

D. Mark Renaud
202.719.7405
mrenaud@wiley.law



Wiley Rein LLP
1776 K Street NW
Washington, DC 20006
Tel: 202.719.7000

wiley.law

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VIA E-MAIL (CELA@FEC.GOV)
CONFIDENTIAL

Mr. Jeff S. Jordan
Attn: Trace Keeys, Paralegal
Office of Complaints Examination and Legal Administration
Federal Election Commission
1050 First Street, NE
Washington, DC 20463

Re: MUR 7834; Response of Google LLC

Dear Mr. Jordan,

On behalf of our client Google LLC (“Google”), we respond to the Complaint filed by Americans for Legal Immigration PAC (“ALIPAC” or “Complainant”) in the above-referenced matter.

The Complaint alleges Google violated the Federal Election Campaign Act of 1971, as amended (the “Act”), by making certain prohibited in-kind corporate contributions. The Complaint, however, fails to describe any activities that actually amount to a contribution.

Specifically, the Complaint alleges that Google made a contribution to Democratic political committees when ALIPAC’s website and YouTube channel experienced changes in rankings in search results and when various actions were taken to its YouTube channel. The Complaint speculates that political bias was the reason for these changes and actions and, more broadly, plays a part in how Google’s products function and how it enforces its terms of service and policies. However, political bias plays no part in how Google’s products function or how it enforces its policies.

Indeed, Google’s products are built for everyone without regard to politics or political viewpoint. As Google’s CEO Sundar Pichai has testified before Congress, “We approach our work without political bias, full stop. To do otherwise would be contrary to both our business interests and our mission, which compels us to make information accessible to every type of person, no matter where they live or what they believe.”¹

More fundamentally, the Complaint fails to recognize that the alleged actions—to the extent they occurred as described—are nothing more than bona fide commercial activities that

¹ Sundar Pichai’s testimony before the Senate Commerce Committee (Oct. 28, 2020), at <https://blog.google/outreach-initiatives/public-policy/sundar-pichai-testimony-senate-commerce-committee/>; see also, e.g., Shirin Ghaffary and Kurt Wagner, Google CEO Sundar Pichai’s testimony to Congress today, Vox.Com (Dec. 11, 2018), at <https://www.vox.com/2018/12/11/18134984/live-google-ceo-congress-hearing-china-testimony-house-judiciary-committee-censored-search> (quoting Pichai as saying, “I lead this company without political bias and work to ensure that our products continue to operate that way . . . To do otherwise would be against our core principles and our business interests.”).

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Google undertakes countless times per day in the interests of its users and customers. The Commission has concluded on numerous occasions that bona fide commercial activities are not contributions, regardless of the Complaint's speculations that political bias motivated those activities. What's more, when the Complaint alleges political bias, it appears to mean bias with respect to content about *issues*—specifically, ALIPAC's views on immigration. Activities merely with respect to issues fall outside of the Act's ambit altogether.

Furthermore, the Complaint does not allege that Google coordinated any of its bona fide commercial activities with any candidate or political party. This makes sense—Google does not engage in prohibited coordination with political actors, and independent activities cannot qualify as contributions.

For these reasons and others discussed below, the Complaint not only is based on mere speculation, but it also fails to describe any violation of the Act. Therefore, the Commission should find no reason to believe (“RTB”) that Google violated the Act in any manner.

BACKGROUND

I. The Complaint

ALIPAC is an FEC-registered political committee. Its Complaint alleges Google made “corporate in-kind contributions” to the Democratic Party, “Joe Biden for President,” and other unspecified “Democratic campaigns for public office.” According to the Complaint, these contributions were in the form of Google’s “political [*sic*] bias and skullduggery” against “Republicans, conservatives, Christians, and other individuals and groups who oppose the shared political philosophies of [Google] and the vast majority of [its] employees.”

With respect to ALIPAC specifically, the Complaint alleges:

- Google “cut website traffic to [ALIPAC’s] website” and its YouTube videos;
- ALIPAC’s website has diminished in prominence in Google Search results for searches for “illegal immigration”;
- Google “allowed someone at their company to hack and destroy [ALIPAC’s] You[T]ube channel”; and
- Google “demonetized” ALIPAC’s YouTube channel, removed and “censored” its YouTube videos, and blocked ALIPAC from placing ads or being able to livestream on YouTube.

Without providing any factual basis, the Complainant declares itself “certain that if our PAC supported Google’s political agenda on immigration matters, these problems would not be present.”

More generally, the Complaint cites to 148 (by its count) URLs of webpages that purport to demonstrate how Google has an “*indirect* impact” (emphasis added) by “censoring, suppressing, and abusing [] opponents of the political left in America.”

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II. Background on Google

Google is a commercial company with a mission to organize the world's information and make it universally accessible and useful. More than one billion users across the world trust Google's products to deliver the most helpful and reliable information available on the web. Google's products include, among others, its internet search engine ("Search") and YouTube internet video streaming website/digital device app. Both of these products are discussed in more detail below. Paid advertising and other sponsored content on these product platforms, in large part, make it possible for Google to provide both of these products for anyone to use for free.

Google operates, and its products function, in a completely apolitical manner. For example, Search and YouTube display content from, and sell advertising to, billions of users, including among them political users of all forms and beliefs. Google's products and services are offered on the same terms to any user, regardless of belief or affiliation.

To protect and enhance the user experience for each product and service that Google offers, Google tailors its generally applicable policies to distinguish between providing access to a diversity of voices and limiting harmful content and behaviors—such as policies against hate speech or material that is excessively violent, unlawful, deceptive, or obscene.² Google also has generally applicable policies and procedures for users and advertisers to remediate policy violations or to appeal actions that Google has taken for policy violations.³ Google's generally applicable terms of service⁴ further provide that Google reserves the right to take down any content that it reasonably believes breaches its terms of service, violates applicable law, or could harm its users, third parties, or Google. Google's terms of service, policies, and procedures apply equally to every user and advertiser.

Google enforces its policies in an impartial manner using a mix of automated and manual efforts. To understand the full context and scale of Google's policy enforcement: In 2019, Google blocked and removed approximately 2.7 billion ads—more than 5,000 ads per minute—for policy violations. Relatedly, it suspended nearly 1 million advertiser accounts for policy violations. On the publisher side, Google terminated more than 1.2 million accounts and removed ads from more than 21 million web pages that are part of its publisher network for policy violations.⁵ While YouTube is discussed more below, we note here that more than 9.3

² These publicly available policies include Advertising Policies (<https://support.google.com/adspolicy/answer/6015406>), Publisher Policies (<https://support.google.com/adsense/answer/9335564>), and YouTube Community Guidelines (<https://support.google.com/youtube/answer/9288567>).

³ See Reconsideration requests (<https://support.google.com/webmasters/answer/35843>), Disapprovals and suspensions (<https://support.google.com/adspolicy/topic/1308266>), Policy enforcements (<https://support.google.com/adsense/answer/7003627>), and Appeal Community Guidelines actions (<https://support.google.com/youtube/answer/185111>).

⁴ <https://policies.google.com/terms>. These terms of service also describe how users can appeal suspensions or terminations of their Google accounts.

⁵ Google's efforts to protect users from bad ads are described in more detail at: <https://blog.google/products/ads/stopping-bad-ads-to-protect-users>.

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million videos and more than 2 million channels were removed from YouTube for violating YouTube's Community Guidelines in the fourth quarter of 2020 alone.⁶

A) Search

Google's Search product displays results from users' searches based on an algorithm. The algorithm ranks pages (i.e., determining the order in which search results appear) to provide the most useful and relevant information. It does so by matching search terms against available web pages and looking at factors like the number of times the search terms appear on the page and page freshness.

In addition to content, Google's Search algorithm analyzes signals from pages regarding whether, for example, the site appears correctly in different browsers, whether it is designed for all device types and sizes, and the page's load speed. These technical factors also can impact a page's rank in Search.

Google also seeks to ensure that Search results are providing the most authoritative and responsive results by using external quality raters who are recruited from across the United States without regard to political orientation. The publicly available Search quality rater guidelines⁷ make it clear that ratings should never be based on personal opinions, preferences, religious beliefs, or political views. No individual rater can influence the ranking of a page. Instead, Google uses human raters to evaluate the effectiveness of its algorithms.

Content on the internet constantly changes, and Google continuously improves its systems to ensure that it always provides relevant and helpful information. Because of this, the position of any given website or webpage in Search results can change at any time.

Google also releases core updates to Search several times per year. These updates are designed to ensure that, overall, Google is delivering on its mission to present relevant and authoritative content to searchers. Core updates do not target specific pages or sites. After a core update, some pages may perform less well, while others may do better. Any changes are not site-specific, nor do they reflect any type of specific action against sites or pages.

Google does not manually intervene in any particular Search result. Content is removed from organic Search results only in very limited circumstances, such as a court order, valid Digital Millennium Copyright Act takedown notice, or violation of Google's webspam policies.

In short, there are many factors that impact the ranking of webpages in Google Search. There is a whole discipline known as "search engine optimization" ("SEO") that focuses on improving webpage rankings. However, political affiliation, viewpoint, and ideology simply are not factors in determining how pages rank in Google Search.

⁶ Efforts to enforce YouTube's Community Guidelines are described in more detail at: <https://transparencyreport.google.com/youtube-policy/removals>.

⁷ <https://static.googleusercontent.com/media/guidelines.raterhub.com/en//searchqualityevaluatorguidelines.pdf>

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B) YouTube

YouTube is Google's video streaming website/digital device app that allows users to upload and view videos. Users may search for content and also receive content recommendations.

YouTube prioritizes three main elements to provide the best results for user content searches: relevance, engagement, and quality. To estimate relevance, YouTube looks into many factors, such as how well a video's title, tags, description, and content match a user's search query. Search results also incorporate aggregate engagement signals from users, such as the watch time of a particular video for a particular query, to determine if the video is considered relevant to the query by other users.

For quality, YouTube's systems also identify signals that can help determine which channels demonstrate expertise, authoritativeness, and trustworthiness on a given topic. Sources that are determined to be authoritative are elevated in content recommendations.⁸ Relatedly, content that comes close to violating YouTube's Community Guidelines ("borderline content") or that contains harmful misinformation is demoted in recommendations.

YouTube relies on algorithms to determine authoritative, borderline, and harmful content. External content evaluators located around the world provide input that is incorporated into those algorithms. Those content evaluators use the same guidelines as the Search quality evaluators discussed above, which make it clear that ratings should never be based on personal opinions, preferences, religious beliefs, or political views. YouTube's content evaluators also cannot influence the prominence of any particular YouTube content. Political considerations and viewpoints do not factor into determinations of authoritativeness at all. For example, both CNN and Fox News are promoted as authoritative news sources on YouTube.

YouTube also provides content recommendations by taking into account many signals, including a user's watch and search history (if enabled), the channels (i.e., aggregations of particular users' uploaded content) they have subscribed to, and whether videos have been watched to completion by other viewers. Random surveys asking users directly about their experience with individual videos also factor into YouTube's recommendation systems. YouTube's search results and content recommendations consider many factors, but political affiliation, viewpoint, and ideology simply are not factored into these processes.

All "Creators" that upload content to YouTube must adhere to YouTube's generally applicable Community Guidelines⁹ and terms of service.¹⁰ Creators also may choose to earn income (known as "monetization") by having paid advertising appear at the beginning of, at points in between, or after their videos. Creators that choose to monetize their content must further adhere to YouTube's generally applicable monetization policies.¹¹ Violations of those

⁸ YouTube's efforts at raising authoritative content are described in more detail at: <https://blog.youtube/inside-youtube/the-four-rs-of-responsibility-raise-and-reduce>.

⁹ <https://support.google.com/youtube/answer/9288567>

¹⁰ <https://www.youtube.com/t/terms>

¹¹ <https://support.google.com/youtube/answer/1311392>

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monetization policies will lead to so-called “demonetization”—i.e., the inability of Creators to earn income through paid ads in their videos.

III. Summary of the Law

The Act defines a “contribution” as “anything of value made by any person for the purpose of influencing any election for Federal office.”¹² Contributions can be both monetary or in-kind. “In-kind contributions” are defined as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”¹³

As the U.S. Supreme Court noted in *Buckley v. Valeo*, the “the ambiguity of th[e] phrase [“for the purpose of influencing”] poses constitutional problems.”¹⁴ To satisfy “the constitutional requirement of definiteness,”¹⁵ the Court construed the term “contribution” narrowly to mean “contributions made directly or indirectly to a candidate, political party, or campaign committee, and contributions made to other organizations or individuals but earmarked for political purposes, [and] also all expenditures placed in cooperation with or with the consent of a candidate, his agents, or an authorized committee of the candidate.”¹⁶

With respect to contributions made “indirectly,” the Court was not articulating some amorphous theory under which any tangential, indirect benefit to a candidate or political party could be considered a “contribution.” Rather, the Court recognized that, within “the limiting connotation created by the general understanding of what constitutes a political contribution[,] [f]unds provided to a candidate or political party or campaign committee either directly or *indirectly through an intermediary* constitute a contribution.”¹⁷

Accordingly, there are three types of “contributions” that the Supreme Court and the Commission have recognized: (1) contributions given directly; (2) contributions given indirectly through an intermediary; and (3) coordinated expenditures—activity that is not conducted independently of a candidate or political party committee.¹⁸ Consistent with this narrow construction of a “contribution,” activity that does not fall within these categories is not a contribution. Hence, “bona fide commercial activity”¹⁹ and the provision of services “based on

¹² 52 U.S.C. § 30101(8)(A).

¹³ 11 C.F.R. § 100.52(d)(1).

¹⁴ *Buckley v. Valeo*, 424 U.S. 1, 77 (1976).

¹⁵ *Id.*

¹⁶ *Id.* at 78.

¹⁷ *Id.* at 23 n.24 (emphasis added). The Commission’s earmarking rules address the issue of conduits and intermediaries. See 11 C.F.R. § 110.6.

¹⁸ Coordinated expenditures are categorized as “in-kind contributions” for reporting purposes. See 11 C.F.R. §§ 109.20, 109.21. The dissemination, distribution, or republication of a candidate’s campaign materials is another specific type of contribution that is not at issue here. See *id.* § 109.23.

¹⁹ MUR 5485 (Conversagent), First General Counsel’s Report at 7-8 and Vote Certification dated Nov. 1, 2005 (4-0 vote accepting General Counsel’s recommendation to find No RTB).

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commercial and not political considerations, in the ordinary course of [] business”²⁰ do not result in a contribution.

DISCUSSION

I. The Complaint Fails to Describe a Violation of the Act

The Commission cannot find RTB where the “Complaint fails to describe a violation of the Act.”²¹ The Complaint alleges Google made prohibited corporate contributions to “the Democratic Party and Democratic campaigns for public office (including but not limited to Joe Biden for President).” Specifically, the Complaint contends that “search engines listing prominence, rankings, and visibility and reach on social media platforms of the censored contents, individuals, and organizations documented in this complaint are of value” to “the Democratic Party and Democratic campaigns.” By taking actions that impacted the “prominence, rankings, and visibility and reach” of ALIPAC’s (and presumably others’) YouTube channel and website on the basis of political bias, Google allegedly made a contribution to these Democratic political committees.

As an initial matter, the Complaint does not explain why changes to ALIPAC’s YouTube channel and website rankings provide something “of value” to the cited Democratic political committees. Nor does the Complaint explain how the changes to ALIPAC’s YouTube channel and website rankings could have the purpose of influencing a federal election. Even if the Complaint had offered such explanations, however, these assertions, even if true, are not “contributions” under the law.

A) The Complaint describes commercial activity, not a contribution.

The Complaint’s allegations relate to core features of Google’s commercial products—namely, website rankings in Search, YouTube search results and content recommendations, and terms of service and policies to protect and enhance user experience. The Commission has long concluded that this type of “bona fide commercial activity”²² and the provision of

²⁰ Adv. Op. No. 2018-11 (Microsoft); *see also* FEC Adv. Op. Nos. 2012-31 (AT&T) (no in-kind contribution results where rates charged were based on “commercial considerations”), 2012-26 (m-Qube) (no in-kind contribution results where discounts provided were based on “commercial considerations”).

²¹ FEC, Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,546 (Mar. 16, 2007) (*hereinafter*, “FEC RTB Policy Statement”).

²² MUR 5485 (Conversagent), First General Counsel’s Report at 7-8 and Vote Certification dated Nov. 1, 2005 (4-0 vote accepting General Counsel’s recommendation to find No RTB); *see also* FEC Adv. Op. No. 1994-30 (Conservative Concepts) (“entrepreneurial or commercial activity [is] unlimited by the Act”); MUR 5474/5539 (Dog Eat Dog Films, Inc.), First General Counsel’s Report at 8 (“the film, movie trailers, and the film’s official website represent bona fide commercial activity, which the Commission has previously declined to regulate in appropriate cases”) and Vote Certification dated Jun. 7, 2005 (6-0 vote accepting General Counsel’s recommendation to find No RTB).

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services “based on commercial and not political considerations, in the ordinary course of [] business”²³ do not result in a contribution.

For example, in MUR 5485 (Conversagent), the Commission concluded that an automated interactive online chat program (commonly known as a “chatbot”) was not a prohibited contribution or expenditure by virtue of the program’s display of political content. Instead, the Commission accepted the General Counsel’s reasoning that the program, which generated commercial revenues from ads and user fees, was “bona fide commercial activity . . . designed for genuinely commercial purposes rather than to influence a federal election.”²⁴ Relevant to the Complaint in this matter, allegations of political bias simply were immaterial in applying the commercial activity doctrine.²⁵

Google’s products and services are bona fide commercial activity. As explained at the outset of this response, Google provides its commercial products and services to more than one billion users across the world of all affiliations and beliefs, and displays all online content on equal terms. Political advertising and content represent only a small portion of the content on Google’s platforms. Google Search and YouTube operate solely on the basis of commercial factors in a manner designed to provide world-class products and services to its entire user base. Just like the respondent in MUR 5485 (Conversagent), Google receives commercial revenues from these products and services through paid advertising and other sponsored content. Accordingly, the Complaint alleges acts that are part of Google’s bona fide commercial activity. The Complaint fails to demonstrate otherwise and, therefore, fails to describe a violation of the Act.

B) Enforcement of a company’s terms of service is not a contribution.

It logically follows from the Commission’s bona fide commercial activity doctrine that no contribution results from a company’s enforcement of its terms of service in the course of providing a commercial product or service. For example, in Advisory Opinion Request No. 2004-6 (Meetup), the operator of a website that provided basic services at no charge to the general public represented that users of the website must “accept[] the [company’s] terms of service.”²⁶ The Commission concluded that the provision of the website’s services to political committees and candidates would not result in a contribution where the services were provided “on the same terms and conditions to all individuals or entities who are similarly situated in accordance with Meetup’s fixed criteria, whether or not the entities are Federal candidates, political committees, businesses, or other entities in the general public.”²⁷

²³ Adv. Op. No. 2018-11 (Microsoft); see also FEC Adv. Op. Nos. 2012-31 (AT&T) (no in-kind contribution results where rates charged were based on “commercial considerations”), 2012-26 (m-Qube) (no in-kind contribution results where discounts provided were based on “commercial considerations”).

²⁴ MUR 5485 (Conversagent), First General Counsel’s Report at 8-10 and Vote Certification dated Nov. 1, 2005 (4-0 vote accepting General Counsel’s recommendation to find No RTB).

²⁵ See *id.* (concluding that the chatbot program in question was “bona fide commercial activity” notwithstanding that the program appeared to convey messages favoring presidential candidate John Kerry over George W. Bush).

²⁶ Adv. Op. Request No. 2004-6 (Meetup).

²⁷ Adv. Op. No. 2004-6 (Meetup).

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The Complaint alleges that, with respect to ALIPAC, YouTube “demonetized us, removed and censored videos, and block[ed] us from placing ads or being able to live stream.” Additionally, the Complaint generally and vaguely alleges acts of “censoring, suppressing, silencing, threatening, punishing and abusing” by Google of its “political opposition and opponents.” The alleged acts—removal of videos, demonetization, etc.—are the types of actions that Google takes in the ordinary course of business to enforce its terms of service and policies. As explained above, Google’s terms of service and policies are apolitical and apply to all users.

Relatedly, the Commission also more generally has recognized that “[a] vendor may establish and apply eligibility criteria to political committees in order to protect the commercial viability of the vendor’s program” without making a contribution.²⁸ In order to be eligible to use Google’s products and services, a user must—among other things—agree to Google’s standard terms of service. Therefore, the Complaint’s allegations related to Google’s terms of service and policy enforcement again fail to describe a violation of the Act.

C) The Complaint fails to allege Google provided any goods or services at no charge or less than the usual and normal charge.

The Complaint alleges Google made in-kind contributions to the Democratic Party, “Joe Biden for President,” and other unspecified “Democratic campaigns for public office.” “In-kind contributions” are defined as “the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.”²⁹ The Complaint fails to describe any goods or services provided that amount to an in-kind contribution.

As explained above, Google provides its Search and YouTube products for free to the general public and receives commercial revenues from paid advertising on those product platforms. The Complaint does not allege that Google’s provision of these products amounts to a contribution³⁰ or that Google has provided advertising to candidates or political committees at no charge or less than the usual and normal charge.

In short, the Complaint describes features and policies that are inherent to Google’s commercial products and services (i.e., bona fide commercial activity), rather than the provision of goods and services to any candidates or political committees at no charge or less than the usual and normal charge (i.e., an in-kind contribution). For this reason, the Complaint again fails to describe a violation of the Act.

D) Alleged viewpoint bias regarding issues is not a contribution.

The Complaint alleges that Google took actions against ALIPAC’s Search and YouTube presence because Google does not agree with “ALIPAC’s positions on *immigration issues*

²⁸ Adv. Op. No. 2012-28 (CTIA).

²⁹ 11 C.F.R. § 100.52(d)(1).

³⁰ Such an allegation would be erroneous. See Adv. Op. No. 2004-6 (Meetup) (“the provision of a service that is always provided without charge to every person” is not a contribution).

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shared by most Republicans” (emphasis added).³¹ Again, Google’s products and services are apolitical and apply equally to all users, regardless of belief or affiliation.

Furthermore, the Act and Commission regulations do not apply to speech that merely discusses issues. The U.S. Supreme Court has expressly prohibited applying the Act in such a manner, notwithstanding that “[d]iscussions of those issues, and as well more positive efforts to influence public opinion on them, tend naturally and inexorably to exert some influence on voting at elections” due to the often close nexus between candidates and issues.³² The Commission also has recognized *Buckley*’s holding that it would be “overbroad” to regulate “groups engaged purely in issue discussion.”³³

The Complaint’s “contribution” theory compounds error upon error in this respect. For reasons already explained above, the Complaint’s premise that political bias amounts to a contribution is erroneous. Moreover, the “political bias” the Complaint alleges is actually viewpoint bias regarding issues. To suggest that issue-based viewpoint discrimination can amount to a “contribution” is doubly erroneous.

The type of bias the Complaint alleges relates to speech about issues and not about candidates or political parties specifically. For this reason, the Complaint again fails to describe a violation of the Act.

E) The Complaint does not allege any activity that the Supreme Court or Commission has held qualifies as a contribution.

The Complaint does not allege that Google took any action that falls within the three categories of a contribution. It does not allege that Google gave a contribution directly to the cited political committees or indirectly through an intermediary, nor does it allege that any of the activities at issue were coordinated with any candidate, candidate’s committee, political party, or any agents of the foregoing. The Complaint also does not allege that any of the activities at issue triggered the content standards of the Commission’s rules for coordinated communications or otherwise constituted “expenditures” for the purposes of the Commission’s coordination rule.

Rather, the Complaint’s general theory is that the way Search ranks websites, the way YouTube directs users to videos, and the way Google enforces its terms of service and policies result in contributions. As explained previously, this is the type of vague and amorphous understanding of a “contribution” foreclosed by *Buckley* and the Court’s insistence that this term

³¹ Per the Complaint (at unnumbered 3):

We are certain that if our PAC supported Google’s political agenda *on immigration matters*, these problems would not be present. ALIPAC’s *positions on immigration issues* shared by most Republicans are being censored, blocked, and sandbagged by Google while similar organizations who support the Democrat and Google favored *positions* prosper on their platform.

(emphasis added).

³² *Buckley*, 424 U.S. at 42-44 & 42 n.50 (internal citation and quotation marks omitted).

³³ MUR 7417 (Indivisible Washington’s 8th District), Factual and Legal Analysis issued to Indivisible Washington’s 8th District at 6 (quoting *Buckley*, 424 U.S. at 79).

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be cabined by “the constitutional requirement of definiteness.”³⁴ We are not aware of any Commission precedent, and the Complaint cites no Commission precedent, for such a vague and expansive application of the term “contributions” that would encompass an infinite number of activities, no matter how indirectly related they are to elections.

For these reasons, the Complaint again fails to describe a violation of the Act.

II. The Complaint Lacks Any Evidence to Support its Speculative Claims

Not only does the Complaint fail to describe a violation of the Act, but several of its allegations are not factually accurate.

First, the Complaint alleges Google “allowed someone at their company to hack and destroy [ALIPAC’s] You[T]ube channel.” The Complaint offers no evidence whatsoever for this absurd allegation. Google categorically denies that it hacks or permits anyone (including its employees) to hack the user accounts of its products. Google takes online security and the integrity of user accounts with the utmost seriousness. Google’s Threat Assessment Group and Security, Privacy and Abuse team work full-time on preventing any security vulnerabilities and breaches in Google’s products, monitoring for ongoing security threats, and making continuous security improvements to its products to address emerging threats.³⁵

All Google employees are required to undergo security training throughout their Google careers and to abide by the company’s Code of Conduct, which includes measures to keep customers’ information and accounts secure. Google also has technical measures and protocols in place that prevent any individual employee from breaching its users’ accounts.

Second, the Complaint alleges that, with respect to ALIPAC, Google’s YouTube division “demonetized us, removed and censored videos, and block[ed] us from placing ads or being able to live stream.” Although the Complaint alleges that these actions resulted from political bias, in reality, the Complaint describes actions that YouTube takes in the ordinary course of business when enforcing its terms of service and policies. As discussed above, YouTube’s enforcement procedure is apolitical, and the same terms of service, policies, and procedures apply to all users, regardless of affiliation or belief.

Even if these actions were taken against ALIPAC, as explained before, Google removes *billions* of pieces of online content and takes *millions* of other enforcement actions for policy violations each year. These actions have nothing to do with politics and everything to do with Google’s business objective to deliver more useful, relevant, and reliable content to users and to protect users against objectively harmful content (e.g., scams, hate speech, violence, etc.).

Third, ALIPAC alleges that rankings for its website in Google Search results dropped for the search term “illegal immigration” and speculates that political bias was the cause. As

³⁴ *Buckley*, 424 U.S. at 77-78.

³⁵ Google also participates in the Defending Digital Campaigns program, which provides cybersecurity assistance to candidates and political party committees regardless of political affiliation. See Adv. Op. No. 2018-12 (Defending Digital Campaigns).

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discussed above, even if ALIPAC's website ranking changed, Google Search rankings change for a whole host of reasons, none of which have any relation to political bias. As Google's CEO Sundar Pichai testified to Congress, "to do otherwise would be against our core principles and our business interests."³⁶

Moreover, ALIPAC's speculation for the reasons behind the alleged changes to its YouTube channel and search rankings is insufficient to support a claim against Google under the Act. "Mere speculation . . . will not be accepted as true" in the FEC's enforcement process and cannot support an RTB finding.³⁷

III. Vague Allegations of "Indirect Impact" Do Not Establish RTB

The Complaint concludes with a section alleging "indirect impact." It cites 148 URLs for webpages purporting to demonstrate such "indirect impact." This vague allegation fails to describe a violation of the Act and begs the question: "Indirect impact" on what?

The Commission cannot find RTB where the Complaint "is so vague that an investigation would be effectively impossible."³⁸ This section of the Complaint fails even to state an identifiable legal theory and presents exactly the type of vague allegation that cannot support any further enforcement proceedings.

To the extent this section of the Complaint could be read to suggest that these "examples of conservatives and varied opponents of the left who have been banned, censored, abused, or oppressed" constitute an "indirect" contribution, the U.S. Supreme Court and the Commission's regulations foreclose such a vague and expansive theory. As discussed, Google's products and policies are apolitical and operate without political bias. Further, as explained before, the only type of recognized "indirect" contribution is one that is earmarked by a donor and made through a "conduit" or "intermediary."³⁹ The Complaint's 148 examples do not appear to allege any "indirect" contributions made in this manner.

We also note that many of the URLs included in the Complaint appear to be truncated or otherwise bad links and the underlying referenced webpages could not be found. Of the valid URLs, the vast majority of the examples do not appear even to mention Google. Many of the URLs also reference the Complainant's own webpages, as opposed to any independent objective sources.

Insofar as Google is mentioned at all, it is often only in a passing reference. Even the relatively more substantive accusations against Google contained in the cited webpages suffer

³⁶ See Ghaffary and Wagner, *supra*, note 1.

³⁷ MUR 4960 (Hillary Clinton) (Statement of Reasons of Commissioners David M. Mason, Karl J. Sandstrom, Bradley A. Smith, and Scott E. Thomas) (internal citations omitted). Relatedly, the Commission will not find RTB where the Complaint presents allegations that are "not credible." FEC RTB Policy Statement at 12,546.

³⁸ FEC RTB Policy Statement at 12,546.

³⁹ See *Buckley*, 424 U.S. at 78 & 23 n.24; 11 C.F.R. § 110.6.

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from the same defects discussed above with respect to the Complaint. To wit, the accusations appear generally to describe instances in which Google enforced its generally applicable terms of service and policies or the ordinary operation of Google's and YouTube's algorithms. The materials then rely on mere speculation to attribute political motivations where none exist. As explained previously, Google's provision of services based on commercial considerations does not amount to a "contribution," and political bias is irrelevant to both Google's business and the Commission's bona fide commercial activities doctrine.

CONCLUSION

For the reasons discussed above, the Complaint is without any merit and the Commission should find no reason to believe that Google violated the Act.

Sincerely,

D. Mark Renaud

D. Mark Renaud
Eric Wang