

The Honorable Douglass A. North
Noted for Hearing: October 26, 2022
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

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

Defendant.

NO. 20-2-07774-7 SEA

PLAINTIFF STATE OF WASHINGTON'S
MOTION FOR ENTRY OF JUDGMENT
AGAINST DEFENDANT META
PLATFORMS, INC.

I. INTRODUCTION

Defendant Meta Platforms, Inc. (Meta) has spent years blatantly disregarding Washington's Commercial Advertiser Law and making empty promises of transparency. The time has come to hold Meta accountable.

Throughout the conduct at issue in this case, Meta has demonstrated both a flouting of Washington's interests in election transparency and a disdain of Meta's own legal obligations. As the Court stated, the Commercial Advertiser Law "provid[es] the information that citizens need in order to be able to make intelligent decisions about their self-government. And that is an essential part of democracy." Tr. at 30:16–20.¹ Yet this case demonstrates that Meta has no regard for the important interests served by the Law; indeed, Meta argued as much. Instead, Meta

¹The transcript to the September 2, 2022 Motion for Summary Judgment hearing and the Court's rulings on parties' summary judgment motions is attached hereto as **Exhibit B** and is cited to as "Tr. at page:line" herein.

1 | opted for non-compliance over and over again, choosing to double-down *during this case* by
2 | instituting formalized policies and procedures that are wholly inconsistent with the law and that
3 | deter or frustrate those who seek the very information the law provides. This pattern of conduct
4 | supports imposing the maximum statutory penalty of \$10,000 per violation. In addition, given
5 | that Meta previously paid a significant penalty in Plaintiff State of Washington’s (State) first
6 | enforcement action with no effect but Meta instituting further procedures to entrench its unlawful
7 | conduct, it is apparent that the maximum penalty is needed to compel Meta’s compliance with
8 | Washington law. The State accordingly brings this Motion for Entry of Judgment for
9 | adjudication of the penalty amount and entry of all other relief and remedies set forth in the
10 | Court’s October 6, 2022 Order.

11 | II. STATEMENT OF FACTS

12 | On September 2, 2022, the Court granted the State’s Motion for Summary Judgment,
13 | concluding that Meta intentionally violated RCW 42.17A.345 and WAC 390-18-050
14 | (collectively, the “Commercial Advertiser Law” or the “Law”). At the same time, the Court also
15 | denied Meta’s Motion for Summary Judgment. On October 6, 2022, the Court entered a written
16 | order on its summary judgment ruling granting the State’s motion for summary judgment
17 | (October 6 Order). The October 6 Order concluded that Meta had intentionally committed 822
18 | violations of the Commercial Advertiser Law by failing to timely make available for inspection
19 | required information about requested political advertisements relating to Washington state and
20 | local elections (Washington Political Advertisements) between December 2018 and
21 | September 2021. *See* October 6 Order (Dkt. No. 267).

22 | In its October 6 Order, the Court further determined that Meta intentionally violated the
23 | Commercial Advertiser Law under RCW 42.17A.780, based upon, among other factors:
24 | “(1) Meta’s compliance history, which includes Meta’s pattern of knowing and repeated
25 | violations of [the Commercial Advertiser Law] despite enforcement actions by the State related
26 | to Meta’s conduct; (2) Meta’s extensive experience with campaign finance law and procedures

1 and the substantial resources at Meta’s disposal for compliance with such requirements; and
2 (3) Meta’s lack of good faith and failure to acknowledge and take responsibility for its
3 violations.” *Id.* at 6, ¶ 7. The October 6 Order also ordered injunctive relief directed to Meta’s
4 compliance with the Commercial Advertiser Law, reimbursement of the State’s costs and
5 attorneys’ fees, and that the base judgment amount “consisting of the total of the civil penalty
6 assessed against Meta and the amount of Meta’s reimbursement of the State’s costs and
7 fees . . . be trebled as punitive damages.” *Id.* at 6–8.

8 For purposes of this Motion, the State incorporates the Statements of Fact contained in:
9 (1) the State’s Motion for Summary Judgment; (2) the State’s Response to Defendant’s Motion
10 for Summary Judgment; and (3) the State’s Reply in Support of Motion for Summary Judgment.
11 The State also incorporates the Court’s September 2, 2022, oral ruling and the Court’s October 6
12 Order granting the State’s Motion for Summary Judgment.

13 III. ARGUMENT

14 A. This Court Should Assess the Maximum Penalty Against Meta for Its Numerous 15 Intentional Violations of Washington Law

16 RCW 42.17A.750 (Section 750) provides that this Court can assess a base civil penalty
17 against Meta of up to \$10,000 for each of its violations of the Commercial Advertiser Law.²
18 With regard to determining the specific amount to be assessed for each violation, Section 750
19 states that the Court may consider “the nature of the violation and any relevant circumstances”
20 and lists several factors. RCW 42.17A.750(1)(d). The factors relevant to this case include:
21 (1) Meta’s history of lack of compliance; (2) Meta’s experience and sophistication with
22 campaign finance requirements; (3) the financial scope of Meta’s campaign finance activity;
23 (4) Meta’s lack of good faith efforts to comply and lack of demonstrated desire to acknowledge
24 and take responsibility for the violation; and (5) other factors unique to Meta and its unlawful

25 ²Section 750 also authorizes this Court to enjoin any act prohibited, or compel any act required, by the
26 Commercial Advertiser Law. RCW 42.17A.750(1)(h)(i). In its October 6 Order, the Court granted the State’s
request for this remedy, including adopting the text of the injunction to be entered against Meta.

1 conduct in this case, detailed below. *Id.* In its October 6 Order, the Court already concluded that
2 many of the factors identified in RCW 42.17A.750 exist in this case. *See* October 6 Order at 6,
3 ¶ 7 (noting Meta’s history of “knowing and repeated violations,” “extensive experience with
4 campaign finance law,” resources, “lack of good faith,” and failure to take responsibility).

5 **1. Meta’s history of lack of compliance**

6 As detailed in the State’s Motion for Summary Judgment, this is the second enforcement
7 lawsuit against Meta related to the Commercial Advertiser Law, yet Meta has *never* fully
8 complied. In 2018, the State filed its first lawsuit against Meta for having continuously failed to
9 comply with RCW 42.17A.345’s record keeping and inspection requirements since at least 2013
10 (the time-period permitted under the statute of limitations). First Decl. of S. Todd Sipe in Supp.
11 of State’s Mot. for Summ. J. (Sipe Decl.) (filed July 15, 2022), Exs. D, FF–HH. This first case
12 was resolved with a stipulated judgment entered in December 2018 under which Meta paid the
13 State \$200,000.00 as a civil penalty and an additional \$38,500.00 for the State’s costs and fees,
14 and “expressing their commitment to transparency in campaign finance and political
15 advertising[.]” *Id.* at Ex. E; October 6 Order at 3, ¶ 4.

16 Despite this penalty, awareness of the Law’s requirements, and having been given a clean
17 slate, Meta continued intentionally violating the Law from the instant the judgment in the first
18 case was entered. Soon thereafter, Meta was again the subject of multiple complaints and a
19 Public Disclosure Commission (PDC) investigation relating to Commercial Advertiser Law
20 violations. First Decl. of Phil Stutzman in Supp. of State’s Mot. for Summ. J. (filed July 15,
21 2022), Exs. A, B. But this was just the start. As this Court determined, Meta failed to comply
22 with every request it received from the time the first case ended though at least the date of the
23 filing of the amended complaint in this second case. October 6 Order at 3, ¶ 7. Meta has never
24 provided all required information in response to any request, and in the instances where Meta
25 provided some information beyond what is publicly available in the Ad Library, Meta’s response
26 often took weeks or months and included redactions Meta intentionally made to obscure required

1 information from its response to requests. *Id.* Meta engaged in this behavior even though it
2 gathers and retains all of the required information in its regular course of business. October 6
3 Order at 2–3, ¶ 2; Tr. at 31:21–25.

4 Further exacerbating Meta’s intentional pattern of non-compliance, during the course of
5 this litigation Meta created and implemented a formalized process, which includes its attorneys
6 in this enforcement action, for handling inspection requests that flagrantly disregards the
7 requirements of our State’s law. October 6 Order at 4–5, ¶¶ 11–13. Specifically, Meta provides
8 an email link on its website for people to make inspection requests,³ and emails to that address
9 are directed to Meta’s Kirkland & Ellis LLP attorneys who represent Meta in this action.
10 *See* Sipe Decl., Ex. Z at 9–10. Requestors then receive an auto-response directing them to the
11 Ad Library and stating that the requestor will be sent a form to fill out if the requestor is seeking
12 information not contained in the Ad Library. A Kirkland & Ellis attorney then sends the requestor
13 a PDF form and directs the requestor to complete and return the Form. *Id.* Meta’s formalized
14 process for responding to requests violates the Commercial Advertiser Law in many ways,
15 including the making of manual redactions of information that the Law expressly requires be
16 made available and limiting requests to Washington residents and Washington political
17 advertisements spanning a single year even though the Law requires availability for ads covering
18 at least five years. October 6 Order at 4–5, ¶¶ 11–13. This is despite Meta’s knowledge of the
19 Law’s requirements.

20 In sum, Meta has repeatedly and intentionally violated Washington law over many years
21 rather than make any meaningful effort to comply. Meta has chosen to respond to citizen
22 complaints, the PDC’s referral, and the prosecution of this case by formalizing and expanding
23 on its unlawful conduct.

24
25
26 ³As of the date of this filing, Meta continues to direct requesters to the email address. *See* Meta Business
Help Center, Meta, <https://www.facebook.com/business/help/935490686658151> (last visited Oct. 13, 2022).

1 **2. Meta’s experience and sophistication with campaign finance requirements**

2 Meta is the largest social media company in the world. Meta boasts 3.64 billion users
3 worldwide and \$117 billion in annual revenue, 97.5% of which (nearly \$115 billion) comes from
4 digital advertising. First Decl. of Tony Perkins in Supp. of State’s Mot. for Summ. J. (filed
5 July 15, 2022) (Perkins Decl.), Ex. 1 at 50–51, 94; Decl. of Elana S. Matt in Supp. of State’s
6 Resp. to Def.’s Mot. for Summ. J. (filed Aug. 16, 2022), Ex. JJ. A significant part of Meta’s
7 business provides platforms for political advertising across the United States and in more than
8 160 countries around the world. Perkins Decl., Exs. 1, 3. As such, Meta has substantial
9 experience and capabilities for navigating transparency requirements for political advertising in
10 a wide range of jurisdictions. For example, Meta has made changes and/or tailored its
11 Ad Libraries in other countries, such as Canada, France, and India, to comply with the specific
12 legal requirements of those countries, but has chosen not to do so for Washington. Sipe Decl.,
13 Exs. B at 332:1–10, 359:12–362:12; EE at 153:19–155:13. Despite its significant resources and
14 capabilities, Meta, for its own business reasons, has simply made the decision not to comply
15 with Washington’s Commercial Advertiser Law.

16 **3. Financial scope of Meta’s campaign finance activity**

17 As noted, Meta engages in extensive campaign finance activity by providing and
18 facilitating the targeting of political advertisements intended to influence elections, including
19 Washington state and local elections. Although Meta has trumpeted its purported ban on
20 Washington Political Advertisements during the course of this litigation, Meta was aware that
21 its ban would not and did not ban all Washington Political Advertisements from appearing on its
22 platforms. October 6 Order at 3, ¶ 5. Indeed, Meta has displayed at least 1,600 Washington
23 Political Advertisements since 2018. *Id.* at 4, ¶ 10; Sipe Decl., Exs. A at 4; B at 229:4–231:7;
24 Perkins Decl. ¶ 22. PDC records evidence that Washington state and local campaigns and
25 candidates have spent hundreds of thousands of dollars on Washington political advertising on
26 Meta since December 2018. *Id.* at Exs. 11, 12, 18, 20, 19, 21, 15, 17.

1 **4. Meta’s lack of good faith efforts to comply and lack of demonstrated desire**
2 **to acknowledge and take responsibility for its violations**

3 As described above and in the State’s Motion for Summary Judgment, Meta has been
4 well aware of the Commercial Advertiser Law and its requirements since at least 2018. Despite
5 receiving a clean slate in December 2018 and its public statements and testimony touting its
6 commitment to transparency⁴, Meta chose time and time again to continue repeatedly violating
7 the Commercial Advertiser Law. Meta knew that it was continuing to violate the Commercial
8 Advertiser Law when it half-heartedly implemented a ban “you could drive a Mack Truck
9 through,” Tr. at 32:6–7, resulting in Washington Political Advertisements continuing to appear
10 on Meta’s platform in large numbers. Meta knew it was violating the Commercial Advertiser
11 Law when it ignored requestors and instituted a process that made it more cumbersome (and
12 unlawfully so) for requestors to obtain the required information for advertisements that were
13 displayed. And Meta knew it was violating the Commercial Advertiser Law when it refused to
14 respond to requests for weeks and months at a time, producing redacted and incomplete
15 information when and if it ever responded. This pattern wrecks of bad faith.

16 **5. Other factors unique to Meta and its unlawful conduct in this case**

17 Other factors unique to Meta, including the brazenness of its behavior, also support
18 assessing the maximum penalty in this case. Meta, due to its size and impact, is at the center of
19 much discussion and controversy around election integrity and transparency. In an effort to
20 deflect such controversy, Meta publicly touts the importance of transparency, but then chooses
21 for business and profit reasons to violate the very laws that serve those purposes in
22 Washington State. Further, unlike most businesses operating in Washington that strive to comply
23 with this State’s laws, Meta arrogantly “justified” its pattern of intentional violations by
24 claiming—without any support—that its own business model and business decisions made

25 ⁴Meta’s CEO, Mark Zuckerberg, and former COO, Sheryl Sandberg, have gone as far as endorsing a
26 proposed federal law, the Honest Ads Act, which has many of the same record keeping and inspection requirements
for digital advertisers as those set forth by the Commercial Advertiser Law.

1 compliance “impossible.” The Court correctly concluded that these assertions are both
2 unsupported and inconsistent with common sense given Meta’s need for, and use of, the very
3 information covered by the Commercial Advertiser Law. Meta’s actions at every turn have
4 conveyed a sense of entitlement by Meta to set its own rules in the name of its own business
5 interests and a perceived freedom to disregard those that have been enacted by the people and
6 lawmakers of this State. Under these circumstances, unique to Meta and its behavior, the penalty
7 assessed should not constitute a mere cost of doing business for Meta, but to the full extent the
8 law allows should reflect the particularly egregious nature of Meta’s continuing violations in this
9 case.

10 **B. The Requested Base Civil Penalty for Meta’s Repeated and Intentional Violations**
11 **of Washington Law**

12 In accordance with the factors identified in Section 750(d), this Court should impose the
13 maximum civil penalty against Meta for its intentional and repeated violations of the
14 Commercial Advertiser Law. That Meta continued to intentionally commit the very same
15 violations of the Commercial Advertiser Law after already making a substantial payment to
16 resolve the State’s first case underscores that the maximum penalty is needed to compel Meta,
17 with its massive resources, to alter its conduct to come into compliance with Washington law.
18 Accordingly, the State requests that the Court impose the maximum base penalty of \$10,000 for
19 each of Meta’s 822 violations of Washington’s campaign finance law, for a total base civil
20 penalty of **\$8,220,000**, which under the trebling already ordered by this Court in its October 6
21 Order would result in a total civil penalty assessed against Meta of **\$24,660,000**.

22 **C. Separate Cost Bill Will Identify Amount of State’s Fees and Costs Awarded to State**

23 In accordance with RCW 42.17A.780 (Section 780), the Court has awarded the State “all
24 reasonable costs of investigation and trial, including reasonable attorneys’ fees” incurred in the
25 prosecution of this case. *Id.* The State will identify the amount of such costs and fees in a separate
26 cost bill.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

IV. CONCLUSION

The State respectfully requests this Court enter the final judgment against Meta attached as **Exhibit A** to this Motion and assess the trebled civil penalty on Meta set forth therein in the amount of \$24,660,000.00, and enter all other relief provided under the Court's October 6 Order.

DATED this 13th day of October 2022.

ROBERT W. FERGUSON
Attorney General

/s/ S. Todd Sipe

S. TODD SIPE, WSBA #23203
ELANA S. MATT, WSBA #37719
PAUL M. CRISALLI, WSBA #40681
JEFFREY C. GRANT, WSBA #11046
CRISTINA SEPE, WSBA #53609
Assistant Attorneys General
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 464-7744
todd.sipe@atg.wa.gov
elana.matt@atg.wa.gov
paul.crisalli@atg.wa.gov
jeffrey.grant@atg.wa.gov
cristina.sepe@atg.wa.gov
Attorneys for Plaintiff State of Washington

I certify that this memorandum contains 2,705 words, in compliance with the Local Civil Rules.

DECLARATION OF SERVICE

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

Robert M. McKenna
Amanda M. McDowell
Aaron P. Brecher
Mark S. Parris
Orrick Herrington & Sutcliffe LLP
rmckenna@orrick.com
amcdowell@orrick.com
abrecher@orrick.com
mparris@orrick.com
mburleigh@orrick.com
lpeterson@orrick.com

K. Winn Allen
Katherine E. Canning
Julie M.K. Siegal
Elizabeth Hedges
Ashley E. Littlefield
Tracie Bryant
Gabrielle Belzil
Kirkland & Ellis LLP
winn.allen@kirkland.com
katherine.canning@kirkland.com
julie.siegal@kirkland.com
elizabeth.hedges@kirkland.com
ashley.littlefield@kirkland.com
tracie.bryant@kirkland.com
gabi.belzil@kirkland.com

*Attorneys for Defendant Meta Platforms, Inc., formerly doing business as
Facebook, Inc.*

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

DATED this 13th day of October 2022, at Seattle, Washington.

/s/ S. Todd Sipe
S. TODD SIPE, WSBA #23203
Assistant Attorney General

Exhibit A

The Honorable Douglass A. North
Noted for Hearing: October 26, 2022
Without Oral Argument

**STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT**

STATE OF WASHINGTON,

Plaintiff,

v.

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

Defendant.

NO. 20-2-07774-7 SEA

[PROPOSED] JUDGMENT AGAINST
META PLATFORMS, INC.

I. JUDGMENT SUMMARY (RCW 4.64.030)

- A. JUDGMENT CREDITOR: Plaintiff STATE OF WASHINGTON
- B. JUDGMENT DEBTOR: META PLATFORMS, INC.,
formerly doing business as FACEBOOK, INC.
- C. PRINCIPAL JUDGMENT: \$24,660,000.00 civil penalty
(\$8,220,000.00 penalty trebled)
- D. COSTS AND FEES: To be determined by separate order following entry of
final judgment (costs and fees amount trebled)
- E. INTEREST: No prejudgment interest is owed. Interest will accrue on
total judgment amount (principal plus costs and fees) at
12% per year starting from the date the payments are due.
- F. ATTORNEYS FOR JUDGMENT CREDITOR: ROBERT W. FERGUSON, Attorney General
S. TODD SIPE, WSBA #23203
PAUL M. CRISALLI, WSBA #40681
ELANA S. MATT, WSBA #37719
CRISTINA SEPE, WSBA #53609
JEFFREY C. GRANT, WSBA #11046

[PROPOSED] JUDGMENT AGAINST
META PLATFORMS, INC. –
NO. 20-2-07774-7 SEA

1

ATTORNEY GENERAL OF WASHINGTON
Complex Litigation Division
800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
(206) 464-7744

Assistant Attorneys General

G. ATTORNEYS FOR
JUDGMENT DEBTOR:

ROBERT M. MCKENNA, WSBA #18327
AMANDA M. MCDOWELL, WSBA #52312
AARON P. BRECHER, WSBA #47212
MARK S. PARRIS, WSBA #13870
ORRICK HERRINGTON & SUTCLIFFE LLP

K. WINN ALLEN, *Pro Hac Vice*
KATHERINE E. CANNING, *Pro Hac Vice*
JULIE M.K. SIEGAL, *Pro Hac Vice*
ELIZABETH HEDGES, *Pro Hac Vice*
ASHLEY E. LITTLEFIELD, *Pro Hac Vice*
TRACIE BRYANT, *Pro Hac Vice*
GABRIELLE BELZIL, *Pro Hac Vice*
KIRKLAND & ELLIS LLP

II. JUDGMENT

THIS MATTER came before the Court for hearing on cross-motions for summary judgment on September 2, 2022. Plaintiff State of Washington (State) appeared by and through its counsel, Assistant Attorneys General S. TODD SIPE, ELANA S. MATT, and PAUL M. CRISALLI. Defendant Meta Platforms, Inc., formerly doing business as Facebook, Inc. (Meta), appeared by and through its counsel K. WINN ALLEN, TRACIE BRYANT, and GABRIELLE BELZIL, of Kirkland & Ellis LLP, and ROBERT M. MCKENNA and MARK S. PARRIS, of Orrick Herrington & Sutcliffe LLP.

The Court, having considered the parties' briefing and arguments, along with the prior records and files in this case, and having issued an oral ruling on September 2, 2022, and written orders on October 6, 2022, granting the State's Motion for Summary Judgment and denying Meta's Motion for Summary Judgment, and additionally having considered the State's Motion for Entry of Judgment, Meta's Response, and the State's Reply, and being otherwise fully advised in the premises, now therefore enters Judgment as follows:

A. Judgment Amount

1. Meta shall be assessed a civil penalty under RCW 42.17A in the amount of \$24,660,000.00 for 822 violations of Washington's Commercial Advertiser Law, as set forth in

1 the Court's September 2, 2022 oral ruling and October 6, 2022 order, inclusive of trebling
2 ordered by the Court as punitive damages in its October 6, 2022 order for Meta's intentional
3 violations of state law.

4 2. Meta shall pay the amount awarded in Paragraph 1 by wire transfer, pursuant to
5 instructions that will be provided by the State of Washington, or by check or money order made
6 payable to the Washington State Treasurer and sent to the Public Disclosure Commission,
7 PO Box 40908, Olympia, WA 98504-0908 within 30 days from the date of the entry of this
8 Judgment. Payment should reference/identify the case number and Defendant's name for
9 reference.

10 3. Costs and attorneys' fees previously awarded to the State of Washington in the
11 October 6, 2022 order shall be in an amount determined by separate order.

12 4. Pursuant to the Court's October 6, 2022 order, the amount of costs and attorneys'
13 fees awarded in Paragraph 3 of this Order shall also be trebled as punitive damages for Meta's
14 intentional violations of state law.

15 5. Meta shall pay the amounts awarded for costs and attorneys' fees by wire transfer,
16 pursuant to instructions that will be provided by the State of Washington, or by check or money
17 order made payable to the Washington State Treasurer and sent to the Public Disclosure
18 Commission, PO Box 40908, Olympia, WA 98504-0908 within 30 days from the date of the
19 Court's order determining the amount of costs and attorneys' fees awarded to the State. Payment
20 should reference/identify the case number and Defendant's name for reference.

21 **B. Injunction**

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that within 30 days of
23 this final judgment and into the future that:

24 Meta shall come into full compliance with the requirements of RCW 42.17A.345 and
25 WAC 390-18-050 for any and all political advertising and electioneering communications that
26 pertain to Washington state or local elections and ballot measures (Washington Political

1 Advertisements) that have appeared or will appear on any of Meta's platforms. These
2 requirements, include, but are not limited to, (1) timely responding to all inspection requests
3 Meta receives from any member of the public for information about Washington Political
4 Advertisements that Meta is required to maintain under RCW 42.17A.345 and/or
5 WAC 390-18-050; and (2) timely making available for public inspection all information that
6 Meta is required to maintain under RCW 42.17A.345 and/or WAC 390-18-050.

7 Meta is permanently enjoined from conditioning, limiting, or otherwise restricting its
8 compliance with RCW 42.17A.345 and/or WAC 390-18-050 to requests that (a) identify the
9 requestor's citizenship or residency status; (b) that include a timeframe less than authorized by
10 RCW 42.17A.345 or WAC 390-18-050; (c) that limit the number or scope of advertisements to
11 less than authorized by RCW 42.17A.345 or WAC 390-18-050; or (d) are otherwise limited or
12 burdened in a manner not authorized by RCW 42.17A.345 or WAC 390-18-050.

13 Furthermore, 30 days after the entry of the final judgment, Meta shall file with this Court
14 a sworn certification signed by a person or persons authorized to attest for Meta that Meta has
15 come into full compliance with the terms of this injunction set forth herein.

16 A violation of the Court's injunction will constitute a violation of RCW 42.17A.345.

17 For the purposes of effectuating the injunction entered in this matter, the Court will retain
18 jurisdiction over the parties and the subject matter herein after entry of final judgment, as well
19 as the implementation, enforcement, and performance of the terms included in this injunction.

20 IT IS SO ORDERED.

21 DATED this ____ day of _____ 2022.

22
23 HONORABLE DOUGLASS A NORTH
24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Presented by:

ROBERT W. FERGUSON
Attorney General

/s/ S. Todd Sipe
S. TODD SIPE, WSBA #23203
PAUL M. CRISALLI, WSBA #40681
ELANA S. MATT, WSBA #37719
CRISTINA SEPE, WSBA #53609
JEFFREY C. GRANT, WSBA #11046
Assistant Attorneys General
Attorneys for Plaintiff State of Washington

Exhibit B

Motion for Summary Judgment

**State of Washington v. Meta Platforms, Inc. formerly
dba Facebook, Inc.**

September 2, 2022



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

STATE OF WASHINGTON,)	
)	
Plaintiff,)	Cause No. 20-2-07774-7 SEA
)	
v.)	
)	
META PLATFORMS, INC., formerly)	
doing business as FACEBOOK,)	
INC.,)	
)	
Defendant.)	

MOTION FOR SUMMARY JUDGMENT

The Honorable Douglass A. North Presiding

September 2, 2022

TRANSCRIBED BY: Reed Jackson Watkins
Court-Certified Transcription
206.624.3005

A P P E A R A N C E S

On Behalf of Plaintiff:

ELANA S. MATT

S. TODD SIPE

PAUL CRISALLI

Washington Attorney General's Office

800 Fifth Avenue, Suite 2000

Seattle, Washington 98104-3188

On Behalf of Defendant:

K. WINN ALLEN (pro hac vice)

TRACIE BRYANT (pro hac vice)

GABRIELLE BELZIL (pro hac vice)

Kirkland & Ellis LLP

1301 Pennsylvania Avenue NW

Washington, D.C., 20004

On Behalf of Defendant:

ROBERT M. MCKENNA

MARK PARRIS

Orrick, Herrington & Sutcliffe LLP

701 Fifth Avenue, Suite 5600

Seattle, Washington 98104

I N D E X O F P R O C E E D I N G S

PAGE

September 2, 2022, proceedings commence.....	4
Defendant's Motion for Summary Judgment.....	
Argument by Mr. Allen.....	8
Argument by Ms. Matt.....	18
Rebuttal argument by Mr. Allen.....	27
Ruling by the Court.....	30
Plaintiff's Motion for Summary Judgment.....	
Argument by Mr. Sipe.....	34
Argument by Mr. Allen.....	42
Rebuttal argument by Mr. Sipe.....	58
Ruling by the Court.....	61
September 2, 2022, proceedings concluded.....	64

-o0o-

September 2, 2022

THE BAILIFF: -- County Superior Court is now in session.
The Honorable Douglass North presiding.

THE COURT: Please be seated. Good morning.

Okay. So this is State of Washington versus Meta
Platforms Inc. It's King County Cause Number 20-2-07774-7
SEA.

We're here on cross motions for summary judgment. I
thought I might sort of set the stage a little bit before we
get started on the actual arguments. This case has been
pending before me for about two and a half years. Shortly
after it was originally filed, Meta, then known as Facebook,
filed a motion for a preliminary injunction to seek to have
me bar the State from enforcing the public disclosure law
and regulations against Meta, as, in essence, arguing a
facial challenge to the law under the First Amendment and
saying that it was obviously unconstitutional.

At that time, I heard the arguments on the preliminary
injunction and denied Meta's motion. At that -- implicitly,
though I don't know that I explicitly stated it at that
time, rejecting the idea of a facial challenge to the
constitutionality of the law -- of the statutes and
regulations and said we need to develop some facts here so

1 that we could determine whether there was a basis for an
2 as-applied challenge to the constitutionality of the statute
3 and regulations.

4 So we're back here now about two years later. The parties
5 have developed a substantial record, reams and reams of
6 paper are in my office relating to declarations from
7 employees, corporate representatives, experts, deposition
8 excerpts that have been filed, lots of attached reports and
9 compilations and so on. Some of that is helpful to the
10 Court; some of it is not. But it only provides a record
11 from which we can then try to address the issue of whether
12 the statute and regulations are unconstitutional as applied.

13 And so Meta has now renewed its motion to -- for the Court
14 to find the statute and regulations unconstitutional, and
15 the State has brought a cross motion for enforcement of
16 those elements of the law and seeking to have -- get a Court
17 ruling on a number of violations and the intentionality of
18 the violations and so on.

19 So we should probably take up first the -- Meta's motion
20 to find the statute unconstitutional, since obviously, if I
21 were to grant that, then we don't ever get to the point of
22 the enforcement. So I've asked the parties to limit
23 their -- I have read all the briefs. I'd ask the parties to
24 limit their oral presentations to 15 minutes a side on each
25 motion so that we're not here all -- all day.

1 So, Mr. Allen, if you'd like to go ahead with Meta's
2 motion. And --

3 THE CLERK: Could I have, Your Honor, appearances?

4 THE COURT: Okay. Sure. The clerk wants to know who
5 everybody is.

6 So perhaps, Mr. Allen, you could go ahead and let us know
7 who you are.

8 MR. ALLEN: Absolutely, Your Honor. My name is Winn Allen
9 from Kirkland Ellis on behalf of Meta.

10 Would the Court allow me to take my mask off or you prefer
11 for me to keep it on?

12 THE COURT: That's fine. I usually allow the attorneys
13 who are making principal presentations to remove their mask
14 because it does greatly aid clarity in doing that.

15 Let's finish the presentation -- getting the clerk's list
16 of who is speaking now. So my understanding is Ms. Matt is
17 going to be responding to this part of the motion. Is that
18 correct?

19 MS. MATT: Yes, Your Honor. Elana Matt on behalf of the
20 Washington Attorney General's, State of Washington.

21 THE COURT: Okay. And then assuming we get to the State's
22 motion, my understanding is Mr. Sipe is doing that. Is that
23 correct?

24 MR. SIPE: Yes, Your Honor. I'll be representing the
25 State on the State's motion for summary judgment.

1 THE COURT: Okay. And you're responding to that motion,
2 Mr. Allen, if we get to it?

3 MR. ALLEN: I am.

4 THE COURT: Okay. So -- okay. Now -- and do you need
5 anything else at this point, Tonja?

6 THE CLERK: Just make sure I have defense appearance, both
7 sides of appearances.

8 THE COURT: Okay. So -- well, I think that Mr. Allen is
9 doing -- I guess I'm not sure --

10 THE CLERK: I just need to make sure I have appearances
11 for the record, Your Honor.

12 THE COURT: Yeah. Okay. So I think we're set. So okay.

13 MR. ALLEN: And, Your Honor, you mentioned 15 minutes.

14 THE COURT: Uh-huh.

15 MR. ALLEN: Will there be any time for rebuttal on the
16 motion or would you prefer 15 and 15 on our motion and 15
17 and 15 on their motion? I just -- I don't want to save
18 anything for rebuttal if I'm not going to get --

19 THE COURT: Sure, sure. Yeah, I mean, if you want to save
20 a couple minutes for rebuttal, that's fine.

21 MR. ALLEN: Okay.

22 THE COURT: Okay. Sure.

23 MR. ALLEN: So I'll shoot for about 13 minutes and try to
24 save 2 minutes for rebuttal.

25 THE COURT: Okay. That sounds fine.

1 MR. ALLEN: Your Honor, first of all, it's a pleasure to
2 be in front of Your Honor. I do want to address the First
3 Amendment argument. I also would like to spend about a
4 minute on the CDA 230 argument because I also think there's
5 a very substantial question of whether the law is pre-empted
6 by Section 230 in addition to the First Amendment argument.

7 I do believe the record that's been adduced in summary
8 judgment shows that there is a very, very strong First
9 Amendment as-applied argument here and that the law is
10 unconstitutional as applied to Meta as the Fourth Circuit
11 found in a very similar law in Maryland was unconstitutional
12 as applied to the plaintiffs in that case.

13 Your Honor, in 49 other states, interests of electoral
14 transparency and integrity are typically served by imposing
15 disclosure requirements on the political speakers, not on
16 the platforms that those speakers use. Washington has taken
17 a different approach and it has imposed a sweeping and
18 burdensome disclosure requirement on neutral platforms that
19 host political advertising. Those unique requirements, the
20 record shows, the undisputed record shows, has had the
21 direct and predictable consequence of reducing the amount of
22 political speech in the state and depriving candidates and
23 campaigns with a valuable avenue for reaching their
24 constituents.

25 Facebook, Google, and other digital platforms, because of

1 the burdensome and unworkable requirements of the platform
2 disclosure law, have banned state and local political
3 advertisements in Washington. This is the only state in
4 which those platforms ban political ads. There is,
5 therefore, as a result, and I think the record shows this
6 clearly, less political speech in Washington today than
7 there was before the disclosure law was expanded in 2018 to
8 include digital platforms and less political speech in
9 Washington than there is in any other state.

10 It's hard to imagine, Your Honor, a law that has more
11 serious First Amendment consequences. After all, protecting
12 the amount and vitality of political speech is at the very
13 heart of the First Amendment, and laws that effect a
14 shutting down of entire platforms to political speech
15 warrant particularly close First Amendment scrutiny.

16 I do believe the leading case on this issue that either
17 side has cited, Your Honor, is the Fourth Circuit's decision
18 in McManus, which I'm sure you're familiar with. That
19 involved -- and a few points about that case that I think
20 are very important. McManus involved a Maryland law that
21 also sought to impose political speech disclosure
22 obligations on platforms for speech, but that law was much
23 less burdensome than the platform disclosure law in
24 Washington that's at issue here. Nonetheless, the Fourth
25 Circuit struck it down on an as-applied basis under the

1 First Amendment. And the Fourth Circuit recognized two very
2 important things that I also think apply equally in this
3 case, Your Honor.

4 First, laws that impose disclosure requirements on
5 platforms for speech rather than on political speakers pose
6 special First Amendment concerns because they raise the cost
7 of hosting that speech in a way that threatens to shut the
8 platforms off. And, two, the Maryland law at issue there,
9 the Fourth Circuit reasoned, was not nearly tailored to
10 serve the State's interest.

11 Now, as the Court's aware from our briefing, there's a
12 disagreement among the parties about what level of scrutiny
13 applies. We believe strict scrutiny should apply. They
14 cite a number of disclosure requirements applying exacting
15 scrut- -- cases applying exacting scrutiny to political
16 speech disclosure laws. The key point I would make on that,
17 Your Honor, is all of the cases cited by the State are
18 imposing political speech disclosure requirements on
19 political speakers, not on platforms.

20 For the reasons we've set forth in our briefing, we think
21 strict scrutiny is warranted when a state purports to impose
22 political speech disclosure requirements on platforms. But,
23 ultimately, I don't think the Court needs to resolve that
24 question because I think the platform disclosure law, as
25 applied to Meta in this case, fails even intermediate

1 scrutiny, and so the Court doesn't need to decide the
2 question of what level of scrutiny applies because I think
3 the law is so clearly insufficient even under intermediate
4 scrutiny.

5 Now, the under intermediate scrutiny, as the Court knows,
6 the law must be narrowly tailored to serve a sufficiently
7 important governmental interest. That's -- the Supreme
8 Court of the United States just recently said that in the
9 Bonta decision.

10 THE COURT: And you're equating exacting scrutiny with
11 intermediate scrutiny? I'm just trying to make sure --

12 MR. ALLEN: Mean the same thing, Your Honor.

13 THE COURT: -- (inaudible). Okay. Yeah.

14 MR. ALLEN: Strict scrutiny, exacting slash intermediate
15 scrutiny.

16 THE COURT: Right. Okay.

17 MR. ALLEN: I think even the Supreme Court sometimes has
18 used different words.

19 THE COURT: Okay. Yeah. I just -- because I wanted to
20 make sure --

21 MR. ALLEN: Yes.

22 THE COURT: -- we weren't thinking of different things.

23 MR. ALLEN: Correct. No.

24 THE COURT: (Inaudible).

25 MR. ALLEN: When I say "exacting" or "intermediate"

1 scrutiny, it's the same thing.

2 THE COURT: Okay.

3 MR. ALLEN: And then the key question is the law has to be
4 narrowly tailored to serve a sufficiently important
5 governmental interest.

6 Now, for the most part, we don't take issue with most of
7 the governmental interest the State has asserted in terms of
8 providing information to the electorate about the source of
9 the political spending. However, we do not believe this law
10 is narrowly tailored to serve those interests, and I think
11 there's a number of reasons for that.

12 First of all, the information the state is seeking to be
13 disclosed pursuant to the disclosure law can be obtained
14 from political speakers themselves, either under current
15 Washington law -- there's a number of disclosure
16 requirements in the state that are imposed on political
17 speakers, including electioneering communications and
18 political advertising -- or that law could be updated to
19 include those disclosures. And, frankly, that's the way
20 these interests are served in 49 other states in this
21 country.

22 Secondly, and I think this is a very important point that
23 I want to draw the Court's attention to, this law imposes
24 more burdens on platforms for speech than it does on
25 political speakers in Washington. And here's why I say

1 that. Political speakers in Washington are sometimes
2 required to make disclosures on a 24-hour or short basis
3 about electioneering communications or political
4 advertisements that they run. However, under State law,
5 those obligations only apply within short windows
6 immediately before an election. I believe it's 60 days for
7 electioneering communications; 21 days for political
8 speakers.

9 This law, however, purports to require platforms to make
10 these disclosures 365 days a year. And I think that gets
11 the burdens exactly backwards. If anything, the burdens on
12 mutual platforms for speech should be much less than they
13 are on political speakers for reasons the Fourth Circuit
14 articulated in McManus. Here, in Washington, it's currently
15 backwards.

16 There's a number of other reasons I think the law is not
17 narrowly tailored. The production time is far, far too
18 short. The law originally required 24 hours. Now it's two
19 days. Either way, it's much too short when you're dealing
20 with requests that could ask for ad information going back
21 as far as five years. There are various substantive
22 disclosures required by the law that don't serve the State's
23 interests in identifying the source of the political
24 advertising, including things like the method of payment,
25 the number of impressions, demographic information of

1 audiences targeted and reached, and that's information that
2 doesn't serve the State's interest, Your Honor.

3 There's another example, Your Honor, of why the law is not
4 narrowly tailored, and that's that political speakers aren't
5 required under this law to disclose to platforms that
6 they're running political ads or provide the platforms with
7 the information they need to comply. Now, that was
8 something the state legislature considered and did not
9 enact. I believe it's something the Washington Public
10 Disclosure Commission has considered from time to time but
11 has not implemented pursuant to regulation. It was
12 something that was a feature of the Maryland law that was
13 struck down by McManus, that the speakers actually had to
14 provide the platforms with notice that they're running these
15 ads and information needed to comply. But, again, that's
16 not a feature of this law.

17 And the reason why that's important is you have to
18 remember in the digital advertising context, Your Honor,
19 these ads are all self-service. It's not like a -- like a
20 newspaper or a broadcasting station where you go engage with
21 someone and ask them if you can run their ad. On Facebook
22 and Google, anyone can go on, using an automated tool, and
23 just run their own ad at their discretion. They don't
24 interact with a human being.

25 In addition, there's a number of other reasons,

1 Your Honor, why we don't think the law is narrowly tailored.
2 The State is not permitting platforms to use reasonable
3 compliance processes, like as detailed in the record here.
4 Facebook developed a process to respond to some of the ads
5 requested it might get, that asked for very basic
6 information. The State says that violates the law. The
7 State says the law is not limited to Washington citizens.
8 Anyone in the world can ask for information about the law.

9 And so the long and short of it is, Your Honor, under the
10 First Amendment, we believe there's a number of other much
11 more narrowly tailored ways in which the State could serve
12 its interest in electoral transparency and integrity that
13 don't involve imposing burdens on platforms and threatening
14 to shut those platforms down for speech, Your Honor.

15 The State -- I'm not sure how long I've been going. I
16 think about 10 minutes.

17 THE COURT: About that, yes.

18 MR. ALLEN: Yeah. So two more minutes and then I'll sit
19 down, Your Honor.

20 The State makes the point that the law has been around
21 since the '70s and now we're only complaining about it. And
22 the point I would make there, Your Honor, is the law was
23 updated in June of 2018 in a way that increased its burdens
24 dramatically. It was then that the state legislature
25 amended the law to make clear the law applied to digital

1 platforms. It was in 2018 that the PDC implemented its
2 regulations requiring disclosures to be made in 24 hours and
3 requiring digital platforms to produce a lot more
4 information. And sweeping in digital platforms in 2018 is
5 why we're here today. That made the law much, much more
6 burdensome because digital platforms -- because of the
7 volume of political ads on digital platforms. Just the
8 burdens on producing information under the law became much
9 more significant in 2018, and so there was -- a material
10 change began, Your Honor.

11 And the last point I'd leave on the First Amendment,
12 before I spend one minute on the CDA, is, Your Honor,
13 invalidating the disclosure law as applied in this case will
14 not deprive the electorate of information about the
15 political process. Numerous other laws in Washington
16 require political speakers to make robust disclosures about
17 political funding and spending. Those laws will remain in
18 place. And the speaker-focused disclosure laws work to
19 serve the interests of electoral information and integrity
20 in many other states, and we're just asking that Washington
21 be brought in line with that.

22 Now, I do think, Your Honor, that there's a very, very,
23 very significant defense under the CDA 230 here -- CDA 230
24 in this case for two reasons. One is the duty that the
25 State claims Facebook violates derives from Facebook's

1 status as a publisher. And if you look at the Barnes v.
2 Yahoo! case from the Ninth Circuit, that case says that
3 CDA 230, quote, precludes liability when the duty that
4 plaintiff alleges the defendant violated derived from its
5 status as a -- or conduct as a publisher or speaker.

6 Here the duty the State alleges attach only once Facebook
7 publishes a political ad. The requirements under the law
8 that they identify, to produce information upon request and
9 maintain records in certain ways, according to them, that
10 only applies if we run a political ad, if we publish a
11 political ad, and that's right in the heart of CDA 230.
12 And, frankly, Congress enacted CDA 230 for the exact reason
13 we have here, because it recognized that monitoring the
14 amount of information on digital advertising -- on digital
15 platforms was just infeasible for these platforms given the
16 amount of that content. And that gave Facebook a choice of
17 liability or leaving that content up, platforms would
18 respond by shutting their platforms down for speech. So we
19 do think there's a very viable CDA 230 defense.

20 I think I've gone about a minute above my time. I'd save
21 a few minutes from rebuttal, if the Court will indulge me.

22 THE COURT: Okay.

23 MR. ALLEN: But thank you for your time.

24 THE COURT: Thank you.

25 Okay. So Ms. Matt.

1 MS. MATT: Good morning, Your Honor. For decades
2 newspapers, television stations, and other media companies
3 in Washington have complied with the campaign finance
4 disclosure law Meta challenges here and for good reason.
5 The statute serves vitally important purposes of informing
6 the public about efforts to influence Washington's
7 elections. And this purpose is even more important today
8 given the digital and ephemeral nature of the digital media
9 like -- excuse me -- direct and ephemeral nature of digital
10 media, like Facebook. And this is a tool which undeniably
11 has been used to spread mis- and disinformation.

12 But today we're here because the largest social media
13 company in the world, with 3.64 billion users worldwide and
14 \$117 billion in revenue decided, and it was a choice, that
15 its own priorities were more important than the integrity of
16 Washington's elections. Meta makes a host of arguments
17 about burden, all of which are inconsistent with the facts
18 and not grounded in the law.

19 Meta's refusal to comply with Washington's law is
20 intentional and nothing in its defenses suggest otherwise.
21 The Court should reject Meta's defenses because under well
22 established precedent, Washington's commercial advertiser
23 law serves vitally important interests. The law is narrowly
24 tailored to serve those interests. And Meta's burden
25 arguments and immunity defense are fully inconsistent with

1 the testimony of Meta's employees, Meta's own documents, and
2 other evidence.

3 Regarding Meta's First Amendment defense. Exacting
4 scrutiny is the proper legal standard, Your Honor. It is
5 black letter law that disclosure laws are subject to
6 exacting scrutiny. We provided a long list of precedent in
7 case -- in our response, both in federal and state courts,
8 that confirm this legal standard. And, in fact, this very
9 legal standard, exacting scrutiny, was applied by the
10 United States Supreme Court to uphold recordkeeping and
11 disclosure obligations imposed on third-party broadcasters
12 to post political advertising. That's from the Khan
13 [phonetic] case. The appropriate legal standard is well
14 established and not controversial.

15 Meta points to two cases in an attempt to avoid this clear
16 precedent, McManus and NIFLA, neither of which change this
17 Court's analysis. In McManus, the Fourth Circuit expressly
18 distinguished its holding from social media, in any event,
19 did not breach the appropriate legal standard. And the
20 facts of NIFLA could not be more different than the present
21 case. In NIFLA, a California law mandated pregnancy centers
22 to disseminate a government-drafted notice about services
23 the pregnancy centers opposed, namely abortion and
24 contraception.

25 In contrast, several recent cases have applied exacting

1 scrutiny to disclosure requirements. Those include Smith v.
2 Helzer, which upheld an Alaska campaign finance disclosure
3 law in July of 2022, and Gaspee Project v. Mederos,
4 upholding a Rhode Island campaign finance disclosure law in
5 2020 and also expressly declining to apply NIFLA to
6 disclosure requirements.

7 Meta makes passing references to what it claims are
8 decisions by other digital media companies relating to
9 political advertising in Washington, but these passing
10 references don't save the day either. Meta provides no
11 competent evidence about the decisions and reasons of these
12 other companies, offering nothing other than its own sheer
13 conjecture.

14 In argument today, counsel also argued that there is
15 undeniably less speech. And, respectfully, the State
16 disagrees. To support that contention, Meta relies on the
17 expert disclosures of Dr. Steven Weber. Dr. Steven Weber
18 looked only at Facebook advertising. And then, even in
19 that, the declaration of -- second declaration of Tony
20 Perkins demonstrating that such counting was drastically
21 undercounting, as evidenced by the fact that PDC disclosures
22 don't always include the term "Facebook" or "social media"
23 or "digital advertising" in the description.

24 So there is not unquestionably or indisputably less
25 speech. And, in this case, there -- the appropriate legal

1 standard is exacting scrutiny.

2 The law is also narrowly tailored to serve sufficiently
3 important government interests. As set forth in the State's
4 response, the law serves several important interests,
5 proposing transparency, informing the electorate about who
6 is spending money to influence elections, how that money is
7 being spent, combatting interference, and facilitating
8 enforcement of Washington's campaign finance laws. The --
9 again, the importance of these government interests have
10 been confirmed by both federal and Washington courts and, as
11 demonstrated by the State's experts and the facts in all of
12 the information required, the law satisfies these -- the
13 information required by the law satisfies these standards.
14 And to be clear, even if compelling -- excuse me -- even if
15 strict scrutiny were to apply, many of the interests
16 articulated in the State's briefing have been found to be
17 compelling interests in cases like Brumsickle, Buckley,
18 McConnell, and McIntyre, and in this Court's decision on
19 OneAmerica.

20 And it is, of course, the case that the information
21 required by the law serves these interests. Washington's
22 law provides transparency into the who, what, and when of
23 money spent to influence Washington's elections. The who,
24 the name of the sponsor; the what, the specific ad and the
25 demographic information related to targeting, reached

1 impressions, as well as the amount; the when, the dates that
2 the ads were displayed. And Washington law also provides a
3 mechanism for following the money, particularly important
4 for both the informational and enforcement interests by
5 providing payment details, which includes amount, method,
6 and timing of payment, and contact information.

7 The importance of this information, Your Honor, is
8 illustrated by the second declaration of Tony Perkins, which
9 uses both campaign and Facebook-disclosed information to
10 track a payment made by a campaign through an intermediary
11 to purchase Facebook ads.

12 With respect to the demographic information for targeting,
13 reach, and impressions. First, targeting is the primary
14 service sold by Meta. This is the case because social
15 science tells us, as confirmed by the expert testimony of
16 the political scientists submitted by the State, that a
17 message can have different meaning to different people.
18 This is not controversial. Meta has premised its entire
19 business on this very notion. And the examples provided by
20 the State's experts illustrate this point. For example, an
21 advertisement for women's gun classes that's targeted only
22 to men. Or an advertisement about increasing black home
23 ownership targeted only to white neighborhoods. This
24 information, targeting, reach, and impressions, provides
25 important context to understand whether an ad is intended to

1 or, in fact, did mobilize or demobilize. Was it used to
2 garner support or for mere mongering? To understand a
3 political advertisement, one needs to know the intended
4 audience, the targeting, and the reached one, which
5 resulted.

6 Now, Meta makes much of the timing requirement, but the
7 nature of the digital platforms makes timing both critically
8 important and not at all burdensome. Timing matters here,
9 as articulated in the Honest Ads Act, which Meta has very
10 publicly supported, timely disclosure is -- is critical with
11 digital media. And I quote, social media platforms, quote,
12 can target portions of the electorate with direct, ephemeral
13 advertisements, often on the basis of private information
14 the platform has on individuals, enabling political
15 advertisements that are contradictory, racially or socially
16 inflammatory, or materially false.

17 Now, this differs from the strong incentives for these
18 issues to occur -- strong disincentives for these issues to
19 occur on television, radio, and satellite, because the
20 access those platforms provide to press, fact-checkers, and
21 political opponents.

22 Now, Meta makes much of the fact that the law is not
23 limited to Washington residents. But social science tells
24 us that people learn about issues in politics through
25 intermediaries like press, like fact-checkers, like

1 community leaders, like political opponents. And to just
2 give an example, there's no reason why the Washington Post,
3 for example, can't have access to the fact-checking in the
4 same way that the Seattle Times can.

5 So to be clear, digital advertising is direct and
6 ephemeral, and that means that it can be specifically
7 targeted to a group of people at any time for any duration
8 with little to no transparency. Washington law makes this
9 advertising transparent, close in time to when the ad is
10 displayed, so that's important for the informational
11 interest. If I see an ad, I can then go look at the
12 information I need in order to understand the ad, close in
13 time to when I see it, where I see it, as opposed to having
14 to remember months later that I want to go find out more
15 information about that ad and then potentially trying to
16 find that information in a different source.

17 In addition, the timing is particularly important with
18 Washington's vote by mail, which means Washington state and
19 local elections occur over a period of days or weeks rather
20 than on a date certain, the election day.

21 And to be clear, Meta's corporate witnesses testified that
22 they collect all of the information in the course of its
23 regular business. And, of course, they do so because the
24 information that is required is required to run the ad in
25 the first place, and the rest is used to calculate and

1 process payments. Meta has the information. They use that
2 information. And they do so in near real time or, even
3 crediting Meta's own statements, at the very latest, within
4 24 hours of first display, when Meta places all ads and the
5 related information, which, again, give credit to Meta's
6 statements, Meta claims is almost everything required by the
7 law in the ad library.

8 So when faced with the clear value of the required
9 information, Meta shifts to aggrandizing burden. But these
10 arguments are belied by the facts. Meta claims that it must
11 sift through the ads. Yet, it says today, it does that when
12 it applies its own definition of political advertising to
13 place ads in the interests, elections, or politics section
14 of the ad library. Meta claims that others could report,
15 yet advertisers, including Facebook's own political
16 witnesses, would either have to request the information from
17 Facebook, request it from an intermediary, who would then
18 request it from Facebook. And then, even if they get it,
19 that information could not be disclosed with the immediacy
20 required, particularly to serve the informational interests.

21 Meta claims that it is too difficult to make a
22 Washington-specific ad library. Yet Meta can and does
23 modify the ad library based on the legal requirements of
24 various jurisdictions and based on the type of ad. And, in
25 any event, nothing in the law requires Meta to use the ad

1 library to comply. The State's expert, technical expert who
2 obtained a Ph.D. in computer science based on her extensive
3 study of Facebook, opined that Meta could easily and
4 inexpensively comply through a variety of paths.

5 The undisputed evidence is that Meta collects the required
6 information as part of its regular course of business but
7 simply made the choice not to provide it because doing so is
8 inconsistent with Meta's political ad strategy and would
9 require it to divert some of its \$117 billion in revenue
10 from other projects. But lack of interest does not equate
11 to excessive burden, especially here when the evidence
12 actually shows that the burden to Meta is minimal.

13 Now, quickly, counsel referenced Meta's reasonable
14 compliance processes. It referenced to a form. And as
15 described in the State's briefing, the form includes
16 requirements and restrictions that are not consistent with
17 the law. It includes overrestriction that limits the
18 requests to only Washington residents who identify
19 themselves. And it also includes a limitation of one year
20 where the law requires -- allows for a request to be much
21 broader than that, up to five. So that's not a reasonable
22 compliance process under any definition, Your Honor.

23 So, again, the Court should reject Meta's First Amendment
24 defense. I believe I am approaching the end of my time,
25 Your Honor. I will just say very quickly that the cases

1 that Meta has provided in support of the Section 230 defense
2 are distinguishable. They relate to the content of the ad
3 rather than an obligation to disclose information about the
4 ad.

5 Thank you, Your Honor.

6 THE COURT: Okay. Thank you.

7 So if you want to respond, Mr. Allen.

8 MR. ALLEN: Yes, Your Honor. I will endeavor to be brief.

9 Counsel mentioned the McConnell decision as an example of
10 requirements imposed on platforms. McManus distinguished
11 the McConnell decision because it involves broadcasters,
12 which historically have been subject to unique requirements
13 given the scarcity rationale and the limited bandwidth of
14 broadcasting spectrum and the licensing, it's very, very
15 different.

16 On targeting, there was a lot of discussion of targeting.
17 That information can be obtained from political speakers
18 themselves, who select the targeting criteria they would
19 like to run. That is a more narrowly tailored way for the
20 State to obtain that information it would like to obtain.

21 Thirdly, the State offered no explanation and never has,
22 as far as I can tell, as to why these requirements must be
23 imposed on platforms 365 days a year as opposed to in narrow
24 windows, immediately before elections, as they are for
25 political speakers. I've heard no response from the State

1 on that point, and that's certainly a more narrowly tailored
2 way in which the law could be -- could be written to
3 minimize the burdens on platforms.

4 There was discussion by counsel for the State that
5 suggested effectively the burdens aren't that significant.
6 Meta could really apply -- could really comply if they
7 wanted to. That's incorrect, both factually and legally.
8 Factually, as a practical matter, the record in this case
9 shows that compliance is virtually impossible for digital
10 platforms given the number and nature of the political ads,
11 the number and nature of elections and campaigns in this
12 state. That's why Congress enacted CDA 230. It's because
13 it recognized the difficulties in monitoring so much content
14 on platforms.

15 But even setting that aside, as a legal matter, the legal
16 question on the First Amendment is not theoretically whether
17 Meta could comply if it just put more money or more
18 resources. The fact that the law requires a platform to
19 devote more money and more resources is the First Amendment
20 harm because it raises the cause of hosting political speech
21 and it puts those platforms to the choice of do they bear
22 those -- bear those costs or do they -- or do they remove
23 political content from their platform. That is the exact
24 First Amendment concern that is raised by imposing
25 disclosure requirements on platforms, and it's the exact

1 First Amendment concern the Supreme Court recognized in
2 Tornillo.

3 Just two quick points I'll leave the Court with. One is,
4 again, it's undisputed from the record that this law has
5 deprived citizens in Washington of the benefits in digital
6 advertising, which are cheaper. Digital advertising is
7 cheaper. It allows for interaction for voters. It allows
8 for more efficient testing of ads. And it's incumbent
9 entrenching because digital ads are cheaper. They're
10 particularly beneficial for small-dollar campaigns,
11 third-party challengers, upstart campaigns. There's several
12 declarations in the record about that. And so the law is
13 actually having the effect of favoring incumbents in
14 big-dollar campaigns over small-dollar campaigns.

15 And then, finally, I'll just leave the Court with this
16 quote from McManus which said, [As read], because political
17 actors and neutral third-party platforms operate under
18 markedly different incentives, the consequences of a
19 disclosure law vary starkly, depending on where its burdens
20 are placed. And when the onus is placed on platforms, we
21 hazard giving government the ability to accomplish
22 indirectly via market manipulation, which it cannot do
23 through direct regulation, control the available channels
24 for political discussions.

25 For those reasons, we submit, Your Honor, that the First

1 Amendment as-applied defense is valid here, the CDA 230
2 as-applied defense is valid here, and the Court should grant
3 Meta's motion for summary judgment.

4 THE COURT: Okay. Thank you.

5 So I will deny Meta's motion for summary judgment. I
6 think the law is clearly constitutional under the exacting
7 scrutiny standard. It is appropriately the exacting
8 scrutiny standard that applies here. There was some
9 confusion about the standards some time back. But in a
10 trilogy of cases in 2010, the Washington -- the U.S. Supreme
11 Court made it clear that exacting scrutiny is the
12 appropriate standard for challenges to public disclosure
13 laws. And the reason for that is clear because public
14 disclosure laws serve one of the fundamental interests
15 protected by the First Amendment, which is transparency.
16 This is not just somebody trying to regulate speech. This
17 is the State providing the information that citizens need in
18 order to be able to make intelligent decisions about their
19 self-government. And that is an essential part of
20 democracy.

21 And as under exacting scrutiny, the U.S. Supreme Court has
22 recognized that some small burdens can be placed upon
23 speakers and platforms, when necessary, in order to further
24 that standard of -- in order to further the transparency
25 goals of public disclosure; therefore, it's not simply a

1 matter of is -- there can't be any burden placed on speech
2 at all. That would be true if you were simply talking about
3 some law that outright bans a particular category of speech.
4 But when we're talking about public disclosure, which the
5 Court has recognized has a significant role to play in
6 furthering the goals of the First Amendment, in terms of
7 creating greater transparency, some minimal burdens can be
8 imposed.

9 Meta has not demonstrated in this record any issue
10 relating to burden upon them. All of the information that
11 Meta has provided, whether it's experts or anyone else,
12 starts out with the thing that we can't comply with this,
13 and, therefore, that's their given to begin with. And there
14 is no attempt to analyze whether, in fact, they really could
15 comply with it.

16 The only evidence that's presented in this record relating
17 to whether it's reasonable that Meta could comply with it is
18 provided by the State. Their information from the experts
19 and -- that they provided indicates that it would be
20 perfectly reasonable for Meta to be able to comply with
21 this. The only thing that the law requires that has to
22 be -- information that has to be made available is the
23 information that Meta is already collecting. They
24 necessarily collect it in order to be able to run the ads
25 that they're running. So they -- all they have to do in

1 order to display it is essentially press a button. Yes,
2 there may be some small additional effort in sorting through
3 special cases as to whether something is or isn't a digital
4 ad, but they're already doing that in what they've done in
5 setting up an ad library and banning political ads in
6 Washington, which is kind of a -- you know, a ban you could
7 drive a Mack Truck through since they're not really trying
8 to enforce it in any way. It's -- clearly is applicable.

9 The targeting information that is essential here is not,
10 as Meta suggests, available always from the actual political
11 speaker because frequently, as is pointed out in State's
12 materials, the targeting is done through intermediaries and
13 in consultation with the platform, with Meta. It's not done
14 by the political speaker, him or herself, and so the
15 political speaker wouldn't be able to tell you how it's
16 targeted. It's the intermediaries and Meta that determine
17 how -- what demographics they're shooting for, whether
18 people are being picked out because they visited certain
19 websites, they've expressed an interest in certain kinds of
20 things. As the State points out, the targeting is, of
21 course, the whole point of digital ads. It's what
22 distinguishes ads in the digital form from all other kinds
23 of advertising. You know, you can't do that kind of
24 targeting through ads in the newspaper or on radio or TV.
25 They're simply sent out to the public at large. The digital

1 medium allows it to be targeted to specifically those folks
2 that might be interested in it. And, as pointed out by the
3 State, that can be done both for purposes of actually trying
4 to target the people that will be interested in the ad and
5 also being used in a negative way to try and discourage
6 people who would otherwise not, in terms of the interest in
7 the ads. And it's -- often, it is the targeting that tells
8 you what the point of the ad is. Without the targeting
9 information, you simply don't know what it is that's trying
10 to be accomplished with the ad.

11 The Washington law is narrowly tailored to get exactly the
12 information that is needed to serve the purpose of public
13 disclosure, providing the information to the public that is
14 needed to be -- for the public to be able to judge what is
15 happening with these political ads.

16 In essence, the only reason why Meta refuses to comply
17 with the law is, to put it colloquially, they don't want to
18 let the public see how the sausage is made. They don't want
19 the public to be able to judge the targeting that's being
20 done. They don't want the public to know what kind of ads
21 people are running that encourage or discourage people from
22 participating in various events because it's a very
23 lucrative business for Meta. And without the -- and if
24 they've got to reveal that information, they may -- there
25 may be less of it. And so they make -- make less money if

1 people have to tell -- to know what it is that's going on
2 here.

3 This is clearly an appropriate subject for public
4 disclosure, and the law is clearly constitutional.

5 So that brings us to the second part of the case, which is
6 the State's motion for summary judgment. And I believe,
7 Mr. Sipe, you're presenting that?

8 MR. SIPE: Yes, Your Honor.

9 Good morning, Your Honor. I'm assistant attorney general
10 Todd Sipe. I'm representing the State on the State's
11 summary judgment motion. This case is about a large and
12 powerful company that believes it's entitled to ignore
13 Washington law, even one that's existed for decades before
14 the company was formed. And I want to just quickly address
15 something that was raised earlier. Meta has always been
16 subject to this law. It was not changed in any way in 2018
17 to make Meta subject to it at that time. And it was not
18 expanded in 2018. The definition of commercial advertiser
19 has always included entities that sell the service of
20 communicating messages to the general public or segments of
21 the public for the purpose of appealing directly or
22 indirectly to votes for financial or other support in any
23 election campaign. That fits Facebook to the tee, and
24 that's always been the definition.

25 The PDC rules that were enacted in that time were --

1 provided some additional details. They provided some more
2 flexibility in the way that this information could be
3 disseminated. But they didn't expand the law. And they
4 didn't become duly appliant [phonetic] to Facebook in 2018.
5 And, in fact, the violations that Facebook has committed
6 apply equally to the statute that's always been there as to
7 the rules that were put in place in 2018.

8 So Meta is arrogantly justifying its decision to just
9 flatly ignore Washington's law by complaining it does not
10 comport with its priorities or strategies. But the
11 priorities of the people of the state that overwhelmingly
12 enacted our campaign finance law via initiative, the
13 priorities of the legislature, the priorities of the
14 regulators charged with enacting rules and enforcing the
15 campaign transparency laws of the state appear to mean
16 little, if anything, to Meta.

17 Summary judgment is appropriate here because the
18 undisputed facts confirm that Meta's numerous violations of
19 the law and because, as my co-counsel has addressed, Meta
20 has failed to demonstrate a legal and factual basis for its
21 defenses. Indeed, the undisputed facts show more than mere
22 violations. They confirm that Meta has chosen to
23 deliberately defy the express requirements of Washington
24 law. Meta is not above the law and should be held
25 accountable.

1 The material facts demonstrating Meta's intentional
2 violations of Washington law are not disputed. In light of
3 all the obfuscation, it's important to catalog what is not
4 being disputed here, which provides a clearer picture of
5 Meta's unlawful conduct. It is not disputed that Meta
6 received and acknowledged inspection requests made under
7 Washington laws by Eli Sanders and Tallman Trask in 2019 and
8 a second inspection request from Mr. Sanders in the summer
9 of 2021. It is undisputed that Meta did not respond with
10 the required information to the 2019 request beyond what's
11 contained in the ad library for months. And even then
12 provided incomplete information and did not provide that
13 information to the requester's themselves.

14 Clearly, Meta did not promptly respond, as required, to
15 those requests under any reasonable definition based on the
16 undisputed facts.

17 With regard to Mr. Sanders's 2021 request, despite having
18 more than two years to update and enhance its compliance
19 process, it's not disputed that Meta once again provided the
20 information in response to this request over a period of
21 weeks and months. The last batch of information was
22 provided in December 2021, five months after the request was
23 made.

24 It's not disputed that even these records redacted
25 required targeting information and were missing other

1 required data. In fact, the State has identified 41 ads
2 covered by that request in which no data was provided at
3 all. Clearly, once again, Meta did not promptly respond as
4 required under any reasonable definition.

5 There's also no dispute of the facts set out in Zach
6 Wurtz's declaration, about his requests. There could not be
7 since the Wurtz's correspondence with Meta, including his
8 written inspection requests, are all attached to the
9 declaration itself so the Court can see what -- what the
10 requests were. And they've been admitted as authentic by
11 Meta.

12 Rather, what Meta looks to ignore is the legal obligations
13 arising from those facts. For example, Meta claims that
14 it's entitled to ignore most of Wurtz's requests because he
15 purportedly didn't identify himself by his given name. But
16 there's no requirement anywhere under the law that Wurtz
17 needed to do that. Meta justifies substituting its own rule
18 because it claims the information to be, quote, not public,
19 unquote, or sensitive, unquote.

20 It also arbitrarily presumes that it can limit requests to
21 just confirmed Washingtonians for that same reason.
22 However, the people of the state, the legislature, the state
23 regulators, have already determined that this -- that the
24 public, whether you're a journalist, whether you're an
25 activist, whether you're an academic or anyone else, is

1 entitled to this very information that Meta -- regardless of
2 how Meta labels it. And they have decided not to set the
3 limits that Meta has chosen to impose on its own, based on
4 its own priorities.

5 Meta also doesn't dispute that it instituted a formulized
6 process -- a formalized process in early 2020, around the
7 time that this case was filed, for responding to inspection
8 requests made under Washington law. This process was
9 instituted by Meta in an open, intentional defiance of
10 Washington law. Meta does not dispute that this process
11 includes sending requesters a Meta-created form to complete
12 that, among other things, instructs the requester that the
13 inspection request must be limited to ads spanning a single
14 year. So Meta is telling them you can only make a request
15 for a single year. The law itself requires Meta to have the
16 information available for five years.

17 Clearly, Meta believes it's entitled to set its own rules
18 and disregards those of the State.

19 Meta doesn't dispute that, as another part of this
20 formalized process, that they institute a policy to redact
21 all location-targeting information more specific than the
22 entire state for all responses, even though Washington law
23 expressly requires Meta to provide that location-targeting
24 information, quote, to the extent such is collected,
25 unquote.

1 Once again, Meta sets its own rules and disregards those
2 of the State.

3 In addition, although Meta admits that it collects all the
4 data required under Washington law in its ordinary course of
5 business, the undisputed facts also show that Meta has
6 chosen not to maintain the data in a manner so that all of
7 it is available to be promptly provided to members of the
8 public if requested. This is important because Washington's
9 law not only requires Meta to promptly respond to requests,
10 it also imposes a separate legal duty for Meta to maintain
11 the required data for a Washington political ad so that data
12 is available to be inspected by the public within 24 hours
13 after that ad is displayed.

14 Significantly, this duty is triggered for a Washington
15 political ad when the ad is displayed, not when the request
16 is made. This recordkeeping requirement is similar to
17 others that impose legal obligations on entities to timely
18 keep records on their activities, such as mandates on
19 businesses to keep up-to-date employment and transaction
20 records. In those instances, as here, a legal duty exists
21 to have those records current and available, even if they're
22 not ultimately sought by a third party or auditing.

23 In this case, the State has identified 782 instances, 782
24 separate ads for which Meta failed to timely and have all
25 the required data available for inspection in the manner

1 provided by law. 782 separate violations. This includes
2 411 ads that were covered by Sanders' and Trask's requests.
3 The undisputed facts reveal that Meta did not have all the
4 required data available for those ads available to be
5 promptly provided to the members of the public if requested.
6 Indeed, Meta was unable to provide all the required data
7 even months after Sanders' and Trask's requests were made.

8 Meta has also failed to have all the required information
9 available for potential requests for the 371 additional
10 Washington political ads that fell under Meta's unlawful
11 policy to conceal location-targeting data. These are
12 violations that could be determined without even requests
13 being made because Meta freely admits to implementing this
14 policy to not make particular -- not to make required data
15 available for inspection requests, for any inspection
16 request, not even within 24 hours after the ad is displayed
17 but any time.

18 It's important to note that the undisputed facts not only
19 demonstrate that Meta committed these violations but confirm
20 that these violations were intentional. Not only did Meta
21 not take any steps to fully comply, as evidenced by the fact
22 that it egregiously failed to timely provide required data
23 for any of the requests it received, but, most shockingly,
24 it doubled down on this violating conduct by affirmatively
25 instituting a formalized process it must have known to be

1 unlawful.

2 Finally, Meta claims that it was not provided notice that
3 the State is seeking summary judgment on the whole case,
4 including the affirmative defenses. That claim is baseless.
5 The summary judgment motion that the State filed and the
6 proposed order expressly requested relief that included the
7 imposition of several penalties, an award of fees and costs,
8 an injunction, and a finding that the judgment amount
9 against Meta be subject to treble. None of those requests
10 are consistent or even possible with a limited motion that
11 does not cover the entire case, including the affirmative
12 defenses.

13 Furthermore, parties were aware that there were going to
14 be cross motions specifically addressing the affirmative
15 defenses in this case, which is what's happened and has been
16 fully briefed before Your Honor.

17 The same summary judgment motion there is distinguished
18 from the cases that Meta cites because the motion for
19 summary judgment in those cases only sought rulings on
20 discrete issues. It is Meta's burden to show that there's a
21 legal basis or a fact issue relating to its affirmative
22 defenses that would preclude summary judgment for the State,
23 and they have failed to do so.

24 In summary, the State requests that the Court enter its
25 proposed order with its conclusions of law, that Meta

1 committed the violations set out in the State's motion. The
2 undisputed facts demonstrate that Meta committed these
3 violations and did so intentionally. In addition, the State
4 requests that the Court impose a civil penalty against Meta
5 in an amount to be determined by the parties briefing, award
6 the State its fees and costs, and enter an injunction
7 compelling Meta to take actions needed to comply and rule
8 that Meta's violations were intentional and that the
9 judgment amount is, therefore, subject to treble.

10 Thank you.

11 THE COURT: Okay. So Mr. Allen?

12 MR. ALLEN: Yes, Your Honor.

13 Your Honor, briefly, obviously the Court has ruled on the
14 First Amendment, but we obviously disagree with that, but I
15 believe those disagreements are preserved with the record.

16 The Court did not issue a ruling on our CDA 230 defense.
17 I'm not sure if you want to do that orally or written.

18 THE COURT: Sure.

19 MR. ALLEN: I just -- I just --

20 THE COURT: I mean, I -- I --

21 MR. ALLEN: -- want to make sure that there's a record on
22 that.

23 THE COURT: I don't find the -- Meta's argument on CDA 230
24 is persuasive. CDA 230 is directed at something different.
25 It's directing -- it's directed at preventing platforms from

1 being liable, you know, civil liability, defamation, for
2 something that somebody publishes on that. That's not what
3 this is about. This is -- this is a different matter that
4 has to do with disclosure, and it's clearly not governed by
5 CDA 230. That's a misapplication of the law, to try and
6 apply CDA 230 to it.

7 MR. ALLEN: Thank you, Your Honor. Obviously, we disagree
8 with that, but I'm not going to --

9 THE COURT: Sure.

10 MR. ALLEN: -- engage in a back and forth with the Court
11 about it, unless you'd like me to. Instead, I'll turn to
12 the State's motion.

13 THE COURT: Sure.

14 MR. ALLEN: Your Honor, the State's motion should be
15 denied, and there's a number of reasons for that and I'll
16 take them in order. But the first one is the State's
17 briefing here and oral argument here was full of -- I guess
18 what I would call ad hominem attacks about Meta and its
19 conduct. Meta was described as arrogant, as laws mean
20 nothing to Meta, as deliberating defying requirements, and
21 engaging in egregious and intentional violations. I just
22 think that's inappropriate, and it's not at all supported by
23 the record in this case.

24 Here is what the facts show that Meta does with respect to
25 political advertising, both in Washington and nationwide.

1 It has an ad library that is available 24/7 to the public
2 that is robust, is easy to use. It is a free tool. It can
3 be accessed by anyone, whether they're a Facebook user or
4 not, that provides significant information to any member of
5 the public on demand about political ads. No other digital
6 platform has something comparable, in my view. I think
7 Google has something similar, but I submit the Meta one is
8 much better. And that's a very significant investment of
9 time, money, resources, and efforts to provide information
10 to the public about the political advertisements that are
11 run on Meta nationally and in the state of Washington.

12 So you can't just ignore the fact that Meta has spent the
13 time, money, and resources to develop an industry-leading
14 tool about the ad library. And even in discovery in this
15 case, I believe there's record evidence where the State
16 Public Disclosure Commission is complimenting Meta on its ad
17 library and saying they'd be interested in the State doing
18 something similar. So this is a very powerful tool for
19 people to understand information about political ads that
20 Meta developed on its own, without being asked to do so, and
21 it spent time, money, and resources to do it.

22 That's not the only thing Meta has done. It also has an
23 ad library report, which is a separate but related tool to
24 the ad library, that allows folks to conduct analytics on
25 the information in the ad library and obtain additional

1 information presented in additional ways so folks can better
2 understand the information that's in the ad library report.

3 Meta requires "paid for by" disclosures on the political
4 ads that are run in its platform so that, when folks see
5 political ads, they can see right on the face of the ad
6 here's who is paying for the ad, providing direct disclosure
7 to folks about sources of political spending.

8 And Meta implemented an ad verification process for
9 political ads where we actually go out of our way to verify
10 the identity of folks running political ads on our platform,
11 to make sure those folks are who they say they are, to serve
12 interests in making sure that folks can identify the sources
13 of political funding, and also avoid, you know, other --
14 other things about political spending.

15 So the idea that Meta has just thrown its hands up about
16 political advertising, whether in Washington or nationally,
17 is just not right and it's not consistent with the record
18 developed in this case during summary judgment, including a
19 number of employees who testified, Your Honor, that's how
20 they spend their days at Meta, all day every day, working on
21 these tools. And they are proud of the work they do. They
22 are proud of the election integrity and the political
23 information they're able to disclose. They view it as a
24 civic duty to do this, and I don't think it's fair for the
25 State to impugn the integrity and the motives of these

1 employees who spend their time working on this to promote
2 the same interests that the State says it's promoting here.

3 So that's my first point, Your Honor. And I do want to
4 make clear that it's -- there are people who spend their
5 jobs at Meta 24/7 doing these jobs, and there's a lot.

6 With regard to the specific requests that the State
7 mentions, from Mr. Sanders, Mr. Trask, and Mr. Wurtz. The
8 short answer to that is Meta did everything it could to
9 comply with what it believes the record supports here as an
10 unworkable, very burdensome law that imposes -- is almost
11 impossible to comply with. And, again, there is extensive
12 evidence in the record about the burdens involved in
13 complying with the law. And you can see that at Exhibit 94,
14 pages 325 to 328; Exhibit 25, which is a deposition
15 transcript, page 95; Exhibit 56, page 62; the Bryant
16 declaration, Exhibit 9, which is a long interrogatory
17 response.

18 There's extensive information in the record about why it
19 is burdensome and difficult for Meta or any other digital
20 platform to comply with this law. And there's also an
21 expert report on it from Steven Weber, who is a
22 machine-learning AI political science expert who testifies
23 about that; that there are very real, significant
24 difficulties with compliance -- you know, complying with
25 this law. It's not just a matter of pressing a button.

1 Despite all that, Meta has done everything it could to
2 provide these requesters with the information they asked
3 for. So Mr. Sanders, he -- I think he has two or three
4 requests that are issued in the State's motion -- he has two
5 requests that are issued in the State's motion. At all
6 times, he had access to the ad library, to the ad library
7 report, to the political -- the "paid for by" disclosures.
8 So he wasn't -- it's not like he had no information about
9 political ads run on Meta. He had a wealth of information
10 on political ads run on Meta. And, in addition to that,
11 Meta got the information to Mr. Sanders as fast as it could.

12 Now, with respect to his request that was on July 12,
13 2021, Meta provided three prompt productions of documents in
14 response to that request, in addition to the information
15 that's in the ad library, including on 7/19, 7/25, and
16 August 2nd.

17 So Meta -- even though it's working within a regime that
18 it doesn't think is practically possible to comply with, nor
19 does Google or the other entities that are banned ads, it
20 did everything it could. The hard, good working people at
21 Meta did everything they could to provide him with this
22 information.

23 The State mentions a follow-on request that happened a few
24 months later. That was because Meta became aware of
25 additional ads that were responsive to his request and out

1 of good faith said, oh, Mr. Sanders, these ads that we've
2 recently discovered also fall within Mr. Sanders' request.
3 We should produce those to him. And so we did.

4 And so I think it's odd for the State to try to fault us
5 for that when we're acting in good faith to get Mr. Sanders
6 the information he'd requested.

7 With Mr. Trask, again, he had access to the ad library and
8 the ad library report at all times. He made a request, I
9 think it was on July 23, 2019, and Meta produced information
10 on September 3, 2019, and then made another production on
11 September 10th.

12 Now, I know these productions aren't as fast as the State
13 believes they should be, but I'm submitting to the Court
14 that there's testimony in the record here about us working
15 as hard as we could to produce that information and why we
16 needed that amount of time to put it together. And, again,
17 he -- Mr. Trask had access to the ad library and the
18 information there throughout the whole period.

19 Mr. Wurtz is a much different story. He has a number of
20 requests, alleged requests, that we do not believe are valid
21 requests, and we believe the record supports they're not
22 valid requests. We didn't ignore Mr. Wurtz. I believe
23 counsel for the State said we ignored his requests. That's
24 not true. First of all, there were a number of requests
25 that came from anonymous sources that we learned after the

1 fact that were Mr. Wurtz's apparently. One is Joe Public
2 and another is Public Filing Service.

3 So, you know, we're not in the -- as a company that has
4 proprietary information about its users, about advertisers,
5 we take the protection of that information very seriously.
6 And we're just not in the business of sending that protected
7 information out the door to anonymous people who might
8 contact us, who, as far as we know, could be Russian or
9 Chinese or North Korean operatives. Sounds crazy. But in
10 the modern world, it's frankly not.

11 And, again, in a company that's under the scrutiny of
12 federal and state regulators about the disclosure of
13 information that we should be protecting, and we take the
14 protection of that information very seriously. And so, no,
15 we weren't inclined to disclose information to an anonymous
16 user that didn't identify themselves. Nonetheless, we
17 didn't ignore it. We sent that individual a form, which
18 I'll talk about in a second. Asked that unknown individual
19 at the time to please complete the form. It has very basic
20 pieces of information: Name, email address, are you a
21 Washington resident? And please give us the URLs of the ads
22 you would like information about.

23 It's a form that's designed to make compliance more
24 efficient, not to hinder anybody from getting information.
25 It's trying to help speed the process along. Mr. Wurtz's,

1 in each instance, which we later found out was Mr. Wurtz in
2 each instance, refused to complete the form.

3 So, again, because it was an anonymous person who wouldn't
4 identify themselves and wouldn't complete a very basic form
5 asking for the information, we didn't provide it.

6 Also, the record is very clear that Mr. Wurtz himself
7 engaged in quite erratic and sometimes threatening behavior.
8 He threatened lawyers from my firm to file bar complaints
9 against them, even though we were just acting to try to
10 facilitate the information for him. He told Kirkland &
11 Ellis lawyers not to contact him anymore. He said we had
12 sent him documents containing hidden malware. And, frankly,
13 the associates on my team felt uncomfortable communicating
14 with him. Nonetheless, we sent him the form. We tried to
15 get the information from these anonymous websites to try to
16 comply. He never returned the form, and that's why he did
17 not get the information that was requested.

18 Another point I'd make, Your Honor, is Mr. Sanders,
19 Mr. Trask, and Mr. Wurtz, none of them -- they all testified
20 in this case they were not seeking information for the
21 purposes for which the law was enacted. These are not folks
22 who have questions about political spending or political ads
23 and are trying to figure that out. They're -- they were all
24 doing it, apparently, to test Meta's processes.

25 Mr. Sanders, I believe, was a journalist at the time.

1 Mr. Trask was trying to test our processes for compliance.
2 These weren't folks who were trying to figure out critically
3 needed information about specific candidates or specific
4 spending in light of an upcoming election.

5 Your Honor, the State mentioned some things about us
6 purportedly concealing location-targeting information. We
7 do, under our protections that we -- you know, I think the
8 record is very clear, we have a three-pronged approach for
9 complying in Washington. It's the ad library, combined with
10 the ad ban, which I know the Court mentioned earlier, that
11 it doesn't think Meta is enforcing it. It is enforcing it.
12 There are people -- there's extensive testimony in the
13 record about the efforts we make to enforce the ad ban, both
14 machine learning, both individuals working manually.
15 There's time, resources, money, and effort in processes that
16 go into enforcing that ban. I don't want the Court to think
17 we don't enforce it. There is a substantial -- substantial
18 record evidence that we do.

19 And then thirdly is the productions we make even after we
20 get these requests. We do redact information lower than
21 State-level targeting. Now, the reason for that is because
22 some of this targeting can be quite precise, and we think
23 there's a significant privacy interest from -- we have to
24 protect the privacy of our users, the people that are
25 engaging with these ads, and we think there are very serious

1 privacy threats that can be reverse engineered if we produce
2 granular-level targeting information.

3 I also don't believe it violates the law or the
4 regulation, Your Honor, for us to produce information in
5 that manner. Nothing in the regulations, and it is WAC
6 390.18.050 at paragraph 6, requires that ZIP Code-level or
7 street-level targeting information be produced. It says,
8 quote, a description of the demographic information, e.g.,
9 age, gender, race, location, et cetera, of the audiences
10 targeting reached to the extent such information is
11 collected by the commercial advertiser.

12 I don't think that "to the extent" language means, oh, you
13 have to give us every last piece of targeting information.
14 I think what that's in there for is, oh, well, obviously if
15 you don't collect the targeting information, you don't have
16 to disclose it. But, again, we do disclose location
17 information at the state level, and I don't think there's
18 anything in the PDC's regulation that says, oh, you also
19 have to disclose ZIP Codes or addresses, if you have those.

20 Finally, Your Honor, close to finally, there is a very
21 important point that the State's counsel brought up that I
22 want to spend a little bit of time talking about. They are
23 trying to say that we're not liable for the around 10
24 requests they think we got. We're liable for 782 separate
25 violations. And I believe counsel said 371 additional ones.

1 That is an attempt to hold us -- to equate a violation to
2 each ad that was run on Facebook, not each request. That is
3 legally the incorrect way to look at it, and there's a
4 number of reasons for that.

5 The violation under the statute and regulation is a
6 failure to respond to a request, not a running of an ad or
7 an alleged failure to maintain information about an ad. And
8 the reason we know that is because that's how agency experts
9 from the State Attorney General's office itself interpreted
10 this law in the investigation phase in this case. If you
11 look at Exhibit 70 to the second Bryant declaration, that is
12 a submission made by an assistant attorney general, signed
13 under the name of the attorney general himself, saying that
14 the violation in this case is request-based, not ad-based.
15 It says very clearly that the PDC was charging Meta with
16 only two violations of law at the time because it failed to
17 respond to two requests. And they were not -- they were
18 explicitly not charging Meta with a violation for each ad it
19 ran. They said, quote, lack of access to Facebook's
20 information upon request was the core issue to be addressed,
21 not the amount of information Facebook has to date made
22 available prior to requests being made. They also
23 recognized that, quote, it would quickly lead to a penalty
24 amount grossly disproportionate to other violations of the
25 law to assess a violation on an ad-level basis as opposed to

1 a request violation.

2 So the State's position now is a complete 180 from what
3 they said before, and that for interpretation in my view
4 finds no support in the statute or the regulatory text. The
5 regulatory text says one of the ways you can comply with
6 this law is by producing information promptly upon request.
7 Well, if you don't get a request, you don't have an
8 opportunity to comply.

9 And also, Your Honor, based on the State's logic, it could
10 bring a lawsuit against a platform that never received a
11 request for information at all merely because the State
12 didn't like the way that that entity was maintaining their
13 records. I believe that's unprecedented. I think that
14 would be a dangerous, dangerous intrusion on the internal
15 recordkeeping practices of platforms, and it would be
16 unprecedented, in my view, for the State to purport to
17 penalize a platform for the way in which it maintains its
18 internal records.

19 And I know the Court has already ruled on the First
20 Amendment issue, but I think that might only exacerbate the
21 very real First Amendment concerns here. It will create
22 serious due process, fundamental fairness concerns because
23 the State would be purporting to regulate how we maintain
24 our internal records. So I don't think it's consistent with
25 the statute, the regulation. There are certainly no

1 explicit statute or regulations saying, oh, if you run a
2 political ad, you can be liable in this state, even if you
3 never get a request. In fact, I think below the State took
4 the exact opposite position.

5 Then the other point I'd make, Your Honor, is the record
6 is very clear that Meta does not maintain this information.
7 All right? There's evidence in the record on that. That's
8 the Vanesyan 30(b)(6) deposition at page 248 and 251, and
9 the Schiff, Sarah Schiff 30(b)(6) deposition at pages 52,
10 61, 65, 67, talking --

11 THE COURT: Can I -- sorry. Maintains what information?
12 I kind of lost you on --

13 MR. ALLEN: The information that the law -- that the
14 statute and regulation require Meta to disclose upon
15 request. And so the State -- I believe I heard the State's
16 counsel say, well, Meta doesn't even maintain this
17 information. We didn't. There is evidence in the record
18 that we do maintain it.

19 Now, there obviously -- we talked about extensively before
20 burdens about compiling and producing that information on
21 the quick timeline that the law requires. The record is
22 clear, the evidence in this record, that that information is
23 maintained by Meta. And so if the State is saying we should
24 be liable for each of these ads because we don't maintain
25 the information, we do.

1 And then finally, Your Honor, the State has taken the
2 position that if -- if the Court were to grant its motion
3 for summary judgment, it should find these violations
4 intentional. And I just have to address that. Again, for
5 reasons I said earlier, it's certainly not intentional.
6 Meta is not trying to just ignore Washington law. It is
7 trying to work as best it can with a regime that it thinks
8 is very, very difficult for digital political advertisers.
9 It has invested significantly in political ads transparency,
10 including its ad verification process and its ad library.
11 It has people that work on this 24/7. That's not the stuff
12 of an intentional violation of campaign finance laws,
13 Your Honor. Meta has tried to comply through its ad library
14 and its ad ban. Even when ads slip through that ban, Meta
15 gets the information and tries to produce it as best it can.
16 It's -- you know, this is not a law that has a long track
17 record in the United States. Frankly, it's not a law that
18 even has a long track record in 2018 because I know counsel
19 for the State said, well, the law didn't really change in
20 2018. The reality is it changed significantly in 2018. And
21 the PDC itself says it hasn't historically enforced the law.
22 PDC testified in this case that it's only aware of one
23 enforcement action before 2018.

24 THE COURT: Well, but the law does have a long history
25 outside of digital platforms.

1 MR. ALLEN: It does.

2 THE COURT: I mean, we've been doing this for 50 years
3 with radio, TV, newspapers, et cetera.

4 MR. ALLEN: It does, outside of digital platforms. I
5 would submit, however, Your Honor, that the burdens on
6 digital platforms are much, much different than they are on
7 radio and TV and things like that because of the volume of
8 digital political advertising on the platforms and because
9 of the self-serve nature of the ads, where people can just
10 run these ads on their own. It's a very, very different
11 perspect- -- animal from a burden perspective. And don't
12 just take my word for it. You can take Google's word for it
13 and Yahoo's word for it, because they also left the market
14 for these reasons.

15 So, you know, for all those reasons, I don't think the
16 State's motion should be granted. I very, very much do not
17 think that there's any basis for an intentional violation,
18 any violation. I don't think that the State is correct to
19 try to impose a violation for 782 different ads when really
20 what this is about is a handful of requests. Now, we think
21 a lot of those weren't legitimate requests because they were
22 anonymous, and we think there's a factual disagreement on
23 that. But the key point for that argument is it's a
24 request-based law, not an ad-based law. There's no
25 prohibition on running political ads on Facebook in this

1 state. That would clearly be a First Amendment problem. I
2 think even the Court would agree with that. And so for
3 those reasons, we think the State's motion should be denied.

4 Unless the Court has any questions, I'm happy to sit down.

5 THE COURT: Okay. Thank you.

6 MR. ALLEN: Thank you, Your Honor.

7 THE COURT: Uh-huh.

8 So, Mr. Sipe, do you have anything you want to say by way
9 of rebuttal?

10 MR. SIPE: Your Honor, just two minutes. Is that okay?

11 THE COURT: Sure. Yeah. I mean, I -- by my count, you
12 got four minutes left, so yeah.

13 MR. SIPE: Okay. Very good. I just want to raise just --
14 address just a few points.

15 So there was quite a lot of discussion about the ad
16 library, but it's -- it's undisputed that the ad library
17 doesn't fully comply with Washington law. So it's great
18 that they do it, but it's not compliant.

19 There's a lot of discussion about the burdens on Meta. I
20 just want to just take an overall view of that. This is a
21 law that existed before Meta. And when Meta formed and
22 started doing business in Washington, it's up to them to set
23 up their business so it complies with our laws, not the
24 other way around; not to change our laws because Meta formed
25 a business in a certain way. And so it's just a -- very

1 much of a philosophical difference, I think, we have in the
2 way this should be viewed.

3 I want to talk about the form. I think -- I don't really
4 see a dispute in the facts -- or I mean the request. But I
5 want to talk about this formalized process just for a
6 second. And what was not addressed is -- they talk about
7 the form that is filled out, but what was not addressed is
8 that it specifically says, for instance, date range
9 requested cannot exceed one year. That -- that's clearly
10 not compliant with the law. And there's no response you
11 really can give to that. Same with the "if you are a
12 resident of Washington." There's nothing in our law that
13 says it's limited to people in Washington. That's something
14 that Meta made up.

15 But about the violations -- oh, about the redactions, just
16 for a second as well. So the redactions that were done are
17 anything less than state level. So just to give a clear
18 image is that all they'll see is that -- let's say a race
19 for Seattle council, they'll just see Washington state.
20 They won't see Seattle or they won't even see a ZIP Code.
21 It's not the only thing that's redacted is like an address
22 or anything like that. It was anything less than state
23 level. Clearly not compliant (inaudible).

24 The last point I want to make is about the violations.
25 We've based it just plainly on the language of the rule.

1 The language of the rule says the information needs to be
2 available within 24 hours after the ad is run. We're not
3 disputing --

4 THE COURT: But doesn't --

5 MR. SIPE: -- that they maintain -- oh.

6 THE COURT: But I guess the thing that concerns me about
7 this, Mr. Sipe, the way you're doing it, is that the law
8 gives, I believe, three different ways for them to make the
9 information available. I mean, in the old fashion thing,
10 newspaper runs an ad. You can -- one of the things a
11 newspaper can do is just, at their office, have a -- the
12 information available so somebody can come in and walk in
13 and look at it.

14 If one of those ways of making it available is by request,
15 how -- how do we determine that there's a violation until
16 somebody makes a request to look at the information?

17 MR. SIPE: Sure. So I'm happy to address that. So what
18 the rule says is that if it's by request and it's
19 electronically transmitted, which is the way Facebook does
20 it for the information not in the ad library, is that it has
21 to be sent promptly. So what I look at is the
22 information -- I mean, not that they have it. I don't
23 dispute they have information. But is it -- is it
24 maintained in a way that it is available to be promptly
25 transmitted if a request is made?

1 And there's a couple ways to determine whether that is
2 true. One, you can see an actual request. That's what
3 we're talking about Sanders and Trask. That he made a
4 request and the information was not provided for months.
5 So, clearly, it was not available to be promptly sent to
6 those people.

7 The other way of looking at it is what we talked about
8 with this policy. So they have a policy to not provide
9 certain information. So regardless, if there's a request or
10 not, that information is not available. It's as if a radio
11 station took certain information and locked it away so that
12 nobody could see it. That information is clearly not
13 available to anybody that requests it. So it's almost like
14 a -- somebody just admitting they don't have it.

15 So that's -- that's the way we've approached it. We
16 believe our argument is grounded in the plain language of
17 the rule.

18 And so if there's no more questions, thank you,
19 Your Honor.

20 THE COURT: Okay. Thank you.

21 So I -- I will grant the State's motion to enforce. I do
22 think that Meta is clearly in violation of the rule. I do
23 think, however, that it has to be limited to -- for any
24 enforcement penalties and so on -- have to be limited to the
25 requests that are actually made of Meta because how else,

1 otherwise, given that there are different ways that the
2 statutory scheme allows for somebody to comply with the
3 disclosure requirement, we don't know for sure that there is
4 a violation until somebody actually requests it and doesn't
5 get the information in accordance with what Washington law
6 provides for.

7 So I do think that Meta is in violation with regard to the
8 request that it actually received is intentional. They
9 didn't really make a significant effort to try and comply,
10 either in terms of providing any targeting information,
11 which is clearly required by the law, or in terms of making
12 a serious attempt to comply in a timely fashion with -- to
13 provide the information available.

14 I know it's claiming that it did everything it could, but
15 the fact is that if it were actually keeping the information
16 in a way -- I mean, it digitizes everything. It would be
17 very easy for them to simply organize the information in a
18 way that would make it readily available if somebody makes
19 the request, because they had to take it all in digitally in
20 the first place in order to get the ad.

21 But I think that it has to be based upon requests that
22 have actually been received, so I -- I think that the --
23 although I find that there is -- that the State has
24 established a basis for saying there's a violation for the
25 actual requests that have been received from Trask and

1 Sanders and Wurtz, I don't think that there's a basis on
2 which to enforce the law simply because they didn't keep the
3 information on the ads in the -- in the fashion that they
4 should have.

5 So I would suggest that the State submit a new order
6 that's restricted to it being based on requests, and I'll
7 obviously see what Meta's response to that is, and then we
8 can decide whether there's any further hearing needed.

9 MR. SIPE: Your Honor, can I ask a question about the
10 ruling?

11 THE COURT: Sure.

12 MR. SIPE: Regard to the alleged violations based on the
13 number of ads, are you ruling -- is that issue disposed of
14 or -- or is that an issue -- a fact issue or --

15 THE COURT: I -- I think it's -- unless you can -- I mean,
16 maybe I'm missing something that you can -- but I don't see
17 how where there are several different ways of complying with
18 the law, in terms of making the information available, that
19 we can establish that they haven't complied with the law
20 until somebody makes a request. And so, I mean, obviously
21 when somebody makes a request and they don't produce it,
22 then they're not complying with the law. But before --
23 although I understand your point about they're not keeping
24 it in a way that makes it readily available, I don't think
25 that's something I can enforce against them with -- absent

1 somebody making a request.

2 MR. SIPE: Okay.

3 THE COURT: Okay?

4 MR. SIPE: Thank you, Your Honor.

5 THE COURT: So thank you.

6 THE BAILIFF: All rise. Court is in recess.

7 (September 2, 2022, proceedings concluded)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

STATE OF WASHINGTON)
)
COUNTY OF KING)

I, the undersigned, do hereby certify under penalty of perjury that the foregoing court proceedings or legal recordings were transcribed under my direction as a certified court reporter; and that the transcript is true and accurate to the best of my knowledge and ability, including changes, if any, made by the trial judge reviewing the transcript; that I received the electronic recording in the proprietary court format; that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of September, 2022.





s/ Debra Riggs Torres, RPR, CCR No. 20122368
Reed Jackson Watkins, LLC
800 Fifth Avenue, Suite 101-183
Seattle, Washington 98104
Telephone: (206) 624-3005
E-mail: info@rjwtranscripts.com