

COMPLAINT SUBMITTED TO

SAN DIEGO DISTRICT ATTORNEY

CALIFORNIA HIGHWAY PATROL

CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION

Mr. Carl DeMaio
Chairman, Reform California – Yes on Prop 6
PO Box 27227, San Diego CA 92198

Complainant,

v.

Caltrans
Mehrddad Nabizeh, Engineer
1801 30th Street, Sacramento CA

Manhole Adjusting Inc.
9500 Beverly Rd, Pico Rivera, CA 90660

No on Prop 6 Campaign Committee
Sacramento CA 95814

Respondents.

COMPLAINT

Complainant files this complaint against Caltrans, Mehrddad Nabizeh and other unidentified Caltrans employees, Manhole Adjusting Inc., and other unidentified Manhole Adjusting Inc employees, requesting that the San Diego District Attorney, the California Highway Patrol, and the California Fair Political Practices Commission immediately commence an investigation into violations of state law, as described below.

FACTS

Respondent Caltrans is a California state government agency that receives taxpayer funding – including funding from the gas tax – and is responsible for carrying out road work projects with employees and contractors supervised by Caltrans employees. On August 28, 2018 Caltrans had an active taxpayer-funded project underway on State Route 78 at the intersection of Sutherland Dan Road between Ramona and Julian in San Diego County (hereafter, “Worksite”). Mehrddad Nabizeh is a Caltrans Engineer in a project supervisory role and was identified by witnesses as the Caltrans supervisor on site at the Worksite and who was identified by a witness as the individual who authorized the contracted Caltrans work crew to distribute “express advocacy” campaign literature from the No on Prop 6 campaign committee.

Respondent Manhole Adjusting Inc. is a verified Caltrans vendor and consultant that is active under a current Caltrans contract and associated task order to perform the work at the Worksite – as documented in contract Witnesses, video and photo evidence all document the presence of Manhole Adjusting Inc. equipment and employees at the Worksite and engaged in the distribution of “express advocacy” campaign literature from the No on Prop 6 campaign committee (hereafter, “Caltrans Work Crew”).

Respondent No on Prop 6 Campaign Committee is a registered primarily-formed ballot measure committee that printed and distributed fliers to the Caltrans Work Crew.

From 7am to 3pm on August 28, 2018, Caltrans Supervisor and Caltrans Work Crew were performing taxpayer-funded work at the Worksite.

A Google Traffic Analytics report taken at 11:42am on August 28, 2018 showed RED and ORANGE traffic conditions on State Route 78 at that time and reported a traffic delay of 16-24 minutes. Witnesses reported longer traffic delays over email and voicemail to the Yes on Prop 6 campaign.

Caltrans Work Crew slowed traffic down and engaged each driver for the sole purpose of distributing “express advocacy” campaign literature from the No on Prop 6 campaign committee (See Exhibits 1-5).

Witness Dave Sossaman provides this statement, under penalty of perjury, describing the actions taken by the Caltrans Work Crew (See Exhibit 6):

“On August 28, 2018 at about 11:00 am, I was returning home from Ramona, driving east on Hwy 78, east of Ramona Ca. Just before the intersection of Sutherland Dam Road, all traffic was stopped by the road construction flagman, wearing a bright orange long sleeve shirt, an orange reflective safety vest and a hardhat. The flagman was walking down the center of the Hwy (westbound), knocking on the windows of cars that were directed to stop. When he approached the driver’s side window of my vehicle, he knocked on the window, indicating he wanted me to roll the window down. He had a stack of flyers in his hands. Believing he was a duly authorized Caltrans worker with authority to direct traffic and direct my movements while on the hwy, I rolled the window down. He handed me a flyer and walked to the cars behind me. Initially, I believed the flyer was a notice about the roadwork. I read the flyer closer and found it to be a NO on 6 political campaign flyers, with the name “NoProp6.com” on the bottom. I looked closer and the flyer stated California Professional Firefighters, California Association of Highway Patrolmen etc., “Urge NO on Prop 6.”

I was somewhat shocked that I was directed to stop in the middle of the hwy, by what appeared to be a Caltrans worker, to campaign against/or for a political proposition. This was even more disturbing in that the California Vehicle Code and Penal Code mandate criminal violations and penalties for failing to obey the directions of a Caltrans or other authorized roadway workers directions on the hwy. In addition, I and other drivers stopped, were not free to leave and were at the sole mercy and direction of this government funded campaign worker. In addition, If I had known this was a campaign. I would not have rolled down the window for this person. I looked back, and I could see several female drivers rolling down through windows at the direction of the roadworker/flagman.

When the flagman walked back on the other side of the road, I asked him why he was handing out political flyers in the middle of the road, dressed as a Caltrans worker. He said "its my job, I'm just doing my job". I asked him who he worked for, he said he worked for the road crew whose trucks were staged toward the front of the roadblock."

The literature distributed by the Caltrans Work Crew are unmistakably "express advocacy" campaign fliers with arguments against Prop 6, specific and clear instructions to "Vote NO on Prop 6" and a disclosure revealing that the flier was produced by the No on Prop 6 campaign committee (See Exhibit 7)

At 2:05pm, witnesses Matt Stockton and Noah Ritter arrived at the Worksite with a video camera and captured a Caltrans Work Crew member still distributing the "express advocacy" campaign fliers to each car and were handed the flier. The Work Crew member stated that he was "**working with Caltrans**" and "**They just told me to hand it out.**" (See video at <https://www.youtube.com/watch?v=di2bjTSiffI&feature=youtu.be>)

When pressed on the name of the Caltrans supervisor who told the Work Crew member to hand out the campaign flier, the Work Crew member provided the name and business card of Mehrdad Nabizeh (See Exhibit 8).

Witnesses Stockton and Ritter documented the presence of a Caltrans supervisorial vehicle (See Exhibits 3 and 4) at the Worksite. Stockton and Ritter also requested to speak to the Caltrans supervisor, and waited patiently for one hour, only to be told the Supervisor refused to speak to them.

CRIMINAL VIOLATION - 1

California Government Code Section 8314 declares ***"It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law."***

By utilizing and directing a taxpayer-funded vendor/consultant to distribute "express advocacy" campaign fliers while being compensated under a task order at a project site, Caltrans and Manhole Adjusting Inc., as well as employees involved in this incident, have all violated state law.

CRIMINAL VIOLATION - 2

California Vehicle Code Division 11, Section 22000 declares ***"No person shall bring a vehicle to a complete stop upon a highway so as to impede or block the normal and reasonable movement of traffic unless the stop is necessary for safe operation or in compliance with law."***

Respondent may argue that traffic needed to be slowed for the purpose of the work being performed, however, several witnesses reported that no work was being performed during the times that they were slowed and stopped for the distribution of the "express advocacy" campaign fliers.

Additionally, even during times when road work was being performed by some of the Caltrans work crew, the appropriate action would be to merely slow traffic. The extraordinary and excessive act of completely stopping traffic and impeding drivers from navigating without first taking the “express advocacy” campaign flier for No on Prop 6.

Through these actions that had a significant impact on delaying and impeding the flow of traffic, Caltrans and Manhole Adjusting Inc, as well as each employee involved in this incident, have violated state law.

CRIMINAL VIOLATION - 3

The Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations Section 18420 declares: ***“Reporting Campaign Contributions and Expenditures by State or Local Government Agencies. (a) Any candidate or committee that receives contributions from a state or local government agency must report receipt of those contributions... Nothing in this regulation should be read as condoning or authorizing campaign-related activities by a state or local government agency. Under many circumstances, such activities may be illegal. See Penal Code section 424; Government Code section 54964.”***

The Regulations of the Fair Political Practices Commission, Title Title 2, Division 6, California Code of Regulations Section 18421.1 declares: ***“Disclosure of the Making and Receipt of Contributions. (f) A nonmonetary contribution is "made" by the contributor, and "received" by the candidate or committee, on the earlier of the following dates: (1) The date that funds are expended by the contributor for goods or services, if the specific expenditure is made at the behest of the candidate or committee;***

While the contribution by a state or local government agency is strictly prohibited under California law and any individual or government agency can be punished for such action, it is also against the law for the No on Prop 6 committee to receive and to fail to report any in-kind contribution from a third party in support of its campaign.

In this case, No on Prop 6 actively provided campaign materials to government agents knowing that public funds would be utilized in covering the salaries of employees distributing the campaign fliers. Through these actions, and failure to disclose the nature of the in-kind value of the contribution, the No on Prop 6 campaign has violated the California Political Reform Act and associated regulations.

CONCLUSION

The serious violations of California state law detailed in this complaint must be thoroughly investigated and appropriate enforcement actions against the responsible individuals and parties must be taken. Several law enforcement agencies have jurisdiction over this matter and as such we have submitted this complaint to the San Diego County District Attorney's office, the California Fair Political Practices Commission, and the California Highway Patrol.

If this matter is referred by your office to any other law enforcement entity, we request that you inform us in a timely manner.

Sincerely

Carl DeMaio
Chairman
Reform California – Yes on Prop 6 Gas Tax Repeal Initiative