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STATE OF COLORADO
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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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Case No. 24SC540

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REPLY BRIEF

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with all requirements of C.A.R. 28 and C.A.R. 32, including all formatting requirements set forth in these rules. Specifically, the undersigned certifies that:

The brief complies with the word limits set forth in C.A.R. 28(g).

It contains 5,121 words.

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INTRODUCTION

Nothing better demonstrates the court of appeals division's failure to adhere to the party presentation principle than No on EE's Answer Brief in this Court. After more than five years of litigation, the six pages No on EE devotes to preservation—none of which address party presentation—are left to rely on generic and fleeting references in its briefing below to argue that it adequately raised and developed a facial constitutional challenge to Colorado's registered agent requirement. In contrast, the 27 pages No on EE spends challenging the constitutionality of that law raises multiple new arguments—including arguments for new standards of review—that not even the court of appeals considered.

This Court granted certiorari to decide whether a democratically enacted statute can be facially invalidated where (1) no facial challenge is referenced in the complaint, and (2) no record is developed or arguments made concerning facial constitutionality before either the district court or the court of appeals. No on EE's decision to ignore that question confesses the answer.

ARGUMENT

I. The division's facial invalidation of the registered agent requirement must be vacated as a violation of the party presentation principle.

No on EE makes no attempt to defend the court of appeals division's facial invalidation of the registered agent requirement as consistent with the party presentation principle. Violation of this principle constitutes an independent error, separate from preservation. *E.g. Compos v. People*, 2021 CO 19, ¶ 35 (vacating portion of division opinion for violation of party presentation). No on EE's decision to address questions of preservation only, while ignoring party presentation, *see* Answer Br. 44-51, amounts to a concession: the panel majority's opinion rests on arguments of its own devise, rather than the parties'. *See People v. Bondsteel*, 2015 COA 165, ¶ 61 n.6 (failure to respond to argument "may be taken as a concession"). It must be vacated for that reason.

Instead of confronting party presentation, No on EE makes three arguments that it technically "preserved"—while never substantively

addressing—the facial challenge(s) its brief now presents. None are availing.

First, No on EE argues the "[c]aselaw does not support waiver" of constitutional issues not raised before an ALJ. Answer Br. 44-47. This point is irrelevant to No on EE's facial challenge.[1] As the Secretary acknowledged in her opening brief, parties need not raise *facial* constitutional challenges before an agency to preserve them for appeal. Opening Br. at 30-31 (citing *Cerbo v. Protect Colo. Jobs, Inc.*, 240 P.3d 495, 504 (Colo. App. 2010). The Secretary does not contend that No on EE failed to preserve a facial challenge because she failed to raise the issue before the ALJ. She contends No on EE *never* developed a facial challenge to the registered agent requirement, either before the ALJ,

[1] As No on EE admits, divisions of the court of appeals are split on the question of whether failure to raise an *as-applied* constitutional challenge before an ALJ results in waiver, *see* Answer Br. at 44-45, and that split need not be resolved in this case. Opening Br. at 32 n.7. But the issue on which this Court granted certiorari is whether the court of appeals erred by addressing the registered agent requirement's *facial* constitutionality. *See* Order of Court at 2 (Aug. 4, 2025). No on EE's attempted reframing of the issue presented to encompass its applied challenge, Answer Br. at 3, and its lengthy discussion of as-applied preservation, Answer Br. at 44-48, can only serve to distract from the questions actually before the Court.

the district court, or the court of appeals. No on EE has already conceded as much by waiving its right to file a reply to this very argument before the division (a fact No on EE's brief does not dispute). *No on EE v. Beall*, No. 22CA2245, Notice by Plaintiff/Appellant at 1 (June 13, 2023).

Second, No on EE argues it "preserved its challenges at each stage" because "Colorado requires only that a party 'serve notice of the claim asserted.'" Answer Br. at 47 (citing *LaFond v. Basham*, 683 P.2d 367, 369 (Colo. App. 1984)). This is incorrect. *LaFond*, like other decisions from Colorado's bygone notice pleading regime, was overruled a decade ago. *See Warne v. Hall*, 2016 CO 50, ¶ 24 ("join[ing] those other states embracing the plausibility standard [in] their own analogs to Federal Rule 8"). Litigants must now satisfy the more demanding "plausibility" standard. *Id.* (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). Nor does No on EE's heavy reliance on its *pro se* status before the ALJ strengthen its position. Answer Br. at 47-49. Again, the Secretary agrees that No on EE was not required to preserve a facial

challenge before the ALJ.[2] But in district court, when No on EE was indisputably required to raise, develop, and preserve its facial constitutional challenge, No on EE was represented by experienced campaign finance counsel. CF, 7.

No on EE relies exclusively on two pages of its (represented) district court briefing to claim that it "attacked the registered agent speech mandate facially, i.e. in general and thus beyond [its own] circumstances" before the district court. Answer Br. at 49. A review of these pages, which make no reference to any circumstances other than those specific to No on EE, decisively undercuts that suggestion. *See* CF, 480-81. To the contrary, after a discussion of how the registered agent requirement applied to No on EE's registered agent (Patrick McDonald) specifically, CF, 480, No on EE's district court constitutional challenge concludes as follows:

> Because there is no compelling governmental interest established for the requirement to disclose both the committee

[2] No on EE does argue that it obliquely preserved its as-applied challenge before the agency. Answer Br. at 47. But its Reply Brief before the District Court conceded the opposite. CF, 517 ("No on EE did not raise its [constitutional] objections . . . in the administrative proceedings[.]").

> name and the name of the registered agent *in these circumstances* and the requirement to list the committee's registered agent is both unduly burdensome and redundant, the requirement and subsequent penalty violates *the Plaintiff's rights* under the First Amendment.

CF, 481 (emphases added). No on EE's suggestion that this passage somehow refers to circumstances "beyond" those specific to No on EE runs counter to its plain text. Like the rest of No on EE's briefing below, it raised as-applied argument—about the how registered agent requirement applied in its specific circumstances only—before the district court. *See Citizens United v. Gessler*, 773 F.3d 200, 216 (10th Cir. 2014) (challenge to a statute's "application in a specific case" is as-applied, not facial).

Finally, No on EE contends the division majority—by addressing a facial challenge the parties never raised or developed—"preserved" that issue. Answer Br. at 50-51. Again, the technical preservation of a facial challenge by a division of the court of appeals, acting alone, is not the issue on which this Court granted certiorari.[3] But attorneys, not judges,

[3] Notably, No on EE does not even attempt to identify the location where it preserved—to say nothing of developed—a facial constitutional

should lawyer cases, and No on EE's reliance on the division majority's opinion, rather than its own briefing, only serves to demonstrate the applicability of the party presentation principle to this case. *Dep't of Nat. Res. v. 5 Star Feedlot, Inc.*, 2021 CO 27, ¶ 39 n.15.

At bottom, No on EE proposes that it be permitted to "sandbag" its way to a facial constitutional ruling. After remaining silent on grounds for facial invalidation of the registered agent requirement through three complete rounds of briefing—before the ALJ, the district court, and the court of appeals—and after waiving its opportunity to reply to the Secretary's argument that no such argument had been developed, No on EE now asks this Court to fault the state for "fail[ing] to marshal evidence" to defend against a facial constitutional challenge. Answer Br. at 50. But No on EE's implicit admission here—that such evidence could be important to the state's defense of its laws against facial attack—drives the Secretary's point home. By ruling on a facial

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challenge before the Court of Appeals. It is not possible to do so, because No on EE's appellate brief is devoid of reference to or argument under the "legitimate sweep" standard applicable to such a challenge. Opening Br. 21-27.

constitutional challenge No on EE had never raised or developed, the division denied the state the opportunity to adequately defend a democratically enacted law. The division's decision violates the party presentation principle and must be vacated.

II. No on EE's arguments for unconstitutionality, presented for the first time in this Court, fall short of carrying its heavy burden.

The extent of No on EE's party presentation problem is on display in the full scope of arguments that it advances in this Court for the first time. Not only do the 27 pages No on EE devotes to the constitutionality of the registered agent requirement highlight its previous omissions, they also fall far short of satisfying No on EE's burden to prove facial unconstitutionality.

A. Under binding precedent from the United States Supreme Court, disclaimer requirements are not subject to strict scrutiny.

1. No on EE's strict scrutiny arguments are waived.

No on EE's contention that the registered agent requirement should be subject to strict scrutiny, raised for the first time on appeal, is waived. *See* Answer Br. 14-21; *Beauprez v. Avalos*, 42 P.3d 642, 649

(Colo. 2002) (issues not presented to or raised at the trial court will not be considered on appeal); *e.g.*, *Fifth Ave. Presbyterian Church v. City of New York*, 293 F.3d 570, 576 (2d Cir. 2002) (refusing to consider argument "raised for the first time on appeal" that a law should be subject to strict scrutiny); *von Kerssenbrock-Praschma v. Saunders*, 121 F.3d 373, 378 (8th Cir. 1997) ("Because the district court did not pass upon [question of whether statute was subject to strict scrutiny], we will not consider it on appeal.").

No on EE's waiver of this argument is not just one of omission. In its complaint initiating judicial review of the final agency order, No on EE affirmatively argued that exacting scrutiny applied to the registered agent requirement. CF, 5. By contrast, the term "strict scrutiny" is entirely absent from the record. *See generally*, CF.

2. Even if it were not waived, strict scrutiny does not apply to disclosure or disclaimer laws.

Because they "do not prevent anyone from speaking," disclosure and disclaimer requirements are not subject to strict scrutiny. *See, e.g.*, *Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010). Instead, such requirements are reviewed under "exacting scrutiny." *Id.*; *Free Speech v.*

FEC, 720 F.3d 788, 792-93 (10th Cir. 2013). No on EE argues, for the first time before this Court, that the registered agent requirement does not qualify for exacting scrutiny because it is neither a disclaimer nor disclosure requirement. Answer Br. at 16-20. That argument fails for several reasons.

First, No on EE repeatedly describes the registered agent requirement as a "content-based" restriction on speech, which is necessarily subject to strict scrutiny. But the mere fact that a disclaimer law requires disclosure of certain content does not trigger strict scrutiny. *See, e.g.*, *Citizens United*, 558 U.S. at 366-67. Federal disclaimer laws, which the United States Supreme Court has repeatedly subjected to exacting scrutiny, impose the same requirements. *Id.*

Second, as to disclosure obligations, No on EE suggests that "[i]n the campaign finance context," the term "disclosure" has just "one meaning: donor disclosure." Answer Br. at 16. But binding authority, including cases cited by No on EE for this extraordinary proposition, hold to the contrary. For example, "the compelled disclosure of signatory information on referendum petitions" is a "disclosure

requirement[] in the electoral context" that is subject to exacting scrutiny. *John Doe No. 1 v. Reed*, 561 U.S. 186, 194, 196 (2010).

Even in *Buckley v. Valeo*, 424 U.S. 1 (1976), on which No on EE relies, Answer Br. at 16, the Court repeatedly uses "disclosure" to refer not only to disclosure of donors, but also to disclosure of expenditures. *Id.* at 60. Noting that disclosure obligations, including the obligation to disclose "recipients of expenditures" dated back to 1910, *id.* at 61, *Buckley* described the Federal Election Campaign Act's "primary disclosure provisions" as including "detailed records of *both* contributions and expenditures," *id.* at 62-63 (emphasis added).

And, in assessing the government interests served by disclosure provisions, *Buckley* invoked a definition of "disclosure" broader than "donor disclosure." *Id.* at 66-67. The Court observed that the government interest in "provid[ing] the electorate with information" goes beyond disclosure of donors to reach how those funds are "spent by the candidate." *Id.* at 66 (quotations omitted). And the government interest in deterring actual corruption or its appearance is served "by exposing large contributions *and expenditures* to the light of publicity."

Id. at 67 (emphasis added). *Citizens United*, on which No on EE also relies, Answer Br. at 16, similarly finds that "disclosure" laws include laws which reach beyond donor disclosure. 558 U.S. at 370-71 (noting that, in corporations, "disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable"); *see also McConnell v. FEC*, 540 U.S. 93, 194 (2003) (noting that one of the Bipartisan Campaign Reform Act's "disclosure" provisions requires certain persons to "file a statement with the FEC identifying the pertinent elections" in which the person is making disbursements).

As for the term "disclaimer," caselaw does not support No on EE's proposed limitation that disclaimers can only identify the name of the speaker. *See* Answer Br. at 10, 27. The federal disclaimer law—reviewed and upheld in *Citizens United* under exacting scrutiny—requires more than "identification of the speaker," *id.* at 10; for communications that are not authorized by a candidate, the disclaimer must also "state that the communication is not authorized by any candidate or candidate's committee." 52 U.S.C. § 30120(a)(3); *see also*

Citizens United, 558 U.S. at 366 (referring to "this required statement" as part of the "disclaimer"). And courts addressing on-advertisement donor disclosure requirements describe those disclosures as part of the "disclaimer." *See, e.g.*, *No on E v. Chiu*, 85 F.4th 493, 498 (9th Cir. 2023) (describing the on-advertisement donor requirement as part of the "specific disclaimers" required under California law); *Gaspee Project v. Mederos*, 13 F.4th 79, 90 (1st Cir. 2021) ("[T]he Act requires that the on-ad disclaimer both disclose the relevant speaker and some donors to that speaker."). A campaign finance "disclaimer" is an on-advertisement disclosure of relevant information about the source of the advertisement.

More fundamentally, No on EE's arguments ignore why disclosure and disclaimer requirements are subject to less than strict scrutiny in the first place. "[U]nlike limits on election-related spending—election-related disclosure and disclaimer requirements 'impose no ceiling on campaign-related activities,'" and do not "'prevent anyone from speaking.'" *Gaspee Project*, 13 F.4th at 85 (quoting *Citizens United*, 558 U.S. at 366). Because disclosure and disclaimer limits provide

information to the electorate without imposing a ceiling on campaign-related activities, they are subject to exacting scrutiny. *See, e.g.*, *Reed*, 561 U.S. at 196; *Citizens United*, 558 U.S. at 366-67.

The registered agent requirement satisfies this standard. It imposes no ceiling on campaign-related activities and does not prevent anyone from speaking. It provides on-advertisement information about a committee to an electorate that has repeatedly—through its representatives—expressed interest in that information. Such requirements are subject to exacting scrutiny.[4]

B. The registered agent requirement satisfies exacting scrutiny.

Colorado's registered agent requirement is a modest on-advertisement disclosure that fits squarely within the First Amendment framework the Supreme Court applies to disclaimer and disclosure provisions. It will satisfy exacting scrutiny if there is "a

[4] If the Court concludes that strict scrutiny applies, it should remand the case to the District Court to address that new argument in the first instance. *See Wolf v. Brenneman*, 2024 CO 31, ¶¶ 19, 18 n.2; *People v. Spomer*, 2025 COA 39M, ¶ 43 ("Because the district court didn't rule on this issue, it should be addressed on remand in the first instance.").

substantial relation between the disclosure requirement and a sufficiently important government interest," and if it is narrowly tailored to that interest—without demanding the least restrictive means. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (quotation omitted).

Three points resolve this case under exacting scrutiny: (1) Colorado's interests are concededly important in the ballot measure context; (2) identifying a committee's registered agent has a substantial, practical relation to those interests because it gives voters immediate, human-identifying information and an efficient path to more detail; and (3) the requirement is narrowly tailored by requiring identification of the only natural person associated with every issue committee.

1. No on EE concedes that the state's interest is important but wrongly limits the scope of that interest.

As No on EE acknowledges, the "Supreme Court has treated the interests underlying disclosure and disclaimers" like the registered agent requirement "as important government interests." Answer Br. at 20 (citing *Citizens United*, 558 U.S. at 366-67). On-advertisement

disclosures "'provide the electorate with information'" about who is behind the advocacy they are seeing and "'[e]nsure that the voters are fully informed' about the person or group who is speaking." *Citizens United*, 558 U.S. at 368 (quoting *McConnell*, 540 U.S. at 196 and *Buckley*, 424 U.S. at 76). Nonetheless, No on EE argues the government's interest concerns the name of the organization, only. Answer Br. at 27-28. Not so, for three reasons.

First, *Buckley* holds that the government has an interest in ensuring that the electorate is "fully" informed about the sources of election-related spending. 424 U.S. at 76; *see also id.* at 236-37 (Burger, C.J., concurring in part and dissenting in part) (describing the controlling opinion's recognition of a "broad" informational interest). Identification of a committee's registered agent ensures that voters have access to such fulsome information about a committee.

Second, the registered agent requirement is an important part of a complete disclaimer regime precisely because political committees often hide behind "dubious and misleading" names. *McConnell*, 540 U.S. at 197. Against this backdrop, it was reasonable for the General Assembly

to conclude that ensuring voters are "fully informed" about the sources of election-related advertising requires identification of a natural person associated with the Committee.[5]

Finally, No on EE repeatedly chastises the Secretary for failing to offer evidence to support its constitutional arguments. *See, e.g.*, Answer Br. at 28-29. But, as discussed above, those efforts only serve to highlight No on EE's failure to raise and develop its constitutional challenge. Before the ALJ, No on EE did not file an Answer. *See generally*, CF, 261 (identifying and collecting documents filed before the agency). At the hearing, it raised what No on EE now characterizes as

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[5] No on EE marshals external and non-binding authority for the proposition that *Buckley*'s informational interest "is necessarily more limited in the ballot context" than in the context of candidate elections. Answer Br. at 25-26 (citing cases from the United States Courts of Appeals for the Ninth and Tenth Circuits). That perspective has been adopted by just one federal circuit court and repudiated by several others, including one of the circuits No on EE cites for the proposition. *See, e.g.*, *Hum. Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1006 (9th Cir. 2010) ("[T]he high stakes of the ballot context only amplify the crucial need to inform the electorate that is well recognized in the context of candidate elections."); *see also Worley v. Fla. Sec'y of State*, 717 F.3d 1238, 1247 (11th Cir. 2013) (noting that "the weight of persuasive Circuit precedent cuts against" the idea that the informational interest is less in the ballot issue context than the candidate context).

its constitutional arguments, but in fact were arguments for mitigating the fine. *See* CF, 387-88 (raising impact of violation on voters as part of discussion regarding penalties); 397 (same). No on EE's belated attempt to characterize these as constitutional arguments is blunted by its own admission in district court that it "did not raise constitutional objections during the administrative hearing." CF, 518.

When No on EE first raised its constitutional challenges, it raised only an as-applied challenge. CF, 6 (noting only issues "[i]n this case," and arguing that the Division "deprives Respondent . . . of the right of free speech"). And when offered the chance to assert its facial claims in response to the district court's consideration of them, No on EE demurred before the Court of Appeals. It chose not to argue for facial invalidation in its opening brief and elected not even to file a reply when the Secretary noted that choice. *See supra,* Part I. Against this backdrop, the Secretary cannot be faulted for failing to marshal evidence to address a defense that was neither raised nor argued.

Faced with committees that routinely hide behind "dubious and misleading" names, the General Assembly appropriately determined

that identifying a natural person associated with the committee was necessary to further the state's interests. That decision was fully consistent with existing disclaimer law.

2. No on EE's "no nexus" arguments miss how voters actually use Colorado's disclaimers.

By focusing narrowly on funding (in the case of disclosure) and committee names (in the case of disclaimers), No on EE also misses the substantial relationship between the registered agent requirement and the state's interest in a fully informed electorate.

No on EE alleges a lack of nexus between the requirement and the informational interest because a registered agent may not be a donor to the committee or may not exercise control over the committee's message. *See, e.g.*, Answer Br. at 32. But the registered agent requirement is not intended to provide information about donations or control. Instead, it provides voters with information about the natural person who is the committee's public-facing representative.

In her Opening Brief, the Secretary detailed how that information, alone, provides significant information to voters in many cases. Opening Br. at 47-51. This is not "happenstance." *Contra,* Answer Br. at 12. As

set forth in the Secretary's regulations, campaign finance registered agents have a responsibility to be well-versed in the operations of their committees in a way other registered agents—for example, in the business context[6]—do not, 8 CCR 1505-6, Rule 1.28 (requiring registered agents "to address concerns and questions regarding a committee"). As a result, identifying the registered agent enables concerned citizens to conduct research and track down additional information about a committee and its advertisements in all instances.

The registered agent requirement provides an immediate human anchor associated with every advertisement, demystifying generic, misleading, and otherwise faceless committees. All of which is consistent with the interests upheld in *Buckley* and its progeny.

[6] For this reason, No on EE's references to the Secretary's rules and FAQs governing registered agents in the business context is irrelevant. Answer Br. at 18.

3. The registered agent requirement is narrowly tailored because it requires identification of the one natural person every committee will be associated with.

No on EE attempts to diminish and obscure the important distinctions between facial and as-applied challenges. Answer Br. at 23-24. But, as the Supreme Court recently confirmed, those distinctions "matter". *Moody v. NetChoice, LLC*, 603 U.S. 707, 743 (2024) ("These are facial challenges, *and that matters*.") (emphasis added). No on EE, not the Secretary, bears the burden of proving facial unconstitutionality. *Id.* at 743-44. That burden requires a "rigorous" showing that is "hard to win," precisely to avoid speculative, overbroad invalidation of democratically enacted laws. *Id.* at 723. A facial challenge is "the most difficult challenge to mount successfully" in constitutional law. *United States v. Salerno*, 481 U.S. 739, 745 (1987).

No on EE's only argument for why facial invalidation is appropriate is that the law is not narrowly tailored and thus fails exacting scrutiny in all its applications. Answer Br. at 23. But the law is narrowly tailored because it requires committees to identify the only natural person that will necessarily be associated with the committee.

Throughout the Answer Brief, No on EE time and again notes that registered agents are not required to be officers or donors of a committee. *See, e.g.*, Answer Br. at 35. But the inverse is also true—there is no guarantee that any given issue committee will have an officer or natural-person donors. The only natural person necessarily associated with every issue committee is its registered agent. Having decided that disclosure of a natural person associated with a committee furthers the voters' informational interest, the General Assembly had only one choice—the committee's registered agent. That choice was narrowly tailored.[7]

By focusing on whether registered agents are donors or officers, No on EE fundamentally misunderstands the purpose of the requirement. The registered agent requirement exists to provide information about the "who" and "how." Who is behind the advertisement and how to trace it to people and records. It is not about

[7] Regardless, evidence before the ALJ demonstrated that Patrick McDonald was a key member of the committee. CF, 370 ("Q: [W]ho makes up the committee? A: . . . Sandy, Patrick [McDonald], and myself are the committee.").

the funding behind the advertisement or the consultants who may have chosen the message.

Finally, No on EE faults the General Assembly for imposing an on-advertisement registered agent requirement instead of a donor requirement. Answer Br. at 33-34. But that too follows from No on EE's overly narrow focus on funding. In modern politics, many organizations are directly funded by other organizations. *See generally Citizens for Resp. & Ethics in Wash. v. FEC*, 971 F.3d 340, 344-45 (D.C. Cir. 2020) (discussing the "explo[sion]" of independent expenditure spending post-*Citizens United* and the use of "pass-through, non-disclosure vehicle[s]" that do not disclose their underlying donors). Even here, No on EE was funded by a non-natural person: Liggett Vector Brands, a cigarette company. CF, 370, 382. An on-advertisement donor-identification requirement would not have served the General Assembly's interest in specifically identifying a "natural person" associated with the advertisement. § 1-45-107.5(5)(a)(II).

III. The registered agent requirement is easily understood, and bears none of the complexity of the provisions at issue in *Sampson*.

Because No on EE has not raised its prolix argument prior to this Court, the Court should not address it. *See, e.g.*, *People v. Cagle*, 751 P.2d 614, 619 (Colo. 1988) ("It is axiomatic that this court will not consider constitutional issues raised for the first time on appeal."). Regardless, the registered agent requirement is not nearly so complex as to trigger due process concerns.[8]

Unconstitutional complexity arises when a law is so convoluted that a person "of common intelligence must necessarily guess at the law's meaning and differ as to its application." *Citizens United*, 558 U.S. at 324 (quotations omitted). No on EE makes no effort to explain how the registered agent requirement qualifies as complex under this

[8] No on EE faults the state for "increasing[] the snarl" of requirements by passing multiple bills related to the registered agent requirement. Answer Br. at 43. But those bills reduced, rather than enhanced, the statutory complexity. Whereas the registered agent requirement originally applied only to some communications made by some committees, the 2019 amendment ensured it applied to all persons and committees making meaningful expenditures related to candidate or issue elections. *See generally* Opening Br. at 36-37.

standard. Nor can it. Section 1-45-108.3 is a plain-language obligation that requires neither retention of a campaign finance attorney nor "demographic marketing research." *Citizens United*, 558 U.S. at 324.

Instead of arguing that the registered agent requirement meets this standard, No on EE's prolix argument relies on the Tenth Circuit's discussion of unrelated obligations in 2010 and its own failure to read the laws governing issue committees in 2020. As to the latter, the record is clear that No on EE failed to identify its registered agent on its advertisements because it was unaware of the requirement, not because it misunderstood whether the requirement applied. CF, 386-87. Due process protects against complexity. It does not excuse deficient diligence.

And as to the former, *Sampson v. Buescher*, 625 F.3d 1247, 1249 (10th Cir. 2010), addressed a different question: when, and under what circumstances, a group of citizens raising and spending just $782.02 must register as an issue committee under Colorado law. As applied to such minimal activity, the Tenth Circuit expressed concern that the burdens of campaign finance regulation outweighed the government

interest, which was "minimal, if not nonexistent," considering the group's limited advocacy. *Id.* at 1261. The Tenth Circuit expressed no opinion about the complexity of Colorado's disclaimer requirements. And in any event, the court expressly distinguished that case from one "involving the expenditure of tens of millions of dollars on ballot issues." *Id.*

No on EE looks nothing like the group of neighbors at issue in *Sampson*. It spent roughly $4 million in 2020 opposing Proposition EE and was financed by a sophisticated corporation that participates in one of the most heavily regulated industries in the United States. CF, 350, 382. It hired a "professional campaign consultant," Answer Br. at 43, and an "experienced compliance officer," *id.* In such circumstances, its unawareness of the appropriate obligations does not offend due process.

Instead, No on EE's attempt to reframe its claims against the registered agent requirement into a broader attack on Colorado's campaign finance regime highlights the weakness of its core challenge. At no point in five years of proceedings has No on EE articulated any burden arising from the registered agent requirement. Cognizant that

this failure is fatal to its claims, No on EE now tries to distract from the absence of such a burden by invoking unrelated provisions of Colorado law that are not at issue here.

Time and again, Colorado voters and their representatives have decided that on-advertisement disclosure of a committee's registered agent provides them with meaningful information. That requirement is easily understood, easy to satisfy, and does not interfere with a committee's political advocacy. It satisfies exacting scrutiny, both facially and as-applied to No on EE.

CONCLUSION

The Court should reverse[9] the Court of Appeals and affirm the Final Agency Order.

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[9] If the Court agrees with the Secretary that the division's decision violated the party presentation principle, the proper remedy is vacatur. *See, e.g.*, *Compos*, ¶ 36. However, the Court may affirm the agency's legal conclusion—here that No on EE's as-applied challenge fails—on any ground supported by the record. *See Martin Tr. v. Bd. of Cnty. Comm'rs*, 2019 COA 18, ¶ 6 ("We may affirm an agency's legal conclusion on any grounds supported by the record."), *vacated on other grounds sub nom*, 2020 WL 1260524 (Colo., Mar. 16, 2020).

Respectfully submitted this 23rd day of January, 2026.

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above captioned **REPLY BRIEF** was served via CCEF this 23rd day of January 2026 to all counsel of record for the parties to Case No. 2024SC504.

/s/ Carmen Van Pelt