

## Steven Maviglio

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Ms. Ann Ravel, Chair  
Fair Political Practices Commission  
428 J Street  
Sacramento, California 95814

Re: Comments on Proposal to Regulate Online Communications, 18421

Dear Ms. Ravel:

As you know, as a paid political blogger – all of whose payments are promptly reported to the FPPC under existing regulation by campaign committees – I have been long working with the FPPC on its intent to provide transparency on the Internet. Several years ago, the late Commissioner Tim Hodson invited me to address his FPPC subcommittee. And last year, I spoke before your staff panel, providing specific criticisms about the draft language of the agency's proposal to regulate the Internet for campaign purposes.

Thankfully, FPPC staff scrapped that proposal and has made another attempt that will go before the Commission this week in an attempt to address disclosure among bloggers. I have read the latest proposal and have specific comments below. But before getting into the details of the proposal, it again appears that this is a regulation in search of a problem. **The Commission staff has failed to identify any significant examples of why this regulation is needed.**

In fact, in the informal conversation you had after my testimony in Sacramento last year, you mentioned to me that you heard about an incident of this happening in a local election. I do not believe that a statewide regulation of this nature – the first of its kind in the United States – should be based on an anecdote. Instead, any proposal should be designed to attack an abuse or a problem that exists, particularly when those of us engaged in paid political communication already are included in campaign filings.

Regulating social media and Internet communication is particularly difficult, because, as technology continues to grow in this area, regulations quickly are outdated. **The FPPC's pioneering entry undoubtedly will require continuous updating and monitoring as technology changes and new tools for communication are designed, creating an unnecessary regulatory burden on many unsuspecting campaign workers as well as those of us already reported to the FPPC.**

For example, an article in The New York Times (Sunday, August 11, 2013, Page SR5, [http://www.nytimes.com/2013/08/11/sunday-review/i-flirt-and-tweet-follow-me-at-socialbot.html?\\_r=0](http://www.nytimes.com/2013/08/11/sunday-review/i-flirt-and-tweet-follow-me-at-socialbot.html?_r=0)) focuses on the increasing use of "Socialbots" – automatic systems that tweet and retweet. "Researchers say this new breed of bots is being designed not just with greater sophistication but also with grander goals: to sway elections, to influence the stock market, to attack governments, even to flirt with people and one another."

The article notes that Mexico's governing Institutional Revolution Party used accused of using bots in its election. The proposed FPPC regulation appears not to cover bots – making it obsolete even before you've considered it.

#### Specific Issues with the Proposal as Published on 5/2/2013.

##### Section (a): Purpose

The proposal indicates that it seeks to address a "person other than in-house campaign staff to provide favorable or unfavorable content."

As the Commission is well aware, most local campaigns consist entirely of "in-house campaign staff," more often unpaid but sometimes one or two people that wear many hats. Those payments already are required by the FPPC. On larger campaigns, firms and individuals already are reported.

Looking to target "a person other than in-house campaign staff" with such a broad regulation doesn't seem to be logical. I can think of only one or two instances where someone was paid directly in an attempt to purchase their opinion for publication—and they were called out for it. Peer pressure has far more impact than a regulation.

The proposal calls disclosure "paid by the committee to provide favorable or unfavorable content or commentary on a candidate or ballot measure by providing content for or posting on a website or a web log, whether one's own or another's."

"Favorable or unfavorable content" falls into two categories: paid advertising or free speech. In this example, since I operate a website and accept a web ad (which would be either favorable/unfavorable content under the definition here), I would be required to report that. That information is ALREADY reported under current FPPC regulation. (Additional info below under section (d) critique).

In many -- perhaps the majority -- of cases, social media content are links from mainstream news stories. Judging whether that content is "favorable" or "unfavorable" would depend on the interpretation of the regulated party when, in fact, many news stories are "neutral."

"Content" would also include photography under the proposal. That means if a campaign staffer or a paid photographer/videographer not a "person other than in-house campaign staff" took images of a candidate, they would have to be reported. Or, in many cases, they would be campaign volunteers or a spouse that provided an image posted on the Internet. Again, the language here has broad consequences.

The most unworkable part of this proposal is subsection (c). It requires the listing of the "name of the website or the URL on which the communications are published in the first instance." It also requires the naming of person in a "third party."

That information is almost impossible to obtain if the communication is distributed on the internet via a press release. The individual would somehow be responsible for discovering who posted it first.

The actual posting might be by an entry level staff person or intern at a campaign firm. Under the terms of this regulation, the person posting the material would need to be identified. And in the rough and tumble of a campaign, there might be many persons doing that job or even unpaid interns.

Again, the regulation misses its target and creates a maze of paperwork, much of which may well be inaccurate because of the Internet.

Lastly, under Section (d), the regulation exempts "paid advertisements...already required to carry a 'paid for by' disclaimer." That means most other ads on the Internet, including those on Twitter where a disclaimer is impossible, would be included. That, in turn, would effectively end political advertising on many social media and websites. I would hope that this is not the intent of the regulation.

It should also be noted that this regulation would, in fact, require @SutterBrown and Sutter Brown on Facebook, to report to the FPPC. It's one more reason why the language of this legislation is unnecessary and unworkable as well as being unenforceable.

Again, while I share your views for transparency in California campaign finance law, the Commission should be wary of wading into developing a regulation in this new arena that is flawed and unable to keep up with the ever-changing nature of the Internet.



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