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; *see also* RCW 42.17A.904. Courts, including this one, routinely apply liberal construction to interpret the FCPA. *See State v. Grocery Mfrs. Ass'n*, 195 Wn.2d 442, 454 (2020) (*GMA I*); *State v. Eyman*, 24 Wn. App. 2d 795, 817 (2022). The Court of

Appeals was right to conclude that assessing penalties per ad is the better reading of the FCPA to further it purposes. *See* Op.62-63.

Meta's argument that the Court of Appeals' rejection of the rule of lenity violates due process lacks merit. *See* Op.65-66. The rule of lenity does not apply because, as discussed above, there is no ambiguity in the law and both the Legislature and courts have made clear that the FCPA be liberally construed.

Finally, Meta's hypothetical is inapt. Pet.23-24. Comparing a newspaper that refuses one hundred requests for information about the same highly inflammatory ad to a digital platform refusing to respond to one request seeking sponsor mailing information on multiple ads ignores the considerable discretion trial courts have to impose penalties and determine whether the violations are intentional. *See* RCW 42.17A.750. Instead, take the scenario where a requestor makes a consolidated request for all required information to a digital platform for 100 ads and makes a later request for one ad, and the advertiser

failed to provide demographic information for both requests. Under Meta's proposed interpretation, that failure to produce required information for the one hundred ads would be treated no more severely than a failure to produce required information for the one covered ad. Yet in the former scenario, "a requestor would need only file a separate request for each individual advertisement, which would easily circumvent Meta's proposed legislative intent." Op.64.

The trial court's imposition of penalties per ad is justified by statutory text and implementing regulations and the statutory scheme as a whole; it does not warrant this Court's review.

C. Meta Waived Its Excessive Fines Clause Argument, Which Fails in Any Event

The Court of Appeals correctly held that Meta waived its argument that the penalty violated the Excessive Fines Clause. Op.73 n.37. Below, Meta failed to identify this issue as pertaining to an assignment of error. *See* Am. Appellant's Opening Br. at 9-10. Meta's 75-page opening brief gave a three-

sentence nod to the Excessive Fines Clause by cursorarily citing *United States v. Bajakajian*, 524 U.S. 321 (1998). *See id.* 73-74. Meta failed to include any specific discussion of the two principles and four factors analyzed in *Bajakajian* or any application of the facts of this case to those principles and factors. *Id.* And when the State pointed this waiver out, Meta wholly ignored the Excessive Fines Clause issue on reply, devoting zero words to the issue. *See* Resp't's Br. at 74-76; *see generally* Appellant's Reply Br.

Given Meta's "[p]assing treatment of an issue" and "lack of reasoned argument," the Court of Appeals was right to consider the argument no further. Op.73 n.37; *see also* RAP 10.3(a)(6) (an appellant's brief should contain "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record"). This Court should not countenance Meta's strategic decision not to adequately brief the issue on appeal and should consider the issue no further by declining to review it. *Cf. In re*

Tobin, 165 Wn.2d 172, 175 n.1 (2008) (noting Supreme Court will not consider issues not raised in the Court of Appeals); *US W. Commc'ns, Inc. v. Wash. Utilities & Transp. Comm'n*, 134 Wn.2d 74, 112 (1997), *as amended* (Mar. 3, 1998) ("Only issues raised in the assignments of error, or related issues, and argued to the appellate court are considered on appeal.") (citation omitted).

But even if Meta had preserved its Excessive Fines Clause challenge, it still would not have presented a significant constitutional question worthy of this Court's review. The decision below accords with precedent from this Court and the plain text of the statute.

First, the trial court's assessment of the maximum statutory penalty against Meta for intentionally violating the FCPA over 800 times is consistent with controlling precedent. This Court rejected an excessive fines challenge to an $18 million campaign finance penalty in *State v. Grocery Manufacturers Association*, 198 Wn.2d 888 (2022) (*GMA II*). In

that case, this Court applied the principles and factors identified in *Bajakajian*, 524 U.S. 321, to hold that the penalty was not grossly disproportionate to the defendant's conduct. This Court gave significant weight to the importance of open and transparent elections served by Washington campaign finance laws—undermined by the defendant's intentional misconduct—and that the penalties assessed fell within the amount authorized by the Legislature. *GMA II*, 198 Wn. 2d at 899-907; *id.* at 905 (courts must "give considerable deference to the legislature's judgment on damages"). Additionally, this Court considers the defendant's ability to pay the penalty, which is obviously not a concern here. *Id.* at 899; *see* CP506-07 (Meta made $115 billion in advertising revenue in 2021 alone).[4] The same considerations in *GMA II*—

[4] Meta's recent $25 million settlement with President Trump for suspending his Facebook and Instagram accounts in the wake of the January 6, 2021, insurrection further underscores Meta's ability to pay. Bobby Allyn, *Meta agrees to pay Trump $25 million to settle lawsuit over Facebook and Instagram suspensions*, NPR (Jan. 29, 2025), https://www.npr.org/2025/01/29/nx-s1-5279570/meta-trump-settlement-facebook-instagram-suspensions; *see also*

unbriefed by Meta below or in its petition here—warrant rejecting review.

Second, the trial court's top-of-the range penalty, which was trebled, is reviewed for abuse of discretion and does not involve a significant question of law under the U.S. Constitution. As the Court of Appeals confirmed, the trial court acted well within its discretion to impose the penalty based on Meta's intentional and repeated violations of the law. Op.66-73.

RCW 42.17A.750 authorizes courts to assess a base civil penalty against violators of *up to* $10,000 for each FCPA violation. To decide the penalty assessed for each violation, the law sets out that courts may consider "the nature of the violation and any relevant circumstances" and lists several factors, like the party's compliance history, experience with campaign finance

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Mike Scarcella, *Facebook defends $725 million privacy settlement in US appeals court*, Reuters (Feb. 7, 2025), https://www.reuters.com/legal/litigation/facebook-defends-725-million-privacy-settlement-us-appeals-court-2025-02-07/ (Meta settling a class action about data privacy for $725 million).

law, and good faith efforts to comply with the law. RCW 42.17A.750(1)(d)(i)-(xiv) (identifying fourteen non-dispositive factors). A court can further treble the penalty if the violation is intentional. RCW 42.17A.780.

The Court of Appeals correctly concluded the trial court did not abuse its discretion in imposing the maximum penalty for Meta's 822 violations. The trial court considered Meta's history of not complying with the FCPA; Meta's experience and sophistication with campaign finance requirements; the scope of Meta's campaign finance activity; Meta's lack of good faith efforts to comply and lack of demonstrated desire to take responsibility for its violations; and other factors unique to Meta and its unlawful conduct in this case, such as Meta's steadfast refusal to even try to come into compliance with the law. *See* Op.69; CP5572-77.

The Court of Appeals further confirmed why the trial court was right to treble the penalties for Meta's intentional misconduct. While this case was with the trial court, Meta

instituted a new process for handling inspection requests made under the FCPA. Op.72; CP5972-77, 5983-85, 6236-37. This process, facilitated by Meta's outside counsel, limited requests to one year and required requestors to certify they are Washington residents. CP5977-79, 5983-85, 6236-37. "These limitations plainly violate the disclosure law, which has no such temporal restrictions . . . . " Op.72.

Further, as the Court of Appeals emphasized, Meta took pains to manually redact required information from the records it provided in response to requests. *See id.* 72-73. Meta completely elides that despite using its outside counsel as conduits, Meta still refused to comply fully with the FCPA—taking months to provide incomplete responses, manually redacting location-targeting information, and omitting sponsor information in its responsive records. *See* CP6167, 6111-15, 6123-29, 5861-62, 5932, 5986-95.

The Court of Appeals considered the unique facts of this case to uphold penalties at the top of the range and treble

damages. There is no reason for the Court to grant review on an unpersuasive issue Meta waived.

D. Meta's Desire to Hold Itself Above the Law Is Not an Issue of Substantial Public Importance

The FCPA serves the vitally important purpose of ensuring that Washingtonians have timely access to information about efforts to influence their vote. *See supra* § IV.A.2. Meta's attempts to except itself from the FCPA and evade accountability for repeatedly and intentionally violating it are not issues of substantial public importance for purposes of RAP 13.4(b)(4).

Meta claims that its own business decision to stop selling Washington political ads rather than comply with the law is the public interest justification meriting review.[5] But this is Meta's playbook when it disagrees with laws it does not want to follow.

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[5] Meta points to Google's decision to no longer sell Washington political ads, but never developed a record explaining Google's decision. Meta also omits that Google does not permit political ads in several states, including Idaho, Maryland, Nevada, and New Jersey. *Political content*, Google, https://support.google.com/adspolicy/answer/6014595?hl=en#zippy=%2Cstate-and-local-election-ads-in-the-united-states.

For example, when Canada passed a law requiring platforms like Meta to pay news outlets for content shared, Meta chose to block access to news on Facebook and Instagram rather than pay news outlets. *See* Katie Robertson, *Meta Begins Blocking News in Canada*, N.Y. Times (Aug. 2, 2023), https://www.nytimes.com/2023/08/02/business/media/meta-news-in-canada.html. And the implication that this law is somehow impossible to comply with is belied by the reality that Washington newspapers, TV stations, and radio stations have complied for decades and continue to sell political advertising.

The record here made clear 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. CP663-64; *see* Op.35. One way Meta could comply with the FCPA is through its Ad Library by creating additional fields to display information it collects in the regular course of business (and thus required by the FCPA) not currently in the Ad Library. Meta's reason for omitting this information is that it would conflict with

Meta's goal to provide uniform information about political ads at a country—rather than state—level. *See* CP6654-55 (Meta's CR 30(b)(6) witness).

Meta has shown a willingness and ability to conform to the ad transparency laws of other jurisdictions. Meta has tailored its Ad Library in other countries to comply with specific legal requirements (*e.g.*, Canada, France, and India). CP5931, 5933-36, 6289-91. And instead of withdrawing from the digital advertising market in the European Union, Meta is complying with the Digital Services Act—which regulates online platforms' policies on advertising, transparency, and content moderation. To comply, Meta expanded its Ad Library "to display and archive *all* ads that target people in the EU, along with dates the ad ran, the parameters used for targeting (e.g., age, gender, location), who was served the ad, and more." Nick Clegg, *New Features and Additional Transparency Measures as the Digital Services Act Comes Into Effect*, Meta (Aug. 22, 2023), https://about.fb.com/news/2023/08/new-features-and-

additional-transparency-measures-as-the-digital-services-act-comes-into-effect/.

Meta's contention that it was forced to ban political advertising in Washington is further belied by the fact that Meta endorsed proposed federal legislation, the Honest Ads Act, which contains many of the same recordkeeping and inspection requirements set forth in Washington's law.[6] CP7251.

Meta's business choice to ban political ads doesn't present an issue of substantial public interest under RAP 13.4(b)(4).

V. CONCLUSION

The Court should deny Meta's Petition for Review.

This document contains 4,996 words, excluding the parts of the document exempted from the word count by RAP 18.17.

[6] S. 1356, 116th Cong. § 8 (1st Sess. 2019), https://www.congress.gov/116/bills/s1356/BILLS-116s1356is.pdf; *see* Aimee Picchi, *Facebook: What is the Honest Ads Act?*, CBS News (Apr. 11, 2018), https://www.cbsnews.com/news/facebook-hearings-what-is-the-honest-ads-act/.

RESPECTFULLY SUBMITTED this 12th day of March 2025.

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DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be served, via electronic mail, on the following:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 12th day of March 2025, at Tacoma, Washington.

/s/ Cristina Sepe
CRISTINA SEPE, WSBA #53609
Deputy Solicitor General

SOLICITOR GENERAL OFFICE

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