April 12, 2018

The Honorable Jerry Hill
Chair, Senate Business, Professions and Economic Development Committee
State Capitol, Room 5035
Sacramento, CA 95814

<div align="center">Re: S.B. 1001 (Hertzberg) –OPPOSE</div>

Dear Senator Hill:

I write today on behalf of the Electronic Frontier Foundation (EFF), a San Francisco-based, non-profit organization that works to protect civil liberties in the digital age. EFF represents more than 40,000 active donors and members, including thousands of supporters in California.

EFF respectfully opposes S.B. 1001, which would make it unlawful for any person to use a "bot" to communicate or interact with natural persons online, with the intention of misleading and without disclosing that the bot is not a natural person. Speech generated by bots is often simply speech of natural persons processed through a computer program; this provision would chill the use of bots for many ordinary speech activities ranging from poetry[1] to political speech,[2] especially when part of the bot's point is to poke fun at people who cannot resist arguing—even with bots.[3] S.B. 1001 thus raises significant First Amendment issues.

SB 1001 also requires platforms to create a system whereby users can report suspected bots. Platforms must then "determine whether or not to disclose that the bot is not a natural person or remove the bot" in less than 72 hours (§17942). On its face, this sounds like a positive step in improving public discourse. Unfortunately, years of attempts at content moderation by large platforms show that the opposite will be true: S.B. 1001 will end up silencing or diminishing the very voices it hopes to protect.

Platforms' Content Moderation Policies Are Widely Abused in Order to Censor Legitimate Speech
Platforms are, on the whole, terrible at enforcing content moderation policies.[4] Online trolls and others who wish to silence dissenting viewpoints have learned to take advantage of this, and have become experts at figuring out precisely how to use platforms' policies in order to silence or

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[1]   https://twitter.com/soft_focuses (tweets poetry, without identifying itself as a bot).
[2]   https://fivethirtyeight.com/features/introducing-censusamericans-a-twitter-bot-for-america/.
[3]   https://www.sbs.com.au/comedy/article/2016/10/13/hilarious-genius-has-built-twitter-bot-tricks-idiots-arguing-it-hours.
[4]   See, e.g., "Online Censorship," https://onlinecensorship.org.

otherwise discredit their opponents on social media platforms.[5] In short, these online trolls figure out which key indicators will trigger a platform to take something down or flag it as false or unreliable, and then report posts that contain these indicators but are actually legitimate. There is no reason to think they won't figure out how to game S.B. 1001's system as well.

Further, the targets of this sort of abuse have been precisely the sorts of voices the supporters of S.B. 1001 would likely want to protect: Muslim civil rights leaders,[6] pro-democracy activists in Vietnam[7], and Black Lives Matter activists whose posts were censored due to efforts by white supremacists.[8] Clearly, platforms cannot adequately enforce their own self-imposed content moderation policies to prevent abuse and censorship of legitimate speech. If so, how can we expect them to do any better when it comes to legally mandated policies like the one proposed in S.B. 1001? Unfortunately, we already know the answer to this question: we cannot

Legally Mandated Takedown Policies Incentivize Platforms to Censor Legitimate Speech
Online platforms' track records when it comes to preventing abuse of legally mandated takedown policies are even worse than their track records of preventing abuse of their own self-imposed content moderation policies. Case in point: the federal Digital Millennium Copyright Act (DMCA) requires platforms to remove content that is accused of violating copyright. Platforms err on the side of caution, automatically complying with even absurd takedown requests, rather than risk legal penalties. This has made copyright law a tempting tool for unscrupulous censors: EFF has seen abusive DMCA takedown notices from a would-be Senate candidate, small businesses, and Ecuador's President.[9]

Like the DMCA, S.B. 1001 creates a quick and easy way to make speech disappear from the Internet without any clear standards or meaningful recourse[10] and incentivizes platforms to act first and ask questions later. After all, what incentive will a platform have to complete a thorough investigation into whether or not an account is a bot, particularly when that investigation must occur in under 72 hours, when they can simply take the account offline or mark it as a bot and

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[5]   See, e.g. "Facebook's reporting algorithm abused by antivaccinationists to silence pro-science advocates," https://sciencebasedmedicine.org/facebooks-reporting-algorithm-abused-by-antivaccinationists-to-silence-pro-science-advocates/.

[6]   "How Do Facebook 'Community Standards' Ban a Muslim Civil Rights Leader and Support Anti-Muslim Groups?," http://chicagomonitor.com/2016/06/how-do-facebook-community-standards-ban-a-muslim-civil-rights-leader-and-support-anti-muslim-groups/.

[7]   "Vietnam activists question Facebook on suppressing dissent," http://www.dailymail.co.uk/news/article-5597481/Vietnam-activists-question-Facebook-suppressing-dissent.html.

[8]   "Civil rights groups urge Facebook to fix 'racially biased' moderation system," https://www.theguardian.com/technology/2017/jan/18/facebook-moderation-racial-bias-black-lives-matter.

[9]   "Copyright, The First Wave of Internet Censorship," https://www.eff.org/deeplinks/2018/01/copyright-first-wave-internet-censorship.

[10]   "Copyright, The First Wave of Internet Censorship," https://www.eff.org/deeplinks/2018/01/copyright-first-wave-internet-censorship.

thus fulfill their legal obligation? And even if a platform does decide to spend resources on investigation, how can we expect the platform to accurately discern a bot's artificial identity if the bot is designed well enough "that a reasonable natural person is unable to discern its artificial identity" (§ 17940(a))?

Even Labeling Legitimate Accounts as Bots Will Diminish Legitimate Speech
Supporters of S.B. 1001 have argued that since the bill wouldn't require the removal of accused bot accounts, the collateral damage will be minimal.[11] Instead of taking down accounts, this argument claims, a platform could choose to comply with S.B. 1001 by applying a warning label to accounts that are accused of being bots--and that way, nobody is censored. But this logic is flawed.

The stated goal of S.B. 1001 is to "equip users with the tools to understand where their information is coming from."[12] But S.B. 1001 tries to achieve this by prompting users to discount or otherwise treat accounts labeled as bots differently from accounts that are not. As a result, the victims of the sorts of abuses we describe above will inevitably be ignored or have their speech discounted. Put more plainly: Being labeled so that nobody listens to you can be as harmful to your ability to speak as if you were forbidden from speaking in the first place.

Simply put, S.B. 1001 will not achieve its author's intent. We strongly urge you to vote "NO" on S.B. 1001.

Sincerely,

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cc: Members, Staff, and Consultants of the Senate Business, Professions and Economic
        Development Committee
        Senator Bob Hertzberg

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[11]   "California Lawmakers Want Twitter Bots Branded With Disclaimers,"
        https://motherboard.vice.com/en_us/article/9kgy4y/california-levine-lawmakers-want-twitter-social-media-bots-branded-with-disclaimers.

[12]   Hertzberg Announces Legislation to Encourage Social Media Transparency,"
        http://sd18.senate.ca.gov/news/212018-hertzberg-announces-legislation-encourage-social-media-transparency[/