FILED
United States Court of Appeals
Tenth Circuit

August 22, 2023

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

STREETMEDIAGROUP, LLC, a Colorado limited liability company; TURNPIKE MEDIA, LLC, a Colorado limited liability company,

Plaintiffs - Appellants,

v.

HERMAN STOCKINGER, in his official capacity as Secretary of the State of Colorado Transportation Commission; SHOSHANA LEW, in her official capacity as Executive Director of the Department of Transportation, State of Colorado,

Defendants - Appellees.

No. 21-1448

Appeal from the United States District Court
for the District of Colorado
(D.C. No. 1:20-CV-03602-RBJ)

Todd T. Messenger (Amanda C. Jokerest and Craig D. Joyce with him on the briefs), Fairfield and Woods, P.C., Denver, Colorado, for Plaintiffs-Appellants.

Pawan Nelson, Assistant Attorney General (Philip J. Weiser, Attorney General, and Pat Sayas, Senior Assistant Attorney General, with him on the brief), Office of the Attorney General, Denver, Colorado, for Defendants-Appellees.

Before **HARTZ**, **TYMKOVICH**, and **MATHESON**, Circuit Judges.

TYMKOVICH, Circuit Judge.

Imagine two identical roadside signs. One sign advertises a message for which someone paid the billboard owner. The other advertises a message for which no one paid, such as a public service announcement. But there is a twist: Under Colorado's billboard and signage act, the first sign requires a permit; the second does not.

StreetMedia and Turnpike Media are companies that are in the sign business, owners of billboards and other advertising signs. They contend that Colorado's regulatory scheme violates the First Amendment because it treats billboards, so-called "advertising devices," differently depending on whether the message was paid for or not. The district court disagreed and dismissed the case.

Applying recent Supreme Court precedent, we affirm. Colorado's signage act is a constitutionally permissible policy choice—it furthers Colorado's objectives of promoting roadside safety and aesthetics.

I. Regulatory Background

The Highway Beautification Act is a federal statute encouraging states to control outdoor advertising, primarily billboards. 23 U.S.C. § 131. Congress enacted the Act in 1965 "in order to protect the public investment in such highways, to promote the safety and recreational value of public travel, and to preserve natural beauty." *Id.*

Following the requirements of the Beautification Act, in 1971 Colorado enacted statutes and implementing rules regarding outdoor advertising. The Colorado Outdoor Advertising Act comprehensively regulates outdoor signage on public and private property. Its purpose is

> to control the existing and future use of advertising devices in areas adjacent to the state highway system in order to protect and promote the health, safety, and welfare of the traveling public and the people of Colorado and such purposes are declared to be of statewide concern.

Colo. Rev. Stat. § 43-1-402(1)(a). Those objectives include promoting safety on the state highway system, enhancing the natural and scenic beauty of the state, and providing the public with information of interest to travelers.

StreetMedia and Turnpike (together StreetMedia) are businesses that purchase, lease, license, and seek easements to install roadside signs and billboards to which the Act applies. The Act requires permits for all "advertising devices" that have "the capacity of being visible from the travel way of any state highway." Colo. Rev. Stat. §§ 43-1-402(1)(a); -403(1); -407; -417. In turn, advertising devices include "any outdoor sign [or] billboard … used to advertise or inform, for which compensation is directly or indirectly paid or earned in exchange for [the sign's] erection or existence." Colo. Rev. Stat. § 43-1-403(1) (2021).[1] The Act defines "compensation" as "the exchange of anything of value, including money, securities, real property interests, personal property interests, goods or services, promise of

[1] "'Advertising device' means any outdoor sign, display, device, figure, painting, drawing, message, placard, poster, billboard, or any other contrivance designed, intended, or used to advertise or inform, for which compensation is directly or indirectly paid or earned in exchange for its erection or existence by any person or entity, and having the capacity of being visible from the travel way of any state highway, except any advertising device on a vehicle using the highway or any advertising device that is part of a comprehensive development." The term "vehicle using the highway" does not include any vehicle parked near said highway for advertising purposes. Colo. Rev. Stat. § 43-1-403(1).

future development, exchange of favor, or forbearance of debt." Colo. Rev. Stat. § 43-1-403(1.3). In other words, if a company like StreetMedia constructs or maintains a sign or billboard for paid advertising it is operating an advertising device for which a permit is required.

Under the Act and implementing regulations, advertising devices must meet certain location, size, lighting, and spacing restrictions. Advertising devices may not be erected within "bonus areas," which are "any portion of the area within six hundred sixty feet of the nearest edge of the right-of-way of any portion of the federal interstate system of highways which is constructed upon any part of right-of-way." Colo. Rev. Stat. § 43-1-406(1), (2)(b). And advertising devices located along primary and secondary highways in industrial and commercial areas, for example, cannot be larger than one-hundred-fifty square feet and cannot be located within one-thousand feet of an industrial or commercial building in place. Colo. Rev. Stat. § 43-1-404(e)(1). The rules also establish reasons why a permit must or may be rejected. 2 Colo. Code Reg. 601-3(2.3), (2.11).

StreetMedia challenged the Act as facially unconstitutional because it enacts a content-based regulatory scheme without adequate justification. It claims the speech restriction discriminates based on who the speaker is (one who pays for speech versus one who does not), and that distinction is not supported by compelling reasons that are narrowly tailored to the state's interests. It further contends that the Act is unconstitutionally vague and susceptible to arbitrary enforcement by the government. Finally, it says the distinction violates the Equal Protection Clause by singling out its

business for heavy regulation.

The district court dismissed StreetMedia's complaint under Federal Rule of Civil Procedure 12(b)(6) and entered final judgment. StreetMedia appealed.

II. Analysis

StreetMedia makes three arguments on appeal: (1) the Act regulates messages based on their content; (2) the Act is unconstitutionally vague; and (3) the Act unconstitutionally treats StreetMedia differently than advertisers who are not paid for their services.

We review a district court's grant of a motion to dismiss de novo. *Slater v. A.G. Edwards & Sons, Inc.*, 719 F.3d 1190, 1196 (10th Cir. 2013). To survive a motion to dismiss, StreetMedia "must plead facts sufficient 'to state a claim to relief that is plausible on its face.'" *Id.* (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009)). "At the motion-to-dismiss stage, we must accept all the well-pleaded allegations of the complaint as true and must construe them in the light most favorable to the plaintiff." *Cressman v. Thompson*, 719 F.3d 1139, 1152 (10th Cir. 2013) (internal quotation marks omitted).

StreetMedia contends the Act is facially unconstitutional and unconstitutional as applied to some of its signs. A facial challenge is "a challenge to the terms of the statute." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1127 (10th Cir. 2012). In analyzing a facial challenge, we look to the "relevant constitutional test." *Id.* "[W]here a statute fails the relevant constitutional test . . . , it can no longer be constitutionally applied to anyone—and thus there is 'no set of circumstances' in

which the statute would be valid." *Id.* "A facial challenge considers the restriction's application to all conceivable parties, while an as-applied challenge tests the application of that restriction to the facts of a plaintiff's concrete case." *iMatter Utah v. Njord*, 774 F.3d 1258, 1264 (10th Cir. 2014) (citation omitted).

As we explain, StreetMedia's First Amendment challenges are foreclosed by Supreme Court precedent.

A. First Amendment – Content Based Restriction

StreetMedia first argues the Act is a content-based restriction on speech.[2] It contends that the Act (1) prefers commercial speech to non-commercial speech, (2) reflects a speaker preference favoring commercial speech, and (3) treats speakers differently based on whether content is paid for or not.

To untangle these claims, it is necessary to understand the Supreme Court's recent First Amendment jurisprudence as it applies to outdoor advertising. A regulation of speech is content-based under the First Amendment if it "target[s] speech based on its communicative content"—that is, if it "applies to particular speech because of the topic discussed or the idea or message expressed." *Reed v.*

[2] StreetMedia also contends the district court erred in addressing this issue at all because Colorado did not adequately argue it in its motion to dismiss. But Colorado moved to dismiss StreetMedia's First Amendment claims on the basis that they were not justiciable or plausibly alleged. R., Vol. II at 87–88, 192–94, 226–29. StreetMedia's response to the motion to dismiss makes it clear that it was aware Colorado was challenging the adequacy of the First Amendment pleadings on Rule 12(b)(6) grounds. *See* R., Vol. II at 211–14. Thus, the district court properly considered whether StreetMedia stated a content-based First Amendment violation.

Town of Gilbert, 576 U.S. 155, 163 (2015).[3] The "commonsense meaning of the phrase 'content based' requires a court to consider whether a regulation of speech 'on its face' draws distinctions based on the message a speaker conveys." *Id.* A law may be content-based if it "cannot be justified without reference to the content of the regulated speech" or it was "adopted by the government because of disagreement with the message [the speech] conveys." *Id.* (internal quotation marks omitted). "Whether a legislative enactment is content-neutral or instead content-based turns on 'the government's purpose.'" *Harmon v. City of Norman*, 981 F.3d 1141, 1148 (10th Cir. 2020) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). But a "regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others." *Ward*, 491 U.S. at 791.

In *Reed*, the Court reviewed a challenge to a town's sign ordinance that restricted the size, duration, and location of temporary directional signs. 576 U.S. at 159. The ordinance prohibited "display of outdoor signs anywhere within the Town without a permit" with a handful of exemptions. *Id.* The Court highlighted three categories of exemptions: *ideological signs*, *political signs*, and *temporary directional signs* relating to a qualifying event. The code treated these categories of signs differently from one another, with ideological signs being the most favorably treated and temporary directional signs the least favorably treated. Thus, for

[3] The First Amendment applies to the states through the Fourteenth Amendment. *New York Times v. Sullivan*, 376 U.S. 254, 264 n.4 (1964).

example, temporary directional signs had stricter limits on how large they could be, the number of them that could be placed on a single property, and how long they could be up as related to the event. In contrast, ideological signs could be much larger, placed in all zoning districts, and did not have temporal limits. The Court held that this land development code, which distinguished between categories of signs explicitly based on the type of information the signs conveyed, was content-based and could not survive strict scrutiny. The town's distinctions, the Court explained, were "hopelessly underinclusive" to serve its purported interests of aesthetic appeal and traffic safety. *Id.* at 171.

The Supreme Court took a narrower approach a few years later in *City of Austin v. Reagan Nat'l Advertising of Austin, LLC*, 142 S. Ct. 1464 (2022). In that case, the Court examined a municipal ordinance that distinguished between "on-premises" and "off-premises" signs. The ordinance defined off-premises signs as "a sign advertising a business, person, activity, goods, products, or services not located on the site where the sign is installed or that directs persons to any location not on that site." *Id.* (quoting Austin, Tex., City Code § 25–10–3(11) (2016)). The ordinance did not expressly define "on-premise sign," but did use the term in some of its provisions. The ordinance "prohibited the construction of any new off-premises signs." *Id.* "By contrast, the code permitted the digitization of on-premises signs." *Id.* at 1470.

Despite its arguable tension with *Reed*, the Supreme Court found the scheme was content-neutral. The Court explained that a municipal ordinance was content

neutral even though it distinguished between on-premise and off-premise signs and required government officials to examine the content of the signs to determine compliance. *Id.* at 1471. While an observer must ask who is speaking and what the speaker is saying, the Court determined the ordinance was not content-based because the "off-premises distinction require[d] an examination of speech only in service of drawing neutral, location-based lines." *Id.* The fact that the ordinance was directed at the location of signs was "similar to ordinary time, place, or manner restrictions." *Id.* at 1473. The Court rejected "the view that any examination of speech or expression inherently triggers heightened First Amendment concern." *Id.* at 1474. "Rather, it is regulations that discriminate based on 'the topic discussed or the idea or message expressed' that are content based." *Id.* (quoting *Reed*, 576 U.S. at 171); *but see* Enrique Armijo, *The Content-Discrimination Two-Step Post*-Reed *and* Austin, Cato S. Ct. Rev. 141 (2022).

It is worth noting the dissent in *City of Austin* recognized the conflict with *Reed*.[4] Justice Thomas concluded that "[u]nder *Reed*, Austin's off-premises restriction is content based." *Id.* at 1481 (Thomas, J., dissenting). In his words, "[i]t discriminates against certain signs based on the message they convey—*e.g.*, whether they promote an on- or off-site event, activity, or service." *Id.* He explained that "[m]uch like in *Reed*, that an Austin official applying the sign code must know *where*

[4] Ironically, during the course of litigation, Colorado changed its permitting scheme from one based on the on/off premises distinction endorsed by *City of Austin*, to the current compensation-based scheme.

the sign is does not negate the fact that he also must know *what* the sign says." *Id.* at 1484.

Reed and *City of Austin* resolve the First Amendment issue here: the Act and its rules are content-neutral. Rather than targeting the content of the advertisement, the regulatory scheme regulates the posting of billboards based on whether the speaker compensated the owner of the billboard to erect the device or display the message. Regardless of the message or content on the sign, only for-compensation signs visible from a state highway trigger the regulation. And, as the district court noted, StreetMedia does not allege any animus toward the messages likely to be displayed on for-compensation signs or that the government disagrees with a particular message that might be displayed. *Reed*, 576 U.S. at 163. In short, the Act and rules do not distinguish between content or messages. *See Kenjoh Outdoor, LLC v. Marchbanks*, 23 F.4th 686, 693 (6th Cir. 2022) (stating that an Ohio billboard compliance rule is content neutral where it "applies to any speech, commercial or not, if the person responsible for it is compensated for the message").

StreetMedia resists this conclusion, arguing that the Act prefers commercial speech over noncommercial speech.[5] But even assuming that the Act may create a preference for commercial speech over noncommercial speech, which we doubt, that

[5] StreetMedia also asserts that the Act and its rules will improperly chill political speech. But the Act and its accompanying rules are content neutral; the distinction rests on whether an entity or individual erected a sign for compensation, not whether a sign is political.

does not make it content based.[6] The Constitution tolerates a scheme whose provisions "do not single out any topic or subject matter for differential treatment." *City of Austin*, 142 S. Ct. at 1472. The mere fact that some noncommercial speech may incidentally be swept in, by itself, does not render the Act and rules facially content discriminatory. *See Am. Legion Post 7 v. City of Durham*, 239 F.3d 601, 608–09 (4th Cir. 2001) (upholding a city ordinance as content-neutral restriction on speech, even though it differentiated between commercial and noncommercial speech).

It is true that Colorado's Act and implementing rules target particular advertisers and companies that cater to them: those paying to communicate a message on signs and billboards. But although the Court in *Reed* stated that speaker-based regulation did not automatically render a distinction content neutral, it also noted that such a distinction was the beginning of the inquiry, not the end. 576 U.S. at 170–71. And the reasoning in *City of Austin*, which allowed for location-based regulation even though an observer had to ask who was speaking and what the speaker was saying, further supports concluding that this sort of regulation is content-neutral. 142 S. Ct. at 1471. The Act and rules apply where there is compensation for a sign.

[6] StreetMedia asserts that content displayed for compensation is different than content displayed without compensation. That very well may prove true. But the distinction is the compensation component, not the content. As StreetMedia notes, a sign could be considered an advertising device one minute and not the next. The distinction does not turn on the content of the sign.

Thus, while StreetMedia asserts that the Act has an invidious underlying purpose of targeting the outdoor advertising business, it does not "target speech based on its communicative content." *Reed*, 576 U.S. at 163; *see Ward*, 491 U.S. at 791 (explaining that a regulation can be content neutral even where it "has an incidental effect on some speakers or messages but not others"). Instead, Colorado has provided reasons unrelated to the content of the signs. *See Covenant Media of S.C., LLC v. City of N. Charleston*, 493 F.3d 421, 434 (4th Cir. 2007) (noting that interests proffered by the city, including traffic safety and aesthetics, were unrelated to content of messages).

Before the Court released *City of Austin*, StreetMedia argued that Colorado's revised advertising device definition was just another way to distinguish between on-premise signs and off-premise signs. As part of this argument, StreetMedia pointed to several of Colorado's internal documents relating to the change in the definition. These documents show that Colorado sought to imitate Oregon's resolution by focusing on whether a sign generated income and allowing for the Department of Transportation to demand production of documents when a sign is suspected to be "off-premise." But the Supreme Court in *City of Austin* concluded that such on-premise/off-premise restrictions "distinguish based on location" and are thus "similar to ordinary time, place, or manner restrictions." 142 S. Ct. at 1472–73. Under *Reed*, the Court in *City of Austin* explained, the distinction between on-premise and off-premise signs did not have to survive strict scrutiny, meaning it was content neutral.[7] *Id.* at 1473.

StreetMedia also relies on *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993). But *Discovery Network* involved a city ordinance distinguishing between "commercial handbills" and "newspapers." 507 U.S. at 413–14. Because a law enforcement official had to examine the content of each to determine if the ordinance applied, the Court concluded that the regulation was content-based. *Id.* That is not the case here—the regulation only distinguishes between for-compensation signs and does not require an official to examine the content of the billboard, even though it might have to find out who owns the signage. It does not "single out any topic or subject matter for differential treatment." *City of Austin*, 142 S. Ct. at 1472.

Because the Act and rules are content neutral under Supreme Court precedent, we review under the intermediate scrutiny standard of review. *Brewer v. City of Albuquerque*, 18 F.4th 1205, 1220 (10th Cir. 2021). Intermediate scrutiny requires the Act and rules be "narrowly tailored to achieving significant government interests, and that the [Act and its rules] leave[] open ample alternative channels of communication." *Id.* "[A] regulation need not be the least speech-restrictive means of advancing the Government's interests." *Turner Broadcasting Sys., Inc. v. F.C.C.*,

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[7] StreetMedia attempts to distinguish this case from *City of Austin*. It asserts that *City of Austin* has a narrow holding only pertaining to the textual distinction between on-premise and off-premise signs. This comes, of course, after StreetMedia contends that the underlying purpose of the Act is to distinguish between on-premise and off-premise signs. Prior to *City of Austin*, StreetMedia emphasized that it was prevented from utilizing its signs to display off-premise messages.

512 U.S. 622, 662 (1994). In this context, narrow tailoring requires that the chosen means do not "burden substantially more speech than is necessary to further the government's legitimate interests." *Ward*, 491 U.S. at 799.

Although we are skeptical that paid-for signs are more distracting and damaging to aesthetics, StreetMedia's complaint does not allege with any specificity that the Act and rules fail to meet intermediate scrutiny. Thus, we conclude that the district court properly dismissed this claim.

B. Vagueness

StreetMedia next asserts that the Act and its rules are unconstitutionally vague and operate as a prior restraint on speech.[8]

The void for vagueness doctrine requires that statutory commands provide fair notice to the public. It

> [a]ddresses at least two connected but discrete due process concerns: first, that regulated parties should know what is required of them so they may act accordingly; second, precision and guidance are necessary so that those enforcing the law do not act in an arbitrary or discriminatory way. . . . When speech is involved, rigorous adherence to those requirements is necessary to ensure that ambiguity does not chill protected speech.

F.C.C. v. Fox Television Stations, Inc., 567 U.S. 239, 253–54 (2012). "A statute can be impermissibly vague for either of two independent reasons." *Hill v. Colorado*,

[8] Before the district court, StreetMedia argued that the Act operated as prior restraint. Because StreetMedia did not sufficiently address this argument, we conclude that it is forfeited. *Craven v. Univ. of Colo. Hosp. Auth.*, 260 F.3d 1218, 1226 (10th Cir. 2001).

530 U.S. 703, 732 (2000). "First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits." *Id.* "Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Id.*

"[A] court deciding whether a challenged statute provides fair notice often considers factors such as the enactment's purpose, the harm it attempts to prevent, whether there is a scienter requirement, and the interpretations of individuals charged with enforcement." *Jordan v. Pugh*, 425 F.3d 820, 825 (10th Cir. 2005). "Today's vague laws may not be as invidious, but they can invite the exercise of arbitrary power all the same—by leaving the people in the dark about what the law demands and allowing prosecutors and courts to make it up." *Sessions v. Dimaya*, 138 S. Ct. 1204, 1223 (2018) (Gorsuch, J., concurring in part). But the "Constitution does not . . . impose impossible standards of specificity, and courts should remain ever mindful that general statements of the law are not inherently incapable of giving fair and clear warning." *Sperry v. McKune*, 445 F.3d 1268, 1271 (10th Cir. 2006). "[A] plaintiff whose speech is clearly proscribed cannot raise a successful vagueness claim." *Holder v. Humanitarian Law Project*, 561 U.S. 1, 20 (2010).

The Act is not unconstitutionally vague. First, it provides people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. *Hill*, 530 U.S. at 732. We look to the text of the Act to understand its scope. It defines an "advertising device" as (1) "any outdoor sign, . . . message, . . . [or] billboard"; (2) "intended, or used to advertise or inform"; (3) "for which compensation is directly or indirectly paid or earned in exchange for its erection or existence"; and (4) that has

"the capacity of being visible from the travel way of any state highway"; (5) except for "comprehensive developments." Colo. Rev. Stat. § 43-1-403(1). The conduct covered by the statute is clear: an individual or entity erecting or maintaining for-compensation signs visible from a state highway must acquire a permit.

Second, the Act and its accompanying rules outline what must be included in a permit application, provide a deadline for decision making, and create an administrative right of appeal. Colo. Rev. Stat. § 43-1-408. The rules supply nine reasons for which a permit must be denied and five reasons for which a permit may be denied. 2 Colo. Code Reg. 601-3(2.3), (2.11). As the district court noted, the rules do not provide a catch-all provision or nebulous grant of discretionary authority. Instead, such guardrails meet the constitutional requirements that they are "narrow, objective, and definite." *Shuttleworth v. City of Birmingham, Ala.*, 394 U.S. 147, 151 (1969).

StreetMedia makes several arguments to the contrary. None is persuasive. Its first and primary argument is that the Colorado personnel did not understand the definition of advertising devices and their interpretations did not comport with the actual text of the Act. While the complaint alleges there was confusion at a town hall meeting regarding the application of the Act and one Colorado employee called it vague, that does not render an act unconstitutionally vague. The standard does not look to isolated statements; rather, it asks whether "people of ordinary intelligence [have] a reasonable opportunity to understand what conduct [is] prohibited." *Hill*, 530 U.S. at 732.

Next, StreetMedia contends that Colorado will not apply the law evenly and that there is preferential treatment to other companies. But that is a challenge to discriminatory enforcement, not whether the Act and its accompanying rules authorize or encourage arbitrary and discriminatory enforcement. After all, the rules provide limits on the Act's enforcement.

Finally, StreetMedia expresses concern about officials targeting certain speech. But there is a degree of discretion inherent in all law enforcement activities, including investigation. That is not to say abuse of such discretion could not become a First Amendment issue, but for our purposes here it does not render the Act unconstitutionally vague. And certainly StreetMedia can challenge any selective enforcement against it if that happens.

Although we conclude the Act passes constitutional muster, it cannot be said to be a model of clarity. For instance, it appears to regulate *every* sign on *every* premise located within sight of designated highways. Ultimately, every sign is erected by someone in the sign business, no matter whether the sign is advertising a commercial product, a church, or a business. Colorado seems to suggest this is not so, but the plain text of the Act says otherwise. That said, a more expansive regulatory reach does not render the scheme vague.

In sum, the permitting process for billboards in Colorado is appropriately constrained. StreetMedia's vagueness claim fails because the Act and its rules can be understood by a person of ordinary intelligence and contain adequate constraints against discriminatory or arbitrary application.

C. Equal Protection

Finally, StreetMedia argues the Act and rules are not rationally related to a legitimate government purpose and thus violate the Equal Protection Clause.

Government action triggers the Equal Protection Clause when the action differentiates between an individual or particular category. *Students for Fair Admissions, Inc. v. Harvard College*, 143 S. Ct. 2141 (2023). Some governmental classification schemes are especially suspect—those based on protected categories such as race, sex, or religion. *See id.* Other classification schemes not involving protected characteristic are subject to much less searching judicial review, especially those involving business practices or advancing public health, safety, and welfare. *See Dandridge v. Williams*, 397 U.S. 471, 485 (1970).

As the district court correctly explained, the statute at issue distinguishes between "advertising devices" and other signs and billboards. This sort of classification, which does not involve members of a suspect class, must meet the rational basis standard. *Teigen v. Renfrow*, 511 F.3d 1072, 1083 (10th Cir. 2007).

Under the rational basis standard, a "classification need only bear a 'rational relation to some legitimate end to satisfy the Equal Protection Clause.'" *Save Palisade Fruitlands v. Todd*, 279 F.3d 1204, 1213 (10th Cir. 2002) (quoting *Kinnell v. Graves*, 265 F.3d 1125, 1128 (10th Cir. 2001)). To meet its burden, StreetMedia must "negative any reasonably conceivable state of facts that could provide a rational basis for the classification." *Bd. of Trustees of Univ. of Alabama v. Garrett*, 531 U.S. 356, 367 (2001) (internal quotation marks omitted).

StreetMedia does not meet its burden. Colorado has legitimate interests in highway safety and reducing visual clutter. *See Metromedia*, 453 U.S. at 507 ("traffic safety and the appearance of the city [] are substantial governmental goals"). The district court did not, as StreetMedia insists, improperly draw inferences and prematurely speculate about the effect of the Act. Instead, targeting paid billboard advertising, which includes permanent structures with changing content, from companies that have an economic incentive to construct as many billboards in as many visually prominent locations as possible, is a legitimate government purpose.[9]

Because StreetMedia failed to state a plausible equal protection claim, the district court correctly dismissed this claim.

III. Conclusion

We affirm the district court.

[9] StreetMedia again seeks to draw a comparison between this case and *Discovery Network*. There, the Supreme Court rejected the government's purported safety and aesthetic reasons for regulating commercial handbills. *Discovery Network*, 507 U.S. at 419. But the Supreme Court was applying a heightened scrutiny in the First Amendment context because it determined the policy was not content neutral. Here, we are applying rational basis review, the least demanding level of scrutiny, in the Equal Protection Clause context.