

Federal Election Commission
1050 First Street, N.E.
Washington, DC 20463

Re: Comments in Opposition to Advisory Opinion Request 2022-14 re Google's Pilot Program to Permit Political Campaign Spam

Commissioners,

I'm writing in response to Google LLC's proposal to allow candidate committees, political party committees, and leadership political action committees to send unsolicited spam email without being subject to Gmail's spam filtering algorithm, as outlined in Allen & Overy's July 1, 2022 Advisory Opinion Request (2022-14).

Contrary to the assertions made by Allen & Overy partner Claire Rajan, Google LLC's proposed pilot program would in fact constitute making in-kind contributions to Republican campaigns and committees in two concrete ways.

1. It would directly undermine Democrats' adherence to best practices and significant investments in the opt-in status quo

Democrats have spent the past 20 years developing infrastructure and adhering to email deliverability best practices to build a [significant advantage](#) in small dollar online fundraising. These investments include but are not limited to:

- Maintaining extensive training programs on best practices for campaign staff who run email programs
- Developing a robust ecosystem of vendors, consultants and technology providers dedicated to growing opt-in email communities
- Investing tens of millions of dollars or more via campaign and committee expenditures in acquiring end-user opt-in permission to send bulk email communications

All of these investments were made in order to adhere to well-established best practices for email deliverability, including those specified by Gmail itself. In fact, Gmail's help center includes a page entitled "[Prevent mail to Gmail users from being blocked or sent to spam](#)," which specifies the following:

"Don't send messages to people who didn't sign up to get messages from you. These recipients might mark unwanted messages as spam. Future messages to these recipients will be marked as spam."

As a Gmail spokesperson [told Axios](#) in April in response to Republican complaints of bias in spam filtering, “Gmail users can move messages to spam, or to any other category. Gmail automatically adjusts the classifications of particular emails according to these user actions.”

In other words, to the extent that Republican campaign emails are disproportionately landing in Gmail spam folders, it is in large part due to the fact that Republican campaign emails are disproportionately sending unsolicited spam that recipients do not want to receive.

Changing the opt-in email status quo amounts to penalizing Democrats for making investments in following clearly-established best practices. It would give a distinct electoral advantage to Republican campaigns and committees who have ignored those same best practices for years to their own detriment.

2. It would reward Republicans' disingenuous claims of Big Tech bias and mimic their preferred policy

Google’s proposed pilot program is clearly in response to disingenuous Republican claims that Google and other Big Tech companies are biased against conservative causes. Following the release of an [academic paper](#) purporting to demonstrate such bias, Republican operatives orchestrated a public relations and advocacy effort designed to pressure Gmail to change its rules to allow campaigns to send unsolicited spam emails.

On March 31, researchers at North Carolina State University published a paper entitled “A Peek into the Political Biases in Email Spam Filtering Algorithms During US Election 2020.” The paper’s big takeaway was that “Gmail marked 59.3% more emails from the right candidates as spam compared to the left candidates, whereas Outlook and Yahoo marked 20.4% and 14.2% more emails from left candidates as spam compared to the right candidates, respectively.”

The deeply flawed study failed to account for the fact that Republican campaigns are [notorious for sending](#) scammy and deceptive emails to people who didn’t sign up to receive them, and that Republican campaigns frequently [fail to follow](#) basic email deliverability best practices, all but ensuring that they’re relegated to users’ spam folders—where they belong.

Regardless, Fox News and other right-wing media outlets pounced on the study as proof that Gmail was intentionally undermining Republican fundraising efforts. FoxNews.com alone published [no less than four](#) separate stories promoting the study within a 20-day period in April.

At the same time, Republicans escalated their response. First, they shared “research” exclusively with Fox News purporting to show that Gmail’s spam filtering algorithm cost Republican candidates an estimated \$2 billion in donations since 2019. Then on April 26, the Republican National Committee, National Republican Congressional Committee and National Republican Senatorial Committee filed a [joint complaint](#) formally requesting that the Commission investigate whether Gmail is censoring Republican political emails.

The very next day, on April 27, Sen. Josh Hawley [sent a letter](#) to Google CEO Sundar Pichai accusing the company of “dictating the outcomes of an election” and demanding answers to a series of conspiratorial questions.

Finally, on June 16, a group of Republican senators introduced the [Political BIAS Emails Act](#), which would, [according to one of the sponsors](#), “prohibit large email platforms like Google’s Gmail from using filtering algorithms on emails sent from a political campaign unless the owner or user of the email account took action to apply a label such as spam.”

To date, this legislation has been [cosponsored](#) by 28 Republican senators and zero Democratic senators.

The Commission should be fully aware that Google’s proposed pilot program is nearly identical in substance to this highly-partisan bill that is part of the Republican agenda and is not supported by a single elected official in the Democratic Party. Surely it’s not a coincidence that Google’s July 1 advisory opinion request was made just 15 days after the highly-partisan Political BIAS Emails Act was introduced in the U.S. Senate.

By implementing the proposed pilot program, which has been [described in the press](#) as “a sop to Republicans,” Google would be intentionally catering to the Republican agenda in response to a pressure campaign orchestrated by Republican operatives and politicians.

For both of the reasons outlined above, I respectfully submit that the Commission must conclude that Google LLC’s proposed pilot program would constitute an in-kind contribution to Republican campaigns and committees.

I would be happy to discuss my concerns with the Commission at your convenience.

Thank you for your consideration.

Respectfully,

Josh Nelson
CEO, Civic Shout
Co-Founder, The Juggernaut Project