Ms. Ann Ravel, Chair
California Fair Political Practices Commission
428 J Street, Suite 620
Sacramento, California 95814

Dear Ms. Ravel:

We are writing as the publishers of two of the most popular political blogs in the state. Being on the opposite ends of the political spectrum, we do not often agree on much. But we are joining together to express our concern with a proposal being considered by the Commission that will require the reporting of an expenditure for paid online communications, 18421.5. We believe this proposal is unworkable, unenforceable, and possibly unconstitutional.

Before delving into the proposal itself, we are disappointed that the Commission is considering the adoption of new regulations without any significant outreach to the community that it will affect.

In previous years, the Commission worked closely with the blogger and online communications community, even inviting us to participate in workshops that were held in Northern and South California. At that time, witnesses from across the political spectrum and Commissioners concluded that the social media community was evolving too quickly to effectively regulate and that the "do no harm" approach was the best course of action at this time. We worked closely with Commissioner Hodson and the subcommittee to discuss the various disclosure issues facing the commission, and proposing solutions to the issues raised by the Commission and staff.

This proposed regulation, however, appears to reject the Commission's past position on online communication. Worse yet, it has been developed without any input from our community -- one of the reasons why we believe it is fundamentally flawed.

In a nutshell, this proposal is a solution in search of a problem. Although you have expressed personal concern about this issue, there are only a handful of news reports or complaints in the past decade of elections where the non-reporting expenditures for paid online communications has been an issue.
In fact, these few incidents have come to light because such bloggers were "outed" -- either by news organizations and/or opposition research.

Self-policing by the online community, as well as current reporting requirements, has made paid unreportable blogging almost non-existent in our state -- and in our nation. We know of no other jurisdiction in the United States that has a regulation as sweeping as this proposal. We would also note that this foray into online regulation is in direct contradiction of Governor Brown's remarks to the Silicon Valley Manufacturers Group opposing more regulations on the Internet.

Furthermore, in California, online political financial reporting is already largely regulated. Campaigns that pay for social media work routinely report such payments; they already are required to do so. We can point to hundreds of campaign documents that show that the blogging and other online activity on ballot measures and behalf of candidates is duly reported.

Lastly, we both publish blogs that include what the proposal calls "content" from campaigns. They are paid political ads. And they would be caught in the wide net of reporting that this regulation proposes. It is difficult to imagine that Commission believes that each individual Internet ad should be reported by a Committee in detail. Yet this is what this proposal calls for.

You should also know that most of the state's leading blogs require (or voluntarily request) that any blogger or social media communicator identify themselves as being paid by a campaign. In this election cycle, many campaigns have hired employees, consultants and firms that specialize in social media. Those payments are already filed in reports by committees with the FPPC.

The proposed language in California Code regulation 18241.5 raises major concerns about the ability to monitor and enforce this proposed regulation, as well as free speech issues.

Specifically:

Subsection (a) notes that committees must report "amounts paid to any person who engages" in social networking activities. The reporting proposes to include the name of the URL, website, or "Internet publication" (a term we are not familiar with and that is not defined in the regulation) in the reporting.

That means, for example, that ANYONE working on a campaign -- whether it be the campaign manager, advertising consultant, social media director, field worker, or fundraiser -- must report any kind of posting on Twitter, their personal Facebook page, Tumblr, or any other of hundreds of websites if they receive a penny from the committee.
It means, for example, that someone on a campaign responding to a news story and making an online comment on their iPhone would have to report. As written, if someone was paid to be a field worker for a weekend, they would be required to report to the Committee if he or she posted something about her day knocking on Facebook or Tweeted 140 characters about her support for a candidate.

It means someone who is a vendor at a company who develops a campaign app would have to be reported. It means someone who works on a campaign, captures a candidate on video and posts it on YouTube would have to be reported.

On a gubernatorial or U.S. campaign with 100+ employees or a major ballot committee with broad coalitions, consultants, and vendors, that would create an avalanche of paperwork for a committee to report -- and be impossible for the Commission to enforce.

On the other end of the scale, it would overburden small committees with limited funds that use grassroots political communication thru friends on Facebook, Twitter followers, and YouTube posts as well.

In addition, because of the vagueness of the proposed regulation, it could well mean that any committee would have to report "any person" -- writers, designers, account executives and so forth -- who interacts with newspapers, television stations and other media outlets that have an online platform. Under the proposed language, "content" would include advertisements and "video" would include television commercials and even news reports.

This too is an unworkable provision that would require burdensome and unrealistic reporting of "any person" on a campaign, as well as those who conduct media buys made thru firms that often do not provide the names of every outlet to a campaign where ads are placed. Online advertisements, such as those sold thru Google and Bing, are often sold based on "search" and "contextual" terms -- the "any person" placing that "content" has no idea the extent and depth of where the "content" will appear.

Lastly, the language in this proposal is excessively broad -- "must include amounts paid to any person who engages in activities, SUCH AS THE FOLLOWING, on the committee's behalf." It would be difficult to adhere to these regulations since "such as the following" doesn't provide precise details of what would be required for reporting.

That, in our view, is because social media and the Internet is changing daily, particularly in the area of political communication. Techniques being employed in this election cycle were unheard of two years ago.

We believe the Commission -- and voters -- would be best served by allowing political communication in the evolving world of the Internet to continue to flourish unfettered by a vague yet sweeping proposal like the one before you.
The FPPC should not become the Internet police. The Commission has no role in chilling political speech as this regulation proposes to do. In fact, we would argue that online communication has helped democratize elections -- and this regulation would be a blow to innovation and engagement by more Californians in our electoral process.

If this regulation is adopted, it is not difficult to imagine campaigns simply directing everyone who works for them to stop using social networking at all due to fear of being out of compliance with these onerous rules and subject to gratuitous complaints to the FPPC by their opponents. A consequence of adopting these regulations will be marked chill in some of the most well used sources of communication to engage voters in the democratic process.

We urge you to reject this proposal. Instead, we, as well as other leaders in the online political communication community, would like to work with you -- as we have with the Commission in the past -- to enhance transparency and public disclosure in political communications in a more workable and effective manner.

Steven Maviglio, Co-Publisher
The California Majority Report
steven.maviglio@gmail.com

Jon Fleischman, Publisher
The Flash Report
jon@fleischmangroup.com

cc: Commissioner Montgomery
Commissioner Eskovitz
Commissioner Garrett
Commissioner Rotunda