

117TH CONGRESS
2D SESSION

S. 4409

To prohibit providers of email services from using filtering algorithms to flag emails from political campaigns that consumers have elected to receive as spam.

IN THE SENATE OF THE UNITED STATES

JUNE 15, 2022

Mr. THUNE (for himself, Mr. McCONNELL, Mr. BARRASSO, Mr. BLUNT, Ms. ERNST, Mr. SCOTT of Florida, Mr. DAINES, Mr. COTTON, Mr. MARSHALL, Mr. CRAMER, Mr. CRAPO, Ms. LUMMIS, Mr. LANKFORD, Mr. RUBIO, Mrs. BLACKBURN, Mr. BOOZMAN, Mr. WICKER, Mr. HAWLEY, Mr. RISCH, Mrs. CAPITO, Mr. BRAUN, Mr. TUBERVILLE, Mr. MORAN, Mrs. FISCHER, Mr. SCOTT of South Carolina, Mr. GRASSLEY, and Mr. SULLIVAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit providers of email services from using filtering algorithms to flag emails from political campaigns that consumers have elected to receive as spam.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Political Bias In Algo-
5 rithm Sorting Emails Act of 2022” or the “Political BIAS
6 Emails Act of 2022”.

1 **SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-**
2 **LATING TO FILTERING POLITICAL EMAILS**
3 **THAT A CONSUMER HAS ELECTED TO RE-**
4 **CEIVE.**

5 (a) CONDUCT PROHIBITED.—

6 (1) IN GENERAL.—It shall be unlawful for an
7 operator of an email service to use a filtering algo-
8 rithm to apply a label to an email sent to an email
9 account from a political campaign unless the owner
10 or user of the account took action to apply such a
11 label.

12 (2) EFFECTIVE DATE.—The prohibition under
13 subsection (1) shall take effect on the date that is
14 3 months after the date of enactment of this Act.

15 (b) QUARTERLY TRANSPARENCY REPORT.—

16 (1) IN GENERAL.—Beginning with the first
17 year that begins on or after the date that is 120
18 days after the date of enactment of this Act, each
19 operator of an email service shall be required to
20 make publicly available, on a quarterly basis, a
21 transparency report that meets the requirements of
22 this subsection.

23 (2) CONTENT OF REPORT.—Each quarterly re-
24 port by an operator of an email service required
25 under this subsection shall include the following:

1 (A) The total number of instances during
2 the previous quarter in which emails from polit-
3 ical campaigns were flagged as spam.

4 (B) The number of instances during the
5 previous quarter in which emails from political
6 campaigns were flagged as spam by a filtering
7 algorithm without direction from the email ac-
8 count owner or user.

9 (C) The total number of instances during
10 the previous quarter when emails from political
11 campaigns of candidates belonging to the Re-
12 publican Party were flagged as spam.

13 (D) The percentage of emails during the
14 previous quarter of the year flagged as spam
15 from political campaigns of candidates belong-
16 ing to the Republican Party.

17 (E) The number of instances during the
18 previous quarter in which emails from political
19 campaigns of candidates belonging to the Re-
20 publican Party were flagged as spam by a fil-
21 tering algorithm without direction from the
22 email account owner or user.

23 (F) The percentage of emails during the
24 previous quarter of the year flagged as spam by
25 a filtering algorithm without direction from the

1 email account owner or user for emails from po-
2 litical campaigns of candidates belonging to the
3 Republican Party.

4 (G) The total number of instances during
5 the previous quarter when emails from political
6 campaigns of candidates belonging to the
7 Democratic Party were flagged as spam.

8 (H) The percentage of emails during the
9 previous quarter of the year flagged as spam
10 from political campaigns of candidates belong-
11 ing to the Democratic Party.

12 (I) The number of instances during the
13 previous quarter in which emails from political
14 campaigns of candidates belonging to the
15 Democratic Party were flagged as spam by a
16 filtering algorithm without direction from the
17 email account owner or user.

18 (J) The percentage of emails during the
19 previous quarter of the year flagged as spam by
20 a filtering algorithm without direction from the
21 email account owner or user for emails from po-
22 litical campaigns of candidates belonging to the
23 Democratic Party.

24 (K) A descriptive summary of the kinds of
25 tools, practices, actions, and techniques used by

1 an operator of an email service during the pre-
2 vious quarter in determining which emails from
3 political campaigns to flag as spam.

4 (3) PUBLICATION AND FORMAT.—The operator
5 of an email service shall publish each quarterly re-
6 port required under this subsection with an open li-
7 cense, in a machine-readable and open format, and
8 in a location that is easily accessible to consumers.

9 (c) DISCLOSURE FOR POLITICAL CAMPAIGNS.—

10 (1) IN GENERAL.—Beginning 3 months after
11 the date of the enactment of this Act, each operator
12 of an email service shall be required to disclose to
13 a political campaign, upon the request of the cam-
14 paign and subject to paragraph (3), a report that in-
15 cludes any of the information described in paragraph
16 (2) that is requested by the campaign.

17 (2) CONTENT OF THE DISCLOSURE.—The infor-
18 mation described in this paragraph is the following:

19 (A) The number of instances during the
20 previous quarter when emails from the political
21 campaign requesting the information were
22 flagged as spam.

23 (B) The percentage of emails sent from
24 the political campaign requesting the informa-

1 tion that were flagged as spam during the pre-
2 vious quarter.

3 (C) The number of instances during the
4 previous calendar quarter when emails from the
5 political campaign requesting the information
6 were flagged as spam by a filtering algorithm.

7 (D) The total number of emails sent from
8 the political campaign requesting the informa-
9 tion that reached the intended recipient's pri-
10 mary inbox.

11 (E) The percentage of emails sent from
12 the political campaign requesting the informa-
13 tion that reached the intended recipient's pri-
14 mary inbox.

15 (F) A descriptive summary as to why an
16 email from the political campaign requesting
17 the information did not reach the intended re-
18 cipient's primary inbox.

19 (3) FREQUENCY OF REQUESTS.—A political
20 campaign may not request that an operator of an
21 email service provide a report containing any of the
22 information described in paragraph (2) more than—

23 (A) once per week during election years;

24 (B) twice per month during non-election
25 years; and

1 (C) once a week in the 12 months pre-
2 ceding the date of a special election in which a
3 candidate associated with the political campaign
4 is seeking election.

5 (4) BEST PRACTICES.—An operator of an email
6 service shall provide to a political campaign, upon
7 request, best practices on steps the political cam-
8 paign should take to increase the number of emails
9 from the political campaign that reach the intended
10 recipient’s primary inbox.

11 (5) DEADLINE FOR PROVIDING DISCLOSURE TO
12 POLITICAL CAMPAIGNS.—An operator of an email
13 service that receives a request from a political cam-
14 paign for a disclosure report described in paragraph
15 (1) or best practices described in paragraph (4) shall
16 provide such report or best practices to the political
17 campaign not later than 4 days after the operator
18 receives the request.

19 (d) ENFORCEMENT BY THE FEDERAL TRADE COM-
20 MISSION.—

21 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of subsection (a), (b), or (c)
23 shall be treated as a violation of a rule defining an
24 unfair or a deceptive act or practice under section

1 18(a)(1)(B) of the Federal Trade Commission Act
2 (15 U.S.C. 57a(a)(1)(B)).

3 (2) POWERS OF COMMISSION.—

4 (A) IN GENERAL.—The Federal Trade
5 Commission shall enforce this section in the
6 same manner, by the same means, and with the
7 same jurisdiction, powers, and duties as though
8 all applicable terms and provisions of the Fed-
9 eral Trade Commission Act (15 U.S.C. 41 et
10 seq.) were incorporated into and made a part of
11 this section.

12 (B) PRIVILEGES AND IMMUNITIES.—Any
13 person who violates subsection (a) shall be sub-
14 ject to the penalties and entitled to the privi-
15 leges and immunities provided in the Federal
16 Trade Commission Act (15 U.S.C. 41 et seq.).

17 (C) AUTHORITY PRESERVED.—Nothing in
18 this section shall be construed to limit the au-
19 thority of the Federal Trade Commission under
20 any other provision of law.

21 **SEC. 3. DEFINITIONS.**

22 In this Act:

23 (1) FILTERING ALGORITHM.—The term “fil-
24 tering algorithm” means a computational process,
25 including one derived from algorithmic decision mak-

1 ing, machine learning, statistical analysis, or other
2 data processing or artificial intelligence techniques,
3 used by an email service to identify and filter emails
4 sent to an email account.

5 (2) OPERATOR.—

6 (A) IN GENERAL.—The term “operator”
7 means any person who operates an email serv-
8 ice and includes any person that wholly owns a
9 subsidiary entity that operates an email service.

10 (B) EXCLUSIONS.—Such term shall not in-
11 clude any person who operates an email service
12 if such service is wholly owned, controlled, and
13 operated by a person that—

14 (i) for the most recent 6-month pe-
15 riod, did not employ more than 500 em-
16 ployees; and

17 (ii) for the most recent 12-month pe-
18 riod, averaged less than \$5,000,000,000 in
19 annual gross receipts.

20 (3) POLITICAL CAMPAIGN.—The term “political
21 campaign” includes—

22 (A) an individual who is a candidate (as
23 such term is defined in section 301(2) of the
24 Federal Election Campaign Act of 1971 (52
25 U.S.C. 30101(2));

1 (B) an authorized committee (as such term
2 is defined in section 301(6) of such Act);

3 (C) a connected organization (as such term
4 is defined in section 301(7) of such Act);

5 (D) a national committee (as such term is
6 defined in section 301(15) of such Act);

7 (E) a State committee (as such term is de-
8 fined in section 301(15) of such Act); and

9 (F) a joint fundraising committee that in-
10 cludes any entity described in subparagraphs
11 (A) through (E).

○