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18 **UNITED STATES DISTRICT COURT**
19 **EASTERN DISTRICT OF CALIFORNIA**

20 REPUBLICAN NATIONAL
21 COMMITTEE,

22 Plaintiff,

23 v.

24 GOOGLE INC.

25 Defendant.
26
27
28

Case Number:

VERIFIED COMPLAINT FOR INJUNCTIVE
RELIEF, DECLARATORY JUDGMENT, AND
DAMAGES

INTRODUCTION

1
2 1. This case is about a market-dominant communications firm unlawfully discriminating
3 against the Republican National Committee (“RNC”) by throttling its email messages because of the
4 RNC’s political affiliation and views. Email is an indispensable means of communication to send
5 important information and to build communities. The RNC also relies on this crucial conduit as it
6 engages in its core mission of conducting political activity in support of the Republican Party. This
7 includes communicating political messaging and important Get-Out-The-Vote information to
8 supporters, as well as maintaining relationships with individuals who have and will continue to
9 financially support the RNC, so that the RNC can fund its political activities. To effectively reach
10 and grow its community, the RNC takes great pains to ensure that every email it sends is to someone
11 who requested it.

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

21 3. Throughout 2022, the RNC has engaged with Google month after month to obtain an
22 explanation and a solution. But every explanation has been refuted and every solution has failed.
23 Google continues to suppress the RNC’s emails, and now Google has fallen silent, refusing to discuss
24 the issue further. The only reasonable inference is that Google is intentionally sending critical RNC
25 emails to the spam folder because it’s the RNC sending them. Google’s discrimination has already
26 caused the RNC to lose valuable revenue in California and the rest of the country, and Google’s
27 conduct will continue to cost the RNC further revenue in the coming weeks as the 2022 midterm
28 election looms, and beyond. Perhaps worse, Google’s conduct has caused the RNC to lose its ability

1 to communicate voting information and other political messaging to its supporters during the critical
2 midterm elections. This harm is irreparable and must be stopped.

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

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

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

28 7. States took other measures to ban businesses from discriminating against the public.

1 States, for example, passed civil rights acts (also called public-accommodation provisions) barring
2 businesses from discriminating based on certain classes, including political affiliation and beliefs.
3 *See, e.g.*, Eugene Volokh, *Bans on Political Discrimination in Places of Public Accommodation and*
4 *Housing*, 15 N.Y.U. J.L. & Liberty 490 (2022). California again is one such state. *See* Cal. Civ. Code
5 §§51, 51.5; *see also, e.g.*, *Marina Point, Ltd. v. Wolfson*, 640 P.2d 115, 117 (Cal. 1982) (“political
6 affiliation”); *In re Cox*, 474 P.2d 992, 1000 (Cal. 1970) (“members of the John Birch Society, or who
7 belong to the American Civil Liberties Union”).

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

18 9. Although Google’s tools for discriminating might be more sophisticated than Western
19 Union’s, that doesn’t make it any less of a business in violation of the longstanding nondiscrimination
20 obligations states like California have enacted. Indeed, nondiscrimination provisions have repeatedly
21 been applied to technology more sophisticated than the telegraph. They’ve applied to the telephone.
22 *See, e.g.*, *Goldin v. Pub. Utilities Comm’n*, 592 P.2d 289, 304 (Cal. 1979). They’ve applied to internet
23 service providers. *See, e.g.*, Cal. Civ. Code §3101 *et seq.*; *ACA Connects v. Bonta*, 24 F.4th 1233 (9th
24 Cir. 2022) (detailing the history of net-neutrality rules). And they’ve applied to social media and other
25 websites. *See, e.g.*, *NetChoice*, 49 F.4th at 473-80, 493-94 (social media like Twitter, Facebook,
26 YouTube); *Candelore v. Tinder, Inc.*, 228 Cal. Rptr. 3d 336 (Ct. App. 2018) (dating application);
27 *White v. Square, Inc.*, 446 P.3d 276 (Cal. 2019) (finance website and application); *cf. State v. Google*
28 *LLC*, No. 21-CV-H-06-0274, 2022 WL 1818648 (Ohio Com. Pl. May 24, 2022) (Google’s search

1 engine). Email is not “the point where the underlying technology is ... so complicated that the
2 government may no longer regulate it to prevent invidious discrimination.” *NetChoice*, 49 F.4th at
3 479.

4 10. The court should thus make clear that California’s nondiscrimination provisions apply
5 to Google’s Gmail. Whether Google is categorized as a common carrier, public accommodation, or
6 a business providing a service, California law prohibits Google’s spam filtration of RNC emails based
7 on political affiliation and views. To conclude otherwise would mean that “email providers, mobile
8 phone companies, and banks could cancel the accounts of anyone who sends an email, makes a phone
9 call, or spends money in support of a disfavored political party, candidate, or business.” *Id.* at 445.

10 11. It is no answer to say, as Google surely will, that its spam filtering is not intentional.
11 The most reasonable inference is that it is intentional. Regardless, Google’s conduct is at the very
12 least negligent and unreasonable. And California law forbids that too. Common carrier law doesn’t
13 require intentional discrimination. Neither do common law claims like negligent interference with
14 prospective relations. Neither does California’s unfair practices law. In the end, Google has violated
15 the law, cost the RNC numerous donations and substantial revenue, and irreparably injured the RNC’s
16 relationship with its community.

17 12. The RNC therefore seeks an order of this court declaring unlawful and enjoining
18 Google’s diversion of the RNC’s communications to its supporters that use Google’s Gmail service,
19 and ordering all other appropriate remedies authorized by law, including compensatory, statutory,
20 and punitive damages and attorneys’ fees.

21 **PARTIES**

22 13. Plaintiff RNC is the national committee of the Republican Party as defined by 52
23 U.S.C. §30101(14). The RNC is incorporated in Washington D.C. and has its principal place of
24 business there. The RNC manages the business of the Republican Party throughout the United States
25 at the national level, including by: developing and promoting the party’s national platform; supporting
26 Republican candidates for public office at all levels of government; developing and implementing
27 electoral strategies; educating, assisting, and mobilizing voters; raising funds to support the party’s
28 operations and candidates; and recognizing and coordinating with the various territorial and state-

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