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Colorado Court of Appeals
Case No.: 2022CA2245
Opinion by Hon. Jerry Jones (Hon. Hawthorne, concurring, Hon. Schutz dissenting)

Petitioner
ANDREW KLINE, in his official capacity as Colorado Deputy Secretary of State; and JENA GRISWOLD, in her official capacity as Colorado Secretary of State,
v.
Respondent
NO ON EE – A BAD DEAL FOR COLORADO

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PHILIP J. WEISER, Attorney General
SHANNON STEVENSON, #35542*
Solicitor General
PETER G. BAUMANN, #51620*
Assistant Solicitor General
KYLE M. HOLTER, #52196*
Assistant Attorney General
Ralph L. Carr Colorado Judicial Center
1300 Broadway, 6th Floor
Denver, CO 80203
Telephone: 720.508.6152
FAX: 720.508.6041
E-Mail: Shannon.Stevenson@coag.gov
Peter.Baumann@coag.gov;
Kyle.Holter@coag.gov
**Counsel of Record for Petitioners*

Case No. 24SC540

OPENING BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 , or C.A.R. 28.1, including all formatting requirements set forth in these rules. Specifically, I certify that:

The brief complies with the applicable word limit set forth in C.A.R. 28(g) or C.A.R. 28.1(g).

It contains 8,783 words.

The brief complies with the standard of review requirements set forth in C.A.R. 28(a)(7)(A) and/or C.A.R. 28(b)

> For each issue raised by the appellant, the brief contains under a separate heading before the discussion of the issue, a concise statement: (1) of the applicable standard of appellate review with citation to authority; and (2) whether the issue was preserved, and, if preserved, the precise location in the record where the issue was raised and where the court ruled, not to an entire document.

I acknowledge that my brief may be stricken if it fails to comply with any of the requirements of C.A.R. 28 or 28.1 and C.A.R. 32.

/s/ Peter G. Baumann
PETER G. BAUMANN, #51620
Assistant Solicitor General

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INTRODUCTION

With increasing frequency, some of Colorado's most important and impactful public policy is presented to voters through ballot measures. These measures, which address topics ranging from property taxes, to abortion, to the way Coloradans vote and elect their leaders, can fundamentally alter the rights and lives of Colorado residents.

During these elections, organizations called "issue committees" spend significant sums encouraging voters to support or oppose ballot measures. Consistent with decades of First Amendment precedent, Colorado voters and their representatives require issue committees to identify on their advertisements the "person" paying for the communication. And, because these committees often hide behind "dubious and misleading" corporate names, *Citizens United v. FEC*, 558 U.S. 310, 367 (2010) (quotations omitted), Colorado requires issue committees to also identify a "natural person" associated with the communication: the committee's registered agent ("the registered agent requirement").

The majority below held that the registered agent requirement violates the First Amendment on its face, reaching past the issues as they were pled and argued to address a question that was neither presented nor briefed. As a result, a duly-enacted law was annulled without any argument or discussion about the applicable legal standards, which themselves were misapplied by the majority.

Party presentation and preservation is not empty formalism. The majority's decision rested on factual and legal inaccuracies and inconsistencies. These errors were a direct result of the majority treading a legal path unilluminated by adversarial briefing and argument.

At bottom, the majority's conclusion that the registered agent requirement violates the First Amendment was wrong whether viewed on the requirement's face or as applied to Respondent No on EE. Amidst a cacophony of election-related communications, the identification of a natural person associated with the committee provides tangible and prophylactic benefits to Colorado voters. As to the latter, the

identification of the registered agent reminds voters that an identifiable person is ultimately answerable to the advertisement. And as to the former, many registered agents provide voters with meaningful information about the interests behind vaguely or misleadingly named committees.

Against these clear benefits, the record contains no evidence establishing any burden on No on EE or its peers in providing this information. To the contrary, the facts here demonstrate just how little burden the registered agent requirement imposes on issue committees like No on EE.

The Court of Appeals decision should be reversed and the Final Agency Order affirmed.

ISSUES PRESENTED

1. Did the court of appeals err by holding the registered agent disclosure requirement facially unconstitutional where the plaintiff (1) made no facial challenge in its complaint, (2) developed no record and made no argument in support of a facial challenge before the district court, and (3) presented no argument in support of a facial challenge to the court of appeals?

2. In the alternative, did the court of appeals err by holding the registered agent disclosure requirement facially unconstitutional where disclosure serves compelling public interests and imposes no meaningful burden on issue committees?

STATEMENT OF THE CASE

I. Colorado campaign finance law.

Colorado voters have a demonstrated commitment to campaign finance transparency. In 1996, the People adopted a comprehensive campaign finance regulatory regime by initiative. *See* Title I, Art. 45, Ed.'s Note (1). Five years later, they went a step further, this time enshrining campaign finance requirements in the state constitution. *See generally* Colo. Const. art. XXVIII § 1 ("[T]he interests of the public are best served by . . . providing for full and timely disclosure of . . . funding of electioneering communications, and strong enforcement of campaign finance requirements.").

The General Assembly has supplemented these popular enactments to promote additional transparency. In 2010 it passed

legislation requiring issue committees[1] to include "paid for by" disclosures on most campaign communications. § 1-45-108.3. In 2019, it required those "paid for by" disclosures to identify the issue committee's registered agent. § 1-45-108.3(3); § 1-45-107.5(5)(a).

II. No on EE ran over $3 million worth of advertising without identifying its registered agent.

In 2020, an issue committee was formed to oppose Proposition EE, a proposed nicotine tax that appeared on the November 2020 ballot. CF, 408. Its name was "No on EE – A Bad Deal for Colorado," and its efforts were almost entirely funded by a single cigarette manufacturer, Ligget Vector Brands, LLC. CF, 382. During the 2020 election season, it spent over $4 million on billboards, television ads, and other advertisements urging voters to oppose Proposition EE. CF, 350.

In October of that year, the Elections Division received a third-party campaign finance complaint filed against No on EE. CF, 263-85.

[1] An issue committee is an organization with "a major purpose of supporting or opposing any ballot issue or ballot question" that has accepted or made more than $200 in contributions or expenditures. Colo. Const. art. XXVIII, § 2(10)(a); 8 CCR 1505-6, Rule 1.9.

The third-party complaint alleged that No on EE's advertisements failed to identify its registered agent pursuant to the registered agent requirement. CF, 264. Immediately after receiving notice of the third-party complaint, No on EE worked to cure the alleged violation, and added language identifying its registered agent to its TV, digital, and radio advertisements within 36 hours. CF, 408. It also reprinted its campaign literature to identify the registered agent or added stickers to literature that had already been printed. *Id.*

The matter proceeded to a hearing before an Administrative Law Judge serving as a hearing officer under section 1-45-111.7(5) on stipulated facts. *See* CF, 340–42. No on EE argued that its failure to comply with the statute should be excused but did not raise either a facial or as-applied constitutional challenge to the statute. CF, 395–98.

The ALJ issued an initial decision on May 26, 2021. CF, 401–06. The ALJ adopted the parties' stipulations, including, as relevant here:

- Initially, No on EE's communications included a disclaimer that read: "Paid for by No on EE: A Bad Deal for Colorado." CF, 402.

- None of those initial disclaimers included the name of No on EE's registered agent. CF, 402.
- Between $3 and $3.5 million worth of communications were distributed without identifying No on EE's registered agent. CF, 403.
- Each of the individual communications included in this estimate cost more than $1,000 to produce and distribute. CF, 403; *see also* § 1-45-108.3(1) (requiring a compliant disclaimer statement on communications costing over $1,000).

The ALJ concluded that No on EE violated the disclaimer statute and imposed a fine of $10,000. CF, 405.

Neither party filed exceptions to the Initial Decision. But the then Deputy Secretary of State—the final agency decisionmaker in campaign finance matters—initiated review on his own motion under sections 1-45-111.7(6)(b) and 24-4-105(14)(a)(II). CF, 413, 426. On September 2, 2021, the then Deputy Secretary issued the Final Agency Order at issue in this action. CF, 424–38. The Final Agency Order largely adopted the ALJ's findings of fact and conclusions of law, but it increased the fine levied against No on EE to approximately 1% of the cost of the noncompliant communications, $30,000. *Id.*

III. No on EE brought an as-applied challenge to the registered agent requirement, but asserted no facial challenge.

No on EE sought judicial review of the Final Agency Order, naming both the Deputy Secretary and the Secretary as defendants (collectively, "the Secretary"). CF, 3-7. In its complaint, No on EE primarily challenged the fine—first on the basis that it violated the Eighth Amendment, and second as an abuse of discretion. *Id.* No on EE also argued that the registered agent requirement "deprive[d] Respondent, its donors, and their audience, of the right of free speech under the First, Eighth and Fourteenth Amendments to the United States Constitution." CF, 6. The complaint did not purport to bring a facial challenge. CF, 3-7.

In its opening brief before the district court, No on EE argued only that it was challenging "the necessity, and thus the constitutionality, *as applied to its committee*," of the registered agent requirement. CF, 477 (emphasis added). No on EE did not reference, or develop a record to support, a facial challenge. CF, 476-86. Nonetheless, the district court

concluded it was "unclear" whether No on EE was bringing a facial or as-applied challenge, and it determined neither would succeed. CF, 528.

In the court of appeals, No on EE described its complaint as challenging "the necessity, and thus the constitutionality, *as applied to its committee*, of the requirement to list the registered agent in campaign materials." *No on EE v. Beall*, 2024 COA 79, ¶ 47 (Schutz, J., dissenting) (quoting Opening Br.). Consistent with how it had argued the case below, No on EE did not lay out the legal standards for a facial challenge, cite to any record supporting its facial challenge (there was none), or identify "the precise location in the record" where its facial challenge was preserved. *See* C.A.R. 28(a)(7)(A).[2]

In the Answer Brief at the court of appeals, the Secretary argued that the district court erred in considering a facial challenge. *No on EE v. Beall*, No. 22CA2245, Answer Br. at 17 (May 23, 2023). No on EE did

[2] The word "facial" appears only once in the entire brief in a single stand-alone sentence that says, "The registered agent requirement fails on both 'as applied' and facial grounds." *No on EE v. Beall*, No. 22CA2245, Opening Br. at 7 (April 5, 2023).

not file a reply. *No on EE v. Beall*, No. 22CA2245, Notice by Plaintiff/Appellant at 1 (June 13, 2023); *No on EE*, ¶ 60 (Schutz, J., dissenting) ("The Secretary and Deputy Secretary expressly argue in their answer brief that No on EE failed to preserve any facial challenge. No on EE elected to not even file a reply contesting the lack of preservation.").

IV. Over a lengthy dissent, the majority holds that the registered agent requirement is unconstitutional.

Though No on EE developed no record and made no argument to support a facial challenge at any stage of the proceedings, the majority, over a dissent from Judge Schutz, held that the registered agent disclosure requirement was facially unconstitutional. *No on EE*, ¶ 34.

The majority first concluded that No on EE had preserved its facial challenge because (1) "the district court recognized and addressed it." *Id.* ¶ 13 (citation omitted); (2) No on EE's Opening Brief contained one sentence mentioning a facial challenge, *id.* ¶ 14 (quoting Opening

Br.); and (3) No on EE invoked the "exacting scrutiny" and "narrowly tailored" standards. *Id.*[3]

On the merits, the majority held that the requirement failed exacting scrutiny because it did not further an important government interest. *Id.* ¶ 29. Specifically, it concluded that "defendants haven't shown that knowing the name of an issue committee's registered agent will materially assist voters[.]" *Id.*

Judge Schutz dissented on all points. In his view, "No on EE wholly failed to develop a facial challenge, both in the district court and on appeal." *Id.* ¶ 62 (Schutz, J., dissenting). Because the court was left "with no arguments from the parties that address the merits of the facial challenge decided by the majority," he concluded that the court should not have addressed it. *Id.*

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[3] Although the dissent pointed out that "narrow tailoring" and "exacting scrutiny" were relevant to both the as-applied challenge as well as a facial challenge, the majority did not address that argument. *No on EE*, ¶ 45 (Schutz, J., dissenting).

Even if a facial challenge were considered, Judge Schutz reasoned it would fail. *Id.* ¶ 90. Recognizing that the burden of proving a facial challenge falls on the challenger, *id.* ¶ 86, he noted that the "Supreme Court has repeatedly recognized the legitimate policy considerations that underpin disclaimer laws," *id.* ¶ 71 (citing *Citizens United*, 558 U.S. at 366-71).

From there, Judge Schutz concluded that "[t]he public is substantially benefitted by the disclosure of a human being, rather than a corporate name that is often deceptively misleading." *Id.* ¶ 82. "[W]e can all think of local and national political leaders, social media influencers, pundits, commentators, celebrities, activists, or ordinary citizens whose disclosure as the registered agent of an issue committee would tell the voters something of meaning about the associated advertisement." *Id.* ¶ 87. "And in all instances," he found that identifying the registered agent serves to disabuse "the voting public of the notion that the advertisement flows from the dubious and

misleading name of the issue committee rather than a human being." *Id.* (quotations omitted).

For these reasons, he concluded that No on EE had not carried its burden to prevail on a facial challenge. *Id.* ¶¶ 86-88.

Because the court of appeals decision was issued in the heat of election season, the Secretary sought and received a stay of the court's judgment pending these proceedings. Order of Court (Oct. 22, 2024). The Secretary also sought certiorari on two questions, both of which this Court granted. Order of Court (Aug. 4, 2025).

SUMMARY OF THE ARGUMENT

At no point during the administrative proceedings, or before either the district court or the court of appeals, did No on EE articulate a basis for facially invalidating the registered agent disclosure requirement. By doing so anyway, the majority below violated the party presentation principle and invited significant legal error that could have been avoided if the arguments it relied upon had been subject to adversarial briefing. By reaching beyond the case as it was presented and argued by

the parties, the majority committed procedural errors that require reversal on their face.

Worse still, those procedural errors were compounded by substantive ones. The majority transposed the burden applicable to a facial challenge, misapplied the relevant legal standard, and blindly speculated as to facts necessary to reach its conclusion.

In truth, the requirement that faceless issue committees must identify a natural person on their advertisements is consistent with decades of law dating to *Buckley v. Valeo*, 424 U.S. 1 (1976). It provides an instantaneous reminder that people, not inanimate entities, are ultimately responsible for the advocacy to which voters are exposed during an election. And in many cases the identity of that person provides even greater information because of their known political affiliations or work with related committees.

Because Colorado voters have an interest in knowing who is trying to sway their vote during an election, and because the registered agent disclosure requirement imposes virtually no burden on No on EE

and other issue committees, it is constitutional both facially and as applied to No on EE. No on EE failed to preserve either constitutional challenge, and in any event both fail.

The Court should reverse the court of appeals and affirm the Final Agency Order.

ARGUMENT

I. The division's facial invalidation of the registered agent requirement based on undeveloped arguments violates basic precepts of party presentation and judicial restraint.

A. Standard of review and preservation.

The Secretary preserved this issue for review. *See No on EE*, ¶ 60 (Schutz, J., dissenting) ("The Secretary and Deputy Secretary expressly argue in their answer brief that No on EE failed to preserve any facial challenge."). Waiver and adequate preservation present legal questions subject to de novo review. *See, e.g.*, *Bondsteel v. People*, 2019 CO 26, ¶ 21 (reviewing waiver de novo).

B. The majority understated the burden applicable to a facial challenge.

In concluding that No on EE developed a facial challenge for review on appeal, the majority dramatically understated the burden applicable to such a challenge.

In an as-applied challenge, the plaintiff must establish that a statute is unconstitutional "under the circumstances in which [it] has acted or proposes to act." *Qwest Servs. Corp. v. Blood*, 252 P.3d 1071, 1085 (Colo. 2011). Facial challenges demand more. *E.g.*, *Dallman v. Ritter*, 225 P.3d 610, 625 (Colo. 2010) ("[A] facial challenge can only succeed if the complaining party can show that the law is unconstitutional in all its applications.") (citation omitted). In First Amendment cases, a plaintiff bringing a facial challenge needs to demonstrate that "a substantial number of the statute's applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473 (2010) (citation omitted).

Thus, a party's decision to litigate its case as a facial challenge has consequences. *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). ("[Plaintiff] chose to litigate these cases as facial challenges, and that decision comes at a cost."). Facial challenges are "hard to win." *Id.* The burden on plaintiffs is "rigorous." *Id.* at 723, 743-44. ("To succeed on its First Amendment claim, [plaintiff] must show that the law at issue 'prohibits a substantial amount of protected speech relative to its plainly legitimate sweep.'" (quoting *United States v. Hansen*, 599 U.S. 762, 770 (2023)). And that difficulty is by design. *Id.* Facial challenges "often rest on speculation," "run contrary to the fundamental principle of judicial restraint," and "threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450-51 (2008). For those reasons, a facial challenge is "the most difficult challenge to mount successfully" in constitutional law. *United States v. Salerno*, 481 U.S. 739, 745 (1987).

The majority brushed this difficulty aside in a footnote, opining that "failure to satisfy the 'exacting scrutiny' test *necessarily means* the statute is unconstitutionally overbroad under [the facial challenge 'plainly legitimate sweep'] standard." *No on EE*, ¶ 18 n.7 (emphasis added) (citing *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607-12 (2021)). *Americans for Prosperity* provides no support for this remarkable understatement of the "most difficult" standard in constitutional law. "Exacting scrutiny" describes the test for *both* as-applied and facial First Amendment challenges. *E.g.*, *Citizens United v. Gessler*, 773 F.3d 200, 209 (10th Cir. 2014) (applying "exacting scrutiny" to as-applied challenge); *Ams. for Prosperity*, 594 U.S. at 615 (applying "exacting scrutiny" to facial challenge). But on an as-applied First Amendment challenge, courts consider whether a statute's "application *in a specific case*" survives exacting scrutiny. *See Gessler*, 773 F.3d at 216 (emphasis added). On a facial challenge, however, *Americans for Prosperity* holds that courts consider whether a statute "fails exacting scrutiny *in a substantial number of its applications judged in relation to*

its plainly legitimate sweep." 594 U.S. at 618 (emphasis added) (quotations and alterations omitted).

Put another way, as-applied review entails "exacting scrutiny" of the plaintiff's situation only, and facial review demands "exacting scrutiny" of the statute's many other possible applications. *Moody*, 603 U.S. at 718 (holding "the question in [a facial First Amendment challenge] is whether a law's unconstitutional applications are substantial compared to its constitutional ones"). Thus, a statute may fail "exacting scrutiny" in a particular instance but remain facially valid if it has a plainly legitimate sweep. *See Gessler*, 773 F.3d at 216 ("Courts can, and often do, recognize the overall propriety of a statutory scheme while still invalidating its application in a specific case.").

The majority collapsed this distinction. If "failure to satisfy the 'exacting scrutiny' test *necessarily means* the statute is unconstitutionally overbroad," *No on EE*, ¶ 18 n.7 (emphasis added), then *every* statute that failed exacting scrutiny would be *facially* invalid, and as-applied review would serve no purpose. But that "cannot

be correct," because "[s]uch an approach eliminates the possibility of *as-applied* review." *See Gessler*, 773 F.3d at 216.[4]

Moreover, the majority transposed the burden applicable to First Amendment facial challenges. The majority chastises the Secretary for not proving the statute's facial constitutionality. *See, e.g.*, *No on EE*, ¶ 29. But it was not the Secretary's burden to do so. *See Moody*, 603 U.S. at 744. In effect, the majority reached a question that no party argued, and it ruled against the Secretary because she did not adequately address those unpled arguments. That was error.

According to the Supreme Court, when a party brings a facial challenge, "that matters." *Id.* at 743-44 ("Even in the First Amendment context, facial challenges are disfavored, and neither parties nor courts

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[4] That was not the majority's only error. It also stated that "the mere possibility that disclosure of the registered agent's name might, in some cases, provide relevant information to someone can't be sufficient if 'exacting scrutiny' is to mean anything." *No on EE*, ¶ 32 (quoting *Ams. for Prosperity*, 594 U.S. at 612-13.) But that gets the burden backward. Under *Moody*, the possibility that the registered agent's name might *not* provide relevant information is insufficient to hold the law facially unconstitutional.

can disregard the requisite inquiry into how a law works *in all of its applications*." (emphasis added)). According to the majority opinion, it does not. Because the panel majority misstated and dramatically lowered the burden applicable to facial First Amendment challenges, its opinion must be reversed.

C. After understating the applicable burden, the majority relied on arguments no party made to hold that it was satisfied.

After lowering the bar for a facial First Amendment challenge, the majority stepped over that bar by itself. No on EE never acknowledged, much less addressed with reasoned argument, its burden to demonstrate that the registered agent requirement "prohibits a substantial amount of protected speech relative to its plainly legitimate sweep." *Moody*, 603 U.S. at 744-45. The majority's decision to clear that hurdle on its own represents a clear violation of the party presentation principle and judicial restraint.

Appellate courts "don't consider undeveloped and unsupported arguments." *Woodbridge Condo. Ass'n, Inc. v. Lo Viento Blanco, LLC*,

2020 COA 34, ¶ 41 n.12, *aff'd*, 2021 CO 56; *see People v. Sanders*, 2023 CO 62, ¶¶ 18-19 (finding party "failed to challenge" conclusion that statements were made voluntarily, because conclusory references to and uses of the word "voluntary" were "unsupported by legal arguments or relevant authorities"). Doing so violates the "party presentation principle," a tenet of our adversarial justice system "designed around the premise that parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief." *Compos v. People*, 2021 CO 19, ¶ 35.

No on EE did not present an argument that could carry its burden on "the most difficult challenge" in constitutional law. No on EE has never contended that a "substantial number" of the registered agent requirement's applications are unconstitutional. It has never articulated a position on the statute's "plainly legitimate sweep." In all of No on EE's filings in this case—before the agency, the district court, and the court of appeals—the word "facial" appears a single time. *No on EE v. Beall*, No. 22CA2245, Opening Br. at 7 (April 5, 2023).

"Overbroad" appears not even once. No on EE did not attempt to identify in its brief below the "precise location in the record where [it] took action to preserve the issue for appellate review." C.A.R. 28(a)(7)(A). No such citation could be made, because No on EE took no action to preserve or develop a facial challenge.

And if there could be any further question about the reason for this gaping hole in No on EE's briefing, No on EE *waived its right to reply* after the Secretary argued below that No on EE had failed to develop or preserve a facial challenge. *No on EE v. Beall*, No. 22CA2245, Notice by Plaintiff/Appellant at 1 (June 13, 2023). That waiver concedes the point: No on EE did not preserve or develop a facial challenge to the registered agent requirement for appellate review. *People v. Bondsteel*, 2015 COA 165 ¶ 61 n.6 ("An appellant's failure to respond in the reply brief to an argument made in the answer brief may be taken as a concession.").

The majority waves away this profound void in No on EE's arguments as "[p]erhaps" not "go[ing] into law-review-article depth on

the issue." *No on EE*, ¶ 14. But there was no depth to No on EE's arguments in support of its facial challenge, because No on EE never addressed the applicable standard. The only substance on which the majority's euphemism rests—the fact that No on EE "invoke[d] the 'exacting scrutiny' and 'narrowly tailored' test"—is decisively off point. *Id.* That test applies to *both* as-applied and facial challenges, so "invoking" it does nothing to distinguish—much less carry the "rigorous" burden of—a facial First Amendment challenge.

True enough, no "talismanic incantation" is necessary to avoid a waiver, *see Paul v. People*, 105 P.3d 628, 633 (Colo. 2005), but the majority's reliance on No on EE's use of the word "facial" a single time practically turns that truism on its head. *See No on EE*, ¶ 14 ("No on EE's opening brief asserts that 'the [registered agent requirement] fails on both 'as applied' and facial grounds . . . .'"). Merely using the word "facial" once cannot be sufficient to preserve and develop a facial

challenge.[5] *Brown v. Nucor Corp.*, 785 F.3d 895, 925 (4th Cir. 2015) ((Agee, J., dissenting) ("Preservation would have little to recommend it if litigants could make nebulous, broadly worded arguments and trust appellate courts to work out the details once the opposing party points out the default.").

After three rounds of briefing, No on EE has never cited, acknowledged, or attempted to apply the legal standard applicable to a facial First Amendment challenge. *Moody*, 603 U.S. at 743-44. ("To succeed on its First Amendment claim, [a plaintiff] must show that the law at issue . . . 'prohibits a substantial amount of protected speech relative to its plainly legitimate sweep.'") (citation omitted). But even in the absence of such argument, the majority held that No on EE carried

[5] Nor does the majority's suggestion that No on EE's brief "discuss[ed]" case law concerning facial challenges "along the way" mean that the argument is "develop[ed]." *Id.*, ¶ 14. *See, e.g.*, *Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1001 (D.C. Cir. 2008) ("A fleeting statement in the parenthetical of a citation is no more sufficient to raise a claim than a cursory remark in a footnote[.]"); *Sou v. Gonzales,* 450 F.3d 1, 6 n.11 (1st Cir. 2006) ("Mere notation of the applicable law, without any argumentation as to how it applies to [the] case, does not raise the issue of its application on appeal.") (quotation omitted).

its burden and overcame the "most difficult challenge" in constitutional law. That cannot be correct, and directly violates the party presentation principle. *See Dep't of Nat. Res. v. 5 Star Feedlot, Inc.*, 2021 CO 27, ¶ 39 n.15 (explaining "[a]ttorneys, not judicial officers, should lawyer cases" and courts "should not be making arguments for a party").

This case illustrates why the principle is so important. First, by holding that No on EE's facial challenge was developed—after the Secretary argued and No on EE conceded that such a challenge had not been preserved—the majority denied the Secretary an opportunity to refute the majority's misapplication of facial First Amendment precedent.[6] Second, by holding a facial challenge to be not only developed but availing, the majority opinion threatens the very "short circuit" of the democratic process that the rigorous facial challenge

[6] For example, had No on EE stated (as did the majority in its opinion) that "failure to satisfy the 'exacting scrutiny' test *necessarily means* the statute is unconstitutionally overbroad" *No on EE*, ¶ 18 n.7, the Secretary would have had the opportunity to respond and correct that misstatement with reference to applicable caselaw, as it does here. So too with the majority's error in transposing the burden for proving materiality from No on EE to the Secretary. *See id.* ¶ 30 n.11.

standard is designed to avoid. And the majority's decision to address this issue in the absence of argument required it to engage in "speculation about the [registered agent requirement's] coverage and its future enforcement" without the testing typically afforded by the adversarial process. *See Moody*, 603 U.S. at 723; *see also id.* at 726 (rejecting facial challenge in party because "[m]aybe the parties' focus had all to do with litigation strategy, and there is a sphere of other applications—and constitutional ones—that would prevent the laws' facial invalidation").

The majority's determination that No on EE satisfied the incorrect standard based on arguments No on EE did not make was error. Its decision must be reversed.

II. On this record, No on EE cannot carry its substantial burden of proving that the registered agent requirement is unconstitutional.

A. Standard of review and preservation.

The constitutionality of the registered agent requirement is reviewed de novo. *Aurora Pub. Schs. v. A.S.*, 2023 CO 39, ¶ 36. In

conducting this analysis, the Court presumes that the statute is constitutional, *id.*, and will only declare a statute unconstitutional if the party challenging the statute proves its unconstitutionality "beyond a reasonable doubt," *People v. Moreno*, 2022 CO 15, ¶ 9.

In the First Amendment context, once a plaintiff shows that a challenged law restricts speech, the state normally bears the burden of proving the law's constitutionality. *See, e.g.*, *McCutcheon v. FEC*, 572 U.S. 185, 210 (2014). However, when a plaintiff seeks to facially invalidate a law under the First Amendment, that burden flips and the plaintiff must show that a substantial number of the law's applications are unconstitutional "judged in relation to the statute's plainly legitimate sweep." *Moody*, 603 U.S. at 723, 744 (citation omitted); *accord People v. Hickman*, 988 P.2d 628, 634 (1999).

Because disclosure and disclaimer requirements "do not prevent anyone from speaking," they are subject to exacting scrutiny, a more forgiving standard than strict scrutiny. *Citizens United*, 558 U.S. at 366. Under exacting scrutiny, a regulation is constitutional so long as

there is "a substantial relation between the disclosure requirement and a sufficiently important government interest." *Campaign Integrity Watchdog v. All. for a Safe & Indep. Woodmen Hills*, 2018 CO 7, ¶ 39 (quotations omitted); *see also Ams. for Prosperity*, 594 U.S. at 607.

In conducting this analysis, courts must first "balance" the government's asserted interest against the burdens imposed by the law. *Coal. for Secular Gov't v. Williams*, 815 F.3d 1267, 1278 (10th Cir. 2016). Although the government need not choose the least restrictive means of achieving its objective, exacting scrutiny requires the law to be narrowly tailored to achieve the government's interest. *Ams. for Prosperity*, 594 U.S. at 608.

The Secretary preserved the argument that the registered agent requirement is constitutional both facially and as applied by raising it in her Answer Brief at the Court of Appeals. *No on EE v. Beall*, No. 22CA2245, Answer Br. at 17-18 (May 23, 2023) (arguing that both challenges were unpreserved, but that if court did address the merits of

No on EE's constitutional challenge, "that challenge fails on the merits, both facially and as applied").

B. No on EE also failed to preserve its argument that the registered agent requirement is constitutional as applied, and in any event the requirement survives such scrutiny.

1. Failure to raise an as-applied constitutional challenge during agency proceedings should constitute a waiver of as-applied arguments on judicial review.

No on EE did not preserve an as-applied challenge to the registered agent requirement during the administrative proceedings. Both parties agree that No on EE did not raise its as-applied constitutional challenge before the agency. *See* CF, 518. And generally, "an issue not raised before a hearing officer is waived." *Farmer v. Colo. Parks & Wildlife Comm'n*, 2016 COA 120, ¶ 16.

A narrow exception exists for issues that an administrative agency has no authority to decide, such as facial constitutional challenges. *See, e.g.*, *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495, 504 (Colo. App. 2010) (noting agencies have no authority to decide whether statutes are

unconstitutional on their face). There is a distinction, however, between facial constitutional challenges and as-applied constitutional challenges. *See, e.g.*, *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1198 & n.4 (Colo. 1993). Although administrative agencies have no power to adjudicate the former, they do have authority to "evaluate whether an otherwise constitutional statute has been unconstitutionally applied" in a specific case. *Id.*

Nonetheless, divisions at the court of appeals are split as to whether failure to raise an as-applied constitutional challenge to the constitutionality of a statute or regulation waives the issue for judicial review. *See Williams v. Indus. Claim Appeal Off.*, 128 P.3d 335, 339 (Colo. App. 2006), *rev'd on other grounds by Williams v. Kunau*, 147 P.3d 33 (Colo. 2006) (refusing to consider as-applied challenge not raised during administrative proceedings); *but see United Airlines v. Indus. Claim Appeal Off.*, 2013 COA 48, ¶ 29 (declining to follow *Williams* and considering unpreserved as-applied challenge for the first

time on judicial review). If the Court chooses to reach this issue,[7] it should join the weight of authority—including each judge to address the issue in this case, *No on EE*, ¶ 56 (Schutz, J., dissenting), CF, 529—and conclude that as-applied constitutional challenges are waived if not raised before the agency.

Unlike a facial challenge, "an as-applied challenge alleges that the statute is unconstitutional as to the specific circumstances under which a [party] acted." *People v. Ford*, 232 P.3d 260, 263 (Colo. App. 2009). By definition, review of "specific circumstances" requires an evidentiary record. And if the constitutional challenge is not raised before the agency, the agency lacks the opportunity to develop the record in response to that challenge. It is unfair to require an agency to defend against an as-applied constitutional challenge on an underdeveloped record where the agency lacked opportunity to explore and potentially mitigate the factual underpinnings for the challenge in the first place.

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[7] The Court need not resolve this split to affirm the Final Agency Order. It can assume, without deciding, that the as-applied challenge was preserved, but that the as-applied challenge fails.

See generally Carr v. Saul, 593 U.S. 83, 89 n.3 (2021) (affirming as to adversarial proceedings the "general rule . . . that orderly procedure and good administration require that objections to the proceedings of an administrative agency be made while it has the opportunity for correction.") (quotations omitted).

This case presents a clear example of why this principle is important. After the ALJ found against No on EE, No on EE did not file exceptions before the final agency decisionmaker. CF, 529-30. As a result, the decisionmaker never had an opportunity to address the scope of the government's interest in the registered agent requirement. That inability ultimately enabled the factual and legal errors underpinning the majority's opinion. Raising this challenge during the administrative proceedings could have allowed the parties to develop a record on voters' interest in No on EE's registered agent.

Other states and federal courts of appeals have reached the same conclusion. In 2018, the Sixth Circuit held that although it "could not fault a petitioner for failing to raise a facial constitutional challenge in

front of an administrative body," it "generally expect[s] parties . . . to raise their as-applied . . . challenges before the [agency] and courts to hold them responsible for failing to do so. *Jones Bros., Inc. v. Sec'y of Labor*, 898 F.3d 669, 674, 677 (6th Cir. 2018); *see also Wymslo v. Bartec, Inc.*, 970 N.E.2d 898, 907 (Ohio 2012) ("[A]s-applied constitutional challenge must be raised first in the agency to allow the parties to develop an evidentiary record."); *Lehman v. Penn. State Police*, 839 A.2d 265, 276 (Pa. 2003) (same).

No on EE did not raise an as-applied constitutional challenge to the registered agent requirement during the administrative proceedings. Because this issue was not, but could have been, raised during the administrative proceedings, it is waived for judicial review.

2. The registered agent requirement provides meaningful information to voters in all cases, including as applied to No on EE.

If the Court does consider No on EE's as-applied challenge, that challenge fails. Dating to *Buckley*, 424 U.S. at 81, courts have consistently recognized that campaign finance disclosure requirements

serve an important informational interest. As for on-advertisement disclosures specifically, such disclosures "provide the electorate with information" and "insure that the voters are fully informed about the person or group who is speaking." *Citizens United*, 558 U.S. at 368 (quotations omitted); *see also First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978) ("Identification of the source of advertising may be required as a means of disclosure, so that people will be able to evaluate the arguments to which they are being subjected."); *Gaspee Project v. Mederos*, 13 F.4th 79, 86 (1st Cir. 2021) ("The case law makes pellucid that [the state's] interest in an informed electorate vis-à-vis the source of election-related spending is sufficiently important to support reasonable disclosure and disclaimer regulations.").

At the district court, No on EE conceded the government's interest in on-advertisement disclosures. CF, 478 ("There is inarguably a compelling government interest in requiring the parties who pay for political advertising to identify themselves."). The only question, then, is whether Colorado's decision to require non-natural persons to also

identify the natural person chosen to be the legal face of the organization somehow changes the analysis. It does not.

The registered agent requirement has existed in Colorado since 2010. In the wake of the *Citizens United* decision, the General Assembly enacted two relevant bills. The first, S.B. 10-203, required independent expenditures to include a disclaimer—including the registered agent if the entity making the expenditure was a non-natural person—on certain communications. 2010 Colo. Sess. Laws 1233–35, § 4, *available at* https://tinyurl.com/2nzr5hka. In passing S.B. 10-203, the General Assembly noted that *Citizens United* did "not limit the plenary power of the general assembly . . . to require disclaimers on advertisements, as the purpose of . . . disclaimer requirements is to allow the public to know who is attempting to influence their vote." *Id.* at 1229, § 1(d).

The second bill, H.B. 10-1370, extended the disclaimer requirement—but not the registered agent requirement—to issue committees like No on EE. 2010 Colo. Sess. Laws 1239-43, *available at* https://tinyurl.com/3ajpnn5w. H.B. 10-1370 included an extensive

legislative declaration and noted that its purpose was to provide voters with "information on the sources of election-related spending." *Id.* at 1240, § 1(f).

In 2019, the General Assembly passed H.B. 19-1318, building on the success of the disclaimer requirement by expanding it to cover a broader range of organizations and modes of communication. 2019 Colo. Sess. Laws 3040-47, *available at* https://tinyurl.com/yc26hex6. That legislation also expanded the registered agent requirement to cover not only independent expenditures, but communications funded by issue committees like No on EE. *See* § 1-45-108.3(1)–(2); § 1-45-107.5(5). It also expanded the types of communications subject to the requirement. § 1-45-108.3(1).

The General Assembly concluded in 2010, and again in 2019, that the registered agent requirement promotes the state's informational interest by further illuminating the sources of election-related advocacy. As the U.S. Supreme Court has observed, disclaimers help the electorate sift through the "dubious and misleading names" election-

related groups often use to fund election-related communications. *Citizens United*, 558 U.S. at 367 (quoting *McConnell v. FEC*, 540 U.S. 93, 197 (2003)). "Paid for By No on EE—A Bad Deal for Colorado" tells voters little about the source of a communication. By requiring No on EE to identify a natural person, Colorado discloses to voters the individual who serves as the public face of the organization paying for the communication.

By law, registered agents are integral parts of issue committees. They "address concerns and questions regarding a committee," and are "responsible for timely filing campaign finance reports." 8 CCR 1505-6, Rule 1.28. These are not ministerial responsibilities—they are the activities that allow an organization with a corporate form to interact with the general public.

Even where the registered agent is unknown to the average voter, identifying a natural person serves important purposes. It "interrupts the irrational assumptions created by deceptive corporate names and reminds the observing public that the advocacy is, at the end of the day,

done by nothing more or less than real people." *No on EE*, ¶ 83 (Schutz, J., dissenting). "[I]n all instances the identification of the registered agent serves the important governmental purpose of disavowing the voting public of the notion that the advertisement flows from the 'dubious and misleading name' of the issue committee rather than a human being." *Id.* at ¶ 87 (quoting *Citizens United*, 558 U.S. at 367).

Courts have consistently upheld such laws. *Gaspee Project* is instructive. 13 F.4th at 91. There, respondents challenged a law requiring their "paid issue-advocacy communications regarding the impact of local referenda" to include disclaimer statements that identified the speaker's top five donors. *Id.* at 83 (quotations omitted). There, like here, the respondent argued that the donor information did not further the state's informational interest because it was "redundant" with information the speaker was required to publish online. *Id.* at 91; *see also No on EE*, ¶ 69 (Schutz, J., dissenting) (quoting Opening Brief's argument that the registered agent requirement is "redundant"). The First Circuit rejected that argument,

holding that on-ad information is "a more efficient tool" than that same information being available online, and that on-advertisement disclosure of a natural person's name "provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names." *Gaspee Project*, 13 F.4th at 91.[8]

The Ninth Circuit reached a similar conclusion, upholding on-advertisement identification requirements because "[c]ase law and scholarly research support the proposition that, because of its instant accessibility, an on-advertisement disclaimer is a more effective method of informing voters than a disclosure that voters must seek out." *No on E v. Chiu*, 62 F.4th 529, 544 (9th Cir. 2023); *see also Students for Life Action v. Jackley*, 746 F. Supp. 3d 668, 699 (D.S.D. 2024) (holding that "[i]mmediately accessible voter information is different from information a voter could access through searching state publications

[8] For voters unfamiliar with Colorado's online campaign finance disclosure system—which is to say, most of them—on-advertisement disclosure of the registered agent enables basic research that may provide the voter with further information about the committee or the registered agent.

and files," and collecting cases); *Smith v. Helzer*, 614 F. Supp. 3d 668, 686 (D. Alaska 2022) (finding that "on-ad . . . disclaimer requirement is substantially related to the important governmental interest in an informed electorate and is narrowly tailored to that interest.").

To be sure, those cases addressed statutes requiring advertisements to disclose some of an organization's donors. But that is a difference in kind, not degree. There, as here, legislatures sought to cut through the "dubious and misleading names" election-related groups often use to fund election-related communications, *see Citizens United*, 558 U.S. at 367, by requiring the disclaimers to identify relevant natural persons. There, the legislatures chose the donors, and in Colorado the General Assembly chose the individual who agreed to serve as the speaker's legal representative. Both provide relevant information to voters, and Colorado's choice imposes less of a burden on the speaker by requiring the disclosure of less information.

3. The registered agent requirement imposes virtually no burden, especially on large committees like No on EE.

With the government's interest established, the burden the registered agent requirement imposed on No on EE is negligible. The Court of Appeals did not even address how No on EE was burdened by the registered agent requirement, if at all. *But see Doe v. Reed*, 561 U.S. 186, 196 (2010) ("To withstand [exacting] scrutiny, the strength of the governmental interest must reflect seriousness of the *actual* burden on First Amendment rights.") (emphasis added) (quotations omitted). Regardless, the record shows just how minimally burdensome the disclosure requirement was.

First, No on EE was a sophisticated operation. Unlike a small committee that might be burdened by technical campaign finance requirements, *see, e.g.*, *Sampson v. Buescher*, 625 F.3d 1247, 1261 (10th Cir. 2010), No on EE spent over $4 million on advertisements opposing Proposition EE. "It was not funded by de minimis contributions from human beings, but rather millions of dollars in contributions from a

single corporate entity"—specifically a cigarette company. *No on EE*, ¶ 80 (Schutz, J., dissenting). The requirement that such an enterprise identify its registered agent on its widespread advertisements is negligible compared to the regulatory regimes Ligget Vector Brands navigates daily as part of a highly-regulated industry.

Moreover, once it received notice of the complaint against it, No on EE was able to add the name of its registered agent to its TV, digital, and radio advertisements within 36 hours. CF, 408. And doing so had no effect on the size or content of its message. *Compare* CF, 281 (image of door hanger from original complaint without registered agent), *with* CF, 353 (image of door hanger after No on EE added the registered agent). Both the speed with which No on EE mitigated the violation and the absence of any direct or circumstantial evidence that adding the disclaimer hindered No on EE's message, demonstrate that the burdens imposed by the registered agent requirement, if any, are negligible.

In *Buckley* and its progeny, the United States Supreme Court has left open the possibility of as-applied challenges to disclosure and

disclaimer requirements where the plaintiff shows "a reasonable probability that the [registered agent] would face threats, harassment, or reprisals if [its] name[] were disclosed." *Citizens United*, 558 U.S. at 370; *see also Buckley*, 424 U.S. at 74. But the record is devoid of any evidence to suggest No on EE's registered agent either endured or could have endured such harms. To the contrary, throughout the administrative and judicial proceedings, No on EE has introduced no evidence or testimony from the registered agent in any fashion.

C. Because it particularly advances the state's interest in many cases, the registered agent requirement's plainly legitimate sweep precludes facial invalidation.

As explained above in Part I, the Court should decline to address No on EE's undeveloped facial challenge. If the Court does consider that challenge, though, it fails even if the registered agent requirement is unconstitutional as applied to No on EE.

For good reason, facial challenges—including those arising under the First Amendment—are "hard to win." *Moody*, 603 U.S. at 723. "Claims of facial invalidity often rest on speculation about the law's

coverage and its future enforcement," and "threaten to short circuit the democratic process by preventing duly enacted laws from being implemented in constitutional ways." *Id.* (quotations and citations omitted). The judicial branch's reticence to facially invalidate laws is also "rooted in the doctrine of separation of powers and in the judiciary's respect for the roles of the legislature and the executive in the enactment of laws." *People v. Graves*, 2016 CO 15, ¶ 9 (quotations omitted). "[D]eclaring a statute unconstitutional is one of the gravest duties impressed upon the courts." *Moreno*, ¶ 9.

Reflecting these principles, when a plaintiff seeks to declare a statute facially unconstitutional, even under the First Amendment, that party bears the burden of proof. *Moody*, 603 U.S. at 743-44 (holding that "[t]o succeed on its First Amendment claim, [plaintiff] must show . . ."). In the First Amendment context, this requires both the plaintiff and the Court to address the scope of the law in all its applications. *Id.* at 724. Next, the Court must "decide which of the laws' applications violate the First Amendment," and which do not. *Id.* at 725. Finally, it must "weigh

the unconstitutional [applications] as against the constitutional ones," *id.* at 726, only striking down the law if the former "substantially outweigh" the latter, *id.* at 724.

As explained above, neither No on EE nor the Court of Appeals undertook this "fact intensive" analysis. *Id.* at 747 (Barrett, J., concurring). And particularly on this undeveloped record, the court's ensuing conclusion that No on EE had satisfied its burden was error.

In every application, on-advertisement disclosure of the person charged with "address[ing] concerns and questions regarding a committee," 8 CCR 1505-6, Rule 1.28 provides meaningful information to voters that is more than sufficient to satisfy exacting scrutiny. A facial challenge, however, would have required No on EE to address the law in all its applications. *See Moody*, 603 U.S. at 724. Conducting this analysis would have unveiled many instances in which on-advertisement disclosure of a committee's registered agent advances the state's informational interest even beyond the normal case.

The dissent highlighted two such circumstances. First, sometimes the registered agent also serves as an "organizer, board member, employee, or significant donor of the committee." *No on EE*, ¶ 87 (Schutz, J., dissenting). And second, "we can all think of local and national political leaders, social media influencers, pundits, commentators, celebrities, activists, or ordinary citizens whose disclosure as the registered agent of an issue committee would tell voters something of meaning about the associated advertisement." *Id.*

These scenarios are not hypothetical. If the Secretary had notice of a facial challenge, she would have marshalled significant evidence showing the many applications of the disclosure requirement that support its constitutionality. *See id.* ¶ 87 n.6 (noting that because No on EE failed to assert a facial challenge, the necessary analysis "requires reliance on anecdotal observations"). To the dissent's first observation, for example, Lisa Weil is the Executive Director of Great Education Colorado, and also serves as the registered agent of the Great Education

Colorado Issue Committee, TRACER, *Great Education Colorado Issue Committee*, *available at* https://perma.cc/8VBA-RG4C.[9]

And to the dissent's second point, registered agents are often known political personalities. For example, Michael Fields is a well-known Colorado political figure. He serves as the President of the Advance Colorado Institute, a "conservative advocacy group," and has been profiled in local media. Hannah Metzger, Westword, *Measured Response: Meet Michael Fields, the Republican "Governor" of Colorado*, (Mar. 4, 2025), *available at* https://perma.cc/ME7Y-F78W. He is also known to voters as a political analyst at Fox31 Denver. Advance Colorado, About, *available at* https://perma.cc/P7DH-V5L7. Fields is currently the registered agent of the generically named issue committee "Alliance for Citizens' Tax Cut." TRACER, *Alliance for Citizens' Tax*

[9] Because No on EE did not articulate a facial challenge in its complaint for judicial review—or develop one at any point thereafter—these materials are not in the record. However, the Court may take judicial notice of the existence of these campaign finance filings, if not the accuracy of their contents. *See, e.g.*, *In re Interrog. on H.B. 91S-1005*, 814 P.2d 875, 880 (Colo. 1991) ("[T]his court may take judicial notice of matters of public record and common knowledge.").

Cut, *available at* https://perma.cc/4KYB-GZU8. For well-informed voters confronted with that committee's advocacy, Fields's identity as the Committee's registered agent provides significant, instantaneous, information about the Committee's political affiliations.

The registered agent requirement can also provide information to voters because many registered agents are repeat players. Among the searches available on the Secretary of State's TRACER database is a "registered agent" search, which identifies all of a registered agent's various committees. TRACER, *Registered Agent Search*, *available at* https://perma.cc/NF6T-N6WP. By running this search, voters can see what other committees are associated with the person representing the faceless entity responsible for the advertisement they just saw.

For example, last month an issue committee named "Citizens for a Healthy Tourism Economy" was registered to oppose Eagle County initiative 1A. TRACER, *Citizens for a Healthy Tourism Economy*, *available at* https://perma.cc/Y4XM-HYNF. The Committee's registered agent is Katie Kennedy, who is the registered agent for over 200 active

or terminated committees in the Secretary of State's TRACER system, including several closely affiliated with the state's elected Republican leadership. *See, e.g.*, TRACER, *Senate Majority Fund*, *available at* https://perma.cc/U2CC-H5V6.

And in 2020 an issue committee was registered named "Conservatives for Yes on National Popular Vote," suggesting that its leadership represented conservative interests. TRACER, *Conservatives for Yes on National Popular Vote*, *available at* https://perma.cc/6RE8-3QGX. However, the Committee's registered agent was Rachel Gordon, who had previously served as the registered agent for multiple statewide Democratic candidates.

Finally, issue committees often have similar names. For example, "Protect Kids Colorado" and "Protect Our Children" are both active issue committees registered with the Secretary of State. TRACER, *Protect Kids Colorado*, *available at* https://perma.cc/X7Z3-L6RE; TRACER, *Protect our Children*, *available at* https://perma.cc/QR3Y-EART. For voters seeing advertisements from these two organizations,

the identity of the registered agent is one primary way of distinguishing between two similarly-sounding entities.

In each of these cases, the identity of the committee's registered agent advances the state's informational interest even beyond the average case. And disclosing that identity on the committees' advertisements "provides an instantaneous heuristic by which to evaluate generic or uninformative speaker names." *Gaspee Project*, 13 F.4th at 91. Even if the registered agent requirement does not advance the state's informational interest sufficiently to satisfy exacting scrutiny in all cases (which it does), No on EE cannot—and did not—demonstrate that those instances substantially outweigh the cases in which the state's informational interest is materially advanced.

CONCLUSION

The Court should reverse the court of appeals and affirm the Final Agency Order.

Respectfully submitted this 29th day of October, 2025.

PHILIP J. WEISER
Attorney General

/s/ Peter G. Baumann

SHANNON STEVENSON, No. 35542*
Solicitor General
PETER G. BAUMANN, No. 51620*
Assistant Solicitor General
KYLE M. HOLTER, No. 52196*
Assistant Attorney General

/s/ Kyle M. Holter

SHANNON STEVENSON, No. 35542*
Solicitor General
PETER G. BAUMANN, No. 51620*
Assistant Solicitor General
KYLE M. HOLTER, No. 52196*
Assistant Attorney General
Attorneys for Respondent
*Counsel of Record

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above captioned **ANSWER BRIEF** was served via CCEF this 29th day of October 2025 to the following:

Suzanne Taheri
West Group Law and Policy
6501 E. Belleview Ave., Suite 375
Denver, CO 80111
st@westglp.com
Attorney for Respondent No on EE

/s/ Peter G. Baumann