

## Opposition to SB 1018, the Platform Transparency & Accountability Act

April 26, 2022

Dear Members of the Senate Judiciary Committee:

We respectfully ask you **not** to advance SB 1018 because it:

- Raises constitutional concerns at both the state and federal level
- Would empower bad actors
- Raises several privacy-related concerns

### Constitutional Concerns

SB 1018 violates the First Amendment by limiting the ability of internet platforms to use their algorithms and exercise their editorial discretion as they so choose. Courts have recognized that internet platforms are entitled to First Amendment protection for their editorial discretion akin to more traditional types of media, like newspapers. Internet platforms routinely manage content, allowing most, banning some, arranging content in ways intended to make it more useful or desirable for users”, all that require editorial discretion. Multiple court cases, since at least 2003, have established that computer code and source code, including algorithms, implement a social media platform’s editorial discretion and thus are protected speech under the First Amendment.

Additionally, Article I, Section 1 of the California Constitution provides that “[a]ll people are by nature free and independent and have inalienable rights. Among these are enjoying and defending... privacy.” SB 1018 requires the disclosure of information relating to internet platforms’ algorithms. Because internet platforms’ algorithms and the specific data used to inform the algorithms are sensitive and confidential information, they should be considered legally protected under the California Constitution.

### Empowering Bad Actors

NetChoice member companies believe in the value of transparency regarding content moderation and have taken many steps in recent years to release more information and data about community standards and efforts to enforce them. However, we are not convinced this is the right way to solve the problems that the sponsors are trying to address.

We are concerned that the disclosure requirements in SB 1018 would empower bad actors by giving them detailed information about how platforms are identifying and removing harmful content. Doing so would essentially give child predators and scammers a roadmap to get around these efforts and make adjustments to ensure they don’t get caught. When similar disclosure requirements were included in Florida’s social media bill, signed into law last year by Governor DeSantis, we heard directly from child protection groups saying that it would make it harder to protect children from bad actors.

## Privacy Concerns

Legislation to require that platforms make certain information available to researchers or the public on an ongoing basis must include strong privacy protections. However, SB 1018 would force internet platforms to divulge the personal information of users regularly and without subpoena or other legal process.

The Fourth Amendment provides protection to an individual or entity from unreasonable search and seizure perpetrated by the government. This protection under the Fourth Amendment extends to individuals or entities that have a reasonable expectation of privacy. As such, we believe SB 1018's reporting requirements violate internet platforms' Fourth Amendment right to privacy.

Thank you again for the opportunity to testify. We again urge you not to advance SB 1018.

Sincerely,

Amy Bos  
Director of State and Federal Affairs

**NetChoice**

*NetChoice is a trade association that works to make the internet safe for free enterprise and free expression.*