STATE OF WASHINGTON
KING COUNTY SUPERIOR COURT

STATE OF WASHINGTON, Plaintiff, v. META PLATFORMS, INC., Defendant.	CASE NO.: 20-2-07774-7 SEA ***AMICUS CURIAE* BRIEF OF CHAMBER OF PROGRESS IN SUPPORT OF DEFENDANT META PLATFORMS, INC.'S MOTION FOR SUMMARY JUDGMENT** Hon. Douglass A. North Hearing Date: Sept. 2, 2022, 9:00 am

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*

Washington's political advertising law (RCW 42.17A.345) aims to serve the laudable goal of transparency in political advertising. But the statutory regime has imposed such onerous burdens on online platforms that many of them—Defendant Meta Platforms, Inc. included—have been forced to bar their users from purchasing any political advertisements for Washington state and local elections. That in turn has had, and will continue to have, the effect of silencing the political speech of public interest organizations who rely on the broad reach and low cost of online advertising to spread their messages throughout the country. As a tech industry coalition devoted to a progressive society, economy, workforce, and consumer climate, Chamber of Progress submits this amicus brief to help preserve online advertising in Washington as an outlet for these important voices.

Washington law requires those who publish political ads to provide a wealth of information about the ads, and to do so within 24 hours of a request for such information. But to comply, an online service hosting such ads must somehow readily identify, amidst the millions of ads posted to its service each day, the handful of ads targeting Washington state and local elections. Recognizing they could not successfully manage that task, and hoping to avoid triggering the statute's onerous provisions, Meta, Google, and other online advertising platforms banned political advertising directed to Washington. Candidates, causes, and coalitions can no longer legitimately harness the power of those platforms for election-relating messaging in the state. But a small number of political advertisers ignored Meta's ban, surreptitiously running their ads on the platform and gaining an unfair advantage over those who respected Meta's prohibition. Because Meta's self-serve system did not instantly detect the illicit ads, Meta could not satisfy Washington's disclosure laws regarding those ads. The State thus sued Meta for violating the law.

As Meta's summary judgment motion correctly explains (Mot. 26-27), Washington's statutory scheme unduly burdens core political speech, in violation of the First Amendment. But as Meta further explains, the State's lawsuit conflicts with federal statutory protection that

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shields online services from claims arising from third-party content posted to those services. Chamber of Progress, whose partners include many online platforms subject to Washington law, files this brief to underscore that Congress has thus expressly preempted the State's lawsuit.

In enacting 47 U.S.C. § 230(c)(1) ("Section 230"), Congress recognized that online services could not possibly monitor the massive volumes of third-party content that they host. To ensure that online services would remain willing to accept such content, Congress barred imposing liability on such services arising from their carrying of that content. Under Section 230's plain terms: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," and "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. §§ 230(c)(1), (e)(3). As the Ninth Circuit has held, the question that Section 230 asks is "whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker' [of third-party content]. If it does, section 230(c)(1) precludes liability." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101–02 (9th Cir. 2009).

That is plainly the case here. The state law in question seeks to impose upon Meta a duty to collect and disclose information about third-party political advertisements because of Meta's role as a publisher of those advertisements. Indeed, the State expressly alleges that Meta is a "commercial advertiser" under the statute, defined as anyone who "sells" the service of communicating messages for broadcast or distribution to the general public. In other words, the State theorizes, because Meta is the publisher of third-party advertisements, it has obligations under RCW 42.17A.345, and it allegedly violated them. But Section 230 expressly preempts claims that "treat[] [Meta] as the publisher" of "information provided by another information content provider." 47 U.S.C. § 230(c)(1), (e)(3). Preemption is particularly appropriate here, as the State seeks to impose upon Meta the very obligations that Congress recognized were impossible—monitoring the staggering number of third-party advertisements posted to the

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service, identifying those few that are Washington State political ads, so it can provide detailed information about those ads on request. An unbroken line of countless cases bars the imposition of such obligations. *E.g.*, *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 330–31 (4th Cir. 1997); *Green v. Am. Online (AOL)*, 318 F.3d 465, 471 (3d Cir. 2003).

BACKGROUND

A. Washington amends its campaign finance and disclosure law to impose recordkeeping and disclosure obligations on websites that publish ads targeting state and local elections.

Like many jurisdictions, Washington requires those who engage in political advertising to provide disclosures about that activity. Since 1972, candidates for office and other political organizations running campaign or political ads have been required to satisfy detailed reporting requirements. RCW 42.17A.260; 42.17A.305; 42.17A.235.

But Washington's political advertising law does not stop there. It also imposes disclosure obligations on third-party publishers who act as "commercial advertisers." RCW 42.17A.345. "Commercial advertiser[s]" include "any person that sells the service of communicating messages or producing material for broadcast or distribution to the general public or segments of the general public whether through brochures, fliers, newspapers, magazines, television, radio, billboards, direct mail advertising, printing, paid internet or digital communications, or any other means of mass communications used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign." RCW 42.17A.005(10). "Each commercial advertiser who has accepted or provided political advertising or electioneering communications" targeting Washington state and local elections must "maintain current books of account and related materials" that are "open for public inspection during normal business hours during the campaign and for a period of no less than five years after … the applicable election." RCW 42.17A.345(1). These records must include "[t]he names and addresses of persons from whom it accepted political advertising or electioneering communications;" "[t]he exact nature and extent of the services rendered;" and "[t]he total cost and the manner of payment for the services." RCW 42.17A.345(1)(a)–(c).

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The statute does not, however, require those who actually create or purchase the "political advertising" to identify themselves as such to third-party publishers. Thus, publishers must determine on their own whether the ads are "political" and directed to Washington elections and, if so, make publicly available detailed information about the ad and its sponsor. RCW 42.17A.005(21), (40); RCW 42.17A.345.

The Washington Public Disclosure Commission ("PDC") administers this regime. RCW 42.17A.100; RCW 42.17A.105; RCW 42.17A.110. PDC rules mandate that "commercial advertisers" disclose, upon request: "[t]he name of the candidate or ballot measure supported or opposed or the name of the candidate otherwise identified, and whether the advertising or communication supports or opposes the candidate or ballot measure;" "[t]he name and address of the sponsoring person or persons actually paying for the advertising or electioneering communication, including the federal employee identification number, or other verifiable identification, if any;" "[t]he total cost of the advertising or electioneering communication, or initial cost estimate if the total cost is not available upon initial distribution or broadcast, how much of that amount has been paid, as updated, who made the payment, when it was paid, and what method of payment was used;" and the "[d]ate(s) the commercial advertiser rendered service." WAC 390-18-050(5). Violators may be held liable for "not more than ten thousand dollars for each violation." RCW 42.17A.750(1)(c).

In 2018, Washington bolted regulation of digital political advertising onto this framework. It redefined "[c]ommercial advertiser" to include those who publish "internet or digital communications," thereby sweeping in platforms like Meta. RCW 42.17A.005(10). The PDC then promulgated regulations imposing additional onerous obligations on such platforms. WSR 18-13-005. Online publishers must now identify all Washington political ads posted to their services and provide, in addition to all of the information listed above, "[a] description of the demographic information (e.g., age, gender, race, location, etc.) of the audiences targeted and reached" and "the total number of impressions [i.e., views] generated" for each political ad. WAC 390-18-050(6)(g). Further, all required information "must be made available within

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twenty-four hours" of the advertisement's first public distribution or broadcast, and within twenty-four hours of any changes to such information. WAC 390-18-050(4).

B. In enacting Section 230 of the Communications Decency Act, Congress expressly preempted state law claims that seek to impose liability on online service providers arising from third-party content.

When Congress enacted Section 230 of the Communications Decency Act ("CDA"), it sought to minimize state-law interference with online speech, especially political speech. As Congress explained, "[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse," and "Americans are relying on interactive media for a variety of political [and other] services." 47 U.S.C. §§ 230(a)(3), (5). Even then, in 1996, online services had "flourished, to the benefit of all Americans, with a minimum of government regulation." *Id.* § 230(a)(4). Congress thus declared that it was U.S. policy to "promote the continued development of the Internet and other interactive computer services," and "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation." *Id.* §§ 230(b)(1), (2).

To that end, and recognizing the potential liabilities that these services faced from carrying third-party speech, Congress mandated that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). Further, Congress preempted any and all state laws or claims that conflict with this directive, stating: "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* § 230(e)(3).

"In enacting the CDA, Congress decided not to treat providers of interactive computer services like other information providers such as newspapers, magazines or television and radio stations." *Backpage.com, LLC v. McKenna*, 881 F. Supp. 2d 1262, 1271 (W.D. Wash. 2012) (quoting *Batzel v. Smith*, 333 F.3d 1018, 1026 (9th Cir. 2003)); *accord Carafano v. Metrosplash.com, Inc.*, 339 F.3d 1119, 1122 (9th Cir. 2003). The reason is straightforward: unlike traditional publishers, who can easily monitor and screen ads in their publications, many

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leading websites are open, often self-service platforms that instantly display millions of user-posted messages every day. There is simply too much content for services to monitor and perfectly screen. If legal duties and potential liabilities historically imposed on publishers of third-party content were heaped on such websites, they would have no choice but to severely restrict online speech or shut down. That, in turn, would severely impact the multitudes of businesses, consumers, campaigns, and voters that rely on these services to share and receive messages every day.

The Fourth Circuit Court of Appeals put it best in a seminal decision issued shortly after Section 230 took effect:

> Congress' purpose in providing the § 230 immunity was thus evident. Interactive computer services have millions of users. The amount of information communicated via interactive computer services is therefore staggering. The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.

Zeran, 129 F.3d at 330–31 (citation omitted); *see also, e.g.*, *Dimeo v. Max*, 433 F. Supp. 2d 523, 528-29 (E.D. Pa. 2006) ("[A]bsent federal statutory protection, interactive computer services would essentially have two choices: (1) employ an army of highly trained monitors to patrol (in real time) each chatroom, message board, and blog to screen any message that one could label defamatory [or otherwise problematic], or (2) simply avoid such a massive headache and shut down these fora."); *Weerahandi v. Shelesh*, 2017 U.S. Dist. LEXIS 163910, at *19 (D.N.J. Sept. 29, 2017) ("[T]he breadth of the Internet precludes such companies from policing content as traditional media have."); *Stoner v. eBay Inc.*, 2000 Cal. Super. LEXIS 117, at *10–11 (Cal. Super Ct. Nov. 7, 2000) ("Congress intended to remove any legal obligation of interactive computer service providers to attempt to identify or monitor the sale of ... products" on their platforms, because "the threat of liability for failing to monitor effectively would, in the

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judgment of Congress, deter companies … from making their service available as widely and as freely as possible.").

Section 230 was thus enacted "to maintain the robust nature of Internet communication" and "keep government interference in the medium to a minimum." *Zeran*, 129 F.3d at 330. Any law that regulates speech on the Internet in a manner "inconsistent with" the safe harbor is preempted. 47 U.S.C. § 230(e)(3); *see also, e.g.*, *J.S. v. Vill. Voice Media Holdings, LLC*, 184 Wn.2d 95, 101 (2015) ("Federal law ... preempts state law when state law would stand as an obstacle to the accomplishment of the full purposes and objectives of Congress in passing § 230 of the CDA.") (quoting *Zeran*); *Backpage*, 881 F. Supp. 2d at 1273 ("Congress has expressly preempted state laws that are 'inconsistent with' Section 230.").[1]

Section 230 "does not limit its grant of immunity to tort claims"; it extends to "all civil claims" that arise from publishing third-party content. *Schneider v. Amazon.com, Inc.*, 108 Wn. App. 454, 464 (2001). "Indeed, many causes of action might be premised on the publication or speaking of what one might call 'information content.'" *Barnes*, 570 F.3d at 1101. [C]ourts must ask *whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.' If it does, section 230(c)(1) precludes liability.*" *Id.* at 1101–02 (emphasis added); *accord, e.g.*, *Lasoff v. Amazon.com Inc.*, 2017 U.S. Dist. LEXIS 11093, at *8–9 (W.D. Wash. Jan. 26, 2017) (describing this as "the crux of the CDA litmus test").

[1] Congress provided only limited exceptions to Section 230's express preemption provision—for prosecutorial enforcement of federal criminal laws, civil claims for violation of federal intellectual property rights or the Electronic Communications Privacy Act, and (by recent amendment) enforcement of sex trafficking laws. 47 U.S.C. §§ 230(e)(1), (2), (4), (5). Consistent with Congress's expressed goal of promoting online "political discourse" that is "unfettered by … State regulation" (*id.* §§ 230(a)(3), (b)(2)), there are no exceptions for campaign record disclosure laws.

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ISSUE ADDRESSED BY *AMICUS*

Whether the State's claims are preempted by Section 230 of the Communications Decency Act, 47 U.S.C. § 230.

ARGUMENT

I. The State's attempts to enforce Washington's campaign finance law against Meta are expressly preempted by Section 230 of the Communications Decency Act.

The State's claims in this lawsuit are barred by Section 230. Congress enacted Section 230 to enable and protect today's online world by safeguarding service providers from claims arising from third party content on their services.

"Three elements are ... required for § 230 immunity: [1] the defendant must be a provider or user of an 'interactive computer service'; [2] the asserted claims must treat the defendant as a publisher or speaker of information; and [3] the information must be provided by another 'information content provider.'" *Schneider*, 108 Wn. App. at 460 (citing statute). All three elements are easily satisfied here.

A. Meta provides an "interactive computer service."

As to the first element, Meta plainly provides an "interactive computer service." Section 230 defines an "interactive computer service" as "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server" (47 U.S.C. § 230(f)(2)); and the State expressly alleges that Meta is an "online and digital platform[]" with "users" and "public access" (Am. Compl. ¶¶ 4.7, 4.20, 4.66).

Meta's websites, including Facebook, Instagram, and its advertising platforms, allow billions of users to find and share information on the Internet—a paradigmatic "interactive computer service." *E.g.*, *Force v. Facebook, Inc.*, 934 F. 3d 53, 64 (2d Cir. 2019). Thus, the first prong of Section 230 protection is undeniably satisfied.

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B. The political advertisements at issue originate from other "information content providers."

Nor can there be any dispute regarding the third element—that the content here was provided by another "information content provider," which Section 230 defines as "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." 47 U.S.C. § 230(f)(3). Thus, information is provided by "*another* information content provider" whenever the online service did not "create[] or develop[] the particular information at issue." *Carafano*, 339 F.3d at 1124–25 (quoting 47 U.S.C. § 230(c)(1) (emphasis added)).

The State alleges that Meta violated RCW 42.17A by failing to maintain and disclose records concerning "political advertisements or electioneering communications Facebook hosted." Am. Compl. ¶4.65. The State concedes, as it must, that these ads were provided by third-party "candidates and political committees" and other "advertisers"—not by Meta. Am. Compl. ¶4.62. Thus, the ads here were unquestionably provided by "another information content provider." And courts routinely hold that Section 230 preempts state-law claims that effectively penalize websites for displaying third-party advertisements, including in cases like this one where users posted ads in violation of a website's policies. *See, e.g.*, *Backpage*, 881 F. Supp. 2d at 1268–69, 1273 (enjoining enforcement of a Washington statute that penalized online services for displaying ads depicting minors, explaining that the statute effectively treated websites as "the publisher or speaker of information created by third parties"); *accord Lasoff*, 2017 U.S. Dist. LEXIS 11093, at *3–4, *8–9 (dismissing claims against Amazon arising from ads for counterfeit products that violated Amazon's policies, because "[t]he content … is provided by third parties"); *Murguly v. Google LLC*, 2020 U.S. Dist. LEXIS 32295, *8 (D.N.J. Feb. 25, 2020) (dismissing claims arising from Google's alleged publication of fraudulent job listings); *Goddard v. Google, Inc.*, 2008 U.S. Dist. LEXIS 101890, at *19-20 (N.D. Cal. Dec. 17, 2008) (dismissing similar claims that effectively sought "to hold Google liable for failing to enforce its Content Policy" against fraudulent ads).

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C. The State seeks to treat Meta as a "publisher or speaker" of third-party content posted on its advertising platform.

Finally, the State's claims inherently treat Meta as a "publisher or speaker" of third-party content. The claims do so in two ways. *First*, the statutory duties that Meta supposedly violated expressly arise from its publication of user content, and the State must prove that Meta published that content in order to establish liability. *Second*, compliance with the law's recordkeeping and disclosure obligations necessarily requires that Meta monitor all user content—an impossible burden that Section 230 protects against.

1. RCW 42.17A imposes obligations on Meta as the publisher of third-party political ads.

As explained above, the key question Section 230 asks is "whether the cause of action inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another"; "courts must ask whether the duty that the plaintiff alleges the defendant violated derives from the defendant's status or conduct as a 'publisher or speaker.'" *Barnes*, 570 F.3d at 1101–02. "If it does, section 230(c)(1) precludes liability." *Id.* at 1102.

That is plainly the case here. The statutory duty that Meta allegedly violated—failing to "maintain current books of account and related materials"—expressly derives from its status as a "commercial advertiser who has accepted or provided political advertising or electioneering communications." RCW 42.17A.345(1). The law defines a "commercial advertiser" as "any person that sells the service of *communicating messages or producing material for broadcast or distribution to the general public* or segments [thereof]"—i.e., a publisher. RCW 42.17A.005(10) (emphasis added). Consistent with the statutory text, the State itself affirmatively alleges that this encompasses online publishers. Am. Compl. ¶4.7.

The duty here arises directly from Meta's publication of others' content, and enforcing that duty inherently requires the Court to treat Meta as the content's publisher. *Barnes*, 570 F.3d at 1101–02. This is a straightforward violation of Congress's directives that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any

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information provided by another information content provider," and that "[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. §§ 230(c)(1), (e)(3). Thus, the State's claims are preempted.

It is no answer to say that RCW 42.17A imposes liability for failing to maintain or disclose records *about* ads, rather than for publishing the ads themselves. Publishing the ads is "a necessary element" of Meta's alleged liability (*Zeran*, 129 F.3d at 332)—the State could not allege a failure to disclose or maintain information about "political advertising" that Meta never published. The State cannot "circumvent the CDA's protections through 'creative' pleading" or "artful skirting of the CDA's safe harbor" (*Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016)), and "courts repeatedly have rejected attempts to recharacterize claims fundamentally based on third party posting of information online in order to avoid § 230's prohibition on treat[ing] [the defendant] as a 'publisher' of information" (*Goddard*, 2008 U.S. Dist. LEXIS 101890, at *12–13). In both form and substance, the State here aims to penalize Meta for failing to comply with duties derived from it acting as the "publisher or speaker of … information provided by another information content provider"—an effort that runs headlong into Section 230.

HomeAway.com, Inc. v. City of Santa Monica, 918 F.3d 676 (9th Cir. 2019), is not to the contrary. There, the city enacted a registered regime for rental properties and an ordinance prohibiting anyone from accepting payment for rentals of unregistered properties. Owners of unregistered properties, however, posted rental listings on online services such as Airbnb and HomeAway, and those services accepted payment when those properties were rented. The online services sued the city claiming the ordinance was preempted by Section 230 because it held them liable for listings that third parties posted to their services. But the Ninth Circuit recognized that the ordinance did not do so. Rather, it explained, the ordinance merely "prohibits *processing transactions* for unregistered properties," rather than imposing duties in connection with *publishing* those listings. *Id.* at 682 (emphasis added). The ordinance did not "proscribe, mandate, or even discuss the content of the listings that the Platforms display on

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their websites." *Id.* at 683. In other words, as a subsequent Ninth Circuit panel held in distinguishing *HomeAway*, "the vacation rental platforms did not face liability for the content of their listings; rather liability arose from facilitating unlicensed booking transactions." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1098 (9th Cir. 2019). The third-party listings displayed on the online platforms were simply irrelevant for purposes of applying the ordinance. *Id.*

The statute at issue here, RCW 42.17A, is quite different. The recordkeeping and reporting duties imposed by the statute arise exclusively from the appearance of political advertising on Meta's service. The law applies only if Meta "communicat[es] messages … to the general public or segments of the general public." RCW 42.17A.005(10). And those messages must convey a certain type of substantive content—namely, promotion of a political candidate or ballot measure in a Washington state election. RCW 42.17A.005(21), (40) (defining "electioneering communication" and "political advertising"). Meta's liability under the statute is not triggered by transactions separate and apart from the content of ads that third parties publish. Rather, its obligations under RCW 42.17A are triggered precisely because an online service functions as a publisher of third-party advertisements, and precisely because of the specific content of those advertisements. That is what Section 230 expressly preempts.

2. RCW 42.17A requires Meta to monitor the content of all third-party ads running on its platform—a publisher function Section 230 protects.

RCW 42.17A further violates Section 230 by requiring Meta to monitor the content of third-party ads running on its service. Courts uniformly agree that, because Section 230 "precludes courts from entertaining claims that would place a computer service provider in a publisher's role," the statute "specifically proscribes liability" under any claim that effectively seeks to hold a service "liable for decisions relating to the *monitoring*, *screening*, and *deletion* of content from its network—actions quintessentially related to a publisher's role." *Green*, 318 F.3d at 471 (emphasis added; quoting *Zeran*, 129 F.3d at 330); *accord Schneider*, 108 Wn. App. at 463. Congress forbade imposing monitoring obligations on online services because the

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amount of information communicated on the Internet is "staggering," making it "impossible for service providers to screen each of their millions of postings." *Zeran*, 129 F.3d at 330–31; *accord, e.g.*, *Bennett v. Google, Inc.*, 2017 U.S. Dist. LEXIS 95708, at *4–6 (D.D.C. June 21, 2017) ("It would be impossible for service providers to screen each of their millions of postings for possible problems.") (quoting *Zeran*), *aff'd*, 882 F.3d 1163 (D.C. Cir. 2018).

Yet imposing a monitoring obligation on online publishers is exactly what Washington's law does. Meta can comply only by identifying all Washington state political ads that third parties post to the service, collecting the required information, and making it available within 24 hours of a demand. To do that, Meta must continuously monitor the enormous number of third-party ads posted to its platform. Not only that, but Meta must make an immediate judgment as to which ads amount to "electioneering communications" or "political advertising" for Washington state or local elections. PDC regulations go even further, expressly requiring Meta to evaluate the substance of these messages, by requiring Meta to determine and disclose upon request "whether the advertising or communication supports or opposes" a certain candidate or ballot measure. WAC 390-18-050(5)(a). And Meta must do all of these things without error; as this action shows, the State believes Meta is responsible for reporting information on all political ads it carries, even if Meta does not know those ads have been displayed—and even if Meta affirmatively prohibits such ads.

This is exactly the sort of monitoring obligation that treats Meta as a "publisher" of third-party content, and that Section 230 preempts. In *Backpage*, for example, Washington's law penalizing websites for displaying certain ads "conflict[ed] with Congressional intent because, by imposing liability on online service providers who do not pre-screen content …, the statute drastically shifts the unique balance that Congress created with respect to the liability of online service providers that host third party content." 881 F. Supp. 2d at 1273–74. Numerous other courts have rejected claims that websites failed to "detect and protect against evolving online threats," including fraudulent job advertisements, holding that "Section 230 specifically proscribes liability where a plaintiff attempts to hold [Google] liable for decisions relating to the

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monitoring, screening, and deletion of content from its network." *Murguly*, 2020 U.S. Dist. LEXIS 32295, at *8 (quoting *Green*); *see also, e.g.*, *Weerahandi*, 2017 U.S. Dist. LEXIS 163910, at *18–20 (dismissing claim that Google failed to monitor and remove defamatory videos posted on its YouTube service); *Obado v. Magedson*, 612 F. App'x 90, 93–94 (3d Cir. 2015) (dismissing claims that Google failed to monitor and remove defamatory content from search results); *Pennie v. Twitter, Inc.*, 281 F. Supp. 3d 874, 890 (N.D. Cal. 2017) (dismissing claims challenging Google's provision of accounts to members of Hamas because Google "could only determine which accounts are affiliated with Hamas by reviewing the content published by those accounts"); *Carafano*, 339 F.3d at 1121–22, 1125 (dismissing claims that website "failed to review each user-created profile to ensure that it wasn't defamatory," which "is precisely the kind of activity for which Congress intended to grant absolution with the passage of section 230") (as described in *Fair Hous. Council v. Roommates.com, LLC*, 521 F.3d 1157, 1171–72 (9th Cir. 2008)); *924 Bel Air Rd., LLC v. Zillow Grp., Inc.*, 2020 U.S. Dist. LEXIS 27249, at *10 (C.D. Cal. Feb. 18, 2020) ("The duty that Bel Air alleges Zillow violated, to monitor new users and prevent or remove false claims or postings, derives from Zillow's status and conduct as a publisher."); *Doe v. MySpace*, *Inc.*, 528 F.3d 413, 419–20 (5th Cir. 2008) (noting "fallacy" in argument that plaintiffs "only seek to hold MySpace liable for its failure to implement measures that would have prevented" minors from unlawfully communicating on the site, because "[t]heir allegations are merely another way of claiming that MySpace was liable for publishing the communications").

The duty to monitor imposed by the Washington law further distinguishes *HomeAway*. There, the ordinance at issue prohibiting the booking of unregistered rental transactions "d[id] not require the Platforms to review the content provided by the hosts of listings on their websites. Rather, the only monitoring that appears necessary in order to comply with the Ordinance relates to incoming requests to complete a booking transaction—content that, while resulting from the third-party listings, is distinct, internal, and nonpublic." 918 F.3d at 682.

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Here, by contrast, the alleged statutory duties arise not from Meta processing a "distinct, internal, and nonpublic" financial transaction (*id.*), but from Meta "communicating messages or producing material for broadcast or distribution to the general public." RCW 42.17A.005(10). Although the Washington statute does not use the *word* "monitor," the inquiry under Section 230 is "whether the duty would *necessarily* require an internet company to monitor third-party content." *HomeAway*, 918 F.3d at 682 (emphasis added); *see also Barnes*, 570 F.3d at 1101–02. Here it would, making this exactly the sort of content-based monitoring obligation that Congress forbade the States from imposing on online services, and exactly the sort that Section 230 preempts. Indeed, it is difficult to imagine a situation more antithetical to Section 230 than one where a platform literally bans speech to avoid liability under an impossible-to-comply-with law—and the State nevertheless brings suit because the platform lacked the omniscience to enforce its ban flawlessly.

II. Washington's disclosure regime chills speech and distorts political discourse.

As Congress found when enacting Section 230, "[t]he Internet and other interactive computer services offer a forum for a true diversity of political discourse." 47 U.S.C. § 230(a)(3). But in the pursuit of the worthy goal of transparency in political advertising, Washington's disclosure law chills speech and stifles the diversity of political discourse that Congress sought to protect.

By imposing a burdensome and impossible-to-satisfy duty to monitor, Washington's disclosure regime has shut off avenues for political speech. Faced with having to attempt to comply with the disclosure law if they continued to host Washington political ads, Meta, Google, and Yahoo, all concluded that hosting core political speech is simply not worth it. *See* Weber Decl., Ex. A ("Weber Report") ¶ 32. This shut off digital advertising, with its "low-cost capacity for communication." *See Packingham v. North Carolina*, 137 S.Ct. 1730, 1735 (2017).

Shutting off such an "inexpensive" means for communication "inevitably favors certain groups of candidates over others." *See Collier v. City of Tacoma*, 121 Wn.2d 737, 752 (1993) (striking down yard sign regulation that tended to benefit the well-known incumbent at the

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expense of "[t]he underfunded challenger … who relies on the inexpensive yard sign to get his message before the public"). As the record here shows, low-cost digital advertising is essential to smaller campaigns and less-well-heeled groups that lack the resources to reach the public through traditional, more expensive means. *See* Def's Mot. for Summ. J. 16. And as Amicus knows, digital advertising is a vital channel for getting out the message on issues related to a progressive society, economy, workforce, and consumer climate. Thus, Washington's disclosure regime not only runs afoul of 47 U.S.C. § 230(c)(1)'s preemptive provision, it also undermines the statute's purpose in securing the internet as "a forum for a true diversity of political discourse" (47 U.S.C. § 230(a)(3)).

CONCLUSION

The State's claims are foreclosed by Section 230 of the CDA. For the foregoing reasons, Amicus respectfully requests that the Court enter summary judgment in Meta's favor.

I certify that this brief contains 5,392 words, in compliance with the Local Civil Rules.

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Respectfully submitted,

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