

FPPC Complaint

Complaint Type: Sworn Complaint

Contact Information:

Brian Marvel c/o PORAC
2940 Advantage Way
Sacramento, CA 95834
president@porac.org
(916) 928-3777

Respondent Information:

Carl DeMaio for State Assembly
18295 High Mesa Court, San Diego, CA 92127
jsk@ptf-inc.com
(619) 786-8019
ID#1464955

Reform California with Carl DeMaio - Ballot Measure Committee
260 Buena Creek Rd, San Marcos, CA 92069
jsk@ptf-inc.com
(619) 786-8019
ID# 1268914

Carl DeMaio, Candidate carl@carldemaio.com
J Stevan Kemp, Treasurer jsk@ptf-inc.com, (619) 548-4084
Sara Kemp, Assistant Treasurer stspolitical@gmail.com, (760) 212-7413

Reform California Voter Guide
7185 Navajo road, Suite J
San Diego, CA 92119
(619) 786-8019

C. April Boling, Voter Guide Treasurer, april@aprilboling.com, (619) 713-6888

Violation Type: Various - See Attached
Violation Code Section Various - See Attached
Violation Comments: See Attached

Witnesses:

LMA Marketing + Advertising
5190 Governor Dr STE 106, San Diego, CA 92122
(858) 537-9600

Verification

I understand that by filing a Sworn Complaint under Penalty of Perjury that I may be subject to criminal prosecution if the complaint is false. FPPC will provide me with updates as required by law.

Brian R. Marvel
Brian R. Marvel (Aug 28, 2024 14:18 PDT)

Brian Marvel

Aug 28, 2024

Date

Violation #1: Violation of Contribution Limits and Misuse of Candidate-Controlled Ballot Measure Committee Funds

Carl DeMaio is a candidate for State Assembly in 2024. He also controls a ballot measure committee, Reform California with Carl DeMaio - Ballot Measure Committee (hereafter “Reform California”). Based on publicly available information, it appears that Mr. DeMaio has misused Reform California funds to benefit his Assembly campaign in direct violation of state law.

By way of background, state law imposes limits on the amount of money a candidate for state office can accept from any single source to use for his campaign for state office. (Cal. Gov. Code § 85301, 85302; 2 CCR § 18545.) State law also allows a candidate to control a ballot measure committee. (2 CCR § 18521.5.) A candidate-controlled ballot measure committee that does not pay for communications clearly identifying state candidates is not subject to limits on the receipt of contributions, while if the committee does pay for such communications, it becomes subject to the same limit on contributions received as a political party committee. (2 CCR 19521.5(c).) Under either scenario, the ballot measure committee can raise funds well above the limit allowed for the candidate’s own campaign for office.

The trade off for being able to raise money in higher amounts is a strict prohibition on using the funds held in a candidate-controlled ballot measure committee to support the candidate’s own campaign for office. More specifically “committee funds must be used only to make expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or pre-qualification activities relating to such measures.” (2 CCR § 18521.5(d)(1) (*emphasis added*)). The regulation goes on to allow use of candidate-controlled committee funds for payment of the committee’s reasonable and ordinary operating costs, administrative overhead, fundraising activities, travel, compliance costs, and attorney’s fees incurred as a result of the committee’s activities.” (*Id.*)

Nowhere in the regulation does it state that the funds or resources of a candidate-controlled ballot measure committee may be used to support the controlling candidate’s candidacy for office. In fact, the regulation states that nothing in its contents should be construed to allow “[a] contribution of committee funds to a controlled committee of a candidate for elective office that is not operated as a candidate-controlled ballot measure committee pursuant to this section.” (*Id.* At (f)(1).) In plain language, the funds cannot be used for contributions to a candidate’s campaign for elective office.

Here, it appears that Mr. DeMaio and Reform California have blurred the lines between the resources of each entity, resulting in illegal contributions from Reform California to Mr. DeMaio’s Assembly campaign.

On November 11, 2023 — just short of a month before DeMaio announced his campaign for the 75th Assembly District – the Reform California website¹ had the following disclaimer: Ad paid for by Reform California. Advertisement was not authorized by a candidate or a committee controlled by a candidate.² (See Exhibit A.)

¹ Website available here: <https://reformcalifornia.org/>.

² See internet archive here: <https://web.archive.org/web/20231111040956/https://reformcalifornia.org/> (accessed May 23, 2024)

Such a disclaimer is present on the website dating back to at least 2015.³ Over that period of time, a substantial amount of time, energy, and financial resources went into supporting the website and building out its affiliated database of contacts. It would appear this investment paid off, as the Reform California website currently boasts: “With a database of over 30,000 volunteers statewide, Carl DeMaio and his Reform California movement is always looking for opportunities to connect a worthy campaign to our volunteers to make a difference in their area.”⁴

If you visit the same website today — now that DeMaio is a candidate for office — the following disclaimer is displayed: Ad paid for by Carl DeMaio for State Assembly 2024 – FPPC # 1464955.⁵ Interestingly, Reform California’s name and contact information still appear just above the disclaimer box. (See Exhibit B.)

It appears the DeMaio for Assembly campaign simply inherited the massive infrastructure of Reform California, which is an illegal non-monetary (or in-kind) contribution from Reform California to the DeMaio for Assembly committee. Furthermore, the making of this contribution was not properly disclosed. We could find no non-monetary contributions listed on the Form 460 for DeMaio for Assembly during the period in which he became a candidate and would have theoretically transferred the website (06/30/2023 - 12/31/2023). We also could find no reported in-kind contribution on the two pre-election reports submitted before the primary election (1/1/2024 - 1/20/2024 and 01/21/2024-02/17/2024) or the recent semi-annual statements (02/18/2024 – 12/31/2024) due July 31, 2024.

Regardless of the amount of the in-kind contribution, this is a clear violation of contribution limits, misuse of candidate-controlled ballot measure committee funds, and an unreported in-kind contribution.

Beyond this clear contribution of the website and likely the contact database, additional language on the Reform California website continues to blur the lines between Reform California and the DeMaio for Assembly committee. The website bearing DeMaio’s Assembly campaign disclaimer boasts: “Reform California can run local campaigns through its ballot measure committee thus eliminating the overhead costs of setting up a campaign from scratch.”⁶

The strategic maneuvering of Reform California to benefit Carl DeMaio's Assembly campaign highlights a concerning exploitation of campaign finance regulations. By transitioning the extensive infrastructure of Reform California directly into the hands of DeMaio for Assembly, without the appropriate disclosure or reporting of this as an in-kind contribution, a significant legal and ethical boundary has been crossed. This action not only raises questions about the legality of such a transfer, given the explicit restrictions on contributions from ballot measure committees to candidate-controlled committees, but also about the transparency and integrity of DeMaio's campaign financing.

Recent press articles also raise the question of whether De Maio is genuinely using funds in his candidate controlled ballot measure committee for the purpose of qualifying or supporting ballot

³ Also confirmed via the internet archive.

⁴ See <https://reformcalifornia.org/help-for-reformers> (accessed May 23, 2024).

⁵ Accessed on May 16, 2024.

⁶ See <https://reformcalifornia.org/help-for-reformers> (accessed May 23, 2024).

measures. An article published in the Voice of San Diego on June 14, 2024 suggests that DeMaio may be insincere in his statements about ballot measures and is instead conducting online signatures gathering campaigns to secure more voter contact data for Reform California.⁷ This is particularly concerning since it appears that Reform California is handing over this data to DeMaio's Assembly campaign in violation of contribution limits and other campaign finance law restrictions as further detailed above.

Violation #2: Failure to Accrue Expenses on Campaign Reports

DeMaio's Assembly campaign failed to report a significant TV ad buy, raising questions about transparency and potentially manipulating perceived financial strength ahead of the election.

On December 18th, 2023, DeMaio's Assembly campaign sent out a press release stating that Mr. DeMaio "makes an aggressive TV/Cable buy" for his campaign and touting the \$260,000 media purchase. (See Exhibit C.) The advertising team hired for the project was LMA Marketing & Advertising, according to the press release. This press release is also still available on the Reform California website.⁸ However, Mr. DeMaio's year end campaign report does not show any expenditures or accrued expenses for this alleged media buy.

If Mr. DeMaio's consultant or media buyer purchased the advertising space at the time the campaign announced the media buy or by year end, that purchase was required to be disclosed in the year end campaign report (07/01/2023 – 12/31/2023). We found no expenditures or accrued expenses demonstrating such a media buy, likely in violation of the requirement to accrue goods and services which are received but not yet paid. (2 CCR § 18421.6.)

In addition, we found no such expenditures or accrued expenses on the Assembly committee's first pre-election report (01/01/2024 – 01/20/2024). In fact, expenditures for TV ads do not appear until the second pre-election reporting period (01/21/2024 – 02/17/2024) which closed almost two months to the day after the DeMaio for Assembly campaign publicly announced their media buy. It seems the expense was not properly accrued to inflate the candidate's cash on hand to mislead the media and the public.

Violation #3: Reform California Voter Guide is Actually an Additional Campaign Committee Controlled by Carl DeMaio in Violation of the Law

The Reform California machine also includes a registered "slate mailer organization" called Reform California Voter Guide.⁹ Mr. DeMaio is listed as the Chairman of this entity. (See Exhibit D) While the organization is registered as a slate mailer organization and has not also designated itself as a recipient committee, it appears likely that the organization is in fact a recipient committee and, therefore, an impermissible candidate controlled general purpose committee.

⁷ See *Assembly Candidate Carl DeMaio Keeps Failing at Ballot Initiatives – On Purpose?*, Voice of San Diego, available here: <https://voiceofsandiego.org/2024/06/14/assembly-candidate-carl-demaio-keeps-failing-at-ballot-initiatives-on-purpose/> (Accessed August 1, 2024).

⁸ See <https://carldemaio.com/news/carl-demaio-makes-aggressive-tv-cable-buy-for-state-assembly-campaign> (Accessed May 23, 2024).

⁹ ID # 1446747.

Under the so-called “one bank account rule,” the Political Reform Act prohibits a candidate for state office who controls a committee for his election to office from controlling a general purpose committee that makes contributions or independent expenditures to support or oppose other candidates. (Cal. Gov. Code § 85201; 2 CCR §18521.) Generally, a slate mailer organization (or SMO) is not subject to this prohibition but can become subject to the prohibition if the SMO qualifies as a recipient committee. (Cal. Gov. Code §82048.4(b)(1) (“a slate mailer shall not include... a candidate’s controlled committee”).)

An SMO qualifies as a recipient committee if it receives contributions of \$2,000 or more in a calendar year. (Cal. Gov. Code §82013(a).) While payments for space on the slate by a candidate or by a third party are not contributions because there is consideration for the payment, payments received for the general production or distribution of slate mailers or directly for the purpose of making contributions or independent expenditures are considered contributions for purposes of this test. (Cal Gov. Code § 82015; *Maupin Advice Letter*, No. I-92-389; see also FPPC Manual 7, *Slate Mailer Organizations*, 2020 version, pages 1.2-1.3.)

Here, there are facts which suggest the Reform California Voter Guide was in fact raising and accepting contributions to support DeMaio’s Assembly candidacy rather than mere payments for other candidates or measures to appear on slate mailers. And assuming the organization qualifies as a recipient committee, it seems clear Mr. DeMaio was controlling the committee in violation of the one bank account rule.

As of the last available report online (01/21/2024 – 02/17/2024) the Reform California Voter Guide reported receiving \$461,819.10 this calendar year. Of this total, \$200,426.10 or forty-three percent (43%) came from DeMaio’s Assembly committee. However, several mailers produced by Reform California Voter Guide allocate nearly all of the communications to DeMaio’s candidacy – either to support him or oppose Mr. Andrew Hayes (his opponent). A small band at the bottom of each mailer is half dedicated to DeMaio’s own voter guide (which is also referenced on the events page of the Reform California Website cited above) with the other half dedicated to four candidates, one of which is DeMaio. (Exhibit E.) These mailers demonstrate the payments made to Reform California Voter Guide may have been intended by the payees to subsidize pro-DeMaio communications, thereby resulting in contributions, and turning the entity into a recipient committee. Alternatively, if the payees did not know about the scheme and Mr. DeMaio along with others operating the Reform California Voter Guide did not provide the payees with the space (i.e. consideration) they purchased, the Voter Guide converted those payments into contributions through potentially fraudulent actions.

Assuming these actions and others which will come to light in a thorough investigation prove the Reform California Voter Guide is actually a recipient committee, it is very likely Mr. DeMaio is controlling the entity, and therefore the committee violates the one bank account rule.

A committee is “controlled” by a candidate “if the candidate... any other committee the candidate... controls has a significant influence on the actions or decisions of the committee.” (Cal. Gov. Code § 82016.) The Commission’s legal division has advised that the voting member of a committee’s board of directors is presumed to be controlling due to the “significant influence on the actions or decisions of the committee” the candidate probably exercises. (*Ferguson Advice Letter*, No. A-86-044.) More directly on point, the legal division has advised “[a]n officeholder who participates in

decisions concerning candidates and measures to be included in a committee's slate mailers would also be presumed to exercise significant influence on the actions or decisions of the committee." (*Maupin* Advice Letter, No. I-92-389; see also *Leidigh* Advice Letter, No. A-94-150.) Here, Mr. DeMaio is clearly on the board of the committee. He is listed as the Chairman of the organization on the Reform California Voter Guide's Statement of Organization. (Exhibit D.) Further, the organization uses the "Reform California" brand which Mr. DeMaio has closely aligned with himself and controlled. This name is further used in his candidate-controlled ballot measure committee. For these reasons, it seems more than likely that Mr. DeMaio controls Reform California Voter Guide and, since it is also likely that entity is a recipient committee, that he and the organization have violated the one bank account rule.

Exhibits

Exhibit A

Reform California
PO Box 27227 San Diego, CA 92198
(619) 786-8019

Ad paid for by Reform California. Advertisement was not authorized by a candidate or a committee controlled by a candidate.

Exhibit B

Reform California
PO Box 27227 San Diego, CA 92198
(619) 786-8019

Ad paid for by Carl DeMaio for State Assembly 2024 – FPPC # 1464955

Exhibit C

For Immediate Release

Contact: [Dylan Martin](#)

December 18, 2023

[760-710-7599](tel:760-710-7599)

Carl DeMaio Makes Aggressive TV/Cable Buy for State Assembly Campaign

DeMaio Commits \$260,000 to Initial Flight with Over 7.2 Million Impressions with Voters to Ensure His Reform California Message Is Heard

San Diego — The Carl DeMaio for Assembly campaign today announced the initiation of a comprehensive media campaign in pursuit of his candidacy for the California State Assembly, District 75 which will start with an aggressive TV/Cable buy to ensure DeMaio dominates the messaging in this race.

The initial TV/Cable buy totals \$260,000 and lays the groundwork for expansion where and when needed as the campaign progresses. San Diego-based LMA Marketing & Advertising has been retained by DeMaio's campaign to coordinate TV/Cable advertising.

Exhibit D

STATEMENT OF ORGANIZATION

CALIFORNIA FORM 400

Statement of Organization (Slate Mailer Organization)
 (Government Code Sections 84100, 84101, 84103, 84104, 84108)

Type or Print in Ink.

S 37 1446747

<p>Amendment</p> <p><input type="checkbox"/> Check box if an Amendment and enter I.D. number:</p> <p># _____</p>	<p>Date Stamp</p> <p style="font-size: 1.2em; font-weight: bold;">MAR 25 2022</p>	<p>RECEIVED AND FILED In the office of the Secretary of State of the State of California</p> <p style="text-align: right;">R/B</p>
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Please check one box to indicate the organization's level of activity:

<p><input type="checkbox"/> CITY</p> <p><input checked="" type="checkbox"/> STATE</p> <p><input type="checkbox"/> COUNTY</p>	<p>File original and one copy of this form with:</p> <p>Secretary of State Political Reform Division 1500 11th Street, Room 495 Sacramento, CA 95814</p>	<p>And, if applicable, file one copy of this form with:</p> <p>The city or county officer, if any, with whom the organization must file its original campaign disclosure statements.</p>
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Date qualified as a Slate Mailer Organization: (Month, Day, Year)
 03/24/2022

I Slate Mailer Organization Information

FULL NAME OF SLATE MAILER ORGANIZATION:
 Reform California Voter Guide

STREET ADDRESS OF SLATE MAILER ORGANIZATION: (NO AND STREET) 7185 Navajo Road Suite J	AREA CODE 619	PHONE NUMBER 786-8019
CITY San Diego	STATE CA	ZIP CODE 92119
	COUNTY San Diego	OPTIONAL: FAX / E-MAIL ADDRESS

MAILING ADDRESS OF FILER (IF DIFFERENT THAN ABOVE):
 PO Box 27227 San Diego, CA 92198

A OFFICIAL USE ONLY **B** OFFICIAL USE ONLY

II Treasurer And Other Principal Officers

POSITION	NAME AND PERMANENT ADDRESS	(AREA CODE) DAYTIME PHONE NO.
TREASURER	C. April Boling 7185 Navajo Road Suite J San Diego CA 92119	(619) 713-6888
Chairman	Carl DeMaio 7185 Navajo Road Suite J San Diego CA 92119	(619) 786-8019

Attach additional information on appropriately labeled continuation sheets.

Exhibit E

Carl DeMaio is Our Fighter
That The Sacramento Swamp Fears The Most

For Years, Carl DeMaio Has Led the Fight for All of Us Against Costly Tax Hikes Imposed on You by Sacramento Politicians.

Now Carl DeMaio is Taking Our Fight "Inside the Belly of the Beast" by Running for California State Assembly with a Slate of Reformers to:

- ✓ **Secure the Border**
- ✓ **Require Voter ID**

That's Why Democrats and the Sacramento Swamp are Running a Misinformation Campaign to Boost Their Anointed Spoiler Candidate - and Steal the Seat!

Join Carl DeMaio
Secure the Border

Vote for Our Proven Fighter!
Carl DeMaio for State Assembly

Carl DeMaio Will Fight to Secure the Border

For Years, Carl DeMaio Has Led the Fight Against Costly Tax Hikes Imposed on You by Sacramento Politicians.

Now Carl DeMaio is Leading the Fight to Repeal CA's Dangerous Sanctuary Cities Law!

- ✓ **End Amnesty for Illegal Immigrants**
- ✓ **Eliminate Taxpayer Funding to Illegals**
- ✓ **Support President Trump's Border Wall**
- ✓ **Enact a CA Voter ID Law to Require Strict Citizenship Review for All Voters**

Join Carl DeMaio
Secure the Border

Vote for Our Proven Fighter!
Carl DeMaio for State Assembly

Don't Get Misled by Deceptive Ballot Titles! Get the "Plain English" Voter Guide SanDiegoElectionGuide.com

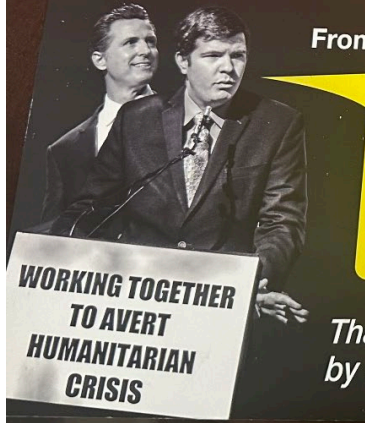
Top Priority Races:

- Carl DeMaio for State Assembly*
- Brian Erickson for Superior Court Judge - Office 41
- Valerie Summers for Superior Court Judge - Office 43

• NO on Prop 1

NOTICE TO VOTERS: THIS DOCUMENT WAS PREPARED BY REFORM CALIFORNIA VOTER GUIDE, NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

"Amnesty Andrew" Hayes Can't Be Trusted on Illegal Immigration



From December 2022 "Amnesty Andrew" Hayes press conference:

- "Welcome *with open arms* those seeking refuge"
- "Provide the basic necessities such as housing, employment and nutritional support, and medical" *at taxpayers' expense!*
- "Identify *migrant shelter sites* for asylum seekers" in San Diego!

That's Why "Amnesty Andrew" Hayes' Campaign is Funded by Sacramento Special Interests Who Support Gavin Newsom!

SACRAMENTO SWAMP CANDIDATE

"Amnesty Andrew" Hayes Demands Taxpayer Funding for Illegal Immigrants

That's Why Andrew Hayes is the Choice of the Sacramento Swamp!

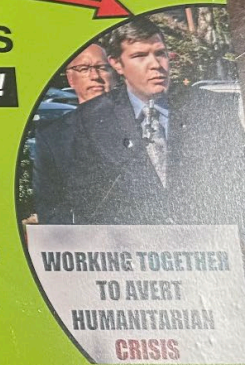
On December 22, 2022, "Amnesty Andrew" Hayes at a press conference demanded immediate "state, federal resources for incoming asylum-seekers." (source: KPBS News)

At the press conference, "Amnesty Andrew" Hayes embraced the Democrats' false border narratives and supported Joe Biden and Gavin Newsom's calls to:

- "Welcome with *open arms* those seeking refuge"
- "Provide the basic necessities such as housing, employment and nutritional support, and medical and behavioral health services." *At taxpayers' expense!*

Amnesty Andrew" Hayes demanded the county "*Identify migrant shelter sites for asylum seekers*" in San Diego!

Check the Facts: AmnestyAndrew.com



Don't Get Misled by Deceptive Ballot Titles!
Get the "Plain English" Voter Guide
SanDiegoElectionGuide.com

Top Priority Races:
• NO on Prop 1

- Carl DeMaio for State Assembly
- Brian Erickson for Superior Court Judge - Office 41
- Valerie Summers for Superior Court Judge - Office 43

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