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16  
17 **UNITED STATES DISTRICT COURT**  
18 **EASTERN DISTRICT OF CALIFORNIA**

19 REPUBLICAN NATIONAL  
20 COMMITTEE,

21 Plaintiff,

22 v.

23 GOOGLE LLC,

24 Defendant.

Case Number: 2:22-cv-01904

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26  
27  
28  
VERIFIED FIRST AMENDED COMPLAINT FOR  
INJUNCTIVE RELIEF, DECLARATORY  
JUDGMENT, AND DAMAGES

1 **INTRODUCTION**

2 1. This case is about a market-dominant communications firm unlawfully discriminating  
3 against the Republican National Committee (RNC) by relegating its email messages to subscribers’  
4 spam folders because of the RNC’s political affiliation and views. Email is an indispensable means  
5 of communication to send important information and to build communities. The RNC also relies on  
6 this crucial conduit as it engages in its core mission of conducting political activity in support of the  
7 Republican Party. This includes communicating political messaging and important Get-Out-The-  
8 Vote information to supporters, as well as maintaining relationships with individuals who have and  
9 will continue to financially support the RNC, so that the RNC can fund its political activities. To  
10 effectively reach and grow its community, the RNC takes great pains to ensure that not only every  
11 email it sends is to someone who requested it but also the subscriber has shown recent active  
12 engagement with RNC content.<sup>1</sup>

13 2. Nevertheless, Google relegated millions of RNC emails *en masse* to potential donors’  
14 and supporters’ spam folders during pivotal points in election fundraising and community building.  
15 The timing of Google’s most egregious filtering is particularly damning. For most of each month,  
16 nearly all of the RNC’s emails make it into Gmail users’ inboxes. At approximately the same time at  
17 the end of each month, Google sends to spam *nearly all* of the RNC’s emails. Critically, and  
18 suspiciously, this end of the month period is historically when the RNC’s fundraising is most  
19 successful. It doesn’t matter whether the email is about donating, voting, or community outreach.  
20 And it doesn’t matter whether the emails are sent to people who requested them or to subscribers who  
21 recently actively engaged with RNC content. This discrimination went on for about ten months—  
22 despite the RNC’s best efforts to work with Google.

23 3. Throughout 2022, the RNC engaged with Google month after month to obtain an  
24 explanation and a solution. But at every turn, the RNC was met with empty excuses and useless  
25 solutions. Google continued to suppress the RNC’s emails, and then Google fell silent, refusing to  
26

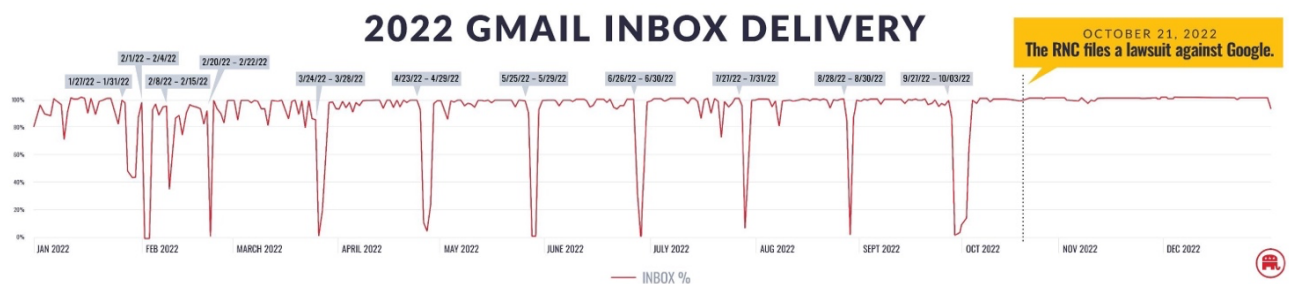
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27 <sup>1</sup> As further alleged below, the RNC sends almost all its emails from the domain name campaigns.rnchq.com, and  
28 it is from this domain name that the RNC sends every email exclusively to those who request them and who has shown recent active engagement with RNC content. Thus, when referring to “nearly all RNC emails,” subscribers, and active engagement (and similar phrases), it is referring to emails sent from the campaigns.rnchq.com domain name.



1 discuss the issue further. The only reasonable inference is that Google was intentionally sending  
 2 critical RNC emails to the spam folder because it's the RNC sending them. Google's bad-faith  
 3 discrimination has already caused the RNC to lose valuable revenue in California and the rest of the  
 4 country, and Google's conduct will continue to cost the RNC further revenue. Perhaps worse,  
 5 Google's conduct caused the RNC to lose its ability to communicate voting information and other  
 6 political messaging to its supporters during the critical midterm elections. This harm is irreparable.

7 4. Google's conduct changed after October 21, 2022, when the RNC filed this suit. Since  
 8 then, Google has stopped the mass relegation of RNC emails to subscribers' spam folders. The RNC  
 9 has experienced its usual high inboxing rates consistently throughout the entire year without any *en*  
 10 *masse* diversion to recipients' spam folders.<sup>2</sup> But it's not because the RNC has done anything  
 11 materially different. The RNC has continued to use leading email-marketing services (like Validity  
 12 and Salesforce) and to adhere to the best practices set out by email platforms (like Google). In fact,  
 13 in November 2022, the RNC *increased* its email send volume and frequency to Gmail users. If  
 14 Google's explanations were legitimate, the RNC's emails should have continued going to spam  
 15 towards the end of the month. Yet no *en masse* diversion occurred then or thereafter. The post-lawsuit,  
 16 post-election timing of Google's ceasefire in discrimination is damning. And it shows that Google  
 17 was feigning misunderstanding the problem when it actually knew how to stop relegating the RNC's  
 18 email to spam the whole time.



26 <sup>2</sup> To be clear, it is not the case that Google has *turned off* its spam filter *in toto* for the RNC specifically. After all, some  
 27 RNC emails are still being sent to spam. But the emails are being sent to spam at rates along the lines RNC emails were sent  
 28 to spam *outside* the cyclical *en masse* relegation of emails to spam that occurred during the period when the RNC's  
 fundraising is historically most successful. In other words, since filing this suit, Google's spam filter is acting how it would  
 for any other bulk sender that diligently follows email platforms' best practices.

1           5.           Unfortunately, this is not the first time a communications company has discriminated  
2 against people based on their political views and affiliation. But fortunately, there are laws ready to  
3 combat this harm. In the 1800s, a pivotal form of communication was the telegraph and Western  
4 Union had a dominate market share across the country. By the late 1800s, “legislators grew  
5 ‘concern[ed] about the possibility that the private entities that controlled this amazing new technology  
6 would use that power to manipulate the flow of information to the public when doing so served their  
7 economic or political self-interest.” *NetChoice, LLC v. Paxton*, 49 F.4th 439, 470 (5th Cir. 2022)  
8 (opinion of Oldham, J.) (quoting Genevieve Lakier, *The Non-First Amendment Law of Freedom of*  
9 *Speech*, 134 Harv. L. Rev. 2299, 2321 (2021)).

10           6.           “These fears proved well-founded.” *NetChoice*, 49 F.4th at 470. Even though Western  
11 Union offered to serve any member of the public, it repeatedly discriminated against messages based  
12 on the message’s political views or on the person’s political affiliation. It, for example, “discriminated  
13 against certain political speech, like strike-related telegraphs.” *Id.*; *see also* Lakier, *supra*, at 2322. It  
14 was also “widely believed that Western Union ... ‘influenc[ed] the reporting of political elections in  
15 an effort to promote the election of candidates their directors favored.” *NetChoice*, 49 F.4th at 470  
16 (quoting Lakier, *supra*, at 2322); *see also* The Blaine Men Bluffing, N.Y. Times, Nov. 6, 1884, at 5.  
17 And it was not the only time Western Union was accused of discriminating based on political views  
18 or affiliation: “Similar accusations were made about Western Union’s role in the presidential contest[]  
19 eight years earlier.” Lakier, *supra*, at 2322 n.114 (citing David Hochfelder, *The Telegraph in*  
20 *America, 1832-1920*, at 176 (2013)).

21           7.           In response to these discriminatory practices, States across the country enacted  
22 nondiscrimination laws that prohibited businesses from “manipulating the flow of information to the  
23 public.” Lakier, *supra*, at 2322; *see also NetChoice*, 49 F.4th at 471. One such State was California.  
24 It passed laws requiring “common carriers” to timely transmit messages in a nondiscriminatory  
25 manner. *See* Cal. Civ. Code §2168 *et seq.*

26           8.           States took other measures to ban businesses from discriminating against the public.  
27 States, for example, passed civil rights acts (also called public-accommodation provisions) barring  
28 businesses from discriminating based on certain classes, including political affiliation and beliefs.

1 See, e.g., Eugene Volokh, *Bans on Political Discrimination in Places of Public Accommodation and*  
2 *Housing*, 15 N.Y.U. J.L. & Liberty 490 (2022). California again is one such State. See Cal. Civ. Code  
3 §§51, 51.5; see also, e.g., *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115, 117 (Cal. 1982) (“political  
4 affiliation”); *In re Cox*, 474 P.2d 992, 1000 (Cal. 1970) (“members of the John Birch Society, or who  
5 belong to the American Civil Liberties Union”).

6 9. Despite these efforts by States (and the federal government), history has repeated  
7 itself. Once again, a dominant communications company is discriminating based on political  
8 affiliation and views and unlawfully controlling the flow of information to the public. At bottom,  
9 Google’s email service is a modern-day Western Union: Google offers to carry messages in the form  
10 of electronic mail. Google allows any adult to make a Gmail account and transmit and receive  
11 communications after agreeing to the same boilerplate terms of service. Google possesses a  
12 significant market share of the email industry with at least 53% of Americans having Gmail accounts.  
13 Google’s email service is an indispensable form of communication for the public to access  
14 information and to achieve vocational success. And Americans expect that when they email someone  
15 who has requested it, the email will be reasonably sent and delivered in the recipient’s inbox.

16 10. Although Google’s tools for discriminating might be more sophisticated than Western  
17 Union’s, that doesn’t make it any less of a business in violation of the longstanding nondiscrimination  
18 obligations States like California have enacted. Indeed, nondiscrimination provisions have repeatedly  
19 been applied to technology more sophisticated than the telegraph. They apply to the telephone. See,  
20 e.g., *Goldin v. Pub. Utilities Comm’n*, 592 P.2d 289, 304 (Cal. 1979). They apply to internet service  
21 providers. See, e.g., Cal. Civ. Code §3101 *et seq.*; *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir.  
22 2022) (detailing the history of net-neutrality rules). And they apply to social media and other  
23 websites. See, e.g., *NetChoice*, 49 F.4th at 473-80, 493-94 (social media like Twitter, Facebook,  
24 YouTube); *Candelore v. Tinder, Inc.*, 228 Cal. Rptr. 3d 336 (Ct. App. 2018) (dating application);  
25 *White v. Square, Inc.*, 446 P.3d 276 (Cal. 2019) (finance website and application); *cf. State v. Google*  
26 *LLC*, 2022 WL 1818648 (Ohio Com. Pl. May 24) (Google’s search engine). Email is not “the point  
27 where the underlying technology is ... so complicated that the government may no longer regulate it  
28 to prevent invidious discrimination.” *NetChoice*, 49 F.4th at 479.



1 funds provided by its supporters to engage in interstate commerce by purchasing services in numerous  
2 States to fulfill its mission. The RNC’s total disbursements in the same period were approximately  
3 \$349 million.

4 15. Defendant Google is a Delaware limited liability company whose principal place of  
5 business is at 1600 Amphitheatre Parkway, Mountain View, County of Santa Clara, State of  
6 California. As the leading internet search engine provider, Google conducts business in all 50 States.  
7 Google also provides a variety of other internet-based products, including Gmail, the leading email  
8 service provider. *See, e.g.,* N. Gilbert, *Number of Active Gmail Users 2022/2023: Statistics,*  
9 *Demographics, & Usage*, FinancesOnline (updated Jan. 14, 2022), [perma.cc/6ZBA-N8P2](https://perma.cc/6ZBA-N8P2).

10 16. Google profits significantly from Gmail through advertising, among other  
11 things. *See How our business works*, About Google (last visited Sept. 19, 2023), [perma.cc/VQ6V-](https://perma.cc/VQ6V-YZ92)  
12 [YZ92](https://perma.cc/VQ6V-YZ92) (“Because of advertising, we’re able to offer our products to users around the world free of  
13 charge....”); *cf. NetChoice*, 49 F.4th at 476 (“[T]he Platforms, which earn almost all their revenue  
14 through advertising, are among the world's most valuable corporations.”). As a general matter,  
15 Google does not charge a user monetary fees to use Gmail. Any person can get a Gmail account if  
16 they meet the age requirement to create a Google Account and agree to Google’s terms of services.  
17 *See, e.g.,* Terms of Service, Google, [perma.cc/M4CV-3TJ4](https://perma.cc/M4CV-3TJ4) (“If you meet these age requirements[,]  
18 you can create a Google Account for your convenience. Some services require that you have a Google  
19 Account in order to work—for example, to use Gmail, you need a Google Account so that you have  
20 a place to send and receive your email.”); *cf. NetChoice*, 49 F.4th at 474 (Platforms like Google have  
21 “represented a willingness to carry anyone on the same terms and conditions,” *i.e.*, without  
22 individualized bargaining.).

23 17. In return for its service, Google collects valuable information from the user. In other  
24 words, a user’s personal information is the compensation for Google’s Gmail services. Google then  
25 uses that data or sells it to third parties to use. Google also sells to third parties the ability to post or  
26 send a targeted, personalized advertisement in the user’s inbox. One example is called a “banner ad.”  
27 Through a service called “Google Ads,” Google sells to third parties the ability to post a banner ad in  
28 a user’s inbox (among other places), and thus, Google profits in part on the popularity of Gmail. *See*



1 *Reach the right audience with Display Ads*, Google Ads (last visited Oct. 20, 2022), [bit.ly/3ZS6dl9](https://bit.ly/3ZS6dl9)  
2 (“Display ads can help you promote your business when people are browsing online, watching  
3 YouTube videos, *checking Gmail*, or using mobile devices and apps. The Google Display Network  
4 reaches 90% of Internet users worldwide, across millions of websites, news pages, blogs, and Google  
5 sites like *Gmail* and YouTube.” (emphases added)). These banner ads generally appear at the top of  
6 the “Promotions” and “Social” tabs of a Gmail user’s inbox.

## 7 **JURISDICTION AND VENUE**

8 18. This court has subject-matter jurisdiction over this matter under 28 U.S.C. §1331, 28  
9 U.S.C. §1367(a), and 28 U.S.C. §1332(a).

10 19. Venue is proper in this district under 28 U.S.C. §1391(b) and 31 U.S.C. §3732(a).

## 11 **GENERAL ALLEGATIONS**

### 12 **I. Email is an indispensable means of communication for the RNC.**

#### 13 **A. The RNC uses email to fund campaigns and build a community, especially in** 14 **California.**

15 20. The RNC purchases millions of dollars in goods and services each election cycle to pay  
16 for its operations, support the campaigns of numerous Republican candidates nationwide, advocate  
17 for laws and policies consistent with its members’ interests, and litigate on related issues. To get the  
18 funds to fulfill its purpose and pay for these activities, it is essential that the RNC cultivate and  
19 maintain relationships with and mobilize its supporters. Many RNC supporters repeatedly fund its  
20 efforts through election cycles, necessitating and creating an ongoing financial relationship  
21 maintained through communications about the RNC’s efforts and needs. The ability of the RNC to  
22 reach its supporters through email is indispensable to its basic operations.

23 21. The RNC’s ability to reach supporters through email is indispensable in today’s digital  
24 world, where landlines and postal mail are rapidly fading in use. And for many RNC supporters, the  
25 means of communication through which the RNC can engage with them, and can solicit their support,  
26 is Gmail.

27 22. This is true in California, specifically. California has the most registered Republicans  
28 of the 50 States. And in California, the RNC has eight offices and three community outreach centers:



1 Half of the RNC's offices and a third of its community centers are in the Eastern District of California.  
2 As in other States, the RNC has sent numerous emails to Gmail users in California who agreed to  
3 receive them and who recently engaged with RNC content. As in other States, the RNC's emails have  
4 been sent to spam. California has ranked first in donations and money raised in 2022.

5 23. From February 2022 to October 2022, the RNC has held approximately 349 events in  
6 the Eastern District of California. These events are critical to the RNC's efforts to raise funds, engage  
7 voters, and support campaigns. The RNC relies on email to inform its supporters of these events.  
8 When the RNC sends emails regarding these events, it expects that those emails will reach their  
9 recipients' inboxes. And so do the RNC's subscribers, especially those who recently actively engaged  
10 with RNC content. But Google at critical moments was sending those emails to the recipients' spam  
11 folders, hindering the RNC's communication with those supporters. Google's actions have impeded  
12 RNC's efforts to raise funds, engage voters, and support campaigns in the Eastern District of  
13 California, resulting in severe economic and reputational damage to the RNC.

14 24. The RNC maintains numerous distinct domains used for email sending. These domains  
15 are organized and delineated based on purpose and use case. For example, the RNC operates sender  
16 domains dedicated to press releases, staff emails, and mass-marketing emails, among others. At issue  
17 here is campaigns.rnchq.com. This domain is used for the RNC's mass-marketing emails, such as  
18 fundraising, get-out-the-vote (GOTV), volunteer recruitment, etc. And this domain accounts for  
19 nearly all email sends—about 98.8% of the RNC's total send volume across all its domains. All other  
20 RNC send domains are designed to be wholly separate and unrelated, as per guidance from Google  
21 and other email providers, to avoid domain reputation issues when sending staff emails because of  
22 mass-marketing email performance.

23 25. Google has pointed to only one other email domain once to justify its discriminatory  
24 filtering: team.gop.com. This, however, is a completely separate domain whose purpose and use case  
25 fundamentally differs from campaigns.rnchq.com. Team.gop.com is used to send press releases to  
26 press lists as well as rapid-response emails, among other things, and accounts for much less than  
27 0.03% of the RNC's total send volume. It is well-known in the industry that email addresses with  
28 separate root domains do not affect each other for purposes of email platforms spam filtration. Google

1 confirmed this to be the case in a phone call with the RNC as early as April 2021. Per Google's  
2 guidance, this completely separate domain (*i.e.*, team.gop.com) could not affect  
3 campaigns.rnchq.com. And in any event, given the domain's minuscule send volume and the  
4 audience that receives the emails, this domain could not affect campaigns.rnchq.com in any way.

5 26. Again, the *en masse* diversion of RNC emails at the end of each month implicated only  
6 the domain name campaigns.rnchq.com. That means, however, that Google's mass relegation of RNC  
7 emails to spam implicates nearly all of the RNC's emails. And Google was well aware that the RNC  
8 uses many different domains, that the domains are completely separate, and that the RNC's  
9 complaints about the *en masse* relegation of emails concerned only the domain name  
10 campaigns.rnchq.com. Google knew this as early as December 2021, at least because of various  
11 emails from the RNC to Google employees, which state that the RNC uses several completely  
12 separate domains but also that the only domain the RNC was asking about was campaigns.rnchq.com.  
13 For example, on December 13, 2021, when the RNC first detected the issue, the RNC told Google,  
14 "The following is our domain address that we are sending from[:] contact@campaigns.rnchq.com."  
15 Moreover, each time the RNC submitted headers of emails improperly sent to spam Google was  
16 informed of the domain at issue (campaigns.rnchq.com).

17 **B. The RNC uses industry-standard tools and methods to optimize engagement with**  
18 **RNC emails and content.**

19 **1. With the relevant domain, the RNC sends emails only to those that request them**  
20 **and tailors its email frequency to the activity of the recipient.**

21 27. With campaigns.rnchq.com, the RNC sends emails only to those who request them.  
22 The RNC maintains a list of people who have requested to receive emails from the RNC. The emails  
23 the RNC sends via campaigns.rnchq.com domain are sent only to people on this list, and thus  
24 everyone who receives an email from the RNC asked to receive the email. The RNC actively updates  
25 the list, so that anyone who no longer wants to receive emails (or a certain type of email) will no  
26 longer do so. If the RNC receives a request to no longer receive a particular type of email, it removes  
27 the person from receiving the type of emails they unsubscribed from in approximately 24 hours. If  
28 the RNC receives a request to no longer receive any emails, then the person is removed from the

1 email list and, within approximately 24 hours, will no longer receive any emails. Thus, the emails  
2 sent to spam at issue here were solicited—the Gmail user asked the RNC to send him or her emails.

3 28. Not only does the RNC maintain a list of people who have requested emails from the  
4 RNC, but the RNC also uses a sophisticated process to determine what segments of the subscriber  
5 audience should be sent which emails and how frequently.<sup>3</sup> This is called “audience segmentation,”  
6 and it is an industry-standard method to optimize engagement with a sender’s content.

7 29. As a general matter, “[e]mail segmentation identifies and groups your subscribers  
8 based on one or more characteristics, including demographics, behavioral data, location, interests,  
9 survey results, and changes in engagement.” V. Kyle, *Email Segmentation, Simplified*, Validity (June  
10 5, 2023), [perma.cc/G46Y-9MLQ](https://perma.cc/G46Y-9MLQ); *see also About Audience Segments*, Salesforce Help,  
11 [perma.cc/YB5X-LH32](https://perma.cc/YB5X-LH32). The audience segments can be “broad,” such as the last activity of the  
12 subscriber being within a certain number of days, or “very refined,” such as level of education, age,  
13 residence, and whether the person has attended a certain event. Kyle, *supra*. “Every business will  
14 have unique ways of segmenting and will require different data sets for best results.” *Id.*

15 30. The RNC is no exception. The RNC’s audience segmentation process is highly  
16 sophisticated, has been in place for many years, and changes continually to improve performance of  
17 email sends. To give an example of basic segmentation the RNC uses: The RNC has at one point limited  
18 all emails not only to subscribers, but also to subscribers who have been active within a certain amount  
19 of time (*e.g.*, 120 days). Activity can be assessed based on opening RNC emails, clicking on RNC links,  
20 signing petitions, donating to the RNC, and other forms of engagement. The RNC’s email sends are  
21 further stratified: For example, the RNC sends emails more frequently to those who are active within  
22 the last 90 days than to subscribers active within the last 120 days. The same is true for those active  
23 within the last 60 days compared to those active within the last 90 days. And so on. The RNC’s process  
24 gets increasingly complex for specific sends or sub-segments of audiences. This segmentation ensures  
25 that recently active subscribers receive the emails and that the emails are relevant to the subscriber.

26  
27 <sup>3</sup> There is a critical difference between email *volume* and *frequency*. Email *volume* is the number of emails sent from a  
28 particular domain on a given period of time (*e.g.*, daily, weekly, monthly); email *frequency* is the number of emails sent to  
a particular subscriber’s email address in a given period of time.

1           31. Google is familiar with established principles of audience segmentation. For example,  
2 when Google markets its Google Ads service, it explains at length audience segments and how  
3 companies can optimize their businesses, including their marketing and ad “campaigns,” using  
4 audience segmentation.

5           32. Google is thus well aware that audience segmentation enables companies to target their  
6 most engaged audiences, tailoring their email frequency to that recipients’ engagement with the  
7 companies’ services. In fact, prioritizing email volume to the most engaged users is a Google Gmail  
8 best practice. *See Prevent mail to Gmail users from being blocked or sent to spam*, Google Help,  
9 [perma.cc/95SX-5HJM](https://perma.cc/95SX-5HJM) (“[s]end email to engaged users only” and “[o]nly send email to people who  
10 want to get messages from you” because “[t]hey’re less likely to report messages from your domain as  
11 spam”); *see also Email Marketing, Validity*, [perma.cc/E4LT-WDEL](https://perma.cc/E4LT-WDEL) (“Follow best practices to  
12 maintain a good sender reputation and high deliverability rates,” including “[s]end[ing] to an active  
13 audience” by “[a]void[ing] spam traps and disengaged subscribers by segmenting your audience and  
14 sending only to people who have been active within a specified time frame”).

15           33. The RNC also uses other industry-standard techniques to improve engagement with  
16 emails. One example is “A/B Tests.” An email A/B test is a method where the sender “create[s] two  
17 versions of an email ... and send[s] them” to two different groups of a sender’s audience. D. Cadet,  
18 *Mastering Email A/B Testing: Strategies, Tools, and Tips*, Validity (July 20, 2023), [perma.cc/CNH8-RRRN](https://perma.cc/CNH8-RRRN). “The goal is to determine which version performs better and yields higher engagement,  
19 whether in the form of click-through rates, conversions, or any other metrics that matter to you.” *Id.*;  
20 *see also Email Testing, Validity*, [perma.cc/W73D-KW85](https://perma.cc/W73D-KW85); *Email Marketing, Validity*,  
21 [perma.cc/E4LT-WDEL](https://perma.cc/E4LT-WDEL) (“A/B testing ... is the best way to make data-driven campaign decisions.”).  
22 The basic idea is to “focus on just one variable within your email” to see how changing that one  
23 variable affects a certain “metric.” *Id.* For example, “if improving open rates is your goal, A/B testing  
24 subject lines can help you discover what [gets] your audience to open” an email. *Id.* “You can  
25 objectively measure the impact of each variable on your email performance and make informed  
26 decisions based on concrete evidence rather than assumptions.” Cadet, *supra*. This helps “email  
27 optimization” and “drives better results over time.” *Id.* The RNC has long used A/B testing, well  
28

1 before Google’s discriminatory filtering. But A/B testing and its benefits are undermined when  
2 arbitrary and discriminatory filtering occurs. Moreover, a market-strong email service provider whose  
3 spam filtering tool repeatedly foils the industry-standard process of A/B testing would be surprising,  
4 to say the least. For example, the RNC can more effectively use A/B testing when the recipient uses  
5 other email service providers, such as Microsoft and Yahoo, because no *en masse* arbitrary and  
6 discriminatory filtering has occurred with those service providers.

7 **2. The RNC uses industry-standard tools and contracts with leading email-marketing**  
8 **companies to ensure that RNC emails follow email platforms’ best practices.**

9 34. The RNC contracts with leading companies in the field of email marketing to ensure  
10 that the RNC’s email practices adhere to service providers’ best practices and to maximize how often  
11 its emails reach a recipient’s inbox rather than its spam folder.

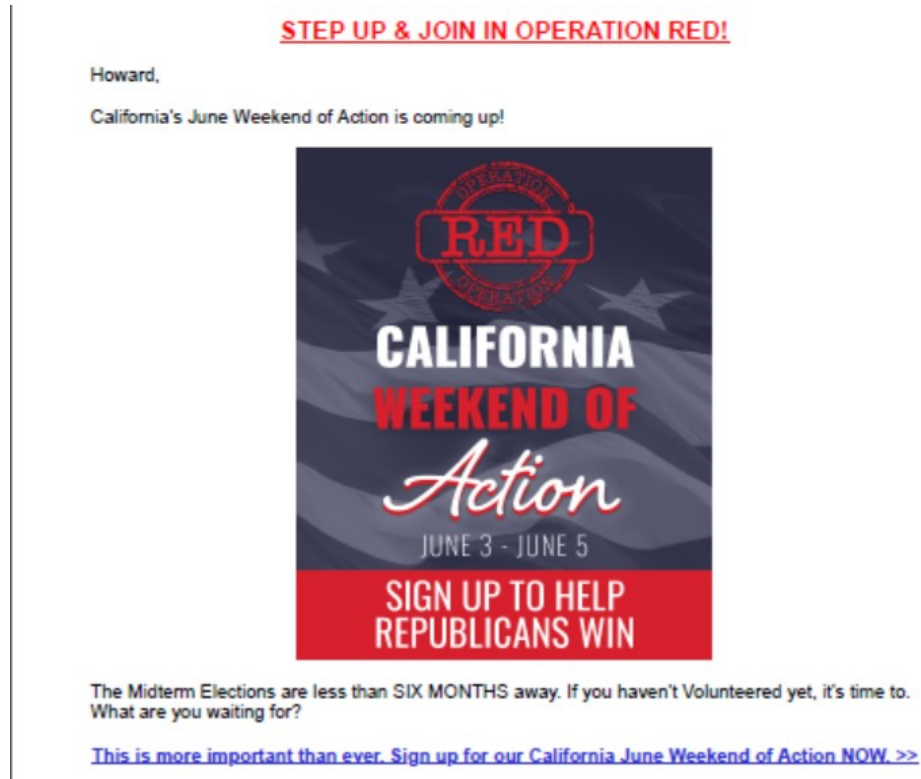
12 35. One reason the RNC uses these companies is to evaluate and maximize its “inboxing  
13 rate.” How often a sender’s emails reach a user’s inbox is called the “inboxing rate.” The “inboxing  
14 rate” is a critical metric to diagnose and fix issues that cause emails to go to spam. And the RNC  
15 strives to keep its inboxing rate high.

16 36. Google does not provide data on whether an email reaches a Gmail user’s inbox. So to  
17 optimize email inboxing, the RNC contracts with a leading company in the field called Validity to  
18 use its email-deliverability platform Everest. According to Validity, “Everest is the absolute pinnacle  
19 of email marketing” and is one of the few programs “that gives you full control of all critical stages  
20 of email marketing.” Together, the RNC can essentially monitor whether its emails reach a user’s  
21 inbox or are filtered into spam using an industry-accepted method. At a general, simplified level, the  
22 RNC, with Everest, has created hundreds of email addresses used specifically to determine whether  
23 an email sent by the RNC reaches an inbox or is sent to spam. When the RNC sends an email, it  
24 generally sends the email to (1) a subset of its self-created email addresses and (2) a subset of people  
25 on its email list. Because the RNC has control over its self-created addresses, the RNC can collect  
26 data on an email’s performance. With help from Everest, a statistical analysis is performed to estimate  
27 the inboxing rate of the email the RNC sent.

28 37. Thus, if Everest and the RNC calculate an inboxing rate of nearly 0%, it means that

1 Gmail hid nearly every email sent by the RNC during the relevant period of time.

2 38. Here is an example of an RNC email sent to Californians who requested emails (and  
3 met the relevant audience segmentation) and that Google sent almost completely to spam:



17 39. The RNC also contracts with Salesforce, an email service provider (ESP) and “the  
18 world’s leading email marketing platform.” *Meet Email Studio*, Salesforce, [perma.cc/AVM2-Z5C5](https://perma.cc/AVM2-Z5C5).  
19 Specifically, the RNC contracts with Salesforce for two services relevant here: Salesforce Marketing  
20 Cloud and Salesforce Deliverability Services. The Marketing Cloud provides the RNC with access to  
21 the Marketing Cloud Email Service Provider, which is an email send platform that users use to, among  
22 other things, send email campaigns, manage subscriber lists, segment audience data, and run  
23 sophisticated A/B tests. *See, e.g., Make every moment count with Marketing Cloud*, Salesforce,  
24 [perma.cc/UU46-UVE4](https://perma.cc/UU46-UVE4); *Meet Email Studio, supra*. The RNC also contracts with Salesforce for  
25 Salesforce Deliverability Services. That service provides the RNC advice and expertise on  
26 deliverability and inboxing. The RNC regularly communicates with its account representative for  
27 deliverability at Salesforce. Salesforce has established relationships directly with all the major internet  
28 service providers’ Postmaster Tools, which enables Salesforce to escalate certain issues quickly.



1           40.       For example, Salesforce ensures that the RNC meets certain policies, such as  
2 authentication policies. Common authentication policies include Domain-based Message  
3 Authentication, Reporting, and Conformance (DMARC), Sender Policy Framework (SPF), and  
4 DomainKeys Identified Mail (DKIM). These policies help ensure the person sending an email is  
5 legitimate (*e.g.*, not spam or someone impersonating the sender). These rules can be edited only by the  
6 person who owns a domain name (*e.g.*, campaigns.rnchq.com) and are then communicated between the  
7 ESP (*e.g.*, Salesforce) and the recipient (*e.g.*, Gmail). When Salesforce audits the RNC's records and  
8 verifies them, they are letting the RNC know these policies are aligned, the rules are being followed,  
9 and that these records are passing correctly. Just before, during, and right after each of the *en masse*  
10 diversions to requestors' spam folders, the RNC's domain was authenticated and verified, according to  
11 industry-standard tools.

12           41.       The RNC also takes advantage of "Postmaster Tools." Each internet service provider  
13 (ISP) has its own "Postmaster Tools." In general, ISPs direct marketers to their tools to evaluate  
14 reputation of the sender's domain reputation. Google Postmaster is a program by Google that Google  
15 claims allows senders, like the RNC, to look at email delivery, user complaints, spam traps,  
16 authentication, domain reputation, and how the RNC's subscribers engage with its emails. *See*  
17 *Postmaster Tools by Gmail*, Google, [perma.cc/N4G2-2JSG](https://perma.cc/N4G2-2JSG). It provides data on email performance,  
18 including delivery rates (not inboxing rates) and spam complaints. *See Get Started with Postmaster*  
19 *Tools*, Gmail Help, [perma.cc/33FE-ZRPA](https://perma.cc/33FE-ZRPA). The RNC uses Google Postmaster to keep a close eye on  
20 its email performance and domain reputation (in Google's eyes at least).

21           42.       For example, Google Postmaster provides the user reported spam rate for a particular  
22 domain. According to Google, the spam rate is the percentage of emails marked as spam by users versus  
23 emails sent to the inbox for active users. Before filing this suit, the RNC's median spam rate was  
24 approximately 0.1%, and its average spam rate was approximately 0.14%. The RNC had no sustained  
25 periods of time of a 0.3% spam rate or higher. In fact, the RNC had only one instance of a 0.3% spam  
26 rate for a single day. The RNC's spam rate has not meaningfully changed since filing this suit.

27           43.       The RNC strives to maintain low user complaints, avoid spam traps, stay authenticated,  
28 and keep high reputations. Validity and Salesforce helps ensure the RNC minimizes its spam rate and



1 maintain a high domain reputation.

2 44. In addition to Postmaster Tools, Google forms a distinct relationship with bulk  
3 emailers. Google also offers a “Sender Contact Form,” so that bulk senders have a way to “contact”  
4 Google’s “Gmail Team” for improperly marking the senders’ emails as spam. *Sender Contact Form*,  
5 Gmail Help, [perma.cc/7WGJ-HB2Y](https://perma.cc/7WGJ-HB2Y); *see also Submit the Google Bulk Sender Form*, Salesforce Help  
6 (Oct. 13, 2022), [sforce.co/46sL1ox](https://sforce.co/46sL1ox) (“While Gmail does not offer up a contact path to discuss  
7 deliverability issues directly with a Google representative, there is a way for clients to reach out to  
8 Google to ask them to reconsider spam folder delivery.”). Google says that it will “use the information  
9 ... provide[d] to investigate and improve [its] spam and abuse detection systems.” Sender Contact  
10 Form, *supra*. It “may take up to 15 days to see ... improvement.” *Submit the Google Bulk Sender Form*,  
11 *supra*. Google also sometimes will perform best-practices training to bulk senders who do not use  
12 Gmail but send to Gmail users.

13 45. Google also has a distinct relationship with politically oriented email senders. For  
14 example, Google has a “Civics Outreach team.” This team helps “build[] products and programs to  
15 help people across the globe engage with the democratic process,” including by helping the “use [of]  
16 specific tools,” such as Gmail. *Learn How To Use Google Tools*, Google Civics, [perma.cc/2GCN-](https://perma.cc/2GCN-YWXS)  
17 [YWXS](https://perma.cc/2GCN-YWXS). This team also provides an email address ([civics-outreach@google.com](mailto:civics-outreach@google.com)) “for questions and  
18 support.” The team is also “focused on helping campaigns and elected officials effectively use Google  
19 and YouTube products to reach voters and on helping them enhance their election security.” *See, e.g.,*  
20 *A. Storey, Our work on the 2020 U.S. election*, Google Civics (Dec. 9, 2020), [perma.cc/D7GH-3HEY](https://perma.cc/D7GH-3HEY);  
21 *L. Richardson, Our ongoing work to support the 2022 U.S. midterm elections*, Google Civics (Sept. 1,  
22 2022), [perma.cc/MC2J-ABDK](https://perma.cc/MC2J-ABDK). Google has told the RNC that its “Civics Outreach team ([civics-](mailto:civics-outreach@google.com)  
23 [outreach@google.com](mailto:civics-outreach@google.com)) is always here to assist” the RNC.

24 **II. Google unreasonably and in bad faith sent RNC emails to the spam folder during critical**  
25 **moments in election fundraising and community building.**

26 46. Google repeatedly sent RNC emails to spam contrary to the spam folder’s purpose. As  
27 a service to its users, and to increase its own profits, Google intercepted certain messages intended for  
28 its users that comprise unsolicited and unwanted bulk-emailed messages and placed them in a separate

1 folder, called the spam folder. But the spam folder’s purpose is to conceal from users unrequested and  
 2 unwanted messages from unknown senders. *See, e.g., Spam*, Black’s Law Dictionary (11th ed. 2019)  
 3 (“Unsolicited commercial e-mail.”). This obviously does not apply to the RNC’s emails to its  
 4 subscribers, who have requested to receive the emails and who recently actively engaged with RNC  
 5 content. Yet Google sent these emails to spam anyway.

6 47. And Google’s most egregious discrimination began in at least February 2022. That  
 7 month, while the RNC was working on matters related to the 2022 midterm election, the RNC  
 8 detected that its Gmail “inboxing” rate suddenly dropped from rates consistently above 90% to nearly  
 9 0% on certain days during the last week of the month. This inboxing rate of nearly 0% means that  
 10 Gmail hid nearly every campaign email sent by the RNC from the Gmail users on whom the RNC  
 11 financially relies. Google’s mass diversion of RNC emails has reoccurred every subsequent month of  
 12 2022, at least until the filing of this lawsuit. Google has provided a series of false explanations for its  
 13 spam filtering.



25 48. Significantly, Google’s most egregious spam filtering has repeatedly occurred towards  
 26 the end of the month—the most effective and important period for these transactions between the RNC  
 27 and its supporters. And Google was aware of this fact before suddenly diverting the RNC’s emails in  
 28 December 2021 because it is common knowledge and well-known in the email mass-marketing

1 industry that the end-of-the-month and the end-of-the-quarter are critical periods for email campaigns  
2 by political organizations. In any event, Google continued to divert the RNC's emails towards the end  
3 of each month even after the RNC repeatedly informed Google that the periods were critical to its  
4 fundraising, community building, and GOTV messaging as early as at least March 2023.

5 49. And tellingly, the *en masse* spam filtering stopped just after the RNC filed this suit,  
6 even though the RNC has not meaningfully changed its email sends.

7 50. Since the 2020 election, the RNC has dramatically reduced both email volume and  
8 frequency. For example, at some points during the 2020 election, the RNC would send requesters  
9 hourly emails, yet there was no *en masse* diversion to spam. In 2021, the RNC sent one fourth the  
10 number of emails than in 2020, yet except for the end of 2021 (December 2021), the RNC detected no  
11 *en masse* relegation of emails to spam. During 2022, the RNC further reduced email volume and  
12 frequency, yet the RNC experienced clockwork diversion of emails towards the end of each month  
13 from January 2022 to October 2022 (when the RNC filed this suit).

14 51. In November 2022, after this suit was filed, the RNC increased its email volume and  
15 frequency; this time, however, there was no *en masse* relegation. The only relevant differences are that  
16 the RNC filed this lawsuit and the midterm elections are over. Both facts tend to show that Google had  
17 control over the RNC's inboxing, and it suppressed those emails because it was the RNC sending them.

18 52. For nearly a year, the RNC has engaged with Google, urging it to stop its interference  
19 with the RNC's relationship with its financial supporters. In that time, the RNC has refuted each of the  
20 serial excuses Google has offered for why it persists in blocking the RNC's emails to its supporters.  
21 Google fell silent as the RNC approached the pivotal 2022 election.

22 53. Upon noticing that Google was diverting nearly all of its emails to users' spam folders  
23 in December 2021, the RNC contacted Google to discuss the issue:

24 I wanted to see if you had time today or tomorrow to discuss an urgent issue,  
25 we are experiencing regarding our Gmail inboxing.

26 We have now had 5 full days of 0 inboxing on Gmail. It appears to have  
27 come out of nowhere, as we are following best practices prescribed by  
28 Google, and have not changed our segmenting or opt-in criteria recently.

Typically, we only send to those who have opened an email from us within  
the last 120 days (we add frequency to our cadence if they have opened

1 more recently). However, for the last several days we have segmented down  
2 to only email those who have opened an email from us within the last 30  
3 days but have seen no forward progress.

4 As of today, we are only emailing those Gmail users who are donors to us  
5 and have also opened within the last 15 days. We will see if this provides  
6 us any upward lift, but as this is a significant hit to our voter contact and  
7 fundraising programs, I wanted to connect with you to see if there was any  
8 way to get eyes and ears on what is going wrong here and how we can  
9 mitigate it.

10 We are in contact with our representatives at Salesforce and at Validity  
11 Return Path [now called Validity Everest], though they do not seem to be  
12 able to identify any cause or resolution to the issue.

13 Please let me know what our best next steps should be here.

14 54. Google responded by suggesting that the RNC reduce the volume and frequency of  
15 emails that it sends. Google also asked the RNC to submit the headers for the emails in question, so  
16 that Google could identify the email traffic in question. *See generally What is an Email Header?*, What  
17 Is My IP Address, [bit.ly/3PwFXYC](https://bit.ly/3PwFXYC). The RNC did, and did so for each subsequent *en masse* relegation  
18 of emails to spam. The RNC and Google also agreed to stay in regular communication to address the  
19 issue.

20 55. From January 28, 2022, to January 30, 2022, the RNC again noticed a sharp decline in  
21 its Gmail inboxing rate. It again contacted Google, which did not provide any additional advice.

22 56. On February 14, the RNC conducted an internal test called the “A/B test.”  
23 Unsurprisingly, the RNC, like others in the industry, runs multiple A/B tests every day. The purpose of  
24 this particular A/B test was to assess whether making the cellphone-number field required on the  
25 donation form affected engagement by a certain audience segment. For this test, the RNC created two  
26 versions of an email whose contents were identical—except that Version *A* and Version *B* had links to  
27 different variants of an RNC donation page. Both donation pages were freshly created, and the links  
28 were RNC WinRed links, which the RNC uses in many of the emails it sends that reach Gmail users’  
inboxes. The only difference between the two pages is that one requires the donor to provide a cellphone  
number, while the other makes the cellphone-number field optional.<sup>4</sup> The RNC then selected two

<sup>4</sup> Here are the two links: (1) <https://secure.winred.com/rnc/trump-valentine-card> and  
(2) <https://secure.winred.com/rnc/trump-valentine-card-mr>.

1 groups of different individuals from the RNC’s active donor audience—Group *X* and Group *Y*—to send  
2 the emails to; there was no overlap between the groups. At the same time, the RNC sent Version *A* to  
3 Group *X* and sent Version *B* to Group *Y*. Even though no recipient received two emails, Version *A*  
4 inboxed at the normal rate, while Version *B* inboxed at a rate of approximately 0% (*i.e.*, Version *B* went  
5 entirely to spam, while Version *A* didn’t).

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Erin from the GOP <contact@campaigns.rncq.com>  
Fri 10/6/2023 9:11 AM  
To:Benjamin Anjomshoaa - Digital <BANjomshoaa@gop.com>

christian

I just wanted to make sure that you saw this email and knew this is your LAST CHANCE to sign President Trump and Melania's SURPRISE Valentine's Day Card.

Don't wait any longer. [Sign in the next 60 MINUTES to make sure President Trump and Melania see your Valentine's Day message! >>](#)

Thank you,  
GOP HQ

[ADD YOUR NAME NOW >>](#)

----- Forwarded Message -----  
From: Wish President Trump & Melania a Happy Valentine's Day  
Subject: FWD: Sign before it's too late  
To: [cwschaeffer@gmail.com](mailto:cwschaeffer@gmail.com)



[ADD YOUR NAME NOW >>>](#)

Thank you,  
GOP Headquarters

[ADD YOUR NAME NOW >>](#)

Erin from the GOP <contact@campaigns.rncq.com>  
Fri 10/6/2023 9:11 AM  
To:Benjamin Anjomshoaa - Digital <BANjomshoaa@gop.com>

christian

I just wanted to make sure that you saw this email and knew this is your LAST CHANCE to sign President Trump and Melania's SURPRISE Valentine's Day Card.

Don't wait any longer. [Sign in the next 60 MINUTES to make sure President Trump and Melania see your Valentine's Day message! >>](#)

Thank you,  
GOP HQ

[ADD YOUR NAME NOW >>](#)

----- Forwarded Message -----  
From: Wish President Trump & Melania a Happy Valentine's Day  
Subject: FWD: Sign before it's too late  
To: [cwschaeffer@gmail.com](mailto:cwschaeffer@gmail.com)



[ADD YOUR NAME NOW >>>](#)

Thank you,  
GOP Headquarters

[ADD YOUR NAME NOW >>](#)

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You are receiving this email at [cwschaeffer@gmail.com](mailto:cwschaeffer@gmail.com).  
Republican National Committee (RNC), 310 1st Street SE Washington, DC, 20003-1885, US  
We believe this is an important way to reach our grassroots supporters with the most up-to-date information regarding the efforts of the Republican Party.  
Thank you for joining our movement. It's because of Patriots, like YOU, that we will take back the Senate and the House in 2022. Reaching grassroots supporters directly is CRITICAL if we're going to succeed, and in order to do that, we need to provide them with the most up-to-date information on all of our efforts.  
If you want to be one of the FIRST Patriots to get the latest updates on efforts directly from the Republican Party, please make sure to follow us on [Facebook](#) and [Twitter](#), and [TEXT WIN2022 to 86616](#).  
If you would like to opt-out of important updates like this, please click [here](#). If you'd like to stop up and activate your 2022 Sustaining Membership, [click here](#). It's because of the commitment and support from real Patriots, like YOU, that we will WIN BIG in 2022.

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[www.GOP.com](http://www.GOP.com)

You are receiving this email at [cwschaeffer@gmail.com](mailto:cwschaeffer@gmail.com).  
Republican National Committee (RNC), 310 1st Street SE Washington, DC, 20003-1885, US  
We believe this is an important way to reach our grassroots supporters with the most up-to-date information regarding the efforts of the Republican Party.  
Thank you for joining our movement. It's because of Patriots, like YOU, that we will take back the Senate and the House in 2022. Reaching grassroots supporters directly is CRITICAL if we're going to succeed, and in order to do that, we need to provide them with the most up-to-date information on all of our efforts.  
If you want to be one of the FIRST Patriots to get the latest updates on efforts directly from the Republican Party, please make sure to follow us on [Facebook](#) and [Twitter](#), and [TEXT WIN2022 to 86616](#).  
If you would like to opt-out of important updates like this, please click [here](#). If you'd like to stop up and activate your 2022 Sustaining Membership, [click here](#). It's because of the commitment and support from real Patriots, like YOU, that we will WIN BIG in 2022!

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1           57.       The RNC replicated the test using a new email send (*i.e.*, not the same email as the  
2 first A/B test), with an identical Version *A* and Version *B* that again only differed in the variant of the  
3 donation pages they linked to. These emails again were sent to two groups that did not overlap. The  
4 RNC observed the same result: An entire batch of one version of the email went to spam, while the  
5 other did not. This test suggests that Google is not suppressing RNC emails based on their  
6 communicative content.

7           58.       The RNC immediately informed Google of the results of its February 14 test and  
8 provided the emails used in that test, which clearly showed the domain the RNC was using as well. The  
9 RNC also stressed with Google that it “need[ed] to move quickly on solving the issue so that [the RNC]  
10 can continue to plan email content and testing.” Although Google initially told the RNC that it would  
11 check with its product team and provide an explanation as soon as it could, Google did not respond for  
12 the rest of the month. To this day, Google has never responded to the RNC’s findings.

13           59.       From February 1 to 2, and on February 21, Gmail diverted the RNC’s emails to spam  
14 folders, causing its inboxing rate to fall to approximately 0%.

15           60.       Shortly after this diversion, the RNC contacted Google and asked whether there was  
16 “any movement and if there is anything [the RNC] can do to escalate the situation. The inboxing issues  
17 are ... just as inconsistent and arbitrary, and they are severely impacting [the RNC’s] ability to  
18 communicate with voters. Hence [the RNC’s] urgency.... [U]ltimately this is causing [the RNC] major  
19 issues.”

20           61.       On March 4, Google responded that the monthly crashing of the RNC’s inboxing rate  
21 was due to a high number of user complaints (specifically, “a lot of Gmail users are marking [RNC]  
22 messages as spam”). It also sent the RNC a list of best practices to avoid having emails labeled as spam,  
23 such as monitoring their “Postmaster’s Tools” or checking their Email Service Provider for any  
24 irregularities.

25           62.       But Google’s explanation was not true. As the RNC informed Google, it already had  
26 been actively monitoring its Postmaster Tools, and those tools showed that there were no reputational  
27 issues. Indeed, the “complaint rate [wa]s incredibly low at .02% over the past several months.” The  
28 RNC also had been told by its ESP, Salesforce, that there were no irregularities causing the issue. There



1 was also no increase in user complaints preceding periods when its inboxing rate fell to nearly 0%. In  
2 addition, the RNC reiterated the A/B tests it ran and that Google had yet to address it. At bottom, the  
3 RNC had “provided a lot of detail and specific examples that should give [the relevant Google] team  
4 everything they need. There’s got to be a better answer here” than no meaningful answer at all.

5 63. From March 25 to 26, the RNC’s inboxing rate again fell to approximately 0%.

6 64. On March 25, the RNC again contacted Google to notify them that the issue was  
7 reoccurring, even though the RNC’s “IP reputation and domain reputation remain[ed] in the same  
8 [strong] levels” as before the discriminatory spamming ever began. If anything, stated the RNC, its  
9 reputation improved. The RNC also reminded Google that the RNC previously submitted information  
10 to Google, such as the email address from which its emails were sent, the displayed name of the sender,  
11 the subject line, and preview text using a Google form designed to collect this information to avoid  
12 mislabeling a sender’s email as spam. The RNC also expressed “frustrat[ion]” that each month the RNC  
13 appears to start back at “square one.” The RNC “continuously raise[s] flags about [the *en masse*  
14 diversion] issue at the beginning of the month and never receive[] any guidance from [Google].” Yet  
15 the RNC does not “even get a follow-up meeting scheduled,” as the RNC has “requested several times.”  
16 Nor did the RNC get any new explanation for the near complete relegation of its emails.

17 65. Eventually, Google agreed to meet again with the RNC to discuss these issues.

18 66. To provide context ahead of the meeting, the RNC, on March 28, sent Google an email  
19 that documented the RNC’s recent efforts to adopt Google’s suggestions:

20 For your awareness, we had more significant inboxing issues pop up after I  
21 emailed on Friday [March 25] and throughout the weekend. [An employee  
22 at the RNC] submitted multiple tickets and included all headers, so the  
product team should have those.

23 Starting on Friday [March 25], we saw our deliverability drop-off and  
24 become unstable. We sent a total of 15 emails across different audience  
25 segments that day and each of them hit spam at 100%.... Volume was almost  
26 identical across all days and there was no change in our sending strategy.  
We have also not seen any rise in spam reports in ReturnPath [now called  
Everest] and our domains all look healthy.

27 We’ve noticed that these issues tend to arise most frequently on weekends  
28 [at the end of the month] that include key events for our fundraising and  
voter contact: for example, weekends with Trump rallies and weekends

1 before end-of-month and end-of-quarter deadlines. Multiple emails sent  
2 over the weekend were expected to be top-performers but all hit spam. We  
3 are also going from 100% inboxing to 0% inboxing; there is not much in-  
4 between.

5 We are hoping to quickly find solutions before EOQ on Wednesday and  
6 Thursday of this week.

7 67. On March 29, the RNC met with Google as planned. Google did not present the RNC  
8 with any new actionable suggestions, but Google offered to have weekly calls with the RNC to discuss  
9 the issue. The RNC accepted this offer and met with Google representatives twice. Then, Google's  
10 representative informed the RNC that she could not meet with the RNC because she had been informed  
11 that she was not legally permitted to do so.

12 68. The RNC once again experienced inboxing problems towards the end of April and  
13 May. On April 25 to 27, and again on May 27 to 28, the RNC's emails to its supporters who use Gmail  
14 were predictably relegated to the users' spam folders. The RNC continued to contact Google employees  
15 and submit reports to Google, but the RNC received no answers and no solutions in return.

16 69. For example, on April 25, the RNC contacted Google and explained that it has "run  
17 into deliverability issues once again," "including several GOTV sends." But "[b]ecause two political  
18 emails that did not include any type of monetary solicitation also faced this issue, we're concerned  
19 about our ability to properly deploy our GOTV messaging, which would be an extreme hinderance to  
20 our organization and the Party as a whole." The RNC also included "screenshots of the deliverability  
21 issues [it was] seeing on Everest, along with screenshots from [Google's own] Postmaster [Tools]  
22 showing that [the RNC's] domain reputation remains high and spam complaints remain low." The RNC  
23 also had "not made any significant changes to [its] volume" that day. Importantly, the RNC again  
24 stressed that "[t]he date this is happening seems significant as well. We've mentioned before that we  
25 continue to see a[] spike in this issue[] around EOM; the last time we saw this was at EOQ at the end  
26 of March." And as the RNC explained several times, the end-of-month and end-of-quarter time period  
27 is critical for the RNC. Moreover, to aid Google in identifying the relevant emails, the RNC (per usual)  
28 "submitted cases with headers for each of the effected emails" and asked what "mitigation efforts  
[Google] suggest[ed]."

1           70.       And on April 28, the RNC informed Google of “another day of poor delivery on April  
2 27th” but noted that things “bounced back today.” The RNC provided “a bar graph showing that [the]  
3 deliverability [or inboxing rate] is trending down at the end of the month.” The RNC also emphasized  
4 that it was “following best practices and [is] not changing [its] sending volume or strategy at the times  
5 of these downturns.”

6           71.       The RNC received no material response from Google concerning the April 28 email.

7           72.       From May 27 to 28, the RNC’s emails to its supporters who use Gmail were once again  
8 predictably relegated to the users’ spam folders. Yet on the days leading up to May 27, the RNC’s user  
9 reported spam rate was approximately 0.1%; then, on May 27 and 28, the rate was approximately 0.0%;  
10 and the days after, the rate was approximately 0.1%.

11          73.       On May 27, the RNC messaged Google that the RNC was “once again seeing the same  
12 downward trend in deliverability that [its] been seeing every month this year.” The RNC, per usual,  
13 “already submitted headers.” The RNC also “attached screenshots of what [its] seeing on inboxing and  
14 a graph that clearly shows the EOM trend. [The] volume remains steady and we have still been  
15 consistently monitoring our content to ensure it follows best practices to avoid spam filters.”

16          74.       Google responded three days later noting that it “[s]ound[ed] like you are following  
17 the right process.”

18          75.       On June 14, the RNC internally communicated:

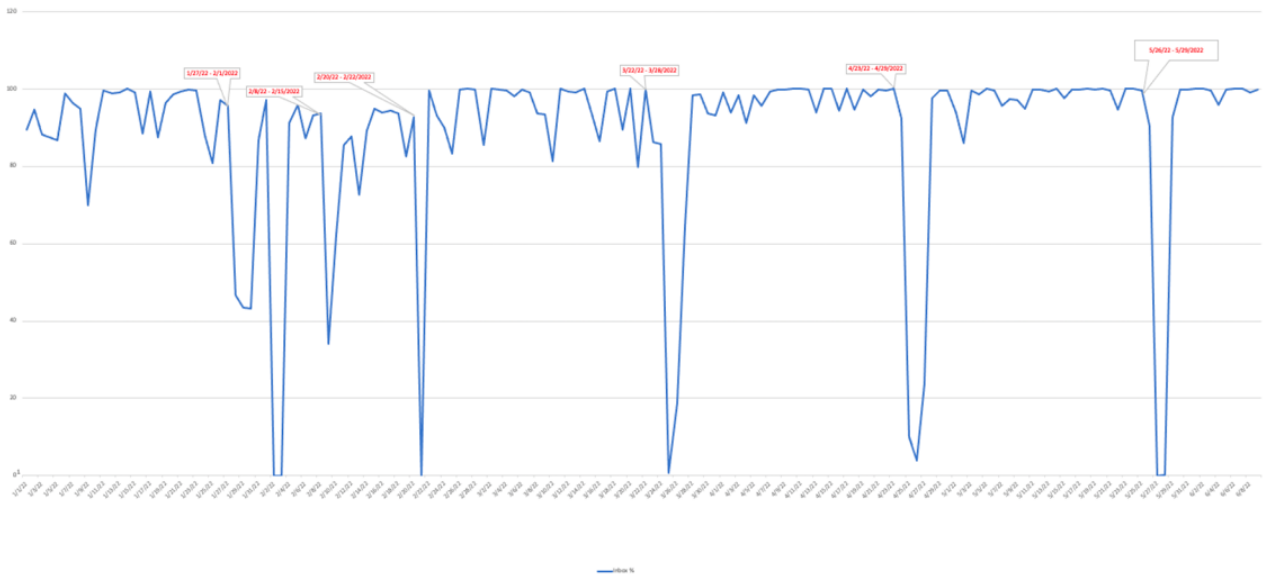
19                   The graph below shows the RNC’s deliverability on Gmail. It is consistently  
20 in the 80-100 range; however, there is a concerning trend where each month,  
21 5-7 days before the end of the month, we go to 0% deliverability for a few  
22 days, and then rebound.

23                   We’ve had numerous conversations with the Google team about this.  
24 Originally, their explanation was that it was our end of month ramp in  
25 volume that caused the drop in deliverability (this was back in December of  
26 last year). However, it is important to note, that as we have continued to see  
27 this trend consistently for the past 5 months, it consistently happens DAYS  
28 BEFORE any end of month ramp. In fact, there is no operational change  
(content, audience, send volume, timing) on the RNC’s end that would  
account for this drop in deliverability.

                  In April, Google’s team informed us that the drop was the result of an  
increase in user reported spam (user reported spam increased from 0.2% to  
0.3%). However, in May, user reported spam decreased to 0.1% and we still  
saw the same drop in deliverability.

1 The rhythm of the deliverability issues has become so predictable that on  
2 May 26th our email director came to me and said “based on the calendar, I  
3 expect we’re going to start spamming today, since there’s an extra day in  
4 May, the spamming will start later.” Sure enough, he predicted it just a few  
5 hours before we began spamming on Gmail.

6 76. Here is the graph included in the email:



7 8 9 10 11 12 13 14 15 77. Soon after, another RNC employee emailed Google with a subject line “RNC Gmail  
16 Deliverability Issues - Monthly Trend,” highlighted the above internal communication in full, and  
17 stressed that as the included communication explains, Google is “tanking the RNC’s deliverability  
18 during the EOM period when fundraising and donations go up.” The RNC asked if Google could “stop  
19 this from happening in June.”

20 78. The same day, an employee at Google responded that he was “[e]scalating now.”

21 79. Later that day, Google said that “a subdomain issue” was “causing” the mass diversion  
22 of emails. Specifically, Google blamed the RNC’s press releases sent from team.gop.com for why it  
23 was diverting the RNC’s emails at the end of each month to Gmail users’ spam folders. Again, Google’s  
24 explanation made no sense. After all, the RNC’s press releases are issued from an entirely different  
25 email domain (specifically, team.gop.com) and that, comparatively, has a minuscule email volume  
26 from the RNC’s main marketing domain (campaigns.rnchq.com). There was thus no “subdomain issue  
27 causing” the erroneous filtering.

28 80. On June 17, the RNC emailed Google rebutting Google’s new explanation that a

1 separate domain (team.gop.com) was causing an entirely different domain to go to spam  
2 (campaigns.rnchq.com):

3 Our team has investigated Google's explanation that you laid out on our call  
4 the other day (that team.gop.com is causing an increase in spam  
complaints).

5 This explanation does not make sense for several reasons:

6 1. Team.gop.com is a subdomain of GOP.com, which is  
7 responsible for the RNC's staff emails. **The RNC's marketing  
8 emails are sent from a completely separate domain  
9 (campaigns.rnchq.com).** The RNC's marketing program is  
10 structured this way explicitly to keep these two systems separate,  
as per recommendations and guidance of ISPs, as we know that  
Gmail associates a domain's reputation with that of its  
subdomains.

11 The RNC team has reported dozens of email headers via Google's  
12 reporting form (which provides no confirmation number), and  
13 done calls and zooms with [two Google employees] every month  
14 this year, so the google team should be well aware that this  
15 inexplicable monthly issue that we are experiencing is with  
campaigns.rnchq.com. Nevertheless, each time we bring these  
issues to Google's attention, we start at square one, getting  
explanations that have been repeatedly debunked or have no  
logical bearing on the situation.

16 2. Team.gop.com is the domain used for the RNC's press releases.  
17 The domain is only used to send to lists of reporters, and on any  
18 given day the maximum send volume is ~45,000 emails. This is  
19 less than 0.3% of the daily send volume of campaigns.rnchq.com.  
If Gmail, contrary to its own guidance, was associating the two  
domains, team.gop.com could not have the volume to cause the  
issue described.

20 Notably, during the May period in question, volume remained  
21 below 20,000 emails per day, and there was no change in sending  
strategy that would account for a change in deliverability.

22 3. Looking at team.gop.com, the RNC team can identify only 5  
23 unique complaints (127 total complaints) across all ISPs in the full  
24 month of May with a monthly send volume of over 400,000. In  
25 full, this amounts to an average complaint rate of 0.2% across all  
ISPs. Due to limitations in the data and reporting provided by  
Google, we do not have any visibility into anything further that  
could cause an issue.

26 This issue has been going on for far too long without resolution  
27 or explanation. It has been over 5 months and we are still  
effectively at square one, working through the basic facts of the  
case here.

28 Thank you for your assurance that you will help us to prevent this

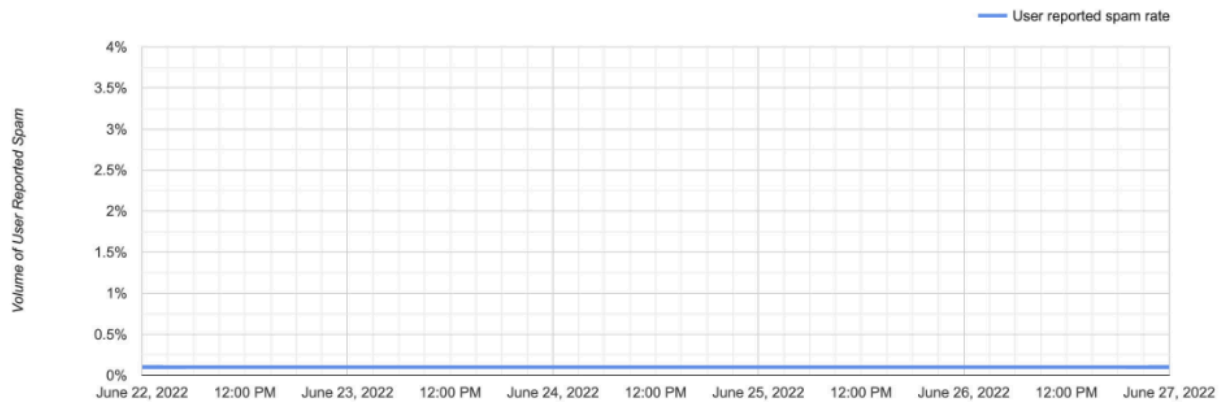
1 issue in June. Our team is ready and available to assist however  
2 we can to identify the source of the issue.

3 81. Moreover, on June 24, Google told the RNC that its “Civics Outreach team (civics-  
4 outreach@google.com) is always here to assist.”

5 82. The Google employee’s “assurance[] that [he] will help [the RNC] to prevent this issue  
6 in June” did not pan out, however. Two weeks later, on June 27, the RNC’s inboxing rate for Gmail  
7 users again dropped to approximately 0%. Yet on the days leading up to June 27, June 27 itself, and  
8 the days after, the RNC’s user reported spam rate was approximately 0.1%.

9 83. The RNC immediately reached out to Google again and emphasized that Google  
10 “need[ed] to fix this asap,” that the RNC “predicted this would happen, like it has happened the exact  
11 same way the past several months,” and that the RNC still has not received any adequate “answers  
12 whatsoever on why.” And the RNC noted that user spam complaints were particularly low leading up  
13 to and when the *en masse* filtering occurred, as these reports from Postmaster Tools showed (and which  
14 the RNC sent to Google):

15 **User Reported Spam**



Date ▲	User reported spam rate
Jun 22, 2022	0.1%
Jun 23, 2022	0.1%
Jun 24, 2022	0.1%
Jun 25, 2022	0.1%
Jun 26, 2022	0.1%
Jun 27, 2022	0.1%

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11 84. On June 28, the RNC and Google had a call, where a Google employee confirmed that  
12 Google saw the same inboxing pattern the RNC did—consistent drops towards the end of each month.  
13 The Google employee asked the RNC to submit headers (the RNC already did) and suggested that the  
14 consistent drop could be because the RNC increased its volume. The RNC responded that increased  
15 volume could not conceivably be the issue because the RNC’s volume was *lower* than the day before,  
16 and the *en masse* relegation of emails to spam always occurred *before* the RNC ever increased send  
17 volume at the end of the month.

18 85. Around the same time, Google provided two new suggestions for its discriminatory  
19 spam filtering: (1) that the RNC’s domain authentication (a system ensuring an email comes from the  
20 purported sender) was possibly at fault; and (2) that the issue could be a result of Google’s algorithmic  
21 spamming system, which collects spam reports over the course of the month and eventually causes a  
22 sender’s email to be diverted to Gmail users’ spam folders. But again, this was no comfort to the RNC.  
23 As the RNC immediately notified Google on June 28, it “checked DMARC, SPF and SKIM on Google  
24 Postmaster and it shows that [the RNC’s] domain is authenticated and verified,” and the RNC checked  
25 with Salesforce, which had already confirmed that its authentications were in proper working order.  
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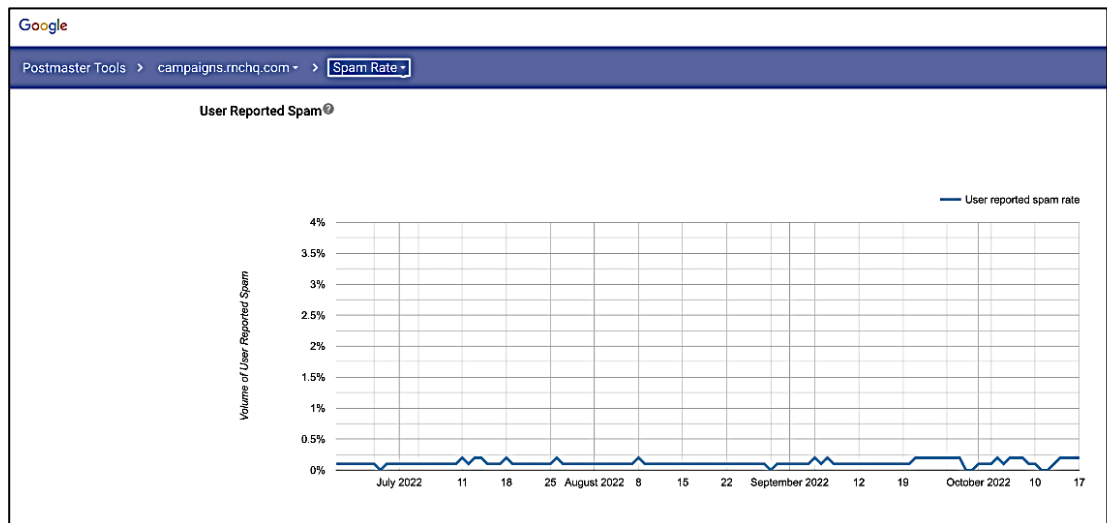
86. Here is the evidence the RNC provided Google:

Date ▲	DKIM success rate	SPF success rate	DMARC success rate
Jun 21, 2022	100.0%	100.0%	100.0%
Jun 22, 2022	100.0%	100.0%	100.0%
Jun 23, 2022	100.0%	100.0%	100.0%
Jun 24, 2022	100.0%	100.0%	100.0%
Jun 25, 2022	100.0%	100.0%	100.0%
Jun 26, 2022	100.0%	100.0%	100.0%



✓ dmarc	message.gop.com	DMARC Record found
✓ dmarc	message.gop.com	The record is valid
✓ dmarc	message.gop.com	All external domains in your DMARC record are giving permission to send them DMARC reports.
✓ dmarc	message.gop.com	Multiple DMARC records corrected to a single record.

87. The RNC also explained that data contradicted the algorithmic spamming explanation because in Google’s own Postmaster tools, the RNC emails only received spam complaints at 0.1%.



1           88.       On July 14, the RNC preemptively reached out to Google to see how it could best  
2 prepare for the end of the month to avoid the pattern of sending nearly all RNC emails to spam towards  
3 the end of the month. The RNC also suggested that Google hold a meeting with the RNC on its best  
4 practices (even though the RNC was already following them). Google did not provide a substantive  
5 response to the RNC’s end-of-month question but did start setting up a meeting in August to go over  
6 best practices.

7           89.       On July 25, the RNC contacted Google, as it was anticipating yet another *en masse*  
8 relegation of emails to Gmail users’ spam folders towards the end of the month:

9                   I just spoke with [a Google employee]. I am concerned as we approach the  
10 period of the month where we have consistently seen Google send us to  
spam that we have made no headway on identifying the issue.

11                   In speaking with [a Google employee], it was largely the same as we have  
12 heard (and debunked) in previous months, that there is a threshold of user  
spam complaints that we teeter on, and then somehow crossover at the same  
time each month.

13                   As we’ve discussed, we do not see this anywhere in the data, including in  
14 Google’s own Postmaster tools.

15                   Bottom line – should we expect Google to choose to block the RNC’s emails  
16 at end of month again this week?

17                   Please let us know what information we can provide to ensure that this  
18 month is not a repeat of previous months.

19           90.       Google acknowledged receipt of the RNC’s inquiry but did not provide any  
20 meaningful substantive response.

21           91.       On July 29, the RNC’s inboxing rate fell to nearly 0%. Yet on the days leading up to  
22 July 29, July 29 itself, and the days after, the RNC’s user reported spam rate was approximately 0.1%.

23           92.       That same day, the RNC contacted Google again. It stressed that it “ha[s] seen no data  
24 to indicate that volume could be the cause of this issue,” that “the end of month timing here is absurd,”  
25 and that the RNC’s “biggest priority is getting off that end of month cadence” because that period is  
critical to the RNC’s fundraising and community building.

26           93.       Google provided no meaningful substantive response to the RNC’s concerns.

27           94.       On August 11, Google came to the RNC to give a training on “Email Best Practices”  
28 to the RNC’s digital department. In the training, Google highlighted six “[c]ommon reasons links can

1 cause an email to be classified as spam”: (1) “[i]f the link details on spam content including asking for  
2 personal/confidential information of the user, or get rich scheme”; (2) “[i]f the link includes any  
3 phishing information that asks for usernames/passwords/social security numbers/credit card details”;  
4 (3) “[i]f the link has also been sent from accounts or IP addresses that have sent other spam messages”;  
5 (4) “[i]f the URL of the link doesn’t match the description of the link, it might be triggered as a phishing  
6 site”; (5) “[i]f the ‘from’ header is showing an incorrect name”; and (6) “[i]f the email/domain is  
7 unauthenticated.”

8 95. The training included a Q&A. Notably, Google in the meeting appeared to state that  
9 Google’s algorithm does not scan emails for political content; rather, it scans only for illegal or obvious  
10 indicators in the content that the email is unsolicited (*e.g.*, “get rich fast,” “free money fast,” and “asking  
11 for personal/confidential information of the user”). And according to Google, it has not generally seen  
12 political emails get flagged as spam for content.

13 96. Despite the RNC following Google’s best practices, the filtering reoccurred. On  
14 August 29, the RNC’s inboxing rate fell to nearly 0%. Yet on the days leading up to August 29, the  
15 RNC’s user reported spam rate was approximately 0.1%; then, on August 29, the rate was  
16 approximately 0.0%; and the days after, the rate was approximately 0.1%.

17 97. As the 2022 midterm elections drew closer, so too did the urgency with which the RNC  
18 needed to address its ongoing issues with Gmail inboxing.

19 98. From September 28 to October 2, the RNC’s inboxing rate fell to nearly 0%. Yet once  
20 again, the user reported spam rate was low before, during, and after the discriminatory filtering.

21 99. On September 29, over nine months after it first contacted Google to seek a solution,  
22 the RNC emailed Google stating:

23 Last night around 11pm we [experienced] spamming once again on Gmail,  
24 right during our EOQ period which are two of the most critical days of the  
25 year.

26 Beyond fundraising, we have key get out the vote emails today in PA, IL,  
27 and MI that are being suppressed as a result of this issue.

28 We have already flagged the headers via Google’s form, but what can we  
do in the immediate term to prevent this suppression. We’re 40 days out  
from Election Day, **we do not have any new transparency from Google**,  
and we need a resolution. Can Google mitigate this spamming immediately?

\*\*\*

1  
2 Further, we have also increased our overall volume significantly as we  
3 approach Election Day, which would theoretically change the time frame in  
4 which we hit this magical threshold... but of course, Google must suppress  
5 our emails the day before our FEC deadline, so that did not change.

6 Please let me know what we can do to resolve this unacceptable voter  
7 suppression issue today.

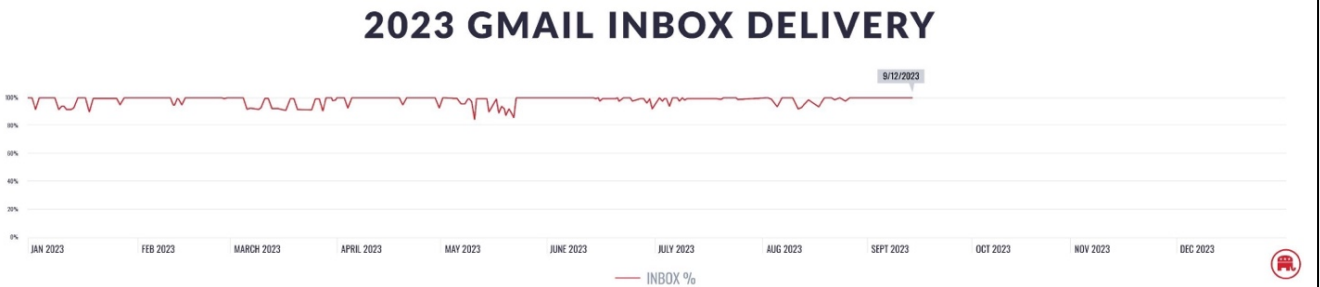
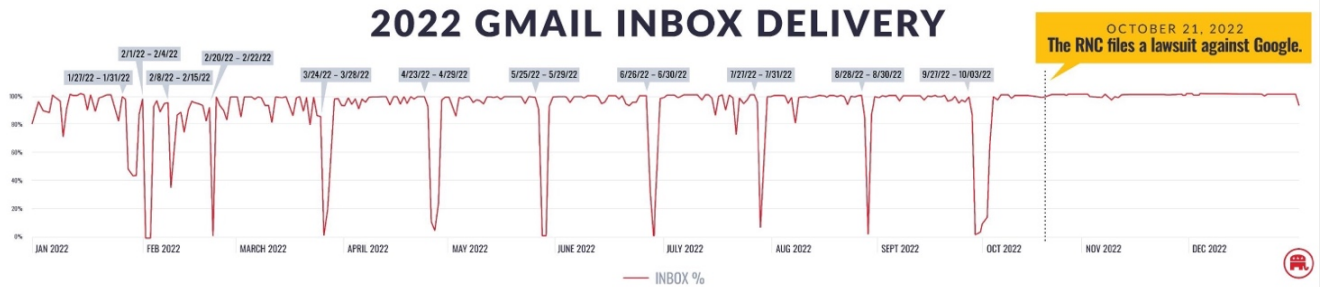
8  
9 100. The next day, September 30, Google responded that it would “be in touch.” The RNC  
10 followed up several times, including to ask if Google had “[a]ny insights or resolutions,” to stress that  
11 it was “still hitting spam” but has “continued to submit headers throughout the day” and to emphasize  
12 that the RNC was approaching its “FEC deadline and get out the vote emails for Virginia early voting  
13 and Minnesota absentee voting slated for” that day.

14 101. But Google never substantively responded. During the approximately three weeks  
15 between September 30 and October 21 (the date this suit was filed), the RNC heard nothing from  
16 Google.

17 102. After October 21, the RNC has not experienced any *en masse* relegation of RNC emails  
18 to the spam folder of Gmail users. In other words, the RNC has had a steady inboxing rate since filing  
19 this suit.

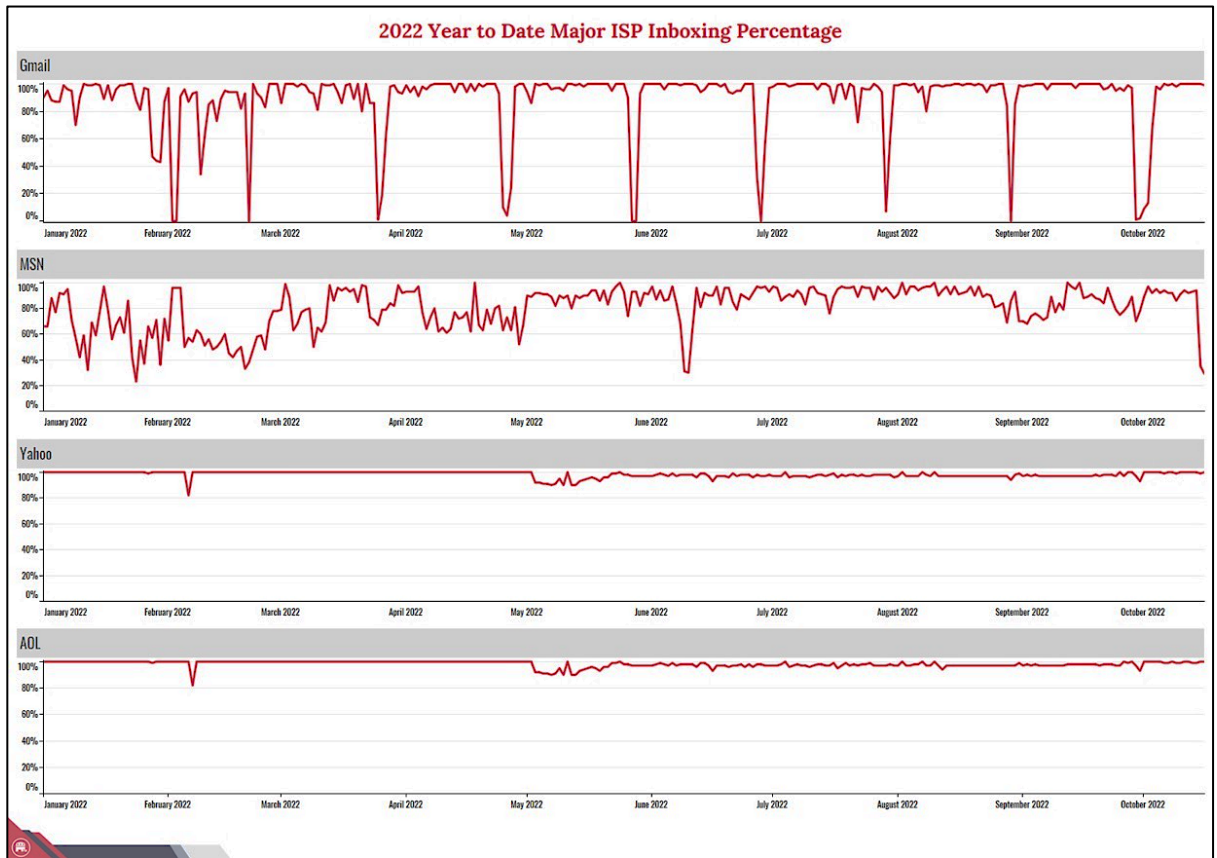
20 103. In sum, Google has repeatedly diverted the RNC’s essential communications to the  
21 financial supporters on which it relies and has done so in the most critical period in the election cycle.  
22 Specifically, Google diverted and concealed as “spam” nearly all of the RNC’s emails to Gmail users  
23 during the following periods: February 2 to 3, and 21; March 25 to 26; April 25 to 27; May 27 to 28;  
24 June 28; July 29; August 29; and September 28 through October 2. User reported spam did not correlate  
25 with these mass relegations. As the RNC pointed out to Google several times, the RNC’s user reported  
26 spam rate was incredibly low leading up to, during, and after these cyclical diversions. For example,  
27 the RNC’s spam rate before, during, and after the *en masse* filtering in May, June, July, and August  
28 were approximately either 0.1% or 0.0%.

1 104. Tellingly, since filing this suit, the RNC has not experienced any *en masse* relegation  
2 of emails to spam.



15 105. The RNC also tracks its inboxing rate for other popular email platforms, such as  
16 Yahoo! Mail and Microsoft’s Outlook Mail. Although those platforms have an identical interest to  
17 Google in limiting “spam” to their users, they did not conceal all (or nearly all) of the RNC’s emails  
18 from its supporters at any point. Indeed, the inboxing rates on these platforms did not reflect *any*  
19 dramatic cyclical decreases in inboxing rates, let alone to the rate of nearly 0%, that Google imposed  
20 on the RNC’s emails at the close of every month in 2022.

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106. Inboxing rates for these other email platforms have stayed the same since filing this suit.

107. Moreover, a recent study by researchers at North Carolina State University (N.C. State Study) found that Google’s Gmail labels significantly more campaign emails from Republican political candidates as spam than campaign emails from Democratic political candidates. Specifically, the study found that Gmail labeled only 8.2% of Democratic campaign emails as spam, compared with 67.6% of Republican campaign emails. This amounts to Gmail labeling Republican campaign emails as spam at more than eight times (8x) the rate of Democratic emails.<sup>5</sup>

108. Google is also aware of, and has responded to, a public study establishing that it is intercepting Republican organizations’ emails at eight times the rate of similarly situated Democratic

<sup>5</sup> Iqbal, et al., *A Peek into the Political Biases in Email Spam Filtering Algorithms During the US Election 2020 (Pre-Print Version)*, *Association for Computing Machinery: World Wide Web Conference*, (Mar. 31, 2022), <https://arxiv.org/pdf/2203.16743.pdf>; for full version, see <https://dl.acm.org/doi/10.1145/3485447.3512121>.

1 party groups.<sup>6</sup> And in response to the RNC’s repeated requests for an explanation and to cease its  
2 interference, Google has offered only a serial litany of false reasons before going silent.

3 109. With its other services, Google has also exhibited bias against individuals and entities  
4 that affiliate with the RNC or its viewpoints. For example, with its YouTube service, Google has been  
5 found to “remove[] or downgrade[]” content associated with conservative viewpoints and affiliated  
6 with the RNC, including Republican state officials’ content. *See generally, e.g., Missouri v. Biden*, ---  
7 F.4th ----, No. 23-30445, 2023 WL 6425697 (5th Cir. Oct. 3); *Missouri v. Biden*, 2023 WL 4335270,  
8 at \*59 (W.D. La. July 4) (“Louisiana’s Department of Justice, which encompasses the office of its  
9 Attorney General, faced direct censorship on YouTube [owned by Google] for sharing video footage  
10 wherein Louisianans criticized mask mandates and COVID-19 lockdown measures on August 18,  
11 2021.”); *id.* (“Similarly, during public meetings concerning proposed county-wide mask mandates held  
12 by St. Louis County, a political subdivision of Missouri, certain citizens openly expressed their  
13 opposition to mask mandates. However, YouTube censored the entire videos of four public meetings,  
14 removing the content because some citizens expressed the view that masks are ineffective.”); C.  
15 Siemaszko, *YouTube pulls Florida governor’s video, says his panel spread Covid-19 misinformation*,  
16 NBC News (Apr. 9, 2021), [perma.cc/WF5N-K8RY](https://www.nbcnews.com/tech/internet/youtube-pulls-florida-governor-video-says-his-panel-spread-covid-19-misinformation-rcna111111); J. Stossel, *The Media and Politicians Keep Trying*  
17 *To Censor Things That Turn Out To Be True*, Reason (Apr. 12, 2022), [perma.cc/LV7E-XA93](https://www.reason.com/story/youtube-censors-heritage-foundation-video-on-gender-dysphoria) (noting,  
18 *e.g.*, that “YouTube suspended Sen. Rand Paul (R–Ky.) for saying, ‘Most of the masks you get over  
19 the counter don’t work.’ But what they said is true. The Centers for Disease Control and Prevention  
20 updated its guidance to say cloth masks are not very effective. And now a big study failed to find  
21 evidence that wearing even good masks stops the spread of viruses.”); *YouTube Censors Heritage*  
22 *Foundation Video on Gender Dysphoria*, Heritage (June 19, 2020), [perma.cc/S63N-5YMS](https://www.heritage.org/tech/article/2020/06/youtube-censors-heritage-foundation-video-on-gender-dysphoria); *cf.*  
23 *Missouri v. Biden*, 2023 WL 4335270, at \*59 (“[A] Louisiana state legislator experienced censorship  
24 on Facebook when he posted content addressing the vaccination of children against COVID-19.”).

25 110. Google also has a history of telling its employees not to put in writing certain  
26 statements that might show an appearance of impropriety. *See, e.g.*, D. McCabe & C. Kang, ‘A

27 \_\_\_\_\_  
28 <sup>6</sup> *See supra*; M. Binder, *Gmail isn’t biased against Republicans. They’re just bad at sending emails.*, Mashable (May 11,  
2022), [perma.cc/AW99-6B4B](https://www.mashable.com/news/google/gmail-bias-republicans/).



1 *Monopolist Flexing’: U.S. Blasts Google’s Tactics as Antitrust Trial Opens*, N.Y. Times (Sept. 12,  
2 2023), [perma.cc/53QP-RVQJ](https://perma.cc/53QP-RVQJ); *cf.* T. Giles & D. Alba, *Googlers Told to Avoid Words Like ‘Share’ and*  
3 *‘Bundle,’ US Says*, Bloomberg (Sept. 14, 2023), [perma.cc/KDZ3-AN2R](https://perma.cc/KDZ3-AN2R).

4 111. Accordingly, the available evidence establishes that Google’s interception and  
5 diversion of the RNC’s emails, and the harm it is causing to the RNC, was intentional, deliberate, and  
6 in bad faith. Google was relegating RNC emails *en masse* to spam because it was the RNC sending  
7 them.

8 **III. The RNC is suffering ongoing and permanent harm by Google’s bad-faith spam filtering.**

9 112. Google’s conduct hindered the RNC’s ability to communicate with its constituents on  
10 important issues and impeded its community from learning about vital information on community  
11 outreach, getting out to vote, and the election and of taking advantage of those opportunities.

12 113. As a direct and proximate result of Googles’ conduct, the RNC has and continues to  
13 suffer cognizable damages amounting well over \$75,000.00. On information and belief, Google has  
14 caused hundreds of thousands of dollars, if not more, in damages to the RNC to date, and the long-term  
15 consequential losses likely total in the millions of dollars. This loss of funding has caused the permanent  
16 loss of opportunities for the RNC that those funds could have supported, in addition to harming its  
17 relationships with its supporters at a time when they are particularly attuned to politics and expect the  
18 RNC to be communicating with them.

19 **IV. Congress in 47 U.S.C. §230 did not condone platforms discriminating based on political**  
20 **affiliation or viewpoint.**

21 114. One critical legislation implicating the internet is 47 U.S.C. §230. Section 230 “was  
22 not meant to create a lawless no-man’s-land on the Internet.” *Fair Hous. Council of San Fernando*  
23 *Valley v. Roommates.com, LLC*, 521 F.3d 1157, 1164 (9th Cir. 2008) (en banc). It merely “provides  
24 internet platforms with limited legal protections.” *Henderson v. Source for Pub. Data, L.P.*, 53 F.4th  
25 110, 119 (4th Cir. 2022). And this limited protection does not bear “an expansive reading ... that would  
26 render unlawful conduct magically lawful when conducted online.” *HomeAway.com, Inc. v. City of*  
27 *Santa Monica*, 918 F.3d 676, 683 (9th Cir. 2019) (cleaned up).

28 115. Section 230 was an amendment to the Telecommunication Act of 1996, specifically

1 Title V, which is called the Communications Decency Act (CDA). Pub. L. 104-104, §509, 110 Stat.  
2 56, 56, 137-39; *Reno v. ACLU*, 521 U.S. 844, 857 (1997). In §230, Congress “tackled only one  
3 [problem]: the ease with which the Internet delivers indecent or offensive material, especially to  
4 minors.” *Force v. Facebook, Inc.*, 934 F.3d 53, 78 (2d Cir. 2019) (Katzmann, C.J., concurring in part  
5 and dissenting in part). And Congress did so by empowering ISPs “to self-regulate” certain offensive  
6 content and providing “tools for parents to regulate[] children’s access to inappropriate material.” *Id.*  
7 at 78-79; *see also Reno*, 521 U.S. at 858 n.24.

8 116. First, “history illustrates that in passing §230[,] Congress was focused squarely on  
9 protecting minors from offensive online material, and that it sought to do so by ‘empowering parents  
10 to determine the content of communications their children receive through interactive computer  
11 services.’” *Force*, 934 F.3d at 79-80 (quoting S. Rep. No. 104-230, at 194). Indeed, “every legislator  
12 who spoke substantively about §230 focused on freeing platforms to block material that was seen as  
13 not ‘family-friendly.’” A. Candebub & E. Volokh, *Interpreting 47 U.S.C. §230(c)(2)*, 1 J. Free Speech  
14 L. 175, 185 (2021); *see also* A. Candebub, *Reading Section 230 As Written*, 1 J. Free Speech L. 139,  
15 144-45 & n.19 (2021) (“In fact, the comments in the Congressional record from every supporting  
16 legislator—and it received strong bipartisan support—reveal an understanding that the Online Family  
17 Empowerment amendment, now codified as section 230, was a non-regulatory approach to protecting  
18 children from pornography and other material perceived to be harmful that the federal government  
19 *already* regulated.” (collecting congressional record sources)).

20 117. What history establishes, Congress’s enacted findings confirm. Congress found that  
21 its policy was to “maximize user control over what information is received by individuals, families,  
22 and schools,” “to remove disincentives for the development and utilization of blocking and filtering  
23 technologies that empower parents to restrict their children’s access to objectionable or inappropriate  
24 online material,” and “to ensure vigorous enforcement of Federal criminal laws to deter and punish  
25 trafficking in obscenity, stalking, and harassment by means of computer.” 47 U.S.C. §230(b)(3)-(5).

26 118. Second, Congress in §230 also sought to overrule *Stratton Oakmont, Inc. v. Prodigy*  
27 *Servs. Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24). *See* H.R. Rep. No. 104-458, at 194 (1996) (“One  
28 of the specific purposes of [§230] is to overrule *Stratton-Oakmont v. Prodigy* and any other similar

1 decisions which have treated such providers and users as publishers or speakers of content that is not  
 2 their own because they have restricted access to objectionable material.”); *see also, e.g., Malwarebytes,*  
 3 *Inc. v. Enigma Software Grp. USA, LLC*, 141 S. Ct. 13, 14-15 (2020) (statement of Thomas, J.) (same);  
 4 *NetChoice*, 49 F.4th at 467-68 (same); *Roommates.com*, 521 F.3d at 1170 (same). In *Stratton Oakmont*,  
 5 an early Internet company (Prodigy) was sued for failing to take down defamatory content posted by  
 6 an unidentified commenter on a message board. 1995 WL 323710, at \*1. Prodigy asserted that it merely  
 7 distributed the defamatory statement, even though the company had also held itself out as a family-  
 8 friendly service provider that moderated and took down offensive content. Indeed, Prodigy had  
 9 “content guidelines” prohibiting certain obscene and offensive conduct and also used an “automatic  
 10 software screening program” as well as manual review “to delete notes from its computer bulletin  
 11 boards that violated the guidelines. *Id.* at \*2, \*4. The court concluded that the company’s decision  
 12 “constitue[d] editorial control” over some content, “render[ing] it a publisher” even for content it  
 13 merely distributed. *Id.* at \*3-4. In other words, the court determined that Prodigy could be liable for  
 14 merely distributing the defamatory statement because it chose to police offensive and harassing content  
 15 from its platform.

16 119. Section 230(c) addresses *Stratton Oakmont* and provides:

17 (c) Protection for “Good Samaritan” blocking and screening of offensive  
 18 material

19 (1) Treatment of publisher or speaker

20 No provider or user of an interactive computer service shall be  
 21 treated as the publisher or speaker of any information provided by  
 22 another information content provider.

23 (2) Civil liability

24 No provider or user of an interactive computer service shall be  
 25 held liable on account of—

26 (A) any action voluntarily taken in good faith to restrict  
 27 access to or availability of material that the provider or  
 28 user considers to be obscene, lewd, lascivious, filthy,  
 29 excessively violent, harassing, or otherwise objectionable,  
 30 whether or not such material is constitutionally protected;  
 31 or

(B) any action taken to enable or make available to  
 information content providers or others the technical

1 means to restrict access to material described in  
2 [subparagraph (A)].

3 120. “These two subsections tackle, in overlapping fashion, the two jurisprudential moves  
4 of the *Stratton-Oakmont* court: first, that Prodigy’s decision to screen posts for offensiveness rendered  
5 it ‘a publisher rather than a distributor,’ and second, that by making good-faith efforts to remove  
6 offensive material Prodigy became liable for any actionable material it did *not* remove.” *Force*, 934  
7 F.3d at 79 (quoting *Stratton-Oakmont*, 1995 WL 323710, at \*4); *see also Malwarebytes*, 141 S. Ct. at  
8 14-15 (explaining how “§230(c) alters the *Stratton Oakmont* rule in two respects”). Put differently,  
9 “Congress sought to spare interactive computer services th[e] grim choice” that Prodigy faced “by  
10 allowing them to perform some editing on user-generated content without thereby becoming liable for  
11 all defamatory or otherwise unlawful messages that they didn’t edit or delete.” *Roommates.com*, 521  
12 F.3d at 1163.

13 121. Section 230(c)(1) provides that “[n]o provider or user of an interactive computer  
14 service shall be treated as the publisher or speaker of any information provided by another information  
15 content provider.” This provision remedied the blurring of publisher and distributor liability. It  
16 “prohibits treating an interactive computer service as a publisher or speaker of any information  
17 provided by a third party.” *Henderson*, 53 F.4th at 119. “A claim treats the defendant ‘as the publisher  
18 or speaker of any information’ when it (1) makes the defendant liable for publishing certain information  
19 to third parties, and (2) seeks to impose liability *based on that information’s improper content*.”  
20 *Henderson*, 53 F.4th at 120-21 (emphasis added). “Online platforms are thus immune from defamation  
21 liability for the content they host, unless they play a part in the ‘creation or development’ of that  
22 content.” *NetChoice*, 49 F.4th at 466 (quoting §230(f)(3)).

23 122. Section 230(c)(2) “clarifies that censoring limited categories of content does not  
24 remove the immunity conferred by §230(c)(1).” *NetChoice*, 49 F.4th at 468. It does so through two  
25 subparagraphs:

26 (2) Civil liability

27 No provider or user of an interactive computer service shall be  
held liable on account of—

28 (A) any action voluntarily taken in good faith to restrict

1 access to or availability of material that the provider or  
2 user considers to be obscene, lewd, lascivious, filthy,  
3 excessively violent, harassing, or otherwise objectionable,  
4 whether or not such material is constitutionally protected;  
5 or

6 (B) any action taken to enable or make available to  
7 information content providers or others the technical  
8 means to restrict access to material described in  
9 [subparagraph (A)].

10 123. As a general matter, subparagraph (A) protects good-faith censorship *by the platform*,  
11 while subparagraph (B) protects handing the censorship tools over to *users*. This division is consistent  
12 with Congress’s purpose of (A) permitting platforms to enforce in good faith its guidelines against  
13 certain content harmful to children and (B) empowering parents to use tools to protect children from  
14 obscene content.

15 124. Congress also specified the type of content it found permissible to censor—*i.e.*,  
16 “obscene, lewd, lascivious, filthy, excessively violent, harassing, or otherwise objectionable.” *Compare*  
17 §230(c)(2)(A) (stating the list), *with* §230(c)(2)(B) (“material described in [subparagraph (A)]”). Each  
18 listed category “refer[s] to speech that was regulated by the rest of the CDA, and indeed that had  
19 historically been seen by Congress as particularly regulable when distributed via electronic  
20 communications.” Candeub & Volokh, *supra*, at 176. It’s “clear” that “providers do not have unfettered  
21 discretion to declare online content ‘objectionable.’” *Enigma Software Grp. USA, LLC v.*  
22 *Malwarebytes, Inc.*, 946 F.3d 1040, 1047 (9th Cir. 2019); *see also NetChoice*, 49 F.4th at 468 & n.23.

23 125. The objectionable-materials clause, and thus §230(c)(2), “says nothing about  
24 viewpoint-based” or political-affiliation-based “censorship.” *NetChoice*, 49 F.4th at 468; *see also West*  
25 *v. Shea*, 500 F. Supp. 3d 1079, 1088 (C.D. Cal. 2020) (rejecting that “Congress intended CDA  
26 immunity to immunize viewpoint discrimination”). To the contrary, Congress found that “[t]he Internet  
27 and other interactive computer services offer a forum for a *true diversity of political discourse*, unique  
28 opportunities for cultural development, and myriad avenues for intellectual activity.” 47 U.S.C.  
§230(a)(3) (emphasis added). And “when Congress gave specific examples in §230(c)(2) of  
‘objectionable’ material that platforms could block with immunity, it offered examples of material that  
was objectionable for reasons unrelated to ‘political ... content.’” Candeub & Volokh, *supra*, at 185

1 (alteration in original). Other parts of the Telecommunication Act reinforce that sentiment. Section  
2 551(b)(1) provides that the Federal Communications Commission (FCC) must “[p]rescribe”  
3 “guidelines and recommend[] procedures for the identification and rating of video programming that  
4 contains sexual, violent, or other indecent material about which parents should be informed before it is  
5 displayed to children: Provided, That nothing in this paragraph shall be construed to authorize any  
6 rating of video programming *on the basis of its political or religious content.*” (Emphases added.) Taken  
7 together, §230(a)(3)’s “extolling the Internet as ‘offer[ing] a forum for a true diversity of political  
8 discourse’ is consistent with §551’s distinction between filtering of ‘sexual’ or ‘violent’ material  
9 (which Congress sought to encourage) and filtering of ‘political or religious content’ (as to which  
10 Congress expressly renounced an intent to encourage).” Candeub & Volokh, *supra*, at 185.

11 **COUNT 1<sup>7</sup>**  
**VIOLATION OF CALIFORNIA COMMON CARRIER LAW**  
12 **Cal. Civ. Code §2168 et seq.**

13 126. Plaintiff realleges all allegations made in paragraphs 1 through 125.

14 127. Under Cal. Civ. Code §2168, Google is a common carrier because it “offers to the  
15 public to carry ... messages” through its Gmail service.

16 128. As a common carrier, Google must as far as it is able “accept and carry” any email  
17 messages offered to it at a reasonable time and place. Cal. Civ. Code. §2169.

18 129. As a common carrier, Google is obligated to deliver messages without preference in  
19 time, price, or otherwise, in the order they are received. Cal. Civ. Code §§2170 and 2208.

20 130. Google violated Cal. Civ. Code §2169 by refusing to accept and carry email messages  
21 from the RNC to Gmail users’ inboxes in the final days of each month.

22 \_\_\_\_\_  
23 <sup>7</sup> The RNC preserves its claims that were dismissed without leave to amend, including the California state-law common-  
24 carrier claims (Counts I and VII), the California Unruh Civil Rights Act claim (Count II), the California state-law negligent-  
25 interference claim (Count V), and the federal common-carrier claim (Count VI). *See, e.g.*, Complaint (ECF 1) at 17-18 ¶¶59-  
26 74, 21-25 ¶¶91-114, No. 2:22-cv-01904 (E.D. Cal. Oct. 21, 2022); *Republican Nat’l Comm. v. Google, Inc.*, 2023 WL  
27 5487311, at \*20 (E.D. Cal. Aug. 24) (“IT IS HEREBY ORDERED that Defendant’s Motion to Dismiss is GRANTED with  
28 leave to amend to establish that section 230 does not apply to this action, and to amend Counts Three and Four.”). Under  
Ninth Circuit precedent, the RNC need not replead claims that were dismissed with prejudice and without leave to amend.  
*See, e.g., Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (“For claims dismissed with prejudice and without  
leave to amend, we will not require that they be repled in a subsequent amended complaint to preserve them for appeal.”);  
*Barnes v. Sea Hawaii Rafting, LLC*, 889 F.3d 517, 531 (9th Cir. 2018). The RNC includes these claims here in an abundance  
of caution to make clear it is not abandoning them and to preserve its rights to appeal. Moreover, the amendments are also  
appropriate for any 42 U.S.C. §230 defense to any claim.



1 131. Google violated Cal. Civ. Code §§2170 and 2208 by failing to deliver the RNC’s  
2 messages to users’ inboxes at the end of each month because they were being sent by the RNC.

3 132. Repeatedly, Google has unreasonably delayed or refused to carry the RNC’s messages  
4 to Gmail users’ inboxes during substantial periods at the end of each month and continues to do so.

5 133. The RNC has suffered damages, because its members who opted to receive  
6 communications via email service were prevented from participating in the RNC’s fundraising  
7 campaigns and other events. On information and belief, this likely resulted in well over \$75,000 in lost  
8 donations and has caused irreparable injury to the RNC’s reputation, goodwill, recruitment efforts,  
9 community outreach, and control over its communications. On information and belief, Google has  
10 caused hundreds of thousands of dollars, if not more, in damages to the RNC to date, and the long-term  
11 consequential losses likely total in the millions of dollars.

12 134. Under Cal. Civ. Code §2209, the RNC is entitled to recover from Google its actual  
13 damages, plus \$50, for the refusal and postponement of its messages.

14 **COUNT II**  
15 **UNRUH CIVIL RIGHTS ACT**  
16 **Cal. Civ. Code §51 et seq.**

17 135. Plaintiff realleges all allegations made in paragraphs 1 through 134.

18 136. The Unruh Civil Rights Act guarantees that all persons are entitled to “full and equal  
19 accommodations, advantages, facilities, privileges, or services in all business establishments of every  
20 kind whatsoever.” See Cal. Civ. Code §51. Any exclusionary policy that is based on “political  
21 affiliation,” “member[ship]” in a political organization, or “personal beliefs” is arbitrary discrimination  
22 proscribed by Unruh. *Marina Point, Ltd. v. Wolfson*, 30 Cal.3d 721, 726 (Cal. 1982) (“political  
23 affiliation”); *In re Cox*, 474 P.2d 992, 1000 (Cal. 1970) (“member[ship]”); *Harris v. Cap. Growth Invs.*  
*XIV*, 805 P.2d 873, 883 (Cal. 1991) (“personal beliefs”).

24 137. Google intentionally (or willfully) denied the RNC full and equal access to Gmail  
25 during critical end-of-month fundraising windows, when it refused to carry RNC emails to its users’  
26 inboxes.

27 138. Google has violated the Unruh Act by denying, or aiding or inciting the denial of, the  
28 RNC’s right to full and equal use of the advantages, facilities, privileges, or services Google offers to



1 the public.

2 139. This exclusionary policy was based on the political affiliation of the RNC, to which  
3 Google is antagonistic.

4 140. Google has intentionally discriminated against the RNC because of its political  
5 affiliation.

6 141. Plaintiff prays for judgment under Cal. Civ. Code §52, including issuance of an  
7 injunction, actual damages, statutory damages of at least \$4,000 “for each and every offense,” and  
8 attorney’s fees.

9  
10 **COUNT III**  
**UNFAIR COMPETITION LAW**  
**Cal. Bus. & Pro. Code §17200, et seq.**

11  
12 142. Plaintiff realleges all allegations made in paragraphs 1 through 141.

13 143. California’s Unfair Competition Law prohibits “any unlawful, unfair or fraudulent  
14 business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited  
15 by [California’s False Advertising Law].” Cal. Bus. & Prof. Code §17200. “Each of these three  
16 adjectives captures a separate and distinct theory of liability.” *Doe v. CVS Pharmacy, Inc.*, 982 F.3d  
17 1204, 1214 (9th Cir. 2020) (cleaned up). Google’s acts and practices violate this statute because they  
18 are unlawful and unfair.

19 144. First, Google’s conduct is unlawful because its business acts and practices violate other  
20 laws, including California’s common-carrier laws, the Unruh Act, and common-law prohibitions  
21 against negligence and interference with prospective economic relations.

22 145. Second, and independently, Google’s conduct is unfair. “Unfair” conduct is framed  
23 broadly “to enable judicial tribunals to deal with the innumerable new schemes which the fertility of  
24 man's invention would contrive.” *Cel-Tech Commc’ns, Inc. v. L.A. Cellular Tel. Co.*, 973 P.2d 527, 540  
25 (Cal. 1999) (cleaned up). A business practice may be unfair without being “proscribed by some other  
26 law.” *In re Adobe Sys., Inc. Privay Litig.*, 66 F. Supp. 3d 1197, 1226 (N.D. Cal. 2014) (citing *Korea*  
27 *Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 943 (Cal. 2003)); *see also In re Zoom Video*  
28 *Commc’ns Inc. Priv. Litig.*, 525 F. Supp. 3d 1017, 1047 (N.D. Cal. 2021). This standard is “intentionally

1 broad.” *Candelore v. Tinder, Inc.*, 228 Cal. Rptr. 3d 336, 351 (Ct. App. 2018) (cleaned up). California  
2 courts have stated three tests: (1) “whether the challenged conduct is tethered to any underlying  
3 constitutional, statutory or regulatory provision, or that it threatens an incipient violation of an antitrust  
4 law, or violates the policy or spirit of an antitrust law”; (2) “whether the practice is immoral, unethical,  
5 oppressive, unscrupulous or substantially injurious to consumers”; or (3) “whether the practice’s  
6 impact on the victim outweighs the reasons, justifications and motives of the alleged wrongdoer.” *Doe*,  
7 982 F.3d at 1214-15. Although Google need flunk only one test, it flunks all three.

8         146. For example, under the first test, “[p]laintiffs do not need to plead any direct violations  
9 of a statute. Instead, [p]laintiffs need merely to show that the effects of [Google]’s conduct are  
10 comparable to or the same as a violation of the law.” *Zoom*, 525 F. Supp. 3d at 1047 (cleaned up).  
11 Google’s conduct is at least “comparable” to violations of the other asserted laws. For example, the  
12 Unruh Civil Rights Act reflects the public policy that discrimination against personal characteristics by  
13 public accommodations is harmful and against the public interest. *See, e.g.*, Cal. Civ. Code §51(b) (“All  
14 persons within the jurisdiction of this state are free and equal, and no matter what their [personal  
15 characteristics] are entitled to the full and equal accommodations, advantages, facilities, privileges, or  
16 services in all business establishments of every kind whatsoever.”); *Harris v. Cap. Growth Invs. XIV*,  
17 52 Cal. 3d 1142, 1150 (1991) (“Enacted in 1959, the Unruh Act secures equal access to public  
18 accommodations and prohibits discrimination by business establishments.”). Even assuming Unruh  
19 does not prohibit political-affiliation discrimination, such discrimination is akin to the harm Unruh  
20 protects because such discrimination is based on a trait that is fundamental to a person’s identity,  
21 beliefs, core values, and self-definition. *See, e.g., Divino Grp. LLC v. Google LLC*, 2022 WL 4625076,  
22 at \*12 (N.D. Cal. Sept. 30) (finding “‘tethering’ test” met based on “alleged discriminatory conduct  
23 violates the policy concerns underlying [Unruh]”); *Nia v. Bank of Am., N.A.*, 603 F. Supp. 3d 894, 908  
24 (S.D. Cal. 2022) (concluding that “intentional discrimination ... amounts to immoral, unethical,  
25 oppressive, or unscrupulous conduct”); *Candelore*, 228 Cal. Rptr. 3d at 351 (“Further, in view of our  
26 conclusion that Tinder’s alleged discriminatory pricing model violates the public policy embodied in  
27 the Act, the UCL’s ‘unfair’ prong provides an independent basis for relief on the facts alleged.”).  
28 Indeed, many other States have barred such discrimination by private businesses because such

1 discrimination is comparable to other invidious discrimination. *See, e.g., Volokh, Bans on Political*  
2 *Discrimination, supra.*

3 147. And California’s common-carrier law reflects the public policy that messages should  
4 be delivered to and received by the designated recipient reasonably and without discrimination. *See,*  
5 *e.g., Huang v. The Bicycle Casino, Inc.,* 208 Cal. Rptr. 3d 591, 597-99 (Ct. App. 2016). So too with  
6 longstanding common-law doctrine. *See, e.g., NetChoice,* 49 F.4th at 471-73 (explaining that the  
7 “common law” supports nondiscrimination obligations for “communications firms” that “hold  
8 themselves out to serve the public without individualized bargaining, and are affected with a public  
9 interest”); *Biden v. Knight First Amend. Inst. at Columbia Univ.,* 141 S. Ct. 1220, 1222-23 (2021)  
10 (Thomas, J., concurring) (similar) (citing A. Candeub, *Bargaining for Free Speech: Common Carriage,*  
11 *Network Neutrality, and Section 230,* 22 Yale J. L. & Tech. 391, 398-403 (2020), and C. Burdick, *The*  
12 *Origin of the Peculiar Duties of Public Service Companies, Pt. 1,* 11 Colum. L. Rev. 514 (1911));  
13 *Candelore,* 228 Cal. Rptr. 3d at 350 (“Virtually any law or regulation—federal or state, statutory or  
14 common law—can serve as a predicate for an unlawful prong violation.” (cleaned up)). That is  
15 especially true for political communications near elections. *See, e.g., NetChoice,* 49 F.4th at 470-71.  
16 Regardless of whether California common-carrier law applies to emails, bad-faith delivering and  
17 receiving of emails is akin to the bad-faith delivery by telegraph and telephone companies. Like the  
18 telegraph and telephony (at least once was), email is an indispensable means of communication. The  
19 RNC relies on this crucial conduit to engage in its core mission of conducting political activity in  
20 support of the Republican Party. This includes communicating political messaging and important  
21 voting information to supporters, as well as maintaining relationships with individuals who financially  
22 support the RNC.

23 148. Moreover, California law states a policy of promoting free-speech principles and the  
24 marketplace of ideas, including neutrality on the internet. For example, the California constitution  
25 provides: “Every person may freely speak, write and publish his or her sentiments on all subjects, being  
26 responsible for the abuse of this right.” Cal. Const. art. I, §2. “The California Supreme Court has long  
27 recognized that this provision confers broader free speech rights than those provided by the First  
28 Amendment.” *hiQ Labs, Inc. v. LinkedIn Corp.,* 273 F. Supp. 3d 1099, 1115 (N.D. Cal. 2017) (citing

1 *Dailey v. Superior Court of City & Cty. of San Francisco*, 44 P. 458 (Cal. 1896)). “In particular, unlike  
2 the First Amendment, California’s provision is not limited to restraining state entities.” *hiQ Labs*, 273  
3 F. Supp. 3d at 1115 (citing *Robins v. Pruneyard Shopping Ctr.*, 592 P.2d 341 (Cal. 1979)). Further,  
4 California has clearly stated a public policy for net neutrality. *See* Cal. Civ. Code §3100 *et seq.* Bad-  
5 faith discrimination based on political affiliation by an ISP or ESP violates these principles.

6 149. Second, and for many of the same reasons as above, Google’s practice challenged here  
7 is “immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers.” *Doe*, 982  
8 F.3d at 1214 (cleaned up). Discrimination based on political affiliation or views is immoral, unethical,  
9 and unscrupulous. *See, e.g., Nia*, 603 F. Supp. 3d at 908 (concluding that “intentional discrimination  
10 ... amounts to immoral, unethical, oppressive, or unscrupulous conduct”); *Divino*, 2022 WL 4625076,  
11 at \*12; *Candelore*, 228 Cal. Rptr. 3d at 351. Further, discriminating based on the sender’s political  
12 affiliation or views is also substantially harmful to the recipient, as the receiver is trying to associate  
13 itself with the sender and receive the information about politics, among other things.

14 150. Bad-faith delivery of critical messages is also immoral, unethical, and unscrupulous.  
15 Moreover, the danger of permitting corporate interference in the communications of political  
16 organizations cannot be overstated. History reflects that negatively affecting political communications  
17 is harmful to the public, especially when the communication is through a crucial conduit (as is the case  
18 here).

19 151. Third, and for many of the same reasons as above, the harm caused by Google’s  
20 business practices to the RNC, its community, and the public far outweighs any “reasons, justifications  
21 [or] motives” Google could have for its conduct. *Doe*, 982 F.3d at 1215. Google has no legitimate  
22 reason to discriminate based on political affiliation or views. There is no “business interest”—  
23 especially not from the market-dominant communications firm—in systematically choking off one  
24 major national political party’s ability to communicate with the millions of Gmail users who requested  
25 the emails. It does not legitimately help business reputation or investment. Regardless of whether the  
26 RNC’s email is in the requestor’s inbox or spam folder, Google still gets full and timely payment for  
27 its services (*i.e.*, the user’s data, which Google uses to make money). Moreover, Google presents Gmail  
28 as an email service provider that delivers emails in a fair and good-faith manner in exchange for the

1 user's information, which Google uses or sells to third parties. And yet Google is preventing the RNC's  
2 messages from reaching its supporters' Gmail inboxes, even though the supporters requested the RNC's  
3 emails and actively engaged with RNC content recently. The RNC and its supporters are severely  
4 harmed when its messages are hidden in spam folders arbitrarily and in bad faith.

5 152. Google's actions in violation of Cal. Bus. & Prof. Code §17200 prevented its users  
6 from participating in the RNC's fundraising campaigns resulting in lost revenue to RNC. On  
7 information and belief, these immediately lost donations total well over \$75,000. On information and  
8 belief, Google has caused hundreds of thousands of dollars, if not more, in damages to the RNC to date,  
9 and the long-term consequential losses likely total in the millions of dollars. The RNC has suffered and  
10 will continue to suffer irreparable injury to its reputation, goodwill, recruitment efforts, community  
11 outreach, and control over its communications.

12 153. Plaintiff prays that Google's conduct be enjoined by this court under Cal. Bus. & Prof.  
13 Code §17203.

14 **COUNT IV**  
15 **INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC**  
16 **RELATIONS**

17 154. Plaintiff realleges the allegations made in paragraphs 1 through 153.

18 155. To state a claim for intentional interference with prospective economic relations, a  
19 plaintiff must show: (1) "the existence, between the plaintiff and some third party, of an economic  
20 relationship that contains the probability of future economic benefit to the plaintiff"; (2) "the  
21 defendant's knowledge of the relationship"; (3) "intentionally wrongful acts designed to disrupt the  
22 relationship"; (4) "actual disruption of the relationship"; and (5) "economic harm proximately caused  
23 by the defendant's action." *Roy Allan Slurry Seal, Inc. v. Am. Asphalt S., Inc.*, 388 P.3d 800, 803 (Cal.  
24 2017).

25 156. Under California law, the defendant's intentionally wrongful acts designed to disrupt  
26 the relationship need not be directed towards the plaintiff but may be "independently tortious only as  
27 to a third party." *Korea Supply Co. v. Lockheed Martin Corp.*, 63 P.3d 937, 956 (Cal. 2003) (quoting  
28 *Della Penna v. Toyota Motor Sales, USA, Inc.*, 902 P.2d 740, 761 (Cal. 1995)).

157. Here, the RNC has existing economic relationships with its financial supporters, which

1 entail a high probability of future economic benefit to the RNC in the form of repeat donations.

2 158. Among other reasons, Google’s conduct is independently wrongful to the extent that  
3 any asserted count (*e.g.*, Unruh, common carrier, UCL) states a claim. Google’s conduct is also  
4 independently wrongful because it violates established industry, trade or professional rules or  
5 standards, such as Google’s own terms of service and implied warranties. *See, e.g., Stevenson Real Est.*  
6 *Servs., Inc. v. CB Richard Ellis Real Est. Servs., Inc.*, 42 Cal. Rptr. 3d 235, 241-43 (Ct. App. 2006).

7 159. As alleged above, Google has actual knowledge of the RNC’s existing economic  
8 relationships with its financial supporters. The RNC has repeatedly informed Google of the economic  
9 value of these relationships, that the end-of-month and end-of-quarter periods are vital times in to  
10 communicate in these relationships, and that Google’s wrongful acts are causing significant harm to  
11 the relationships and resulting financial harm to the RNC.

12 160. Google offered the RNC a series of varying “explanations” as to how the RNC might  
13 prevent Google from intercepting the RNC’s emails and diverting them to Gmail users’ spam folders.  
14 The RNC addressed every one of Google’s proffered explanations. Still, despite the RNC’s diligent  
15 and targeted efforts following Google’s directions, Google intercepted and diverted to its users’ spam  
16 folders nearly all of the RNC’s emails towards the end of each month in 2022 leading up to this suit.  
17 Google stopped only after the RNC filed this suit. The complete absence of reasonable alternative  
18 explanations for why Google intercepted and diverted RNC emails *en masse* to spam indicates that  
19 Google engaged in intentionally wrongful acts designed to disrupt the existing economic relationship  
20 between the RNC and its donors.

21 161. As a direct and proximate result of Google’s intentional wrongful acts, there has been  
22 an actual disruption of the RNC’s existing economic relationship with supporters who are past, current,  
23 and future donors. Google repeatedly intercepting and diverting the RNC’s communications with its  
24 financial supporters, in fact caused (and continues to cause) a measurable decrease in their donations  
25 to the RNC.

26 162. Accordingly, Google is liable to the RNC for intentional interference with a prospective  
27 economic relationship. On information and belief, Google has caused hundreds of thousands of  
28 dollars, if not more, in damages to the RNC to date, and the long-term consequential losses likely total

1 in the millions of dollars.

2 163. The RNC prays for damages according to proof at trial under this claim, pursuant to Cal.  
3 Civ. Code §3333, and other applicable California laws, and for injunctive relief under Cal. Civ. Code  
4 §525 *et seq.*

5 **COUNT V**  
6 **NEGLIGENT INTERFERENCE WITH PROSPECTIVE ECONOMIC RELATIONS**

7 164. Plaintiff realleges the allegations made in paragraphs 1 through 163.

8 165. California law recognizes the tort of negligent interference with prospective economic  
9 relations. *J'Aire Corp. v. Gregory*, 598 P.2d 60, 63 (Cal. 1979).

10 166. A claim for negligent interference with prospective economic relations requires that the  
11 plaintiff establish: “(1) an economic relationship existed between the plaintiff and a third party which  
12 contained a reasonably probable future economic benefit or advantage to plaintiff; (2) the defendant  
13 knew of the existence of the relationship and was aware or should have been aware that if it did not act  
14 with due care its actions would interfere with this relationship and cause plaintiff to lose in whole or in  
15 part the probable future economic benefit or advantage of the relationship; (3) the defendant was  
16 negligent; and (4) such negligence caused damage to plaintiff in that the relationship was actually  
17 interfered with or disrupted and plaintiff lost in whole or in part the economic benefits or advantage  
18 reasonably expected from the relationship.” *N. Am. Chem. Co. v. Superior Ct.*, 69 Cal. Rptr. 2d 466,  
19 479 (Cal. App. 1997).

20 167. To establish negligence, “the plaintiff must show that the defendant had a duty to use  
21 due care, that he breached that duty, and that the breach was the proximate or legal cause of the resulting  
22 injury.” *Brown v. USA Taekwondo*, 483 P.3d 159, 164 (Cal. 2021) (internal quotation marks omitted).

23 168. In the context of a claim for negligent interference with prospective economic relations,  
24 California courts assess whether the defendant owed the plaintiff a duty by applying the six factors  
25 outlined in *Biakanja v. Irving*, 49 320 P.2d 16 (Cal. 1958). *See J'Aire*, 598 P.2d at 63. These factors  
26 include: “(1) the extent to which the transaction was intended to affect the plaintiff, (2) the  
27 foreseeability of harm to the plaintiff, (3) the degree of certainty that the plaintiff suffered injury, (4) the  
28 closeness of the connection between the defendant’s conduct and the injury suffered, (5) the moral  
blame attached to the defendant’s conduct, and (6) the policy of preventing future harm.” *Id.*



1           169. As stated above, the RNC is in existing economic relationships with supporters who are  
2 past, current, and future donors that subscribe to receive RNC emails, establishing a high probability  
3 of future economic benefit to the RNC in the form of repeat political donations.

4           170. As also stated above, Google knew of these existing economic relationships, as the RNC  
5 directly informed Defendant about them.

6           171. Further, Google owed the RNC a duty to not falsely or arbitrarily label the RNC's emails  
7 to its supporters as spam for several reasons: (1) Defendant Google's interception and diversion of the  
8 RNC's emails with Gmail users is necessarily a transaction intended to affect the RNC; (2) it is highly  
9 foreseeable that by engaging in such conduct, Defendant would cause harm to the RNC and in fact the  
10 RNC informed Google it was harming the RNC; (3) Defendant knew with a high degree of certainty  
11 that intercepting and diverting RNC emails to its supporters would harm to the RNC, if for no other  
12 reason than the RNC told Google that it harmed the RNC, and continues to do so; (4) Defendant's  
13 conduct is directly connected to the injury suffered by the RNC, namely, the loss of funds from RNC  
14 supporters because Defendant prevented them from receiving crucial RNC emails; (5) Defendant's  
15 interception and diversion of the RNC's emails is morally blameworthy because it baselessly and  
16 secretly suppresses the political speech and income of one major political party and Google has  
17 concealed its true purpose with months of false explanations; and (6) public policy strongly supports  
18 the prevention of Google's arbitrary and self-serving interference in the economic relationships of its  
19 users and groups like the RNC with which it is apparently antagonistic due to Google's dominance of  
20 the email market, the national interest in protecting freedom of political expression and association, the  
21 need for Americans to stay informed and provide financial support for candidates of their preferred  
22 political ideology, and the freedom of the American people to engage in the electoral process with and  
23 through political organizations free from corporate manipulation.

24           172. Defendant Google thus breached its duty to the RNC by intercepting and diverting to  
25 spam folders nearly all RNC emails to its supporters at the end of each month.

26           173. By breaching its duty, Defendant Google proximately caused substantial financial harm  
27 to the RNC in the form of cognizable lost donations. On information and belief, Google has caused  
28 hundreds of thousands of dollars, if not more, in damages to the RNC to date, and the long-term

1 consequential losses likely total in the millions of dollars.

2 174. The RNC prays for damages according to proof at trial under this claim, pursuant to Cal.  
3 Civ. Code §3333, and other applicable California laws, and for injunctive relief pursuant to Cal. Civ.  
4 Code §525 *et seq.*

5 **COUNT VI**  
6 **UNLAWFUL DISCRIMINATION**  
7 **47 U.S.C. §202**

8 175. Plaintiff realleges all allegations made in paragraphs 1 through 174.

9 176. The Telecommunications Act defines “common carrier” as “any person engaged as a  
10 common carrier for hire, in interstate or foreign communication by wire or radio or interstate or foreign  
11 radio transmission of energy, except where reference is made to common carriers not subject to this  
12 chapter; but a person engaged in radio broadcasting shall not, insofar as such person is so engaged, be  
13 deemed a common carrier.” 47 U.S.C. §153(11).

14 177. The Act subjects certain common carriers to various nondiscrimination obligations.  
15 *See, e.g.*, 47 U.S.C. §201(b).

16 178. Governing precedent requires courts to defer to the Federal Communications  
17 Commission’s reasonable classification of services. *See Howard v. Am. Online Inc.*, 208 F.3d 741, 752  
18 (9th Cir. 2000); *see also Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019) (explaining that lower  
19 courts are still bound by *National Cable & Telecomms. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967  
20 (2005)); *ACA Connects v. Bonta*, 24 F.4th 1233 (9th Cir. 2022).

21 179. The FCC does not classify email providers as common carriers subject to  
22 nondiscrimination obligations. The D.C. Circuit has upheld the classification as reasonable. *See*  
23 *Mozilla*, 940 F.3d at 18. The Ninth Circuit has adopted, if not strongly suggested, agreement with the  
24 D.C. Circuit’s conclusions. *See ACA Connects*, 24 F.4th at 1241 (“We are guided by the D.C. Circuit’s  
25 decision in *Mozilla* as to the scope of the FCC's regulatory and preemptive authority after the 2018  
26 reclassification.”).

27 180. The RNC brings this claim under 47 U.S.C. §§206 and 207. The RNC also  
28 acknowledges that this claim is foreclosed by binding precedent and is alleging it to preserve the issue  
for further review or intervening Supreme Court precedent.

**COUNT VII**  
**NEGLIGENCE**  
**Cal. Civ. Code §2162**

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2  
3 181. Plaintiff realleges the allegations made in paragraphs 1 through 180.

4 182. Google has a duty to the public to receive, to the extent of their capacity, all messages  
5 clearly and intelligibly written, and to transmit them upon reasonable terms. *C.f. Primrose v. Western*  
6 *Union Tel. Co.* 154 U.S. 1, 14 (1894) (holding that telegraph companies bore this same duty). In  
7 California, a carrier of messages for reward also has a statutory duty to “use great care and diligence in  
8 the transmission and delivery of messages.” Cal. Civ. Code §2162.

9 183. Google thus has a duty to receive emails sent by the RNC, and to transmit them to  
10 Gmail users’ inboxes upon reasonable terms.

11 184. Google also has a duty to transmit and deliver messages sent by the RNC to Gmail  
12 users with great care and diligence.

13 185. Google did not transmit the RNC’s emails to its users’ inboxes on reasonable terms,  
14 or exercise care and diligence in the transmission and delivery of the RNC’s emails to Gmail users  
15 because it has in bad faith, and for no accurate or reasonable reason it can explain, intercepted and  
16 diverted the RNC’s emails to Gmail users’ spam folders. Google’s political bias or hostility to the RNC  
17 is not a reasonable basis for refusing to transmit the emails to its users’ inbox and, in the alternative, its  
18 arbitrary or incompetent failure to deliver the RNC’s emails to Gmail users’ inboxes does not constitute  
19 great care and diligence.

20 186. As a result of Google’s breach of its duties, the RNC was unable to communicate with  
21 its financial supporters who were Gmail users during the most critical periods of fundraising. This  
22 prevented RNC financial supporters from learning about the RNC’s efforts and opportunities to support  
23 those efforts, and the RNC was harmed by not receiving donations it would have otherwise received.  
24 On information and belief, these immediately lost donations likely amount to hundreds of thousands of  
25 dollars, if not more, and the long-term consequential losses likely total in the millions of dollars.

26 187. The RNC prays for damages according to proof at trial under this claim, pursuant to  
27 Cal. Civ. Code §3333, and other applicable California laws, and for injunctive relief pursuant to Cal.  
28 Civ. Code §525 *et seq.*

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WHEREFORE, Plaintiff requests that judgment be entered against Defendant, ordering:

- (a) a decision that the policies and practices complained of are unlawful under state and federal law;
- (b) preliminary and permanent injunctive relief to remedy Google’s violations of state and federal law;
- (c) an award of actual, statutory, and exemplary damages to be paid by Google;
- (d) an award of reasonable attorneys’ fees and costs incurred in filing this action under Cal. Civ. Code §52 and other applicable laws;
- (e) an award of pre- and post-judgment interest; and
- (f) such further relief as the court deems appropriate.

1 Date: October 10, 2023

**DHILLON LAW GROUP INC.**

2 By: /s/ Harmeet K. Dhillon

3 Harmeet K. Dhillon

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5 Jeremiah D. Graham

6 Anthony J. Fusaro, Jr.

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20 (703) 243-9423

21 *Counsel for Plaintiff Republican National Committee*

22 **DEMAND FOR JURY TRIAL**

23 Under Rule 38 of the Federal Rules of Civil Procedure, Plaintiff demands trial by jury on all  
24 claims in this action of all issues so triable.

25 Date: October 10, 2023

**DHILLON LAW GROUP INC.**

26 By: /s/ Harmeet K. Dhillon

27 Harmeet K. Dhillon

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*Counsel for the Republican National Committee*



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**VERIFICATION ON FOLLOWING PAGE**




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**VERIFICATION**

I, Christian Schaeffer, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. §1746.

Date: October 10, 2023



Christian Schaeffer, on behalf of the  
REPUBLICAN NATIONAL COMMITTEE