September 18, 2013

To: California Fair Political Practices Commission
From: Steven Maviglio, Forza Communications
Re: Proposed Regulation for Online Communication, 18421.5
September 19, 2013 Meeting Agenda

Thank you for the opportunity to provide further comment on the proposal to regulate online communication.

On Thursday, the Commission has the opportunity to regulate online communication correctly -- or simply do it fast. Given the pioneering nature of this regulation, I urge the Commission to take the time to improve the language of this proposal so that it is understandable, enforceable, and accomplishes what its authors intend for it to do.

Let me be clear: I support the disclosure of payment to bloggers who are paid by campaigns. And indeed, a routine review of filings from the last campaign shows that online communications were reported by all of the state's major candidates and ballot campaigns. The notion is "INTERNET" -- it couldn't be clearer.

That said, if the Commission intends to move forward, to put it bluntly, the language of this regulation still needs a lot of work. As I write this, changes were still being made to the language -- changes that have not been shared with the social media community or those who will need to report it. (In fact, the Commission's website still has a May version of the language under "Proposed Regulations" and requires additional search for the current version). And while I very much appreciate the communication I've had with the attorney working on the language, it is clear to me that there is still work to be done or the regulation will become a reporting and enforcement nightmare, mistakenly snaring thousands of Californians who work on political campaigns for campaign violations.

Who is Being Regulated? (Lines 4-5)

- The new draft eliminates the words "in house campaign staff" on page 1, lines 4-5. This change would mean a substantial increase in reporting by ANYONE working on a campaign as well as sub-vendors as the language now reads. Staff and the chair (in a media interview) have stated it would not apply to someone not specifically paid for posting/providing online, but the language does not explicitly say that. It should if that is the case, then the language should read "primarily to pay a person ... "

- For example, someone paid for walk precincts for a day who posts content on their personal Facebook page would be regulated; anyone working for a phone bank firm employed by a campaign would fall under the regulation if they Tweet about their candidate/cause; a campaign manager -- already reported -- also would be required to report their online communication. Any employee of a social media vendor or sub-

vendor who posts a video online would be regulated. This is clearly overly burdensome, and in this day and age, would require just about anyone working on a campaign to have an additional reporting requirement, even sub-vendors.

- In social media, screen names, "handles" or other identifiers that are not the providers/ posters real name are often used. The regulation does not speak to that. For example, to use Sutter Brown, the regulation would require the reporting of the person who provides this content (if paid) but there's no way to connect it to Sutter Brown. The absence of regulation here would likely lead to a proliferation of such bogus identities.

- The addition of the words "favorable or unfavorable content" means that a significant amount of online communication would be a judgement call. In many instances, campaigns distribute news articles generated by news outlets and other information that is essential neutral in content. This language leads to other gray areas: is a post for a debate "favorable or unfavorable"? Or is it simply "content"?

"Providing," "Posting" -- Or Both? (Lines 10-13)

Lines 10-13 pertain to the "providing" of online content. I understand that further changes in this language are being made in response to a communication I had with the FPPC. However, I have not seen that language.

My suggestion was to detail what "providing content" is. For example, in many instances, campaigns provide content to social media users to post under their names or screen names. For example, Facebook postings and Tweets often are *provided* by campaign workers but *posted* under the name of a campaign principal or a screen name. Videos are shot but one person or teams but posted under someone else's name or on someone else's channel. Who would be reported -- the person in the first instance, the second, or both? Tightening the language clear would clarify this.

Where Communication Is Regulated (Lines 10-13)

The original justification for this regulation were reported instances of blog posts being posted by someone being paid by a campaign, but not reported. As indicated earlier, these instances have been extremely rare, largely because of self-policing in the social media community.

This regulation, in lines 12-13, extends the regulation well beyond blogs -- into ALL social media platforms and video sites. There is simply no evidence where disclosure in these platforms has been a problem. Expanding into this area creates numerous problems, as technology is changing, and the proposed regulation is unworkable because of logistics. Striking lines 12-13 and limiting the regulation to blog use would address the concerns cited for the creation of this regulation. There's no sense trying to kill a mouse with a nuclear warhead rather than a mousetrap. The proposal, as applied here, is clearly overreaching -- and without any justification.

"Published in the First Instance" Line 18

The regulation seeks to force reporting of online communication where it appears "in the first instance." The problem with that is often that the provider/poster has no idea where it will appear in the first instance. Online communication can appear in multiple platforms simultaneously. For example, one campaign I worked on provided suggested Tweets to its campaign coalition allies for them to Tweet to their members. Where did it appear for the first time? The campaign had no idea. This requirement not only is unworkable and a major burden on anyone posting or providing content, but achieves nothing in terms of disclosure. The disclaimer provisions of this regulation and other reporting provisions would clearly identify anyone posting online without the additional burden of trying to figure out where it first appeared.

"Regularly Published Rates" Line 21

Anyone who has worked as a media buyer (or seller) knows that "regularly published rates" are rarely what's charged to any campaign. Mass purchases, last-minute opportunities, and off-the-rate-card prices are routinely used to discount advertising space. Under the regulation, unless the "regularly published rates" are charged, another new level of reporting would be unnecessarily required.

Exemption for Committee Websites, Page 2, Lines 1-3

This carve-out should also be applied to the PERSONAL site of anyone receiving campaign payments. This would eliminate personal Twitter and Facebook accounts, for example, relieving the burden of reporting for campaign workers, vendors, and sub-vendors who simply want to communicate to their friends, co-workers, and family.

Identifying Disclaimer, Page 2, Lines 6-11

The proposed language requires a disclaimer "in a clearly conspicuous manner along with the posted content in each instance of the content appearing on the Internet or other digital platform." As pointed out in the August meeting, this is technologically impossible for many platforms. Staff suggested the disclaimer would be included in a Facebook or Twitter "profile." But the language does not say that; profiles do not appear "along with" the posted content -- they are buried within the platform, requiring additional search. If indeed what the staff testified would be acceptable, then that language should be incorporated into the proposed regulation and not left up to interpretation.

What is a "Response" Comment?, Page 2, Lines 14-15

The language exempts "commentary posted in response to another person's content." This begs the question of what a "response" is. If, for example, FLASH REPORT publishes an article critical of a Democratic candidate, and someone "responds"to it on

CALIFORNIA MAJORITY REPORT, is that "commentary posted in response to another person's comment"? Of course it is. However, when staff was questioned about this, the answer I was received was that this was reportable. Again, the language here is unclear and confusing, providing a loophole it doesn't intend to create.

Other Concerns: The Regulation Fails to Address Socialbots

The regulation continues to fail to address the fastest-rising use of social media in online political communication: socialbots. SOCIAL MEDIA TODAY reported last month that "50 percent of all web traffic is not from humans." http://socialmediatoday.com/cdelucia22/1697621/rise-social-bots. They are used on Twitter, Facebook, Reddit, and multiple other platforms.

If it is to be effective, language should be developed to also require identification and disclosure of this form of online communication -- otherwise the Commission will be missing half of the traffic it finds necessary to regulate.

Or better yet -- craft language that addresses a real issue instead of requiring an avalanche of paperwork and new reporting requirements.

* * * * *

I would welcome the opportunity to continue to work with FPPC staff in a constructive manner on a regulation that is effective and works.

Thank you.

* * * * *

Comments from KPCC Listeners during discussion between Chair and I on the "Larry Mantel Show" http://www.scpr.org/programs/airtalk/2013/08/27/33450/political-bloggers-might-need-to-disclose-financia/

James in Pasadena
"This is a huge misunderstanding of the internet and marketing. There are firms and agencies which have a host of fake / duplicate accounts called "Matured Accounts" that live on various sites and forums. They have spreadsheets of accounts, 100 internet users to 1 real person marketer operations. Some of these accounts have been around since 2007 and has several thousand posts to that fake user's name. It would be impossible to regulate these accounts without invading personal privacy. Some fake accounts have fake account conversations with themselves. How can this be regulated properly?"

gShawn
So corporations can pour money into politics with anonymity and abandon, but we need to have disclosure for speech? Hogwash!

Jack in Ventura
My opinion is for sale!Posts might take a while since I'll have to drive out of state to post apparently....Any bidders?

San Jose Mercury News Op-Ed: FPPC Proposal on Internet Campaigning Casts Net Too Broadly
http://www.mercurynews.com/opinion/ci_24070812/steven-maviglio-fppc-proposal-internet-campaign-communications-casts

Steven Maviglio: FPPC proposal on Internet campaign communications casts net too broadly

By Steven Maviglio Special to the Mercury News San Jose Mercury News
Posted:

MercuryNews.com

Will the state's political watchdog soon be regulating Sutter Brown, as well as everyone who is paid to work on a political campaign and tweets, posts a video on YouTube, or shares their views on Facebook?

Although well intentioned, this dangerous first-in-the-nation attempt by the Fair Political Practices Commission (FPPC) to regulate Internet communications is fraught with problems that threaten free speech and stifle the use of social media in political campaigns.

It is no secret that political communication on the Internet has rapidly evolved in the past decade. In 2003, when political communication on the Web was still in its infancy, the Bipartisan California Commission on Internet Political Practices began to first explore how to require public disclosure of online Internet political communication. At that time, bloggers, consultants and social media experts of all political stripes pleaded with the commission to "do no harm" -- to let the evolving political Internet world grow without technology-stifling regulations.

And grow it has. Campaigns and voters are turning to the Internet like never before, tweeting and posting political news to their Facebook, Tumblr, Reddit and other social media accounts in record numbers. According to the Pew Research Center, 34 percent of Americans say the Internet now is their main source of campaign news. Google research indicates that 68 percent of American voters use the Internet to research political information.

But now the FPPC wants to go where no other state has gone before: regulating anyone who receives payment from a campaign to produce any content on the Internet to fill out paperwork -- from a worker paid to spend one day knocking on doors and tweets about it from her iPhone, to the campaign manager who spreads the word on a community blog, to the part-time student paid to coordinate campus volunteers and posts a humorous YouTube video about the ballot campaign he's working on.

Required in this avalanche of new paperwork would be a requirement to list the first website, URL and blog on which the "content" appears. That would be a nightmare for a large campaign with hundreds of paid workers and vendors. Even for shoestring campaigns, it would add a new layer of regulation that would likely result in less online communication.

Is this proposal unworkable? You bet. Is it enforceable? Not a chance.