S.L.C.

John Thune
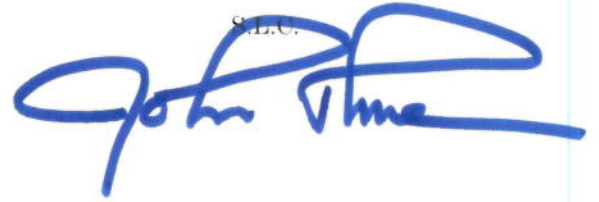
117TH CONGRESS
2D SESSION

S. _____

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

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, *+ Sullivan* Mrs. FISCHER, Mr. SCOTT of South Carolina, and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on _____

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".

SEC. 2. UNFAIR AND DECEPTIVE ACTS AND PRACTICES RE-LATING TO FILTERING POLITICAL EMAILS THAT A CONSUMER HAS ELECTED TO RECEIVE.

(a) CONDUCT PROHIBITED.—

(1) IN GENERAL.—It shall be unlawful for an operator of an email service to use a filtering algorithm to apply a label to an email sent to an email account from a political campaign unless the owner or user of the account took action to apply such a label.

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

(b) QUARTERLY TRANSPARENCY REPORT.—

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

(2) CONTENT OF REPORT.—Each quarterly report by an operator of an email service required 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

4

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 Democrat 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   Democrat 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).