

# **Report of the Bipartisan California Commission on Internet Political Practices**



**DECEMBER, 2003**

**Chairman:**

Geoffrey Cowan

**Vice-chairs:**

Susie Swatt, Deirdre K. Mulligan

**Commissioners:**

Steven C. Afriat, Henry Wolfgang Carter, Conway Collis,  
Harvey A. Englander, Keith E. Flippin, Edward D. Hearst, Philip Muller,  
Keith Olberg, James W. Rushford, Duf Sundheim

## TABLE OF CONTENTS

PREFACE	4
EXECUTIVE SUMMARY	8
CHAPTER ONE: A FRAMEWORK FOR ENABLING ONLINE POLITICS	17
CHAPTER TWO: THE SCOPE OF ONLINE POLITICAL ACTIVITY	22
CHAPTER THREE: THE POTENTIAL REGULATION OF ONLINE POLITICS	33
CHAPTER FOUR: RECOMMENDATIONS	40
APPENDICES	51

*To Joseph Remcho, for his dedication to the Commission and the State of California*

## **THE COMMISSION MEMBERS**

### **Chairman:**

Geoffrey Cowan

### **Vice-chairs:**

Susie Swatt, Deirdre K. Mulligan

### **Commissioners:**

Steven C. Afriat, Henry Wolfgang Carter, Conway Collis,  
Harvey A. Englander, Keith E. Flippin, Edward D. Hearst, Philip Muller,  
Keith Olberg, James W. Rushford, Duf Sundheim

## **ACKNOWLEDGEMENTS:**

We are particularly grateful for the contribution of the late Commissioner Joe Remcho who served on this commission from its inception to his untimely death. This report is dedicated to his memory.

The Commission would also like to thank the individuals who were originally appointed to the Commission but are not currently serving; they include, William H. Deaver, Barbara Yanow Johnson, Dung H. “Zoon” Nguyen and Joseph Remcho.

The Commission received generous institutional assistance from the Annenberg School for Communication at the University of Southern California and the Samuelson Law, Technology, and Public Policy Clinic at the University of California, Berkeley. We are especially grateful to Matt Grossmann for laboring patiently over numerous drafts of this report, Vic Biondi, Paul Cusack, Gloria Labbad, Sean Treglia, Sophia Wachholtz, Amalie Weber, and Cynthia Willis for lending their advice, expertise and moral support in helping manage the deliberative process and the logistics that made this report possible.

We would also like to thank Kim Alexander, Sonia Arrison, David Chiu, Hal Dasinger, Kirk Deiningner, Lauren Gelman, Bob Hansan, Chris Kelley, Jeff Lennan, Joe Lynn, Craig Newmark, Dan Schnur, Bob Stern, Ray Uyemura, Bill Whalen, and Tracy Westen for testifying before the Commission. We thank Michael Cornfield and Kirsten Foot for contributing research data. Finally, we thank Kim Alexander, Steven Clift, Michael Cornfield, Karen Getman, Kirk Jowers, Xandra Kayden, Jim Knox, Phil Noble, Trevor Potter, and Bob Stern for their helpful comments on this report.

## PREFACE

The legislation establishing the Bipartisan California Commission on Internet Political Practices was adopted three years ago<sup>1</sup> in order to create a body that would “examine the various issues posed by campaign activity on the Internet in relation to the goals and purposes” of the Political Reform Act of 1974 and “make recommendations for appropriate legislative action, if any.”<sup>2</sup> A year later, the legislature adopted a bill that specifically called on the Commission to consider issues of what it called “political cyberfraud.”<sup>3</sup> To carry out our work, we have held seven hearings in four cities; heard from eighteen witnesses; reviewed the literature in the field in the state and the nation; consulted several dozen experts; and conducted a thorough survey of the way in which similar laws are being implemented in every state. Based on that material, and on our own experience with politics, policy and the law, we are pleased to submit this report, which contains a summary of our findings and our recommendations.

During the years since the law creating the Commission was adopted, much has changed in the life of the Internet and of the State of California but the issues posed by the legislation remain as important as, and in some respects even more important than, they were three years ago. The nation and the state have passed through several election cycles during that time, including the national election of 2000, the California election of 2002, off year elections for mayors and other offices, and the recently completed recall election of 2003. The authors of the law anticipated that during ensuing elections candidates and others would “explore and develop new uses of the Internet for political purposes in California” and that “political activity on the Internet will increase exponentially.”<sup>4</sup> How right they were!

The subject of our study is a moving target. In each election cycle, candidates and campaigns develop new uses for emerging technologies; government agencies find new issues to consider; citizens and citizen groups discover new ways to use the Internet to become involved in the political process; and news providers (from traditional news organizations to individual bloggers) become increasingly successful in using the Internet to provide new and different information about candidates and elections. Each of these new activities raises questions about benefits and costs, interpretation and implementation of legal limitations, the rise of new actors in the political debate, and the relationship of new political techniques to core political freedoms. There is no reason to expect a slowdown in the evolution in technology, the ways in which it will be used, or the questions it raises for policymakers.

In some important respects, the Internet has now become the driving force behind innovations in campaigning. It has enabled candidates to reach and mobilize constituencies and to raise funds more efficiently, effectively and inexpensively than ever before. During the recent recall campaign, the organizers were able to spread and gather petitions over the Internet. Presidential candidates - from

---

<sup>1</sup> The legislation was introduced by Assemblyman Keith Olberg in February, 2000 and signed into law on September 29, 2000. Mr. Olberg is a member of the Commission. Since some of the Commissioners were not named for more than a year, the Commission did not hold its first meeting until the spring of 2002.

<sup>2</sup> AB 2720, Legislative Counsel’s Digest, 1999.

<sup>3</sup> SB 412, § 4, 2001.

<sup>4</sup> AB 2720, § 1(A), 1999.

John McCain in 2000 to Howard Dean in 2004 - have found ways to raise funds at the grassroots level. In the current presidential campaign, candidates are using the Internet to mobilize supporters and help voters gather for meetings and demonstrations.

The web has also become an increasingly valuable source of information about campaigns and contributions, providing data that is available to voters, citizens groups and reporters alike. During the 2000 campaign, candidates put their positions and advertisements on their websites; then-Governor George Bush took a leadership role in posting campaign contributions on the Internet in real time; the Federal Election Commission was able to put information about campaign contributions online for all to see and search; and independent organizations such as the Center for Responsive Politics ([www.opensecrets.org](http://www.opensecrets.org)) were able to find ways to make campaign finance information more useful and accessible. Meanwhile, groups in California, such as the Center for Governmental Studies ([www.cgs.org](http://www.cgs.org)), the California Voter Foundation ([www.calvoter.org](http://www.calvoter.org)), and the League of Women Voters ([www.smartvoter.org](http://www.smartvoter.org)) created ways to use the Internet to make information about candidates even more available and more useful.

Voters seeking information about politics have reported that the Internet is becoming an increasingly important source of information.<sup>5</sup> Voter information comes from a wide variety of Internet sources including candidate websites, traditional and non-traditional news sources, advertising, and email from friends. The growth of the web as a vehicle for friends to connect with friends, a phenomenon sometimes referred to as peer-to-peer marketing, has enabled a larger group of Americans to join (or return to) the political process through their own social networks. Peer-to-peer marketing has become an effective (and, for some voters, trustworthy) vehicle for news, opinion, fund raising and organizing. Whatever the source, the overall point is the same: Those with access to the Internet need no longer be passive observers in the political process. Now they can seek news and information from countless sources – and they can create, assemble and distribute it as well.

To a very large extent, all of this Internet political activity furthers several central goals of California's campaign law, the Political Reform Act, which was designed, in part, to encourage greater public participation in politics by reducing some of the perceived advantages and influence created by the need for more money in politics.<sup>6</sup> As an almost cost-free method of disseminating information, the Internet has, in some important cases, helped to provide an inexpensive means for candidates and their supporters and opponents to make their voices heard.<sup>7</sup> With low barriers to entry, the Internet has encouraged individual citizens to participate in campaign dialogue. As a remarkable aggregator and disseminator of information, it has made it possible for voters to become informed about elections and to do so at their own pace, from sources they trust; and it has enabled them to participate in information distribution as never before.

---

<sup>5</sup> The Pew Internet and American Life Project, *The Internet and Campaign 2002* and *The Rise of the E-Citizen*.

<sup>6</sup> The 1974 law stated, for example, that "State and local government should serve the needs and respond to the wishes of all citizens equally without regard to their wealth" and found that "the costs of conducting election campaigns have increased greatly in recent years and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions." See §81001(A) and (C) or Appendix Two for the full text.

<sup>7</sup> The Political Reform Act found that "The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved inadequate" and required that "Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." See §81001(G) and §81002(C) or Appendix Two for the full text.

The Internet has also enhanced another of the 1974 Act's goals by increasing the disclosure of information about the amounts and sources of contributions to campaigns - both by making it easier for the state's Fair Political Practices Commission (FPPC) and similar agencies to collect such information and by enabling the information itself to be assembled, analyzed, disseminated and accessed by voters, non-profit organizations, and the Press in ways that until recently would never have been deemed possible.

Our Commission believes that the Internet and associated new technologies, if allowed to flourish, increasingly will be used in ways that improve the quality of campaigns and elections. Therefore, despite widely differing views on the wisdom of other aspects of politics and political reform, our Commission believes that the advantages of enabling Internet political activity currently do, and for the foreseeable future will, far outweigh the benefits of restricting its potential through heavy-handed regulation. For that reason, we urge the legislature, the FPPC, and all others with interpretive or enforcement power to resist the temptation to adopt laws or regulations that, no matter how well intended, would have the practical effect of reducing the remarkable ability of new technology to empower candidates and voters. In particular, we think that the government should resist calls for excessive requirements that could unnecessarily, and perhaps unintentionally, inhibit or criminalize citizen participation in politics via the Internet.

We do not intend to gloss over the challenges that a fluid communications medium such as the Internet and other new technologies have created, nor can we ignore the likelihood that more such challenges will emerge in the years ahead. There are several areas that deserve public attention. First, many citizens still do not use the Internet or know that it is an important source of political information. Second, as with all mediums, there is the risk of deception or what the legislature has labeled "political cyberfraud." Third, there is the risk of voter alienation as a result of some Internet campaign activity, including political spam. Finally, there is the risk that the potential loss of privacy as a result of action by government or others (for example, by putting extensive personal information about voters or campaign contributors online), may result in decreasing political participation.<sup>8</sup>

Each of these areas may require some solution unique to the Internet but where action is needed it can almost always be taken under current laws.<sup>9</sup> Although we urge the legislature and FPPC to make use of this report to continue to examine Internet related areas, we think that the appropriate course for the legislature and regulators is to be cautious about calls for special regulations aimed at restricting Internet activity by citizens. The Commission believes that the regulatory cure may often be worse than the disease, and that Internet campaigning is a field in which problems, while real, will be largely self correcting if given the time to play out naturally.<sup>10</sup> There are also areas, such as spam, where any discussion of regulations specifically addressed to political campaigning will likely bump

---

<sup>8</sup> For example, some government agencies, including the Federal Election Commission, require the precise address of each contributor online, while others, such as the City of Los Angeles Ethics Commission, only lists contributor address by zip code. Some people believe the FEC's requirements are too intrusive while others take the position that the City's are not enough. A New York City Web site raised privacy concerns by placing too much information online. For examples, see "As Public Records Go Online, Some Say They're Too Public" by Amy Harmon published in the *New York Times* on August 24, 2001.

<sup>9</sup> Indeed, members of the Commission felt that there are areas in which the FPPC should act in a more timely fashion.

<sup>10</sup> We are mindful that all regulations face difficulties in enforcement, especially those that involve infractions by people and groups who are enthusiastic about participating in campaigns but are not knowledgeable about campaign law.

up against strong constitutional protections for political speech. For these reasons, we do not think it would be wise or necessary to adopt new laws or a new administrative vehicle specifically aimed at *limiting or regulating* the use of the Internet by political actor. This is especially important in view of the new diversity of participants made possible by the Internet.

The Commission believes, however, that there are some government actions that should be taken to *protect and enhance* forms of political participation on the Internet. We urge the legislature to consider amending the 1974 Act to create a special exemption for online voter education activities and anonymous independent political activities on the Internet. Similarly, we urge the FPPC to take several actions to protect and enhance political participation on the Internet. In particular, regulators should provide considerable latitude for candidates and independent organizations that wish to use new technologies such as peer-to-peer marketing and to use hyperlinks by establishing broad exemptions for these activities rather than restricting them in an attempt to stop coordinated expenditures.

In addition, because the Internet has become so central to political life, we urge the legislature to consider methods of increasing the accessibility of campaign finance information and of enabling more voters to take advantage of the Internet as a source of information and outlet for political participation. Each recommendation is spelled out in some detail in Chapter Four.

With great appreciation for the contribution of all of those who served as witnesses and consultants throughout the process, and for the opportunity to be of service to the State, we respectfully submit this report.



## EXECUTIVE SUMMARY

Assembly Bill 2720 created the Bipartisan California Commission on Internet Political Practices to address concerns about the applicability of the Political Reform Act (PRA) to Internet political activity. According to the act, the unique nature of the Internet “permits individuals, groups, and others to engage in political speech and other political activity that could constitute the type of activity subject to regulation under the Political Reform Act of 1974.” AB 2720 indicated that this Act was not intended to regulate online activity: “The Act predates the development of the Internet by nearly two decades” and “is silent on its application to political activity on the Internet.”<sup>11</sup>

The Commission’s enacting legislation directs it to make recommendations regarding several specific issues: 1) whether online “express advocacy” (an instruction to vote for or against a candidate)<sup>12</sup> should be subject to disclosure requirements, 2) whether Web site costs should be treated as reportable contributions or independent expenditures, 3) whether “fan sites” should be treated differently than other online activity, 4) whether identification requirements apply online, 5) whether current laws can protect against fraud, libel, or slander online, 6) whether disclosure of Internet activity is necessary to encourage broad participation, and 7) whether current law or a new regulatory structure is more appropriate for Internet political activity. Senate Bill 412 extended the Commission’s reporting deadline such that the final report would include recommendations on the issue of cyberfraud.<sup>13</sup> To ensure that these recommendations were based on complete information, the enacting legislation asked that Commissioners inform themselves about several specific topics: 1) the magnitude of changes caused by the Internet, 2) current online campaign practices, 3) legal developments in campaign law, and 4) the concerns of public interest groups.

Due to the state budget crisis, the members of the Commission voted at a meeting on Dec. 13, 2002 to fulfill this legislative mandate but to return all remaining funds budgeted for the Commission. To successfully complete its work, the Commission voted to accept logistical support from the Annenberg School for Communication at the University of Southern California and to accept research support from the Annenberg School and Boalt Hall School of Law at the University of California, Berkeley.

The Commission formed three subcommittees for topic area discussions, held seven public meetings and hearings, and conducted several major research projects. We considered information collection central to our task and acquired information about two broad subjects: use of the Internet for political purposes and existing and potential regulation of this activity.

The Commission had a multifaceted approach to investigating online political activity. We heard testimony from political consultants, reporters, technologists, public interest groups, and other practitioners in public hearings. We analyzed Web sites from candidates, initiative committees, and independent groups in all recent gubernatorial, congressional, and presidential elections. We catalogued online attempts to influence legislation in recent U.S. legislative cycles. We reviewed

---

<sup>11</sup> AB 2720, Chapter 975, Statutes of 2000 § 1(B)-(C).

<sup>12</sup> See footnote 52 of the *Buckley v. Vallejo* U.S. Supreme Court decision for an explanation of the “magic words” that currently designate a communication as express advocacy.

<sup>13</sup> SB 412, Chapter 927, Statutes of 2001.

news reporting about online politics, interviewed experts in the field, and pursued case studies of early innovators. This investigation yielded important findings:

1. Online political activities become more widespread and more tactically advanced with each election. Both the number of candidate Web sites and the diversity of their content have grown considerably over the last three election cycles. The Internet is incrementally becoming more important to the modern campaign.
2. Candidate Web sites typically include issue platforms, biographical information, links, news stories, a volunteer sign-up form, and an online contribution solicitation. More extensive Web sites include speech archives, television and radio commercials, downloadable campaign paraphernalia, sample letters to the editor, candidate comparison charts, language translation services, referral systems, personalized content, and online organizing toolkits.
3. In high-profile campaigns, individuals and organizations create independent Web sites with information about candidates and issues. Media organizations, non-profits, and corporate Web “portals” create national, state, and local voter guides featuring candidate statements, links, comparison engines, polls, and advertising archives. Campaigns generate online news coverage that includes editorial content, “fan sites” with information supporting one of the candidates, and parody sites. Statements supporting candidates also appear in thousands of postings on message boards, newsgroups, chat rooms, and listserves.
4. The Internet allows individuals and groups that do not typically buy broadcast or print advertising to participate in electoral and legislative policy dialogue and debate. Discussion board participants, parody authors, graphic artists, editors of online newsletters, chat users, Web site directory organizers, and loose networks of participants are engaging in efforts to influence the outcomes of elections or legislative proposals. Many of these new entrants in the policy or campaign debate do not see themselves as political committees, lobbyists, or advertisers. Some are unaware of how campaign finance regulation might apply to their activities.<sup>14</sup>
5. The Internet promotes peer-to-peer political marketing, where campaigns rely on supporters to spread the word to their friends and online communities without the direct involvement of the campaign. Campaign sites encourage users to pass along campaign-produced messages, place campaign advertisements on their personal sites, and promote the candidate in online fora. Many campaigns also include local or regional groups of supporters organizing online independently of the central campaign organization via their own Web sites and email listserves. These independent activists are often in email communication with the campaign and independent and official sites are linked via candidate journals or blogs. Online volunteers also can spread candidate messages via offline campaigning and “meet-ups” linking online organizers with offline supporters.
6. Internet users have access to a wider scope of independent sources of political information than users of traditional media. Citizens can request comparisons of candidates or legislators

---

<sup>14</sup> Craig Newmark of craigslist.org, for example, testified to the Commission that he was considering using his Web site to lobby the legislature on spam legislation but considered the action to be personal political activity: “It would just be me acting as Craig, not craigslist.” May 2, 2003 Commission hearing in Palo Alto, CA.

based on criteria they select for themselves, compare advertisements and issue positions side-by-side, and engage in open discussions aided by unedited interactive fora. Online voter education efforts, such as the rolling text-based debate between Presidential candidates by the Web, White, and Blue Consortium<sup>15</sup> or the archive of California candidate campaign promises by the California Voter Foundation,<sup>16</sup> promote informed participation.

7. To gain visibility, Web sites rely on Internet infrastructure maintained by third parties and Web sites that help users find other information. Search engines, directories, news aggregators (such as Google News), portals, and Internet service providers are critical for generating Web site publicity and allowing users to find campaign Web sites. There are potential issues with respect to how such search engines and portals might treat different candidates and causes.
8. Online fundraising is becoming increasingly important to some political candidates and organizations and early evidence suggests that such fundraising is attracting new participants to the campaigns who make relatively small contributions. Online contributors for both McCain and Dean contributed in smaller increments than offline contributors, averaging around \$100 in each case.<sup>17</sup> The Internet also creates the capability for citizens to learn about and identify candidates throughout the nation whom they would like to support.
9. Legislators and executive agencies use their Web sites to distribute information to the public and collect information from citizens. The Web increases the accessibility and breadth of distribution of all government information, including disclosed campaign finance activity. Individuals and organizations increasingly are using email and the Web to provide input to their representatives and government agencies.
10. The changes in political discourse brought by the Internet are still in their initial stages; citizens are beginning to look online for new chances to participate. Forty-two million Americans research public policy online and 23 million send their comments to public officials through the Internet. In campaigns, however, television remains the dominant form of communication. Only 13 percent of Americans go online for campaign information while 66 percent still primarily use television for information in statewide or national campaigns.<sup>18</sup>

To be sure, many organizations have collected these examples of online political activity, but the Commission's unique purpose is to combine this information with an assessment of how these activities might affect or be affected by existing and potential campaign finance and lobbying regulation. This concern with both the activity and its legal implications provides an informational basis for making decisions about regulating online politics. We reviewed Internet-related advisory

---

<sup>15</sup> For the 2000 elections, a consortium of foundations and Internet portals created a question and answer session among Internet users and the major candidates for President.

<sup>16</sup> This archive tracks statements made on candidate Web sites in previous elections and is available at [www.calvoter.org](http://www.calvoter.org).

<sup>17</sup> For information on McCain's donors, see "McCain's New Hampshire Win Nets Fast Web-Cash" in *Newsday* on February 3, 2000 on page A4 or "McCain Raising Campaign Cash, Volunteers Fast Online" in *The Atlanta Journal and Constitution* on December 29, 1999 on page A6. For information on Dean's donors, see transcripts of "Weekend Addition" on *National Public Radio* for November 9, 2003 and "Lou Dobbs Tonight" on *CNN* for August 27, 2003. For profiles of online donors, see "The Online Campaigner" in *Campaigns & Elections* for August 2003 on page 38 and "Web may revolutionize fundraising" in *The Christian Science Monitor* on July 31, 2003 on page 2.

<sup>18</sup> The Pew Internet and American Life Project, *The Internet and Campaign 2002* and *The Rise of the E-Citizen*.

opinions and enforcement actions by the Federal Election Commission (FEC) and state regulatory agencies. We surveyed state regulatory agencies, requesting their opinions about the impact of online political activity and how it might be regulated; we received questionnaires back from over half of the states (26). For historical perspective, the Commission also studied how political reformers have responded to past technological transformations, such as the rise of television. Several important findings came out of our legal and regulatory investigation:

1. Well over half of state regulators of campaign activity said the Internet would increase in importance over time as a medium of campaigning; 100 percent of states responding said that the Internet will be “somewhat” or “very important” to campaigns in the next 10 years, even though over 43 percent of respondents told us that it is currently unimportant.<sup>19</sup>
2. There is a scarcity of experience regarding Internet political activities in these state regulatory agencies. Only about 12 percent of the leaders of these agencies report that they often visit campaign Web sites and less than 40 percent of state campaign regulatory agencies offer Internet training for their staff.
3. States have begun to regulate online political activity. Some states report issuing up to six advisory opinions related to online politics, with an average of two per state. The reported number of enforcement actions related to online state political activity ranges from zero to ten, with an average of one or two per state. In at least seven states (out of 26 responding), legislatures are now looking into the regulation of online political activity. At least five states anticipate issuing new regulations about Internet political activity soon.
4. Regulators do not foresee facing difficulty in applying existing regulations to the Internet. Only about five percent of state respondents expect to encounter “a lot” of difficulty and fully 14 percent expect no difficulty whatsoever. Regulators also do not believe that groups and individuals engaged in Internet-based activities are likely to run afoul of the law unintentionally. Only five percent believe that Internet users will face such difficulty often; half of respondents believe that incidents of violations by those unaware of the law will be rare. We expect that drawing the line between unaffiliated individual supportive activity and online campaigning subject to reporting requirements will be more difficult than these regulators anticipate.
5. Some states have already encountered questions about a multitude of issues related to online politics such as whether to require disclaimers on every page of a Web site, whether to allow the use of government computers for filing of campaign finance reports and to send and receive campaign emails, how to determine the “fair market value” of email and links, whether email will require a “paid for by” disclaimer, and how individuals can obtain compliance for attributing a Web site to the official campaign organization. Regulators report that some are discussing the possibility of adopting new regulations to address issues such as “fake” Web sites, disclaimers on emails, and Internet polling.
6. At the national level, the FEC has undergone a transformation in its approach to online political activity. At first, it attempted strict regulation of Internet activity, ruling that providing hyperlinks to a candidate site was a reportable campaign contribution and that

---

<sup>19</sup> All survey results are based on the answers given by the 26 state agencies that returned our questionnaire.

independent “fan sites” had to register as Political Committees. It is now moving toward encouraging online activity by proposing to allow most independent advocacy under a volunteer exemption and by reevaluating its ruling on hyperlinks. The indicated direction of change in regulations accompanied a change in perspective; the FEC now sees online political activity as a way of expanding participation. It modified its initial reactive and strict regulation as it became aware of the benefits of the new types of political activity that would be deterred by its actions and as it heard about concerns from groups across the political spectrum.<sup>20</sup>

7. We can learn from some of the difficulty faced by early regulators by being more aware of the kinds of online activity that will be affected by regulations and by asking whether regulating an activity advances our goals for better campaigns and elections and whether it is even possible to develop workable regulations under uncertainty. Poor planning and failure to envision the potential of online political activity has often led to a rigid regulatory perspective that seems to undermine the goals of the regulation. Regulatory attempts that are premature have led to overly broad rules that sweep in more than is necessary. In many cases, regulators have reacted to a new type of activity by attempting to shoehorn it in to an old regulatory category with the predictable unfortunate results.
8. As state regulators move forward in this area, many seem destined to make the same missteps of the FEC’s early decisions. For example, many state regulators have not taken proactive steps to distinguish between “fan sites” by individual citizens and professional political efforts by independent committees. If regulations on coordinated expenditures are applied strictly to hyperlinks and email, candidate committees might be forced to account for all kinds of independent online activity that occurs on their behalf. Without a careful consideration of online voter education efforts, regulations may also deter voter guides and online fora. The current high level of regulatory uncertainty may have a chilling effect on efforts to increase online political activity.
9. California regulators have already given official advice to practitioners on use of the Internet for political purposes that will be consequential for many common Internet practices. The FPPC staff has advised that establishing a Web site in favor of a candidate is a reportable activity that may be considered an independent expenditure or an in-kind contribution. The FPPC also determined that email communications in support of a candidate from the campaign do not require a disclaimer. In both cases, they established precedent in response to specific requests rather than in a coordinated strategy to reformulate existing laws.
10. When government attempts to regulate the use of technology, what we do not know can indeed hurt us. The speed of technological change and the ability of practitioners to adapt to new rules make regulatory efforts in these areas difficult. Swift changes can make old rules inoperable or inappropriate. Technological changes that affect how hyperlinks are generated, how content from one Web site is framed by another, how online advertising is delivered to users, and how lists for unsolicited email campaigns are constructed, for

---

<sup>20</sup> See Federal Election Commission Advisory Opinions 1997-16, 1998-22, and 1999-17 and “Square Pegs & Round Holes: Applying Campaign Finance Law to the Internet” by the Center for Democracy and Technology, published in October 1999.

example, could all change the meaning and the impact of regulations written prior to these innovations.

11. We have learned through our research that when regulations are adopted piecemeal and without the benefit of expertise in practice and a more general outlook on the impact of online activities on achieving the goals of political regulation, the likely outcome is a regulatory environment that is reactive rather than enabling, restrictive rather than liberating. Such an approach produces regulations that are designed to counteract only the worst examples of online abuse and as a result can at times dampen the democratizing potential of online political activity.

The Commission encourages policymakers to think broadly about the purposes of regulation when considering whether online activity can and should be regulated. If any online activity might be subject to regulation, agencies should produce clear guidelines for practitioners, rather than responding only to specific requests by interested actors. We are conscious of the tension between allowing many voices to be heard in the political debate and enhancing the quality, transparency, and accessibility of information in a democracy. The Commission has, however, come to a general consensus regarding the regulation of online political activity that can serve as a framework for reformulating policy: We believe that most online political activity should remain unregulated.

Our approach should not be interpreted as an attack on traditional campaign regulation. Many commissioners support California's political regulation and the goals of its campaign finance reforms. Several commissioners and witnesses said that, in their eyes, the problems that campaign regulation was designed to address have not subsided. Others believe that the current system of campaign regulation causes more problems than it solves. The public remains concerned about corruption, inequalities in political influence, the tone and content of political debate, and the abuse of the legislative and initiative processes; many commissioners share these public concerns. Several commissioners fully support all of the PRA's original efforts to require public disclosure of information about political advertisers and to restrict the flow of unlimited contributions to political candidates, especially contributions that may present the appearance of corruption. Other commissioners do not support all of the original goals of the PRA and believe that the Internet should be a free and open medium for discourse where all Internet activity should not be subject to any kind of political regulation.

Even those commissioners that support campaign finance and media regulation, however, believe that the threshold for regulation should be higher for communications that involve certain categories of voices in the political debate, namely individual citizens acting on their own or in small grassroots groups who are not campaign professionals. Commissioners also unanimously favor online activity that is likely to produce a more informed electorate or to increase political engagement. We therefore support legal interpretations that tend to encourage independent informative activity rather than those that construct obstacles.

The commission acknowledges that reasonable minds can disagree about the merits of regulating campaign practices. We believe, however, that people of all political persuasions will recognize the value of Internet-based political activities. The Internet can help expand low-cost participation in public debate, promote openness and accountability, and provide for the wide dispersion of unlimited information. Though the Internet also promotes political activity that some Internet users may find distasteful, burdensome, or confusing, we are optimistic that there are ways to empower

users to counter the online activity they find abusive while locating the online political information they need as an alternative to strict regulation.

Our approach to the regulation of Internet political activities is designed to promote online political activity that helps to achieve the following goals: 1) allowing more citizens to influence public policy and political debate, 2) enabling transparency in governance and campaigning, 3) reducing the cost of campaigning, and 4) promoting access to information about candidates, ballot measures, and legislation.

With these goals in mind, we acknowledge the difficulties of applying our principles in practice. Our recommendations are therefore to be regarded as preliminary and subject to modification when applied to specific cases; they are designed to offer a baseline and point of departure for regulation and legislation. The report is not an attempt to draft the details of regulations but does serve to provide a rationale for a comprehensive set of improvements to our system of campaign regulation in the context of emerging technologies, whether or not any regulation is deemed necessary. The challenge is to present a coherent framework to guide policymakers as they proceed from our shared goals to the practical challenge of reformulating policy for a new era of California politics.

The Commission makes the following recommendations:

1. *Create an Exemption for Online Voter Education*

The legislature should create an exemption from coordination and expenditure regulations and reporting requirements for online voter education efforts that are (1) open to all candidates or ballot measure committees, (2) accessible by the public and (3) presented in an independent fashion.

2. *Create a Safe Harbor for Campaigns with Respect to the Online Activities of Others*

The FPPC should enable Internet users to independently create Web sites that use material from official campaign sites and link to official campaign sites without necessitating onerous reporting requirements or central control of content by the campaign. The agency should rule that providing hyperlinks, sending email, using a site's interactive functionality, and downloading materials would not be sufficient to establish coordination between an independent effort and a candidate or ballot measure committee.

3. *Allow "Fan Sites," Political Parody, and Criticism Without Necessitating Disclaimers or Reporting Requirements*

The legislature and the FPPC should create breathing space for online campaigning equivalent to the individual use of physical spaces for activities such as creating lawn signs or engaging in door-to-door conversations with neighbors. In particular, the FPPC should extend to the Internet current laws that allow anonymous independent activities under \$1000 or anonymous in-kind contributions of Internet speech activities under \$100.

4. *Exempt Volunteer Activity*

Rather than or in addition to recommendation number three, the FPPC should clarify that it will designate individual online campaigning, even by those who have not volunteered for the campaign in another capacity, as volunteer activity exempted from reporting requirements. The agency should establish a regulatory presumption that individual use of the Internet for political advocacy is not prohibited or reportable.

5. *Enable Reasonable Accounting for the Cost of Internet Activities*  
The FPPC should make clear that investments for general use rather than campaign purposes in computer hardware, Internet dial-up, broadband, or wireless services, and software purchasing, maintenance, and consulting are exempt from contribution and expense reporting requirements. The FPPC should also indicate that uses of work, school, or public access computer equipment or services will be considered occasional, isolated, or incidental when companies or schools anticipate and accept personal use of their equipment.
6. *Allow Hyperlinks Without Affecting Advertising Regulation*  
The FPPC should issue a regulation declaring that providing a hyperlink to a candidate or ballot measure committee Web site will not be considered a contribution and will not establish coordination with a campaign unless the hyperlink is provided in the same manner as other hyperlinks for which the Web site normally charges a fee. Sites that automatically pull text from a Web site, such as a search engine, should also be exempt from regulation even if the text includes express advocacy, as long as the process has not been intentionally designed to favor or disfavor a candidate or position based on a political viewpoint.
7. *Protect Online Media Coverage*  
The FPPC should issue a regulation declaring that news coverage from online media outlets, including editorials, are exempt from regulation if the online media outlet normally engages in the same type of activity outside of campaign politics. The exemption should include campaign coverage by online publications native to the Internet that do not fit into the existing print and broadcast media exemptions.
8. *Remove Liability for Third Party Political Content*  
The FPPC should exempt Web sites that provide interactive opportunities to display third-party content, such as bulletin boards, chat rooms, search engines, listserves, personal directories, and comment surveys, from liability or reporting requirements for allowing communications with express advocacy on their site.
9. *Protect Online Endorsement Communications to Members*  
Under the existing exemption for member communications, the FPPC should allow organizations that use the Web or email to communicate to the press or organizational members to distribute endorsement announcements via their Web site as long as those endorsements are announced on the site in the same manner as other press releases or announcements to members that do not involve campaign politics.
10. *Do Not Reinstate Statute Against the Use of Candidate Names in Domain Names*  
The legislature previously outlawed the use of candidate names in a domain name in a statute that expired due to a sunset provision. This statute was rightly not extended by the legislature because it gave perverse incentives for domain name registration authorities to rescind the domain name of someone engaging in political speech. The domain name arbitration system, the current federal law against “cybersquatting,” and laws against fraud, libel, and slander provide sufficient protection for abusive uses of domain names. If the legislature entertains efforts to curb broader Internet fraud issues, it should be wary of regulating political speech. If further restrictions on the misuse of identity should prove needed, they should not specifically address political speech.



11. *Expand Access to Online Political Participation*

Steps should be taken to promote online political participation to ensure that Californians become enlightened consumers of political information and able participants in the online political debate. For example, schools, libraries, and technology centers could promote and educate students about the use of the Internet in political campaigns.

12. *Move Toward Interoperability in Online Campaign Finance Reporting Systems*

The State should take steps to encourage local jurisdictions and the State to integrate online campaign finance reporting systems if possible without mandating the use of a particular reporting technology.

13. *Commission a Study About Access to Political Information Via Portals and Search Engines*

The legislature should commission a study to examine the role of Web portals and search engines in political activities. This study should include an examination of potential bias by search engines, a content analysis of election information available on the most popular Web portals, a study of how search algorithms affect the placement of candidate websites in search returns, and a comparison of the role of portals and traditional media outlets as conduits of political information.

In addition to offering policy recommendations, the Commission believes that choices made by political practitioners can help to achieve the benefits of online political activity while reducing the risks and negative consequences of burdensome regulation. We make the following recommendations for candidates, ballot measure committees, and independent expenditure committees for consideration when they create their Web sites:

1. Practitioners should display and follow a privacy policy that informs citizens about how their personal data will be used by the organization.
2. Campaigns should make the information on their Web sites available to persons with disabilities and those with low-speed Internet connections.
3. Campaigns should give email recipients an option to remove their name from any email list. The Commission also agrees with campaign professionals that sending unsolicited email to those who have not opted in to receive email is not in the interest of campaigns.
4. Campaign Web sites should include any information on their sites that the FPPC recommends for educating Internet users about what online activities might trigger reporting requirements under campaign finance law.
5. Government employees should not use public resources to engage in Internet political campaigning. Use of personal email, Internet access, and computer equipment for political purposes helps remove any appearance of impropriety.

By following the framework outlined here, the Commission strongly believes that California can serve as a leader in encouraging the growth and vibrancy of online campaign participation while remaining diligent about monitoring Web-based activities. The state can play a central role in changes in Internet technology and in campaign innovation because the state's views on technology policy are often a model for other states and nations and campaign changes often begin in California. The state is in a unique position to disseminate new approaches and lead by example by enabling online political activity that advances democratic values.

## CHAPTER ONE: A FRAMEWORK FOR ENABLING ONLINE POLITICS

Great expectations accompanied the rise of online political activity. Technology luminaries and political reformers alike predicted that the Internet would transform democracy. It was trumpeted as a new public sphere where citizens would be in constant discussion and in direct communication with elected leaders. Voters would go to the World Wide Web for up-to-the-minute details on every vote, every dollar contributed, every speech, every campaign promise, and every meeting in an informed democracy for the information age. Some even predicted that we would vote online within a decade or even that future elections might be eliminated altogether and replaced by a democracy in the style of the ancient Greeks, where each citizen helped draft policy. Best of all, the visionaries asserted, it could all happen from the comfort of the living room couch.<sup>21</sup> California, as the great innovator in technology and direct democracy, was to lead this transformation.

As we have been unable to live up to these expectations, this hype has become a relic of a bygone era. Without a sober consideration of the opportunities for politics brought by technological change, however, we may miss a more gradual, but no less profound, transformation in the way we engage and participate in the political process. As Microsoft Chairman Bill Gates often says, “We always overestimate the change that will occur in the next two years and underestimate the change that will occur in the next ten.”<sup>22</sup> You do not need to be a utopian visionary to recognize the important set of changes that the Internet is bringing to politics. It is beginning to offer a viable alternative to the top-down, low-involvement, poll-driven, ad-heavy campaigns that have dominated elections since the rise of television some three generations ago. The still nascent and rapidly evolving technology has already made possible an unprecedented flow of information and new modes of electoral participation. It has provided candidates with a means of reaching out directly to voters without the intermediation of the news media. It has spurred independent voter education efforts and enabled individuals who cannot buy television advertising to play prominent roles in campaigns. In addition to expanding the number of actors who participate in political discussions, it has advanced new techniques for campaigning that rely on volunteer-centered campaign organizations. In the California recall election alone, several thousand Web sites provided information. Major recall candidates pursued everything from online journals to animated games.

Internet campaigning is already impacting mainstream politics. Consider these examples:

- In 1999, independent candidate Jesse Ventura was elected governor of Minnesota largely as a consequence of a volunteer network generated by email lists and his Web site. The Internet campaign helped Ventura secure enough resources to compete, generate media buzz about the size of his rallies, and forge an enormous get-out-the-vote drive without a traditional party organization.

---

<sup>21</sup> A prominent advertisement circulated widely in national newspapers paid for by Internet start-up Voter.com during the 2000 campaign, for example, featured the image of a disheveled, unshaven youth laying on a couch with a laptop computer by his side, casting a vote.

<sup>22</sup> See Bill Gates et al. in *The Road Ahead* (New York: Viking, 1996) and “Bill Gate’s New Rules” in *Time Magazine* on March 22, 1999.

- During the current presidential campaign, Governor Howard Dean has emerged from virtual obscurity to consideration as a frontrunner by using his Web operation to raise more money from more individuals than any other candidate thus far, engineer several thousand local “meet-ups” among supporters that helped him build a national organization from scratch, and keep almost half of a million Internet users apprised of campaign developments.
- The California recall election was incubated online and gathered momentum via Web-based distribution of petitions, surprising political observers with the speed of its qualification. One high-profile gubernatorial candidate even decided to run based on a show of support from an independent fan Web site urging her candidacy.
- The two Californians that started Moveon.org in the wake of President Clinton’s impeachment have transformed their online presence into a major political player, expanding their network of supporters to 1.7 million. The grass-roots force—about the size of the Christian Coalition at its height—has raised substantial resources, initiated a major war protest, and intervened in several key elections.
- Large depositories of nonpartisan political information previously unavailable to all but the most persistent journalists are now available to every citizen online. California has led the nation in this area with non-profit organizations such as the Center for Governmental Studies and the California Voter Foundation gathering facts and data about campaigns, campaign finances, and elections and assembling detailed clearinghouses of reliable information.

As these examples show, the new medium is proving itself to be important in ways few would have imagined, but the changes it will bring to political discourse are still in their initial stages. As of 2002, only 13 percent of Americans said they go online specifically to search for campaign information contrasted with 66 percent who identify television as their primary source of campaign and political information.<sup>23</sup> Though Californians are not yet trading in their television sets, they are poised to look for alternative methods of becoming informed and engaged in politics.

The current political media landscape, with greater numbers of political television ads coupled with declining campaign news coverage, has generated poor reviews from the public. Less than 30 percent of Californians find political advertisements in statewide elections helpful and most are dissatisfied with both the candidates and the campaigns. Voters also believe that the conduct in campaigns is deteriorating; 38 percent of Californians believe campaigns have gotten worse over the last ten years, while only about 12 percent believe they have gotten better.<sup>24</sup> Because reliance on television for campaigns is in part responsible for breeding this citizen discontent, policymakers should be attuned to any opportunity to change the nature of campaign communication.

Online activity is changing the political process without waiting for the imprimatur of government agencies whose job it is to monitor and enforce campaign practices. Though the FEC and California’s FPPC and have not been active in either promoting or deterring online activity, we cannot assume that status quo policy will be indifferent to these developments. The legal

---

<sup>23</sup> The Pew Internet and American Life Project, *The Internet and Campaign 2002* and *The Rise of the E-Citizen*.

<sup>24</sup> Public Policy Institute of California and the Institute of Governmental Studies, *Statewide Survey*, November 2002.

distinctions and rules set forth in the California PRA are not easily reconciled with the dynamic, decentralized process that often blurs the line between monetary assistance to candidates and grassroots political speech. The Internet promotes interactive coordination between individuals and campaign organizations, provides opportunities for individuals and new political groups to communicate with mass audiences at low cost, and challenges the traditional boundaries between personal action like leafleting, volunteering, and soapbox speechmaking and political campaigning through the mass media like television advertising. The rise of the Internet raises the question that the Commission has been asked to answer, whether the PRA's current framework—designed when few could have imagined the reach of the Internet in campaigns—can be applied to the amorphous, evolving web of ideas that has become the hallmark of political life in cyberspace.

The question could not be more relevant to current regulatory and legislative debates. As campaigns continue to migrate online with increasing frequency and urgency, the FPPC will be called upon to issue rulings that apply PRA provisions to political activity on the Internet. Candidates, political organizations, corporations, citizens, non-profit organizations and other participants will continue to move online. Fundamental questions regarding the role of government in this sphere will need to be resolved. Whether regulation of online political activity is considered an attempt to place square pegs in round holes or a necessary step to extend protections against corruption, it is certainly better to formulate an approach to Internet campaigning that considers the traditional goals of campaign regulation along with the changes brought by the new medium. Inaction will not necessarily lead to less regulation because the restrictions imposed by existing regulations are not always well suited to the realities of cyberspace.

Do current California campaign laws need to be revised to accommodate political activity in cyberspace? Is the basic approach set forth in the law flexible enough to encompass the types of decentralized and individual political efforts that will take place with new technology? Does the current regulatory approach risk limiting the promise that the Internet holds for strengthening California democracy? These fundamental questions are difficult to address because California's current regulatory framework was enacted under very different political and technological conditions.

As the Commission has been asked to consider the goals and purposes of the PRA in our consideration of these questions, we have been conscious of differences of opinion over which goals are most important and how they can be achieved. For your review, we present the entire findings and purposes of the act in Appendix Two. We have elected to focus on two key goals that we believe should be foremost considerations in applying the PRA to online political activities. First, we should promote broad participation in the political process while protecting against the threat of corruption. Second, we should foster diverse and robust sources of information that inform voters on issues and create transparency and accountability in campaigns and governance.

Are these goals still appropriate for the medium of the Internet? The answer is most certainly a resounding "yes!" The pressing challenges and unforeseen opportunities that await California can only be prioritized and addressed by a citizenry that is willing to express its collective views through participating in the electoral process. We believe that this kind of citizen-government relationship can only be achieved if the substance of campaign discourse is broad, diverse and inclusive of all who choose to participate. The early examples of citizen online political engagement are encouraging and seem to suggest that the Internet will be a welcome addition to California political campaigns. As the pace of new uses of technology continues to accelerate, the current campaign

regulatory regimes may become obsolete. The change ahead presents an opportunity for governments to rethink old approaches to political regulation that have been central to a divisive public debate about the direction of democracy. The rise of Internet politics offers an opening to test new models and explore fresh ideas about how we can promote improved campaigns.

### Statement of Philosophy

The Commission has been asked to consider whether existing campaign laws are or should be made applicable to Internet-based campaign activities. We believe that this inquiry is about much more than whether each regulation is suitable to Web-based campaigning. Rather than focus only on details of application and implementation, we endorse an approach that furthers the broad democratic values that underlie the system, relying on them to help us navigate the challenges we are likely to encounter in developing a new framework.

Our specific recommendations proceed within a general consensus that much of online political activity should remain unhampered by government constraints. The weight of the evidence we examined regarding political online activity leads us to believe that *the best course of action any government can take is to enable the medium to mature naturally, allowing innovative political activities to develop*. We believe that the primary role of government in responding to the medium should be to concentrate on approaches designed to produce a more informed electorate and to increase political engagement.

With these general ideas in mind we propose that the State of California adhere to the following principles when considering political activities taking place via this new and maturing medium:

1. *Favor Citizen Involvement*  
Focus on the potential of the Web for expanding participation, especially by non-traditional political actors. For example, support approaches that encourage online political activity without easily triggering reporting requirements or opening campaigns to potential liability as a result of actions by individuals or small groups of citizens.
2. *Limit the Involvement of Government Regulators*  
Agencies should consider all implications of potential regulations, even those that appear routine. If and when circumstances arise that require state action, take care to produce clear guidelines and best practices for practitioners.
3. *Recognize that the Internet is Different from Other Modes of Communication*  
Be mindful of the unintended effects of applying regulations designed for print or broadcast mediums (such as advertising and contribution restrictions) to new kinds of participation that take place online.
4. *Empower Individuals to Counter the Potential for Online Abuse in Politics*  
Encourage the private sector, non-profit groups and citizens to respond to political activity they find abusive by using technological tools, finding alternative information, and holding responsible campaign actors accountable.
5. *Be Aware of the Interconnected Nature of the Web*  
Seemingly simple interpretations by campaign enforcement agencies may create unintended ripple effects with enormous implications for much online activity. We should be conscious

of all circumstances in which a regulation might apply, not merely the particular activity that each regulation is designed to address.

Applying this framework in the dynamic, fast-paced, real world of campaigns and technological innovation will be difficult but we strongly believe that we must approach these new activities within this framework, rather than in a piecemeal fashion. If nurtured instead of restrained, the Internet has the potential to provide citizens with a more meaningful voice in democracy. The challenge of reformulating law to enable that transformation is therefore worth what stands to be gained.

## CHAPTER TWO: THE SCOPE OF ONLINE POLITICAL ACTIVITY

Any regulatory framework for online political activity should be cognizant of the ways that people use the Internet for political purposes. Policymakers must be aware of both the common and uncommon online methods of participating in political debate and affecting the outcome of elections. The Commission sought to begin building the factual basis for its recommendations by compiling work done by others, collecting information on the activities most relevant to our mission, and hearing testimony from experts in the field.

While acknowledging that the political Internet is in a constant process of evolution, we aimed to identify the types of online activities that have a significant impact on our ability to achieve the goals of the PRA. Our approach was to catalog all current uses of the Internet by candidates, initiative committees, and independent groups in recent California statewide elections and in the two most recent U.S. Congressional and presidential election cycles. We reviewed news reporting about online politics and requested testimony from political consultants, reporters, technologists, and public interest groups. As a starting point for understanding what might lie ahead, we looked to the early online innovators recognized as trendsetters by their peers.

### Online Innovators

Though the scope and magnitude of the effects of technological change are not easy to predict, early signals often arise from the actions of a few vanguard innovators. Online politics has had its share of pacesetters. Internet politicking was introduced to the world through the election of Jesse Ventura as governor of Minnesota. Ventura was a relatively unknown political neophyte who began the campaign with limited resources and little established organizational support; he compensated for these handicaps by generating a network of volunteers using email and the Web. That network provided loans to the campaign to gain public financing, popularized his mass appeal, enabled his campaign to raise issues that the major party candidates had not addressed, and ultimately brought thousands of new voters to the polls.

Successful online campaigning has been supplemented by impressive Internet fundraising. Until recently, John McCain was the poster child for such success. The national surge in popularity following his victory in New Hampshire was made possible by instant access to Web-based funds for use in campaigning in other states. His campaign advisors later said that his serious challenge to George W. Bush would not have been possible without his early success online. Donors to McCain were not traditional political participants; the broadening involvement enabled him to overcome his lack of support from prominent party fundraisers.

The latest case of the exemplar online candidate is Governor Howard Dean. At the start of the 2000 presidential primary campaign, Dean was under-funded, little-known outside his state, and generally considered an also-ran by Washington insiders and the elite media. Through aggressive use of Internet-based organizing, Dean has promoted a network of several hundred independent Web sites made by groups in local areas and by communities interested in single issues. Rather than directing these efforts from campaign headquarters, Dean has encouraged self-appointed emergent leaders within local areas and party factions. He provides a local organizing kit for these leaders to build their own Web sites; as of August, 89 new leaders had taken advantage of the program and 326

individuals had started online discussion fora for the candidate on a single portal, including several designed for Spanish-language speakers.<sup>25</sup> His Web site has engineered several thousand networked local “meet-ups” among supporters and his email list includes half of a million Internet users. He also was the trendsetter in establishing weblogs for candidates and their supporters. His Internet volunteers have had a significant impact on the direction of the campaign. Dean used new campaign slogans based on suggestions from Internet message-boards, reorganized his campaign schedule to meet with local Internet groups, and relied on dispersed online followers to raise money in their homes. Dean’s Internet efforts show how an online platform for grassroots campaigning can vault an obscure candidate to the front of the race for a presidential nomination. On the strength of Internet fundraising, Dean’s campaign is now in first place in total contributions and has the broadest donor base.

There are new innovations in online politics happening all the time. During the life of the Commission, we have seen the Internet serve as an incubator for two political movements whose mission was encapsulated in their Web site names: [recalldavis.com](http://recalldavis.com) and [draftwesleyclark.net](http://draftwesleyclark.net). Both groups seeking a recall of Governor Gray Davis used the Web to distribute printable petitions to collect signatures for the recall. Decentralized petitioning made possible by the Web helped those efforts include people outside of major metropolitan areas and served as a counterweight to paid signature gatherers.

The newest prominent contender in the 2004 Democratic presidential primary entered the race with the support of many online activists who had been organizing for months without an official campaign organization. As a result, General Wesley Clark was up-and-running from day one of his new campaign. His Internet supporters provided not only a Web site but also a multi-state organization, a long list of donors, and a way to generate media buzz as an established candidate. Because his name was already a fixture on the campaign trail promoted by an existing core of supporters, he was not easily dismissed by commentators or his opponents despite his late arrival.

Internationally, South Korean candidates have been at the forefront, taking advantage of the world’s highest rate of broadband Internet access. Roh Moo-Hyun was elected President of South Korea after ranking third in polls with only 18 percent of the vote just two months prior to the election. Nosamo, a group of politically active 20- to 30-somethings that used Web sites, chatrooms, and online message boards, supported Roh’s campaign. The self-funded group had 70,000 members and was credited as a central force in the turnaround victory.<sup>26</sup>

Innovations have not only come from candidate organizations, they have come from independent actors. America Online used search and matching technology to help its users find a candidate that matched their issue preferences. The California Voter Foundation provided links to every candidate’s site and unbiased information on statewide initiatives. DemocracyNet provided candidate profiles, statements, and videos. Web, White, and Blue oversaw a rolling text-based debate between presidential candidates syndicated to appear on hundreds of Web sites.

MoveOn.org has been at the forefront of online advocacy, beginning by mobilizing constituents to oppose the impeachment of President Clinton and expanding to involve hundreds of thousands of

---

<sup>25</sup> See transcripts of *PBS NewsHour* for August 5, 2003.

<sup>26</sup> See “South Korea Takes E-Campaigning to New Heights” by Jaclyn Elledge published in *PoliticsOnline Net Pulse* on February 3, 2003.



people contacting Members of Congress on proposed legislation, organizing to oppose the California recall election, and mobilizing to protest the Iraq war. They recently received an influx of \$15 million to take over many get-out-the-vote efforts in the 2004 election. As a part of their “virtual march on Washington,” MoveOn generated over one million calls and faxes to Congress in a single day.

The Web has also been used as a vital organizing force for more traditional protests. Using parody Web sites, email and discussion boards, virtual sit-ins, independent broadcasting, and directories of local contacts, organizers of the 1999 Seattle WTO protest were able to engineer a highly-coordinated gathering that was the largest U.S. protest in a generation and ignited a worldwide series of mass actions that is still ongoing. International peace and human rights movements have also been successful at using the Web for organization and advocacy.

### Current Political Internet Usage

It is not only a few mavericks who have been active in online politics. Almost every serious candidate for statewide or congressional office now has a Web site and an email list. Each site typically includes issue perspectives, biographical information, links, news stories, a volunteer sign-up form, and an online contribution solicitation. More extensive Web sites include features such as speech archives, television and radio commercials, downloadable campaign paraphernalia, alterable letters to the editor, candidate comparison charts, language translation services, referral systems, personalized content, and online organizing activities. Both the number of candidate sites and the diversity of their content have grown considerably over the last three election cycles.

High-profile campaigns feature independent Web sites with information about candidates or issues. National, state, and local voter guides run by media organizations, non-profits, or corporate portals feature candidate statements, links, and comparisons. These campaigns also typically generate editorial content in online news coverage, “fan sites” with information supporting one of the candidates, and parody sites with information and images lampooning one of the candidates. Any statewide race is also likely to be featured in thousands of postings in message boards, newsgroups, chat rooms, and listserves. Web sites supporting or opposing one candidate may range from a site to accompany a television campaign by an independent expenditure committee to a grassroots action by an individual on his or her free home page.

All of this activity does not automatically translate into impact. Most campaign consultants now acknowledge the power of the Web to raise money and keep supporters informed about the campaign but many still question its capacity to convert undecided voters because visitors to a campaign Web site are typically committed supporters. Banner advertising and other ways of using the Internet as a medium to “push” campaign messages to Internet users who are online for reasons other than to seek out political information have not yet caught on among campaign professionals.

Among both practitioners and regulators, however, there is wide agreement that the Internet will become more important in campaigns in the future. Consultants are recommending spending more on Web services than ever before and a few campaigns are betting all their chances on Web-based efforts. Campaigns are not the only ones to recognize the coming growth of online campaign activities. In a survey of state-level election officials conducted by the Commission, well over half said the Internet would increase in importance over time as a medium of campaigning; 100 percent said the Internet will be somewhat or very important to campaigns in the next 10 years. Professional

campaigners and state officials realize that as online political activities become more widespread and more tactically advanced, the Internet is incrementally becoming more central to the modern campaign.

### Campaign Web Site Innovations

In reviewing current features on campaign Web sites, we have noticed several trends with important implications for the future direction of campaigns and for the efforts of policymakers to promote the Internet's democratic potential. Campaign organizations increasingly encourage visitors to engage in online politicking on their behalf outside of the campaign Web site. These efforts allow online political activity off candidate Web sites to have more of an impact on the campaign, directing users to alternative content and independent grassroots activity. They also raise questions for policymakers about whether they want to encourage campaigns to control usage of the Internet by outsiders, especially whether regulating authorities might classify these independent efforts promoted by the campaign as coordinated expenditures. Examples of this kind of activity include:

- Encouragement of users to download banners to place on their personal Web sites: Many campaign sites allow users to copy a graphic and a link to the campaign site and instruct users on how to place the banner on their site. When the user downloads a banner, the campaign has no control over whether the user will place it on a personal site or provide free unreported advertising on a site that normally sells banner ads.<sup>27</sup>
- Creation of candidate Web rings: Web sites often link themselves together in a ring of sites about a single topic so that all other Web sites in the ring are accessible from each site. This activity seems to promote coordination among disparate independent candidate supporters.<sup>28</sup>
- Requests for chat rooms, message boards, and newsgroups from users: Some candidates ask users to inform them of places they go online and then encourage other users to campaign for the candidate on these independent sites.<sup>29</sup>
- Syndication of Web site materials: Some political parties offer Web site creation tools that allow individuals or candidates to create a site that can be remotely updated by a central site. This makes it easier for people to create professional sites but raises coordination concerns.<sup>30</sup>
- Lists of independent sites on a campaign Web site: Campaigns give users the option of advertising their listserve or Web site on the campaign site by offering to link to all sites that support the campaign and request a listing.<sup>31</sup>
- Instant messaging profile systems: Some sites offer users the chance to place a profile on the candidate Web site, including their instant messenger identification. These systems allow other users to contact candidate supporters and coordinate campaign activities.<sup>32</sup>

---

<sup>27</sup> For example, see [kucinich.org](http://kucinich.org).

<sup>28</sup> On [webring.com](http://webring.com), for example, hundreds of sites for each of the major presidential contenders are linked in rings.

<sup>29</sup> For example, see [deanforamerica.com](http://deanforamerica.com).

<sup>30</sup> The British Labor Party and the Canadian Green Party both use these systems.

<sup>31</sup> For example, see [blogforamerica.com](http://blogforamerica.com).

<sup>32</sup> Al Gore's 2000 presidential campaign site, for example, included this feature.

The use of peer-to-peer political marketing (the distribution of campaign messages by supporters) is a second important trend related to these efforts to encourage off-site activity. Some campaign Web site features now promote campaigning on behalf of the candidate by enabling users to send messages from the Web site to other Internet users. The Commission views this use of word-of-mouth campaigning techniques as an encouraging sign in a political atmosphere dominated by mass media advertising. The activity also raises questions for policymakers by making it unclear who should be held responsible for the content of these messages and whether they will establish campaign coordination with independent activists. Examples of this kind of activity include:

- “Tell a friend” emailing systems: Campaigns typically give users the chance to send a pre-written but personalizable solicitation to their friend to visit the candidate Web site or to support the candidate on election day.
- E-postcards: Campaigns often offer a more complicated version of an email solicitation, encouraging users to send an email including a video of a campaign advertisement or a link to an animated message on the candidate Web site.<sup>33</sup>
- Site personalization: Some advanced campaign sites include a method of tailoring site contents to individual users, providing them with information tailored to their interests and encouraging users to advertise their version of the site to their network of friends, rather than the generic campaign home page.<sup>34</sup>

A third important trend on campaign Web sites is the effort to link online and offline political campaigning. These strategies allow online supporters to reach people who do not visit the campaign Web site and enable Internet campaigns to be an effective tool in generating support offline. They also raise questions for policymakers about whether rules against coordination and rules requiring updated campaign disclaimers will threaten these decentralized campaigning methods. Examples of these online-offline connections include:

- Distribution of printable materials: Campaigns make it easy for users to download brochures, issue papers, stickers, rally signs, and other documents to distribute offline.
- Distribution of camera-ready print advertisements: Some campaigns encourage users to download and use ads without being able to control whether they will use it in small neighborhood newsletters or in newspapers that typically sell advertising.<sup>35</sup>
- Distribution of broadcast-quality radio and television ads: Some campaigns allow supporters to download commercials without controlling whether they are used for unregulated advertising or for local public-access television.<sup>36</sup>

---

<sup>33</sup> For example, see [georgewbush.com](http://georgewbush.com).

<sup>34</sup> For example, see [johnkerry.com](http://johnkerry.com).

<sup>35</sup> Ralph Nader’s 2000 presidential site included these advertisements with a lengthy disclaimer.

<sup>36</sup> The media gallery on George W. Bush’s 2000 presidential site included these options.

- Community involvement kits: Campaigns encourage grassroots campaigning by giving users a package of materials designed to create local campaign organizations.<sup>37</sup>
- Organization of “Meet Up” days: Campaigns sponsor local organizing meetings with self-appointed local leaders. These offline activities sometimes require the expenditure of resources and are networked by the campaign.<sup>38</sup>
- Fundraising house parties: Campaigns encourage supporters to invite their friends to their houses to participate in conference calls or Web-based meetings to raise money for the campaign. These efforts may constitute coordinated fundraising activity.<sup>39</sup>

### Trends in Online Advertising

The Internet is a potential medium for public political advertising that some observers believe could one day have the power and impact of traditional broadcast communications. We considered whether it would make sense to apply existing campaign regulations designed for traditional broadcast advertising to advertising on the Web. We were conscious that new kinds of online advertising arise all the time; we tracked these new advertising methods used by campaigns to get a sense of the challenges that lay ahead. The Commission recognizes the need to balance the important goals reflected in California’s campaign advertising regulations when we apply these regulations to activity that is difficult to place in traditional advertising categories. Examples of this kind of advertising include:

- Banner advertisements with mini-sites on other sites: Campaigns sometimes purchase banner ads that include the production of a mini-site associated with the banner campaign and hosted on the site where the ad is placed.<sup>40</sup>
- Pop-up windows and flash commercials: Campaigns purchase advertising that appears overlaid on a Web site and has the potential to confuse voters about whether it is associated with the Web site they are viewing.<sup>41</sup>
- Banner ads with solicitation of contributions: Some banner ads ask users for contributions before they visit the candidate Web site.<sup>42</sup>
- Search engine keyword ads: Campaigns may purchase text advertisements to appear next to or within the search returns when users search for specified keywords, even those that do not directly relate to the campaign.<sup>43</sup>

---

<sup>37</sup> Bill Bradley’s 2000 presidential campaign site, for example, offered an extensive kit.

<sup>38</sup> For a list of ongoing meet-ups for most of the current candidates, see [meetup.com](http://meetup.com).

<sup>39</sup> For example, see [deanforamerica.com](http://deanforamerica.com).

<sup>40</sup> America Online, for example, created a mini-site for the campaign for governor of Ohio.

<sup>41</sup> A recent Republican research report showed that pop-up advertising was more effective for fundraising than traditional banners.

<sup>42</sup> See America Online’s advertising programs for candidates.

<sup>43</sup> Google includes these ads in a column to the right of their search results. At [overture.com](http://overture.com), candidates can buy an ad to appear directly in their search returns.

- Search engine position improvement: Campaigns may use keyword modification and linking strategies to increase the position of their site in the results for a given keyword search. Search engines themselves generally control how prominently each site is featured in their returns.<sup>44</sup>

### Trends in Online Voter Education

The Commission is encouraged by the use of the Internet for voter education platforms that include nonpartisan information about all candidates. Several new styles of voter education efforts provide easy access to candidate sites and foster comparisons of candidates to enable informed voting decisions. They also raise questions for policymakers about how to encourage these activities without threatening them with regulations designed to address campaign advocacy. Examples of online voter education include:

- Directories of candidate Web sites: Some voter guides and Web portals include descriptions of and links to all candidate Web sites but may have missing entries or larger entries for some sites.<sup>45</sup>
- Sample ballots: Some voter guides include printable ballots with links and information, where voters can select candidates and then remember their choices.<sup>46</sup>
- Candidate comparison engines: Some guides allow users to select the candidate that best represents their views by asking users policy questions and then using an algorithm to determine the candidate that matches them best, thus recommending a candidate.<sup>47</sup>
- Cyber-debates: Some guides include ongoing text discussions between candidates or online chat sessions that invite users to ask questions of candidates.<sup>48</sup>
- Candidate surveys: Using some guides, users can compare answers from all candidates who responded to a questionnaire about their issue positions.<sup>49</sup>
- Commercial indexes: Some guides include archived television and radio commercials for many candidates but may not include ads from candidates who have not submitted them to the site.<sup>50</sup>

### Trends in Online News Coverage

The distinction between news coverage and online advocacy is difficult to draw in the online world. Online media coverage presents an opportunity to decentralize media power in campaign discussions but it is likely to raise regulatory questions about how to apply the PRA's exemption for

---

<sup>44</sup> Searchenginereport.com, for example, discusses techniques for search engine position improvement.

<sup>45</sup> For example, see Yahoo's directory entries for the 2004 campaign.

<sup>46</sup> For example, see smartvoter.org.

<sup>47</sup> AOL Presidential Selector is one of the most prominent tools of this kind.

<sup>48</sup> See the 2000 presidential debate organized by Web, White, and Blue.

<sup>49</sup> The League of Women Voters produces online guides of this kind.

<sup>50</sup> In 2000, major foundations formed a site called the Freedom Channel to index candidate commercials.

media coverage so as to encourage expanded media discourse but not allow professional campaign organizations to use the media exemption as a loophole. Examples of this style of media coverage include:

- Online newspapers with criticism of public officials: Some Web sites with no offline media component editorialize against candidates in their news coverage.<sup>51</sup>
- Online newsletters with express advocacy: Some Web sites present political news from a partisan perspective and encourage users to vote for a candidate in their news coverage.<sup>52</sup>
- Newspapers with online features attacking a candidate: Some news organizations with print versions add features to their Web site that editorialize against a candidate and are only available online.<sup>53</sup>
- Media-sponsored online candidate debates: Some media organizations present video or text-based debates that limit candidate participation to two well-known candidates.<sup>54</sup>

### Trends in Independent Advocacy Efforts

The Commission is encouraged by the growing number of independent Web site operators that seek to influence an election outside of professional campaign organizations. Individuals or small groups often construct these sites at little expense. These efforts also raise questions for policymakers about how to apply independent expenditure, coordination, and disclaimer rules so as to encourage expanded civic engagement. Examples of new kinds of independent online activity include:

- Candidate “defense forces”: Some Web sites respond to negative attacks about a candidate or attack opposing candidates. They have the ability to play a prominent role in a campaign by encouraging candidates to respond to their charges.<sup>55</sup>
- Unaffiliated local organizations: In high-profile races, many groups of local supporters will organize their own Web sites in support of a candidate to coordinate local activities. They are often linked to and from the candidate site and include campaign staffers, official volunteers and unaffiliated local supporters.<sup>56</sup>
- Fundraising from an independent site: Several Web sites raise money either directly for a candidate or for an independent campaign to support a candidate from a Web site separate from the candidate’s site.<sup>57</sup>

---

<sup>51</sup> For example, see [anotherperspective.org](http://anotherperspective.org).

<sup>52</sup> For example, see [frontpagemag.com](http://frontpagemag.com).

<sup>53</sup> For example, see [phoenixnewtimes.com](http://phoenixnewtimes.com).

<sup>54</sup> The Bismark Tribune sponsored an online debate with limited participation.

<sup>55</sup> For example, see [deandefense.org](http://deandefense.org).

<sup>56</sup> For example, see [rifordean.org](http://rifordean.org).

<sup>57</sup> [moveon.org](http://moveon.org) has initiated several campaigns of this kind.

- Online issue advocacy with electoral implications: Non-profit groups are using their Web sites to distribute information about a candidate's record or to encourage users to send information to friends about a candidate's record.<sup>58</sup>

Some online independent advocacy occurs on parody sites. These sites facilitate light-hearted political communication and help make politics more accessible to citizens who are not typically politically involved. They also present special problems for policymakers in applying independent expenditure, coordination, and disclaimer rules. Examples of new kinds of online parodies include:

- Web site running for office: Several fictitious web-based entities have announced their intention to run for office. These Web sites have included negative information about existing candidates and asked voters to support the fictitious candidate.<sup>59</sup>
- Parody site generating media attention: One candidate parody site, gwobush.com, produced at low cost received so much media coverage that its additional hosting expenditures made the site go over the reporting limit for independent expenditures.
- Parody disclaimers: Some Web sites include disclaimers that poke fun at disclaimers found on official candidate sites and do not identify the creator of the parody.<sup>60</sup>
- Parody sites with endorsements: Some parodies include an explanation of the parody somewhere on the site that expressly advocates the election of an alternative candidate.<sup>61</sup>
- Ongoing parody of government office: Some parodies of elected officials stay online during election campaigns and continue to critique an incumbent candidate for office.<sup>62</sup>
- "Slap" sites: On some sites, the user is offered the chance to activate an animation of a candidate being slapped or take some other action against the candidate.<sup>63</sup>

### Trends in Domain Name Usage

All Web sites are accessible via addresses that include a domain name. These inexpensive domain names make the Web site address easier to remember and can help users find desired sites. In campaigns, many actors register domain names that include the name of a candidate. The use of some of these domains has raised concerns among legislators about the potential for online fraud but raise questions about the regulation of core political speech. Examples of this kind of domain name usage include:

---

<sup>58</sup> The National Abortion Rights Action League sent a video email with pro-choice advocacy from Whoopi Goldberg, for example, that included the tagline "Make your choice count on election day."

<sup>59</sup> Michael Moore initiated a Web-based campaign for the Ficus plant. The Doonesbury cartoon character "the Duke" also ran an online campaign that included criticism of the actual candidates.

<sup>60</sup> For example, see georgebush2000.com.

<sup>61</sup> For example, see georgybush.com.

<sup>62</sup> For example, see whitehouse.org.

<sup>63</sup> slaphillary.com, for example, offered such a feature during her Senate campaign.

- Use of campaign Web site domain name for marketing purposes: Some business buy a candidate domain name to sell products, including both those relevant to the campaign and those unrelated to the campaign. These sites typically use the candidate name to lure voters searching for a candidate's official site.<sup>64</sup>
- Use of candidate name for opposing candidate's site: Candidates sometimes buy domain names including the name of a current officeholder in order to increase traffic to their site from voters looking for the alternative candidates site.<sup>65</sup>
- Parody site with candidate domain name: Parody site administrators often use a candidate's name in their domains in order to generate traffic and make the site appear more authentic. Sites like electsladegorton.com even include express advocacy in the domain name but include information that clearly critiques the candidate.
- Site that gets shut down by registration authority: The use of a candidate name in a domain name sometimes encourages a complaint to the registration authority. In one case, the Helengrad Kumara political satire site was taken down by a registration authority following a complaint; no hearing or legal review was undertaken.<sup>66</sup>

### Trends in Online Campaign Business Practices

All organizations developing Web sites make decisions about how they will interact with users and other sites, often creating internal policies governing their actions. These decisions often have an impact on the user experience. Campaign Web sites have chosen some practices that users may find distasteful or that might generate complaints from other Web sites along with some practices that may enhance the user experience. Examples of these practices include:

- Explanation of campaign finance laws: Candidate and organizational Web sites often explain contribution rules and disclosure requirements to their users. A few sites post links to information from campaign finance agencies and explain the rules particular to online activities.<sup>67</sup>
- Sharing email lists between organizations and campaigns: Campaign Web sites sometimes use email lists generated by non-profit groups, candidates or independent Web sites. In one case, a former campaign Web master used the campaign email list for her own campaigning purposes.<sup>68</sup>
- Maintaining a Web site from the previous election: Campaign sites often transform after an election, becoming a vehicle for some goal of the former candidate. Bill Simon's 2002 site,

---

<sup>64</sup> For example, see the commercial site howarddean.com.

<sup>65</sup> Dan Dow's use of johndutra.com instigated the California law against using officeholder names in a domain name.

<sup>66</sup> For information, see nznews.org.nz.

<sup>67</sup> See Erskine Bowles Web site for Senate in 2002 or Howard Dean's online organizing school.

<sup>68</sup> Pat Buchanan's 2000 campaign used email lists generated by organizations he had been involved with prior to the campaign. The campaign Web master, Linda Mueller, used the campaign email list for her own "Buchanan Brigades" Web site after she was fired.



for example, remained online to criticize the policies of Gray Davis. Arnold Schwarzenegger's site even took applications for state jobs after he won the recall election.

- Appropriation of materials from another site: Campaign sites may use pictures, text, or documents downloaded from an opponent's site or a media site. The campaigns sometimes alter the materials and place them on their own site.<sup>69</sup>
- Framing another Web site: Candidates sometimes link to another Web site, such as their opponent's site, but use a frame so that part of their own Web site surrounds the opponent's site. Using frames, campaigns can add their own commentary on another site.<sup>70</sup>

### Learning From Early Trends in Internet Political Activity

These examples are designed to show the breadth of information presented online and the variety of styles used to participate in online politics. We are conscious that new uses of the Internet for politics arise every day but we believe this report provides a basis for considering the kinds of activities that are occurring online, especially those that have the potential to increase citizen involvement and are made possible only by this new medium.

Each time regulations are applied to the Internet, they will likely affect many different kinds of online activities, some unintentionally. The Commission believes that attention to the trends in use of the Internet for political activities can help policymakers prepare for the difficulty of applying laws designed with other mediums in mind to a medium with the democratizing potential of the Internet. We believe that many of the new ways that the Internet has empowered citizens to participate in politics are quite promising for democracy. We now seek to formulate a regulatory approach that can enhance the use of the Internet for these activities.

---

<sup>69</sup> Slade Gorton and Maria Cantwell each used photos from the other's Web site, creating a controversy over alterations made to a photo featuring Gorton and a fish.

<sup>70</sup> Murray Sabrin's Web site included a feature called "The scary world of John Corzine" that framed Corzine's site and added disparaging commentary.

## CHAPTER THREE: THE POTENTIAL REGULATION OF ONLINE POLITICS

### The Evolution of California Campaign Law and Policy

Californians love to hate political campaigns. Complaints about special interest influence and attack advertising have been a staple of California politics for many decades. California's progressive tradition has yielded a set of populist institutions and a regulatory framework designed to curb undue influence and promote more meaningful democratic discourse. In the eyes of the public, the problems that political regulation was designed to address have not subsided. Citizens remain concerned about corruption, inequalities in political influence, the tone and content of political debate, and the alleged abuse of the legislative and initiative processes. Witness the last two gubernatorial elections, where candidates took turns attacking one another on the grounds of using governmental positions for personal gain, being beholden to campaign contributors, and engaging in unfair and abusive campaign tactics. The twin sets of abuses that campaign finance regulation is designed to address—the potential for corruption in government and the potential distorting effects of large campaign contributions—remain high on the public agenda.

Even though Californians have been willing to try regulatory approaches to redress some perceived inequities in politics, they have traditionally been wary of government regulation of political speech. California's competing goals of keeping undue influence in check and limiting the role of government in campaigns have produced an innovative mix of reforms over the years. California passed its first campaign regulatory act, the "Purity of Elections" law, in 1893. It regulated corruption, bribery, fraud, and called for disclosure of receipts and expenditures with the Secretary of State. In 1921, these provisions were applied to ballot initiative committees. California first regulated lobbying activities in 1949 in response to the perceived power of Arthur H. Samish. In 1974, the landmark PRA was passed by the voters as Proposition Nine. Though the law was written prior to the Watergate affair, it came to a vote and passed overwhelmingly in the post-Watergate reform era. The Act created the FPPC and the Political Reform Division of the Secretary of State's office.<sup>71</sup>

Nearly every year, the legislature has passed amendments to the PRA and the FPPC has produced new regulations regarding its interpretation. In 1999, the legislature created the Bipartisan Commission on the Political Reform Act (the McPherson Commission). Their report, titled "Overly Complex and Unduly Burdensome: The Critical Need to Simplify the Political Reform Act," proposed many legislative and administrative changes. The latest major alteration of California campaign law came with Proposition 34, passed by voters in the November 2000 general election. It amended the PRA, changing many provisions regulating contributions and expenditures.

### Leading the Way in California

California's political reform tradition, like all its innovations, has had an impact on the nation. The state always seems to find itself on the leading edge of whatever is new, interesting and innovative. Silicon Valley is often referred to as "ground zero" of the information age, shaping the future of computing technologies and driving the next generation of Web-based innovations. Because the

---

<sup>71</sup> See "History of the Political Reform Division" on the Secretary of State's Web site at [www.ss.ca.gov](http://www.ss.ca.gov).

Internet sector of the national economy is concentrated in California, the state's views on relevant policy in the area are often relied on as a model for other states and other nations. Political change, too, seems to begin in California; from the rise of professional consultants to the use of direct democracy to the adaptation of campaign advertising, new political strategies and tactics are often previewed here.

California plays the same incubation role for campaign and election laws. The relentless drive by campaign professionals to win elections by adapting their tactics to push the envelope of existing laws has produced cycles of campaign reform; state policy-makers continually attempt to strike a balance between the goals of fostering an informed citizenry through disclosure and reforms and avoiding the potential chilling effects of too much government regulation. New Internet-based technologies are radically altering the methods by which people express their political opinions and participate in campaigns. State leaders have begun to raise questions about whether these new forms of online participation are somehow tipping the balance in ways that are healthy or unhealthy for democracy. Regardless of what policy-makers decide, other states will be looking to California again as a laboratory for reform.

### Current State Regulation

To play a leading role in the transition, California will have to act soon. In surveys of state elections officials conducted by the Commission, states report issuing up to six advisory opinions and up to ten enforcement actions related to use of the Internet for political purposes. Legislative and administrative staffs are now looking into the regulation of online political activity in many states and at least six states told us that they anticipate issuing new regulations about Internet political activity soon.

Some states have already encountered questions about a multitude of issues: whether to require disclaimers on every page of a Web site, the use of government computers for filing of campaign finance reports and to send and receive campaign emails, how to determine the "fair market value" of email and links, whether email will require a "paid for by" disclaimer, whether there can be a link from a government site to a campaign site, how to attribute the costs of setting up and maintaining a Web site and receiving assistance from a party, and how individuals can obtain compliance for attributing a Web site to the official campaign organization. Regulators responding to our survey reported that they might adopt new regulations to prohibit using governmental sites for campaigning, to allow Internet polling, and to address what a respondent called "fake" Web sites.

All of these issues will be central to how we develop an appropriate regulatory framework for online political activity. If regulations are adopted piecemeal, we are likely to produce a regulatory environment that is reactive rather than enabling. Thankfully, California has an opportunity to lead the way toward a thoughtful and considered approach. As one regulatory agency chair told us, "We, too, are trying to grapple with this issue and we're looking forward to seeing your results." To create a model regulatory framework, we must produce real results in the state that prides itself on its forward-thinking approach.

### The Difficulty of Online Political Regulation: Learning from Early Problems

Online political activity, still a relatively new phenomenon, has caused concerns in some states and foreign governments. In order to solve perceived problems, some policymakers have applied

existing campaign laws drafted prior to widespread Internet activity to emerging online political practices. More commonly, regulators have supposed that they are applying straightforward legal language to new activities without considering the consequences of their letter-of-the-law interpretations. In each of the cases discussed below, regulators reacted to a new type of activity by placing it in an old regulatory category. These well-intentioned attempts to protect democracy against potential abuses might stifle new kinds of activity that would ultimately help to advance the underlying policy goals of the laws being applied. Thus far, attempts to apply regulations designed for a static communications landscape to the dynamic online sphere led only to new difficulties.

#### *Case 1: International Efforts to Preclude Online Political Activity*

New kinds of political participation that are not envisioned by older regulations may initially seem threatening. In Japan, an old election law banned candidates from “using visual images that can reach a large unspecified number of viewers.” This provision was originally interpreted to preclude constructing any candidate Web site, engaging in any email campaign activity, or updating legislative Web sites during a campaign.<sup>72</sup> The rationale for this regulation is that mass advertising favors wealthy candidates; at the outset, regulators did not recognize the low cost of entering the electoral debate by posting information on the Web.

In South Korea, the National Election Commission reported that it had discovered 9,327 cases of illegal cyber-campaigning in the 2002 campaign. The regulators were endeavoring to ensure that every individual posting information on a bulletin board, newsgroup, or chat room included complete and unbiased information about the candidates for President. The Commission seemed not only indifferent to its incapacity to regulate all activity of this kind but inattentive to the potential of this widening political debate to spark participation by uncommon voices in the traditional political debate.<sup>73</sup>

#### *Case 2: Treating Hyperlinks as Campaign Contributions*

Traditional definitions of a campaign contribution refer not to the transfer of money but to the provision of “anything of value.” This has allowed regulatory agencies to include all manner of online activity under the heading of reportable activity. The most egregious blunder thus far is the treatment of any hyperlink on a Web site as a contribution. In 1998, the FEC ruled that a link from a corporate Web site to the campaign Web site of the corporation’s CEO constituted a prohibited corporate contribution. This ruling was made in reaction to an instance where a candidate was clearly using corporate resources of all kinds to advance his candidacy but it had the unfortunate side effect of making all links from search engines, Web directories, and individual Web sites illegal.

The State of Oregon has pursued a more differentiated approach, first declaring that links are not always a “thing of value,” but later ruling that public Web sites should not link to candidate sites and that no candidate’s site should link to the site of another. They have gone so far as to suggest that even legal links should include a disclaimer indicating who paid for the link underneath each link. Instead of considering how links on Web sites promote the accessibility of relevant information,

---

<sup>72</sup> *Reuters Newswire*, June 16, 2000 referenced in “Internet in Japan’s Election,” *Democracies Online Newswire*, June 19, 2000.

<sup>73</sup> See “Prosecution To Crack Down on Illegal Cyber-Campaigning,” in Korean Newswire *Empas* on November, 25, 2002.

Oregon regulators responded to the actions of “bad actors” as they arose, setting policy based on the worst example rather than the numerous examples of helpful links.

#### *Case 3: Discouraging Online Voter Guides*

Political regulations often provide opportunities for independent organizations to engage in unbiased voter education efforts without considering their contributions to all candidates. Because these laws do not envision online voter guides, however, they may be outdated and serve to quash online efforts. Online voter guides may include statements, links, advertisements, and issue positions from all candidates or ballot measure committees, all of which might necessitate their registration as a political committee engaging in an independent expenditure campaign for all of the candidates.

The FEC, for example, originally ruled that CompuServe could not provide free Web space to all candidates. It also did not clear hurdles to online voter guides that did not match the format requested by the Commission for printed voter guides. A commercial provider of services to candidates, Voter.com, then requested that the FEC require all Web sites to charge candidates for posting any materials from the campaign, linking to any candidate Web site, or providing a candidate email address. Though the FEC wisely chose not to honor this interpretation, it illustrates the potential of commercial operations to prevent neutral online voter guides from providing information about candidates without reporting it as a contribution.

#### *Case 4: Turning a “Fan Site” Into a Political Committee*

Laws regulating independent expenditures typically define their scope to cover all methods of “public political advertising.” The unforeseen outcome of this regulation is that an “I love Arnold” page on a personal Web site may be in danger of violating campaign laws. In 1998, for example, the FEC ruled that an individual who created a site from his personal computer advocating the election of a candidate had to include a specific disclaimer and keep track of expenses. The individual was informed that he needed to count the cost of his computer, among other expenses, in calculating his Web site construction expenditures. The FEC also placed the burden of deciding whether or not his Web site was a coordinated expenditure on the individual; it cited two pieces of evidence for possible coordination: a link to the candidate’s Web site and an email request from campaign staff that he change the spelling of a word on the site.

State regulators may also use broad interpretations that limit construction of fan sites. At least one regulator indicated to us that individuals or small groups may be required to register as Political Action Committees and file regular reports to an agency, itemize all receipts and expenditures, and report information such as their address, their treasurer, and their bank account location, as well as the time and resources spent creating the Web site. If sites are determined to be coordinated expenditures because of their links or email communication, more trouble might lay ahead. The campaign organization would then be responsible for reporting the in-kind contributions of these independent groups and for approving all of the information on their Web site.

#### *Case 5: Web Site Costs and Coordination*

Rather than proactively establishing guidelines for practitioners on how to account for the costs of Internet activity and how to designate in-kind and coordinated contributions, the staff of the

California FPPC at first followed the letter of the law used in other mediums. An early advice letter concluded that “The fair market value of the portion of the website containing express advocacy is reportable as an in-kind contribution if it is made at the behest of a candidate. If the expenditure is not made at the behest of a candidate, it must be reported as an independent expenditure.”<sup>74</sup>

This regulatory interpretation brings a broad array of Internet activities under regulatory scrutiny and does not establish clear tests for determining reporting requirements. First, the advice contends that any part of a Web site that expresses support or opposition to a candidate or ballot initiative will be reportable to the state without providing a way to partially account for costs such as hosting, domain names, and paid work on sites that include other content. Second, the interpretation establishes a “fair market value” standard rather than asking Internet users to account for direct costs incurred, even though the market value of a Web site might increase with publicity but no additional cost. Third, it puts the burden on Internet users to determine whether their expenditure was made “at the behest of a candidate” and does not clarify whether independent Web sites made with assistance from “organizing kits” or other features on a candidate Web site would establish coordination.

### Promoting Citizen Participation: Learning From Early Successes

Early experience regulating Internet political activity provides more than a lesson in “what not to do.” There is much to be learned from case studies of efforts by governments to promote strategies that encourage online political participation advancing the core principles that campaign law is designed to promote. In each case presented below, a regulatory agency envisioned the potential benefit of some activity occurring online and then cleared barriers to the widespread use of the Internet in campaigns.

#### *Case 1: Exempting Volunteer Activity*

Campaign finance law typically exempts campaigns from reporting the time spent by volunteers working on the campaign. The FEC used this exemption to try and create a broad protection for individual online activity and to remove the cloud of potential regulation. If an individual had volunteered for the campaign in some other capacity, the FEC reasoned that all of their time spent online and the incidental expenses they incurred promoting the candidate would not be reportable to the Commission. Under this proposed regulation, volunteers could build Web sites and promote the candidate in online fora and chat rooms without being subject to regulation. The difficulty with this approach is that it places volunteers who only operate online in a precarious position, wherein they have to engage in offline work to be able to pursue their efforts online.

#### *Case 2: Equating Online Politicking with Offline Pamphleting*

The State of Iowa has pursued an alternate approach. The critical distinction for their regulators is whether online activity should be considered analogous to television advertising campaigns or individual pamphleting. The State has created a regulatory subsection where individuals are exempt from identifying themselves or reporting expenditures if they use their own resources of \$500 or less to campaign online. They reasoned that the U.S. Supreme Court had ruled, in *McIntyre v. Ohio Elections Commission*, that independent advocacy of a personal nature is protected free speech. Creating a clear exemption for certain kinds of online activity by equating that activity with offline

---

<sup>74</sup> November 4, 1998 Advice Letter, File No. I-98-242.

campaigning other than television advertising can help make effective distinctions about which kinds of online activity will not be subject to regulation.

### *Case 3: Allowing Free and Reduced Hosting Arrangements*

The State of Hawaii has already taken a proactive approach to encouraging more candidates to use the Web. It allowed a corporation to offer free Web sites to all candidates without reporting its expenditures as long as they are offered in an impartial manner. Reasoning that free hosting should be treated like free television time, namely to be encouraged rather than restricted, Hawaii eliminated the barriers to entry for campaigning online. Ohio took a similar approach, allowing an Internet service provider to offer Internet access and Web site hosting to all candidates for a fee of only \$1 per month, with the condition that it would be available to all candidates. Similar kinds of arrangements should be promoted to allow all candidates to be active online.

### *Case 4: Treating Email as Personal Communication*

The California FPPC has removed the cloud of regulation from the use of email for political campaigning by designating this activity as personal communication rather than political advertising. In a recent advice summary, the Commission staff interpreted a broad exemption for email: “The Act does not prohibit soliciting contributions to a ballot measure committee via email and currently does not require sender identification on email.”<sup>75</sup> The Commission reasoned that because the act does not specifically prohibit email, a form of communication not contemplated at the time of its passage, it should remain unregulated absent additional legislative action. This regulatory strategy advances a norm that activity that does not fit into existing regulatory categories will not be regulated by default.

### Learning From Early Experience With Regulation

California can learn from both the successes and the difficulties of early attempts to regulate Internet political activity. Attempting to preclude widespread Internet usage and to regulate all hyperlinks has not met with success. The inability to make a distinction between voter education and political advertising or between professional political organizing and “fan sites” has threatened the most promising aspects of the use of the Internet for political purposes. California’s own experience shows that regulators must be clear about what activities will constitute coordination and how to account for Internet costs, rather than passing the buck to Internet users to interpret the statutes.

On the more promising side, policymakers have cleared the way to more extensive use of the Internet for grassroots participation by using volunteer exemptions, relying on analogies to pamphleting rather than television advertising, and recognizing the beneficial aspects of new voter education efforts. California’s own experience illustrates that, at least for email, activity not directly contemplated by the PRA does not have to be conflated with regulated offline activities.

Several key lessons can be learned from this experience:

1. Campaign finance agencies should decide what kinds of online activity, if any, will be regulated and produce clear guidelines for practitioners, rather than responding only to specific requests by interested actors.

---

<sup>75</sup> December 11, 2001 Advice Summary, File No. A-01-276.

2. Policymakers should be attentive to the unique potential of the Web to expand participation in campaign communication and to the unintended effects of applying regulations designed for other media to these new kinds of participation.
3. Regulators can advance an approach that allows online political activity by non-traditional political actors without easily triggering reporting requirements or opening campaigns to potential liability.
4. Policymakers can empower Internet users to find the online political information they request without constant government oversight.
5. Regulators should be cautious. Seemingly simple regulations about how hyperlinks, email, and Web sites relate to legal doctrines regarding in-kind contributions and campaign coordination will have enormous implications for much online activity.



## CHAPTER FOUR: RECOMMENDATIONS

The Commission acknowledges the difficulties of applying our broad principles and the lessons of our research in practice. Our recommendations are therefore preliminary. They offer a baseline for adapting the campaign regulatory framework to the Internet in a way that strikes the right balance between enhancing democratic deliberations and limiting the potential for abusive practices. Rather than the details of regulations, we provide a rationale for each task, a summary of the problems and current practices, a list of obstacles to achieving our goals, and a recommendation on how to implement our desired changes. With occasional but limited dissent, the Commission has come to consensus on the following recommendations:

### 1. Create an Exemption for Online Voter Education

*Purpose:* Facilitate voter education by exempting online, nonpartisan voter education efforts from coordination and expenditure rules.

*Summary:* Presenting information from all candidates or ballot measure committees should not be considered a coordinated or independent expenditure. These efforts should be encouraged rather than restricted. We should protect online fora that are (1) open to all candidates or ballot measure committees, (2) accessible by the public and (3) presented in an independent fashion. At a minimum, an exemption should protect online voter guides, link lists, and candidate comparison utilities along with archives of speeches, commercials, campaign statements, issue positions, bills sponsored by candidates, video clips, and questionnaire responses. If any individual or organization makes an effort to solicit information from all candidates or ballot measure committees, their activity should not be subject to regulation.

*Current obstacles:* Currently, the definitions of contribution and expenditure do not clearly exclude from their ambit investments made in developing such Web sites.<sup>76</sup> The building of such a Web site could run afoul of the prohibition against certain “in kind” contributions that prohibits in kind contributions valued at more than \$100 without abiding by reporting requirements.<sup>77</sup> The efforts ostensibly are also subject to contribution limitation under the sections of the PRA that impose “Limits on Contributions from Persons” and “Limits on Contributions from Small Contributor Committee.”<sup>78</sup> By dint of their expenditures or contributions, they could be deemed a committee or even a controlled committee if it is decided that in obtaining accurate information about various candidates the Web site operator has “act[ed] jointly with a candidate.”<sup>79</sup> Such informational sites could easily fall astray of the PRA and expose candidates or voter guide providers to unforeseen liability for failure to report receipt of contributions.

---

<sup>76</sup> See § 82015 and § 82025. In particular, § 82015(b)(2)(C)(ii) states that “communications that contain reference to the candidate’s candidacy for elective office” are “election related activities,” which are considered contributions absent full and adequate consideration.

<sup>77</sup> See § 84300.

<sup>78</sup> See § 85301 and § 85302.

<sup>79</sup> See § 82013 and § 82016.

*Recommendation:* An explicit exemption for online voter education activities should be included in the act. The FPCC may be able to establish guidelines for this exemption. Alternatively, a general exemption could be incorporated into the act by the legislature. Such an exemption could be effectuated in a new separate section or in each of the individual provisions governing contributions and expenditures.

## 2. Create a Safe Harbor for Campaigns with Respect to the Online Activities of Others

*Purpose:* Enable Internet users to independently create Web sites that use material from official campaign sites and link to official campaign sites without necessitating onerous reporting requirements or central control of content by the campaign.

*Summary:* We should make clear that providing hyperlinks, sending email, using a site's interactive functionality, and downloading materials would not be sufficient to establish coordination between an independent effort and a candidate or ballot initiative committee. Campaigns should be able to provide materials and functionality to support any of the following activities by individuals or organizations without establishing a coordinated expenditure: (1) providing code and images to place an ad that redirects users to the campaign Web site on an independent site that does not sell advertising, (2) providing materials that can be syndicated by remote independent Web sites that do not normally sell advertising, (3) encouraging individuals or organizations to link to a campaign Web site or to sign-up to receive email from the campaign, (4) allowing individuals or organizations to download campaign-generated content for offline distribution, (5) offering to post a hyperlink to an independent site or to encourage users to join an independent email listserve, and (6) allowing individuals or organizations to use special features on campaign Web sites to refer others to the site or to send an email to others requesting campaign support. The current laws are not clear on the extent to which they govern these activities, and thus potentially expose campaigns to significant unforeseen liability. Problems that have already been encountered on California campaign Web sites include:

1. TV ads that are placed on a Web site: Strict rules govern the reporting on the top two donors funding the creation and broadcasting of advertisements, mandating that this information be updated every five days. When an ad clip is placed on a Web site, however, the ad can be emailed and forwarded through peer-to-peer marketing. **Expecting campaigns to track an ongoing chain of e-mail and other forms of peer-to-peer marketing to update donor information is pragmatically infeasible.** It is not clear that a broadcast model of campaign oversight is appropriate in this context.
2. E-cards provided on a campaign Web site: The e-cards are intended for the visitor to distribute to their friends. This means that the individual is distributing the campaign's email. Current regulations are not clear on whether this activity would be considered volunteer activity or a campaign contribution. It could even constitute coordination with the campaign.
3. Campaign materials such as bumper stickers, wallpaper, posters: Campaigns distribute these items for users to download. Given the way that similar activities are monitored in the print world, it is unclear whether a campaign must disclose and regulate user downloading and printing.

*Current obstacles:* Currently an expenditure is treated as a contribution to the candidate if the expenditure is made (1) in cooperation or in consultation with the candidate, a controlled committee or any agent, (2) in concert with, at the request or suggestion of, the candidate, a controlled

committee or any agent, (3) under any arrangement, coordination, or direction with respect to the candidate or the candidate's agent.<sup>80</sup> The activities that may constitute coordination in a campaign are not clearly defined. Our survey of state regulators indicated that respondents acknowledge that the following activities may constitute evidence of coordination: (1) previous direct contributions—22 percent, (2) visits to the campaign Web site—22 percent, (3) the taking of information or graphics from the campaign Web site—33 percent, (4) emails from the individual to the campaign—33 percent, (5) emails from the campaign to the individual—39 percent, (6) links from the individual's site to the campaign Web site—50 percent, and (7) links from the campaign's site to the individual's Web site—72 percent. Many of these activities are fundamental to the operation of the Internet and help encourage participation by individuals and groups that could not otherwise engage in campaign activities. Placing limitations on linking, emailing, or indexing would make it more difficult for Internet users to find and utilize campaign sites. This kind of activity should not be deemed sufficient evidence of coordination.

*Recommendation:* An FPPC regulation establishing the contours of what does and what does not constitute coordination with respect to Web site activities may be sufficient. Such a definition of what constitutes coordination should be as narrow as possible and exempt all of the above activities from establishing coordination on their own. It should make clear that other kinds of routine Web site features and uses should not establish coordination even if they are not anticipated in the act. Alternatively, the legislature should establish a safe harbor for campaigns that inform visitors of the rules and are unaware of improper use of the campaign's Web site.

### 3. Allow "Fan Sites", Political Parody, and Criticism Without Necessitating Disclaimers or Reporting Requirements

*Purpose:* Protect individual online grassroots political activity. We should create breathing space equivalent to individual use of physical spaces for activities such as creating lawn signs or engaging in door-to-door conversations with neighbors.

*Summary:* Individuals or small groups should be able to support or oppose a candidate or ballot measure via low-cost Web sites, blogs, email campaigns, or participation in online fora without necessitating compliance with regulations requiring a disclaimer. In particular, parody sites and online efforts to critique public officials should be protected so that they do not spur opponents to use campaign finance law as a tool to suppress free speech.

*Current obstacles:* An anonymity allowance already exists in the statute but is limited to contributions under \$100. The law says that no reporting or disclosure is required for contributions of less than \$100.<sup>81</sup> The FPPC has also agreed in principle that Web sites classified as independent expenditures under \$1000 would not require a disclaimer but the most recent staff advisory does not reflect this understanding.

*Recommendation:* The FPPC should issue a regulation clarifying the interpretation of this provision. They should extend to the Internet current laws that allow anonymous independent activities under

---

<sup>80</sup> See § 85500(b).

<sup>81</sup> See § 84304.

\$1000 or anonymous in-kind contributions of Internet activities under \$100<sup>82</sup>. If the creator of a Web site does not reach the \$1000 threshold for classification as a political committee, they should not face any reporting or identification requirements.

#### 4. Exempt Volunteer Activity

*Purpose:* Remove the cloud of potential regulation from individual Internet activity.

*Summary:* This could serve as an alternative method for exempting individual Web site creation from contribution, expenditure, and reporting requirements.

*Current obstacles:* There is an exemption for volunteer activity under current law. Sections in the FPPA covering volunteer activities, anonymous contributions and cash, and in-kind contributions provide analogous coverage to federal volunteer exceptions.<sup>83</sup> The FEC has chosen this method to try and exempt online activity.

*Recommendation:* The FPPC could clarify in its advice that individual online campaigning will be considered volunteer activity but would need to include those who have not volunteered for the campaign in any other way. We ask the FPPC to establish a regulatory presumption that individual use of the Internet is not a prohibited contribution or expenditure absent facts to the contrary. Alternatively, we recommend that the FPPC make a public statement that the future presumption will be in favor of Internet political activity.

#### 5. Enable Reasonable Accounting for the Cost of Internet Activities

*Purpose:* Enable individuals to express their opinions on the Web without exposing themselves to reporting requirements and without exposing campaigns to unforeseen liability for inappropriately costing volunteer activities.

*Summary:* We need to make investments for general use rather than campaign purposes in computer hardware, Internet dial-up, broadband, or wireless services, and software purchasing, maintenance, and consulting exempt from contribution and expense reporting requirements. Direct campaign investments, such as the purchase of a domain name specifically for a campaign site or hosting costs specifically attributable to a campaign site, would not be exempt. To this end, the statute should be interpreted to allow for an exemption of costs for equipment or supplies that (1) have already been acquired for another purpose, such as a personal computer, or are available free of charge or to the public generally for another purpose, such as corporate and library access equipment, and (2) are used primarily for another purpose and only used in a *de minimus* manner for campaign purposes.

*Current obstacles:* The FPPC has made no ruling on accounting for the costs of Internet activity. Certain recent Advice Summaries highlight the potential confusion in applying these statutes to Internet activities:

---

<sup>82</sup> This activity would include, for example, online activities that the FPPC would define as coordinated or directed by the campaign.

<sup>83</sup> See § 82015 and administrative code 18215 for the volunteer exemption. See also § 84304 and § 84300.

1. “The current mass mailing statute and regulations only apply to tangible items and not the Internet”.<sup>84</sup>
2. “Contributions received and expenditures made by an incumbent council member for the purpose of mailing a questionnaire to constituents must be reported on the council member’s campaign statements. If another individual mails the questionnaire at the council member’s behest, the council member must disclose payments of \$5,000 or more made by the individual”.<sup>85</sup>
3. “The exception to the definition of contribution provided by section 82015(f), which is applicable to certain meetings and fundraisers, does not apply to a phone bank”.<sup>86</sup>

*Recommendation:* In its advice and regulations, the FPPC should clarify how to account for Internet services and equipment owned by an individual or used at public facilities. It should treat the cost of using general computer and Internet equipment and services owned by an individual for general use or used at other facilities for general use as zero. The FPPC should also indicate that uses of work or school supplied computer equipment or services will be considered occasional, isolated, or incidental when companies or schools anticipate and accept personal use of their equipment. Use of these services and this equipment for Web site production or uploading, but not hosting, should be exempted from reporting absent evidence of employer encouragement or coercion.

#### 6. Allow Hyperlinks Without Affecting Advertising Regulation

*Purpose:* Enable Internet users to easily locate candidate and ballot measure Web sites without affecting regulation of advertising expenditure reporting.

*Summary:* Hyperlinks provide the functionality that makes the Web a web, rather than merely a document storehouse. Web sites often provide links to any other site of a similar nature, use ‘robots’ to automatically generate directory listings for other sites, or allow users to submit sites for inclusion on a list of links. Web sites also sign up for hyperlink exchange programs that agree to post their banner on other participating Web sites in exchange for posting a banner on their site. Many individuals also place links to favorite sites on their personal sites. Search engines use the number of links to a particular site to help determine the ordering of sites in the results lists. All of the links allow users to find the information they would like, whether it is the official candidate and ballot measure sites or independent sites. Placing any limitations on linking would make it more difficult for Internet users to find official campaign sites.

If a site normally charges for a hyperlink, such as a banner advertisement, providing a link of the same kind should be considered an in-kind contribution. If a site normally provides links without charge, however, providing a link of the same type to a political candidate should not be treated as a contribution and should not establish coordination with the campaign. Different types of hyperlinks on the same Web site should be treated differently. As long as a Web site normally provides free hyperlinks of the same nature as a hyperlink that the Web site provided to a campaign site, the site administrators should be exempt regardless of whether they normally charge for hyperlinks of a different nature. If paid and free links are intermingled, they should be appropriately identified. If a corporation normally charges for priority hyperlinks in an online directory but decides to offer

---

<sup>84</sup> See June 19, 2002 Advice Summary, File No. I-02-123.

<sup>85</sup> See May 29, 2002 Advice Summary, File No. A-02-116.

<sup>86</sup> See December 5, 2001 Advice Summary, File No. A-01-249.

priority listings to official candidate Web sites for all candidates free of charge, that activity should not be considered a contribution.

*Current obstacles:* The FPPC has not ruled on whether hyperlinks will be considered contributions, but several other states have ruled that some links will be considered contributions or will establish evidence of coordination. At least one state has recommended placing disclaimer text under hyperlinks and many regulators told us that hyperlinks would be treated as evidence of contributions or coordinated activity.

*Recommendations:* The FPPC should clarify in its regulations and advice that providing a hyperlink to a candidate or ballot measure committee Web site will not be considered a contribution and will not establish coordination unless the hyperlink is provided in the same manner as other hyperlinks for which the Web site normally charges a fee and similar hyperlinks have not been provided to all other candidates and/or ballot measures. Hyperlinks that include express advocacy, either in the text of the URL or in the name of the site, should be exempt from regulation unless they receive payment or normally charge a fee for placement. Sites that automatically pull text from a Web site, such as search engines, should also be exempt from regulation even if the text includes express advocacy as long as the process has not been intentionally designed to favor or disfavor a candidate or position based on a political viewpoint. If this change cannot be effectuated in a regulatory interpretation, the legislature should establish a specific exemption for hyperlinks.

## 7. Protect Online Media Coverage

*Purpose:* Allow media coverage of candidates by net-native Internet publications that are not already covered by print and broadcast media exemptions.

*Summary:* Publishers of newspapers and periodicals and radio and television stations are presumably able to publish editorial information on their Web sites under current law. Media coverage that only appears online, however, may not be covered by the current media exemption.

*Current obstacles:* In § 86300(b), current law states that “Any newspaper or other periodical of general circulation, book publisher, radio or television station (including any individual who owns, publishes, or is employed by any such newspaper or periodical, radio or television station) which in the ordinary course of business publishes news items, editorials, or other comments” is exempt from contribution and expenditure reporting requirements. The FPPC has made no ruling on whether Web sites would constitute a “periodical of general circulation.”

*Recommendation:* The FPPC should indicate in its advice or regulations that news coverage from online media outlets, including editorials, are exempt from regulation if the online media outlet normally engages in the same type of activity outside of campaign politics and engages in no other effort to support a candidate or promote a ballot measure.

## 8. Remove Liability for Third Party Political Content

*Purpose:* Promote fora for communication about campaigns without requiring the forum provider to edit all communications or face liability.

*Summary:* Corporate portals, non-profit voter guides, news media sites, and independent providers allow citizens to communicate (often pseudonymously) about candidate and ballot measure campaigns by providing bulletin boards, chat rooms, listserves, personal directories, surveys, and other interactive opportunities. Citizens often use express advocacy in these fora to promote a candidate or ballot measure. Third parties should not be held accountable for these communications, even if they are biased in the direction of one candidate or issue position.

*Current obstacles:* The FPPC has made no ruling on whether third-party providers of communication fora are responsible for the public political advocacy of their users.

*Recommendation:* The FPPC should exempt Web sites that provide interactive opportunities to display third-party content, such as bulletin boards, chat rooms, search engines, listserves, personal directories, and surveys with comments, from liability or reporting requirements for allowing communications with express advocacy on their site. The originator of a statement should be the only person responsible for observing reporting and disclaimer requirements, if any are necessary.

## 9. Protect Online Endorsement Communications to Members

*Purpose:* Allow entities to announce candidate and ballot measure endorsements on their Web sites without triggering reporting requirements.

*Summary:* Non-profit associations, corporations, and unions have Web sites that serve multiple roles. They use their sites to communicate to the press, their members, and the general public. Communications that are directed toward the media or organizational members but are still accessible by the general public should not be considered regulated activity.

*Current obstacles:* Organizational communications to members, including endorsements, are exempt from reporting requirements unless the organization uses “general public advertising” for those communications.<sup>87</sup> The FPPC has made no ruling on whether organizations can communicate with their members or the press via a Web site without triggering reporting requirements. Seventy-seven percent of the state regulators that responded to our survey said that releasing an endorsement press release on a non-profit site would necessitate reporting the site as an independent expenditure. Two states declared that the Web site would become entirely illegal if it issued such a press release because it would be classified as a corporate actor expressly advocating the election of a candidate.

*Recommendation:* Under the existing exemption for member communications, the FPPC should issue a regulation exempting organizations that use the Web or email to communicate to the press or organizational members. Even if it is publicly available, a communication should be exempt as long as it is announced on the site in the same manner as other press releases or announcements to members that do not involve campaign politics.

## 10. Do Not Reinstate Statute Against the Use of Candidate Names in Domain Names

*Purpose:* Promote use of the Internet to expand participation in the electoral debate by allowing commentary on candidates and ballot measures by unaffiliated individuals.

---

<sup>87</sup> See § 85312 for exemption of communications to members from contribution reporting requirements.

*Summary:* Individuals, unincorporated groups, or organizations often register and use domain names that include the name of a candidate or officeholder for providing commentary about that person, creating a parody of that person's official site, or allowing others to post comments about the person.

*Current obstacles:* Under § 17525, a statute which has currently expired due to a sunset provision, "It is unlawful for a person, with a bad faith intent to register, traffic in, or use a domain name, that is identical or confusingly similar to the personal name of another living person or deceased personality, without regard to the goods or services of the parties." The provision is not applicable if the domain name "is connected to a work of authorship, including but not limited to, fictional or non-fictional entertainment, and dramatic, literary, audiovisual, or musical works" but a domain name registration authority will not be held liable under the law if they take action to rescind the domain name of someone engaging in such a work of authorship. Under this provision, if an officeholder or candidate asked a registration authority to remove a parody or commentary Web site, they would potentially face liability for maintaining the site but face no liability for removing the site; thus, their incentives promoted removing the site. It was also unclear what was considered "bad faith intent." This statute was rightly not extended by the legislature and is no longer applicable.

*Recommendation:* The legislature should not renew the domain name statute. The uniform dispute resolution policy under the Internet Corporation for Assigned Names and Numbers and the current federal law against "cybersquatting" provide sufficient protection for abusive uses of domain names to extract money from officeholders, to use a trademark to confuse users, or to misrepresent oneself as another. Current laws against fraud, libel, and slander are sufficient to solve online abuse and candidates already can obtain a court order to reveal the identity of an anonymous online speaker. In cases of political speech, the burden of proof in such cases is justifiably high. Any extension of the domain name statute would create burdens to an uninterrupted political debate. If any new restrictions are deemed necessary, they should not be specifically directed at political speech.

## 11. Expand Access to Online Political Participation

*Purpose:* Ensure that Californians are educated about the use of the Internet for political activities, both as enlightened consumers of political information and as potential participants in the online political debate.

*Summary:* In order to achieve the democracy-enhancing benefits of the Internet's low-cost methods of participating in political communication, many citizens should be empowered to make their own online contributions. Participating in online politics requires knowledge of the Internet and campaign practices but does not require intricate technical skill. Schools and libraries, for example, already have programs that teach students how to build Web sites and use search engines. In some civics classes, students already visit candidate Web sites in order to learn more about campaigns. To the extent possible, these students should be introduced to the variety of online campaign information and taught that they can participate in online campaigning by utilizing resources at campaign Web sites and by building their own online advocacy centers.

*Current obstacles:* Providers of technology and political education have not yet emphasized expanding participation in online politics.



*Recommendation:* Steps should be taken to promote online political participation. For example, schools, libraries, and technology centers could promote use of the Internet in political campaigns.

## 12. Move Toward Interoperability in Online Campaign Finance Reporting Systems

*Purpose:* Enable citizens and the media to easily search for and compile information on campaign contributions using a Web interface and enable campaigns to easily provide that information to multiple jurisdictions.

*Summary:* Campaign finance reporting systems throughout California make different kinds of data available and present different user interfaces for search and retrieval of information. The Commission received testimony that it is sometimes difficult for citizens, reporters, or organizations to search for and compile necessary information summarizing campaign contribution data. Campaign organizations also may encounter trouble when submitting data to multiple systems. To the extent possible, the State should consider technology-neutral methods of integrating these reporting systems.

*Current obstacles:* State and local jurisdictions have not worked together to integrate their campaign finance reporting systems.

*Recommendation:* The State should take steps to encourage local jurisdictions and the State to integrate online campaign finance reporting systems if it is possible to do so without mandating the use of a particular reporting technology.

## 13. Commission a Study About Access to Political Information Via Portals and Search Engines

*Purpose:* Further examine the role of Web portals, such as search engines, directories, and access providers, in directing users to information about political campaigns.

*Summary:* Internet users find political Web sites primarily via conduits that serve as gateways to the Web, such as Yahoo!, Google, and America Online. We need further study on the role of these intermediaries; they comprise the structure through which citizens gain access to political information online. In particular, we need data on these key gatekeepers treat sites from different local, state, and federal candidates and how they present non-profit educational sites and individual citizen comment sites. Several commissioners are concerned that search engines, for example, might show bias in their results or that search algorithms might affect the quality of voter information. Other commissioners are concerned that users of these portals will not be directed to the enormous diversity of online political content available.

*Current obstacles:* Existing information is not clear enough to evaluate the role of portals and search engines. We cannot make relevant recommendations without a larger base of knowledge.

*Recommendation:* The legislature should commission a study on how portals and search engines present political Web sites and how this governs voter access to online political information. The study should include a content analysis of election information available on the most popular Web portals, a study of how search algorithms affect the placement of candidate Web sites in search returns, a test of the treatment of candidates based on their party and the office they seek, and a comparison of the role of portals and traditional media outlets as conduits of political information.

## Practitioner Recommendations

Choices made by policymakers will be complemented or made unworkable by the practices of political actors. Practitioners such as candidates, officeholders, ballot committees, independent activists, political parties, Internet vendors, consultants, and other political actors can help to achieve the benefits of online political activity while reducing the risks. The Commission has therefore come to consensus on the following set of recommendations for practitioners as they create their Web sites:

1. Practitioners should display and follow a privacy policy that informs Internet users about how their personal data will be used by the campaign organization and its vendors. Privacy policies for political organizations should mirror the best practices used by industry and promoted by the Federal Trade Commission. In particular, information should only be transmitted to third parties if the citizens affirmatively consent.
2. Campaigns should make the information on their Web sites available to persons with disabilities and those with low-speed Internet connections. Practitioners can create alternative versions of their Web sites that are more accessible without sacrificing the functionality of their main site.
3. All campaigns should give email recipients an option to remove their name from any email list. Email recipients should always be directed to an easy option for removing their names within the text of a mass email, even if they have previously signed up to receive that email. The Commission also agrees with campaign professionals that sending unsolicited email to those who have not directly opted-in to receive email is not in the interest of candidates.
4. Campaign Web sites should include any information on their sites that the FPPC recommends for educating Internet users about their responsibilities under campaign finance law. If the FPPC determines that any common Internet activity might trigger reporting requirements for individuals or might subject them to liability under campaign finance law, the agency should recommend a set of instructions and make education materials available to voluntarily place on candidate Web sites.
5. Government employees should not use public resources to engage in Internet political campaigning. For any campaign related purposes, public employees should use personal email, Internet access, and computer equipment or resources supplied by the campaign organization. Establishing a bright line between government and campaign resources helps remove the appearance of impropriety.

## Conclusion

If the California Legislature, the FPPC and political practitioners all do their part to enable Internet political activity that enhances the breadth and depth of democratic participation, the Commission strongly believes that we can advance the goals of the PRA and set an example for other states and nations struggling to conform the goals of their own political regulatory frameworks with new and evolving technologies. The implementation of each recommendation will not be without difficulty or controversy. We believe, however, that the opportunity that Internet political activity presents to

achieve our shared goals justifies the extensive effort that our suggested reformulation of policy will require.

Taking no action in an evolving technological environment will not result in a lack of regulation or the maintenance of the status quo. Instead, current law and its straightforward interpretations may threaten some of the most promising trends in online political participation, especially if policy is evolved in an ad-hoc fashion in response to perceived crises. The Commission urges policymakers to take a broad view toward empowering Internet political activity, particularly by private citizens. The application of campaign finance law to a new medium is not a mere technical issue; it is a set of decisions involving core democratic values. It is an opportunity to achieve some of the original goals of political regulation, even those that cynics say remain out of reach.

As a mass peer-to-peer medium with low barriers to entry and tremendous capabilities for organizing and communication, the Internet is not like what has come before. While Internet politics is not a panacea for a democratic utopia, early indications are that it can help expand grassroots political participation and generate more educated voters. Technological change and entrepreneurial practitioners may drive the process but, because we have an established framework for regulating political activity, government must play a role in the transformation of politics that the Internet makes possible. Playing that role will require forward-thinking policymakers like those that established our Commission to help address these issues.

We expect and trust that in the future, many individuals and organizations will review the issues that we have confronted here. We hope that we have provided a jumping-off point for some of these efforts. With a coordinated and focused campaign to reformulate our campaign laws for the Internet age, we may find a new approach to advancing our long shared dream of a better polity.

## APPENDIX ONE: MEETINGS OF THE COMMISSION

### Meeting One: Organizing and Appointment of Chairs

Date: March 8, 2002

Location: Sacramento

Commissioners: Henry Carter, Conway Collis, Geoffrey Cowan, Edward Hearst, Barbara Johnson, Philip Muller, Deirdre Mulligan, Keith Olberg, Joseph Remcho, James Rushford, Susie Swatt

Witnesses: Karen Getman - Fair Political Practices Commission

### Meeting Two: Planning and Appointment of Subcommittees

Date: April 26, 2002

Location: Los Angeles

Commissioners: Conway Collis, Henry Carter, Geoffrey Cowan, Barbara Johnson, Edward Hearst, Philip Muller; Deirdre Mulligan, Joe Remcho, Duff Sundheim

Witnesses: Matt Grossmann - Institute of Governmental Studies

### Meeting Three: Discussion of Funding

Date: December 13, 2002

Location: Berkeley

Commissioners: Steve Afriat, Henry Carter, Conway Collis, Geoffrey Cowan, Philip Muller, Deirdre Mulligan, Joe Remcho, James Rushford

Witnesses: Hal Dasinger - Fair Political Practices Commission

### Meeting Four: Hearing of the Political Communications Subcommittee

Date: February 21, 2003

Location: Sacramento

Commissioners: Geoff Cowan, Henry Carter, Jim Rushford, Conway Collis, Keith Olberg, Philip Muller.

Witnesses: Dan Schnur - political strategist; Hal Dasinger - FPPC; Kim Alexander - California Voter Foundation; Bob Hansan – Capitol Advantage; Joe Lynn – San Francisco Ethics Commission

### Meeting Five: Hearing of the Technology Subcommittee

Date: May 2, 2003

Location: Palo Alto

Commissioners: Geoff Cowan, Deirdre Mulligan, Henry Carter, Edward Hearst, Harvey Englander.

Witnesses: Lauren Gelman - Stanford University Law School; Jeff Lennan - Digital Campaigns; David Chiu - Grassroots Enterprise; Sonia Arrison - Pacific Research Institute; Chris Kelley - Baker and McKenzie; Kirk Deininger - Zantaz; Craig Newmark - craigslist.com; Bill Whalen - Hoover Institution

### Meeting Six: Hearing, Research Presentation, and Discussion of Principles

Date: July 25, 2003

Location: Los Angeles

Commissioners: Geoff Cowan, Philip Muller, Steve Afriat, Jim Rushford, Conway Collis

Witnesses: Bob Stern, Ray Uyemura, and Tracy Westen - Center for Governmental Studies

Meeting Seven: Review of Proposed Findings and Recommendations

Date: September 22, 2003

Location: Berkeley, Sacramento, Los Angeles (Teleconference)

Commissioners: Henry Carter, Conway Collis, Geoff Cowan, Keith Flippin, Edward Hearst, Philip Muller, Deirdre Mulligan

Meeting Eight: Discussion of Draft Preface, Executive Summary, and Recommendations

Date: November 14, 2003

Location: Berkeley, Sacramento, San Francisco, Burbank, Los Angeles, Pasadena (Teleconference)

Commissioners: Steve Afriat, Geoff Cowan, Conway Collis, Harvey Englander, Keith Flippin, James Rushford, Susie Swatt

Meeting Nine: Discussion of Draft Report

Date: December 5, 2003

Location: Berkeley, Pasadena (Teleconference)

Commissioners: Conway Collis, Geoff Cowan, Keith Flippin, Edward Hearst, Philip Muller, Deirdre Mulligan (Steve Afriat and Harvey Englander were on the conference call but could not be heard by other participants)

Meeting Ten: Approval of Draft Report

Date: December 19, 2003

Location: Berkeley, Sacramento, Burbank, Los Angeles, Pasadena, Oakland, Palo Alto (Teleconference)

Commissioners: Henry Carter, Conway Collis, Geoff Cowan, Harvey Englander, Keith Flippin, Philip Muller, Deirdre Mulligan, Jim Rushford, Susie Swatt

## APPENDIX TWO: FINDINGS AND PURPOSES OF THE POLITICAL REFORM ACT

In preparing this Report, the Commission has reviewed the original stated purposes of the Political Reform Act, outlined in Sections 81001 and 81002 of the Act:

### § 81001. Findings and Declarations.

The people find and declare as follows:

- (a) State and local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;
- (b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;
- (c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;
- (d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;
- (e) Lobbyists often make their contributions to incumbents who cannot be effectively challenged because of election laws and abusive practices which give the incumbent an unfair advantage;
- (f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions;
- (g) The influence of large campaign contributors in ballot measure elections is increased because the ballot pamphlet mailed to the voters by the state is difficult to read and almost impossible for a layman to understand; and
- (h) Previous laws regulating political practices have suffered from inadequate enforcement by state and local authorities.

### § 81002. Purposes of Title.

The people enact this title to accomplish the following purposes:

- (a) Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- (b) The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials.
- (c) Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided.
- (d) The state ballot pamphlet should be converted into a useful document so that voters will not be entirely dependent on paid advertising for information regarding state measures.
- (e) Laws and practices unfairly favoring incumbents should be abolished in order that elections may be conducted more fairly.
- (f) Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this title will be vigorously enforced.