

Before the
District of Columbia Office of Human Rights
441 4th Street NW, Suite 570N
Washington, DC 20001

JOHN F. BANZHAF III, Complainant

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v.

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GOOGLE, Respondent

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**COMPLAINT AND REQUEST FOR IMMEDIATE INVESTIGATION OF
UNLAWFUL DISCRIMINATION BASED UPON POLITICAL AFFILIATION
IN VIOLATION OF § 2-1402.11 Prohibitions AND § 2-1401.02 (25) Definitions**

By this formal legal complaint which meets all of the statutory and other requirements for a complaint and investigation, John F. Banzhaf III, a professor emeritus of law at the George Washington University [GWU] Law School, who has filed more than 100 successful complaints alleging discrimination on the basis of sex, race, national origin, age, and disability with the D.C. Office of Human Rights, charges and complains against GOOGLE, a “public accommodation” doing business in and having many other ties to the District of Columbia, that it has in the past and continues to discriminate against the Republican National Committee (RNC) on the illegal and prohibited basis of political affiliation.

Complainant makes these allegations upon information and belief, and based upon two lengthy documents which are **hereby incorporated in full by reference and included in this complaint**:

A 25-page complaint filed in the United States District Court for the Eastern District of California:

REPUBLICAN NATIONAL COMMITTEE v. GOOGLE INC. <https://bit.ly/3TKP9t7>

which is a verified complaint filed under oath and subject to penalties for perjury **AND**

A formal legal complaint filed with the Federal Election Commission [FEC] entitled
Illegal In-Kind Contributions Made by Google to Biden For President and Other Democrat Candidates <https://bit.ly/3z30IDS>

which includes, and is based in part upon, research by the North Carolina State University’s Department of Computer Science published new academic study, “**A Peek into the Political Biases in Email Spam Filtering Algorithms During US Election 2020.**”

In summary, the court complaint charges Respondent with:

throttling its email messages because of the RNC’s political affiliation and views . . . Google has relegated millions of RNC emails *en masse* to potential donors’ and supporters’ spam folders during pivotal points in election fundraising and community building.

The timing of Google’s most egregious filtering is particularly damning. For most of each month, nearly all of the RNC’s emails make it into users’ inboxes. At approximately the same time at the end of each month, Google sends to spam *nearly all* of the RNC’s emails. Critically, and suspiciously, this end of the month period is historically when the RNC’s fundraising can influence undecided donors.

It asserts that the study shows that GOOGLE “marked Republican emails as spam at more than an 820% higher rate than it marked emails from Democrat candidates”; far more than Outlook or Yahoo.

Complainant John F. Banzhaf III, in support of his complaint, alleges upon information and belief as follows:

THE COMPLAINANT, INCLUDING HIS HISTORY OF SIMILAR ACTIONS

Complainant John F. Banzhaf III is a professor emeritus of law at George Washington University. In this capacity he and/or his law students have filed numerous complaints with the Office of Human Rights alleging discrimination based upon sex, race, national origin, age, and disability.

As a result:

All of the dry cleaners engaged at the time in the practice of charging women more than men to launder shirts were required to sign settlement agreements with the Office agreeing to no longer discriminate on the basis of sex, even though they were able to prove that the higher prices were arguably justified because it often cost more to launder the shirts of smaller women.

All of the hair cutters engaged at the time in the practice of charging women more than men for the same simple basic haircut were required to sign settlement agreements with the Office agreeing to no longer discriminate on the basis of sex, even though they claimed that the higher price for women was justified because it took the respondents longer to cut the hair of women.

In a complaint which was brought by three GWU women, all bars, night clubs, and similar establishments engaged at the time in the practice of charging women less for drinks and/or admission, under a promotion known as “ladies nights,” were required to sign settlement agreements with the Office agreeing to no longer discriminate on the basis of sex. Here the respondents argued that the promotion benefitted women because they paid less, but also benefitted men because it attracted more women to the bar for the men to interact with. However, the desires of the women as well as those of the men did not justify sex discrimination, regardless of any alleged benefits.

Both the Cosmos Club and the Metropolitan Club, which previously had been all-male “men’s clubs,” were forced to sign settlement agreements with the Office agreeing to stop discriminating on the basis of sex or gender in selecting and admitting members, even though they argued that being forced to admit women would interfere with the comradery of the club, stifle free speech, and violate constitutional freedom of association.

In a proceeding known as Banzhaf and Schwartz v. Cosmos Club, the Office upheld Professor Banzhaf’s complaint that the Cosmos Club discriminated against women, and held in a written agency ruling that, pursuant to § 2-1403.04(a), Prof. Banzhaf was authorized to file complaints against *“any person or organization, whether or not an aggrieved party . . including a complaint of general discrimination, unrelated to a specific person of instance.”* In other words, the statute expressly authorizes him to file a complaint – in this instance of political affiliation discrimination against the RNC – even though he is not himself subject to the discrimination and/or even a member of a class subject to the discrimination.

Complainant Banzhaf has also been successful in other instances of discrimination – e.g., he filed the complaint which led to the first woman being admitted to formerly all-male state-supported military academies – as well as in other legal areas; see, e.g., <http://banzhaf.net/>

Prof Banzhaf’s legal complaints also were instrumental in obtaining special prosecutors to oversee investigations of former president Richard Nixon. He and his students put together the lawsuit which forced former vice president Spiro T. Agnew to return the money he took in bribes.

More recently, the formal legal complaint which Banzhaf filed triggered the current grand jury criminal investigation of former president Donald Trump and several associates for allegedly illegally trying to interfere in Fulton County, Georgia, with the presidential investigation.

THE RESPONDENT

Respondent, GOOGLE Inc, has its primary address at 1600 Amphitheatre Parkway, Mountain View, CA 94043. It is a very large corporation which provides many valuable services - including providing email and associated email filtering services - to thousands of individuals, businesses, NGOs, and governmental organizations in the District of Columbia. Because it provides such services, it is subject to the Human Rights Act, and falls within the jurisdiction of the Office of Human Rights.

§ 2–1401.02. (24) Definitions provides that

“Place of public accommodation” means any person or place that **provides**, to a person **in the District**, access to an accommodation, **service**, or good, **whether or not** that person or place **maintains a physical location** in the District or **charges for those goods or services . . .**, [emphasis added]

Because it provides a “service,” Respondent is a place of public accommodation, even if there are no “charges for those . . . services.”

However, Respondent also provides advertising and similar services for a charge, and also reportedly maintains a massive and expensive physical lobbying presence in the District.

THE CHARGE AND APPLICABLE LAW

§ 2–1402.01. General provides that

Every individual shall have an **equal opportunity** to participate fully in the economic, cultural and intellectual life of the District and to have an **equal opportunity** to participate **in all aspects of life**, including, but not limited to . . ., in places of **public accommodation** [emphasis added]

In addition, **Part D. Public Accommodations. § 2–1402.31. Prohibitions** provides that:

(a) General. — It shall be an **unlawful discriminatory practice** to do any of the following acts, wholly or partially for a discriminatory reason based on the actual or perceived: . . . **political affiliation . . .**

of any individual:

(1) To deny, directly or indirectly, any person the **full and equal enjoyment** of the goods, services, facilities, privileges, advantages . . . of any place of public accommodations [emphasis added]

It seems all too clear that the RNC is being denied the “full and equal enjoyment” of Respondent’s services because, in handling and delivering the RNC’s emails, it allegedly discriminates against the RNC on the basis of its political affiliation - according to the attached documents incorporated in full in this complaint by reference.

§ 2-1401.02. (25) Definitions provides that:

“Political affiliation” means the state of belonging to or endorsing any political party.

Moreover, the Office of Human Rights has amplified upon that definition as follows:

A. What does “political affiliation” mean and in what context is this protected trait covered?

Meaning: POLITICAL AFFILIATION means the state of belonging to or endorsing a political party. See D.C. Code § 2-1401.02(25). Political party, in turn, means a national political party, a State political party, or an affiliated organization that is regulated by the District.¹ A political party is not a special interest group that may have a political message.

Examples of a political party include:

- The Republican Party
- The Democratic Party
- The Green Party
- The Libertarian Party
- The Constitution Party...

Coverage: POLITICAL AFFILIATION is a protected trait in the DC Human Rights Act and is applicable to all four areas of OHR’s enforcement: (1) employment, (2) public accommodations, (3) housing, and (4) educational institutions.

So, beyond any doubt, discrimination against the RNC constitutes discrimination based upon political affiliation.

TYPE OF DISCRIMINATION

The RNC, in the two documents which are attached and hereby incorporated in and made a part of this complaint, presents compelling evidence that the illegal discrimination in the handling of the RNC's email, based upon the criteria or factor of political affiliation, is intentional.

Indeed, in the letter complaint which is incorporated by reference, the RNC claims that because the political affiliation discrimination is intentional, it actually constitutes **Illegal In-Kind Contributions Made by Google to Biden For President and Other Democrat Candidates**

But even assuming for the sake of argument that the discrimination based upon political affiliation is not intentional, but rather is either negligent (e.g., careless in the design of the system so that it discriminates) or even non-negligent (e.g. a totally unexpected result of the system's design), it nevertheless constitutes an illegal violation of the D.C. Human Rights Act.

§ 2-1402.68. Effects provides that:

Any practice which has the **effect or consequence** of violating any of the provisions of this chapter shall be **deemed** to be an **unlawful discriminatory practice**.
[emphasis added]

So regardless of whether or not the discrimination is intentional - or only negligent or totally unintentional - the effect or consequence is unlawful discrimination based upon political affiliation.

In this regard, it is important to note that no complainant (e.g. Banzhaf or the RNC) is required to identify - much less to prove by any standard of evidence or proof - whether the discrimination was the result of deliberate intent, carelessness, or a completely unexpected result of the programming and/or system design.

Moreover, the Office of Human Rights is itself not required to investigate and/or to determine whether the discrimination on the basis of political affiliation was intentional, negligent, or totally unexpected.

Instead, to take action under its statute, the Office need not discover or otherwise determine the specific underlying cause of the discrimination. On the contrary, it need only find, based upon this extensive proof, that such discrimination is in fact occurring.

Here, the decision in **Davis v. District of Columbia**, (D.C. Cir. June 7, 2019), although it involves a different statute, nevertheless is illustrative. [Words below in italics are from the decision]

*The D.C. Circuit holds (2-1) that a group of fired social workers (SWAs) and social service assistants (SSAs) had - contrary to the district court's ruling - **sufficiently identified a "particular employment practice" susceptible to challenge** for its adverse racial impact under Title VII, 42 U.S.C. § 2000e-2(k)(1)(A)(I). [emphasis added]*

Here the instant complaint has identified the practice, and the clear result of that practice.

*Forty-seven plaintiffs filed suit alleging that their agency, the District of Columbia Child and Family Services Agency, selected categories of employees for a **reduction-in-force (RIF)** that were **heavily staffed by Black employees**. Due to a budget shortfall, the agency eliminated 115 positions. The plaintiffs alleged that "[a]t an agency that was 73.4 percent African American, 93 percent (107 out of 115) of the RIF victims were Black. [emphasis added]*

*By defendant's own account, the "Agency **'did not utilize a single uniform criteria, test or requirement'** in determining which positions would be eliminated, but rather 'realign[ed] functions and implement[ed] new service models,' as well as made **"multiple individual decisions . . .** [emphasis added]*

In other words, in **Davis** it appears that the discrimination was neither intentional nor even negligent, but rather the unintended cumulative result of various different decisions, perhaps even decisions made by different people at different times. Nevertheless, the net effect was illegal discrimination.

Although the District Court had dismissed this reduction-in-force disparate impact claim, the Court of Appeals reversed:

*The panel majority notes that "this is the first time this court has been asked whether a RIF or, more precisely, **the practices through which an employer implements a RIF**, are subject to disparate-impact review under Title VII." [emphasis added]*

*This was **quite enough to meet their burden** under 42 U.S.C. § 2000e-2(k)(1)(A)(I). "To the extent that a completed RIF is an identified event comprising selection and termination of a rash of employees, it is a far cry from the challenges to bottomline 'racial imbalance in the work force' that precedent and our colleague eschew." [emphasis added]*

SUMMARY AND CONCLUSION

Complainant, based upon the documents which are included within this complaint by reference, has provided more than enough evidence that the Respondent does discriminate on the basis of political affiliation in the clear violation of the D.C. Human Rights Act - or, at the very least, enough evidence to provide probable cause for a further followup investigation by the Office of Human Rights.

Although all complaints and all investigations by the Office may arguably be important, at least to the parties involved, these allegation are even more important because the discrimination may well have an impact on elections. In other words, this arguably is an attempt to illegally affect elections.

Even if the various emails were only “throttled” to recipients within the District, the effect could still be profound and very important because so many influential people receive their emails in the District. This, by itself, would be more than enough reason for the Office to immediately began a thorough investigation, and to take all necessary and appropriate steps based upon the outcome.

However, since the practice appears to be affecting million of political emails from coast to coast, the decision by the Office - to investigate a formal and valid legal complaint, or to refuse to do so for whatever reason - could have profound effects on many different elections.

Complainant thanks the Office for its past cooperation in his efforts to fight illegal discrimination, and would be willing to cooperate fully with the Office in resolving this new complaint.

Respectfully submitted, verified, and signed by the Complainant under penalty of perjury,
this 23th day of October, 2022

/s/

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