

**CALIFORNIA CITIZENS FOR ETHICS IN
GOVERNMENT**

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April 6, 2010

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OFFICE OF GENERAL
COUNSEL

BY REGISTERED MAIL

Thomasenia Duncan
General Counsel
Office of the General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

MUR # 6272

Re: **Formal Complaint and Demand for Investigation Regarding Failure
to Report In-Kind Contributions by Candidate Charles DeVore**

Dear Ms. Duncan:

This letter constitutes a formal, sworn complaint and demand for investigation concerning the application of the Federal Election Campaign Act of 1971, as amended (the "Act") regarding Charles "Chuck" DeVore, who is a federally registered candidate for United States Senate from the State of California. Mr. DeVore is presently a sitting member of the California State Assembly.

The basis of this complaint is that Mr. DeVore is utilizing his staff from his State Assembly office to assist in the conduct and operation of his current campaign for election to the United States Senate. Despite receiving in-kind campaign staff services (including "chief of staff" and "communications director" services), Mr. DeVore has not reported receiving any in-kind contributions from the California State Assembly, which paid the salaries of his Assembly staff while they worked on Mr. DeVore's political campaign.

I. Summary of the Facts

Assemblyman Chuck DeVore of Irvine is running for the U.S. Senate.¹ We are informed and believe that for some time, Mr. DeVore's campaign is apparently utilizing

¹ Under the Act and Commission regulations, a "candidate" is "an individual who seeks nomination for election, or election, to Federal office." (2 U.S.C. 431(2); 11 CFR 100.3(a).) An individual becomes a candidate for Federal office when that individual, or a person acting on the candidate's behalf and with his

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two staffers who also presently work, or recently have worked, in his official State Assembly office. Mr. DeVore's Chief of Staff in the Assembly, Leisa Brug Kline, purportedly doubles as his campaign manager. Ms. Brug Kline apparently runs her own public relations firm, "Van der Brug," but was paid only \$4,299.78 for campaign work in 2009, according to campaign finance records. Meanwhile, Ms. Brug Kline is considered a full-time employee of the State Assembly, which pays her \$8,125 a month, according to state payroll records.

In addition, we are informed and believe that Mr. DeVore's campaign communications director, Joshua Trevino, formerly worked part-time as a senior consultant for Mr. DeVore's State Assembly office. Mr. Trevino apparently started with Mr. DeVore's Assembly office as press secretary in September 2008, earning \$2,084 a month for working a part-time schedule that required him to be on the job for 50 percent of the work week. Mr. Trevino purportedly left Mr. DeVore's Assembly office the next month, but returned in March 2009 as a "senior consultant" earning \$5,000 a month on a 60 percent schedule. We are informed and believe that Mr. Trevino simultaneously joined Mr. DeVore's campaign for U.S. Senate in March 2009.

In a news account describing some of the of allegations that are the subject of this Complaint, Ms. Brug Kline and Mr. Trevino apparently believe they're donating their services as "in-kind contributions" to Mr. DeVore's campaign. (See Exhibit A hereto.) If they are making "in kind contributions," it would mean some of their donated time was contributed paid time from their official positions with the California State Assembly. In other words, time donated to Mr. DeVore's campaign from the State Assembly itself. This contribution of paid staff time requires disclosure by Mr. DeVore on his campaign finance reports. To date, no such disclosure has been made.

II. Legal Analysis

The Act defines the term "contribution" in two ways. First, the Act defines "contribution" to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." (2 U.S.C. 431(8)(A)(i).) Second, the Act defines "contribution" to include the "payment by any person of compensation for the personal services of another person which are rendered to a political committee without charge *for any purpose*." (2 U.S.C. 431(8)(A)(ii) (emphasis added); see also 2 U.S.C. 441b(b)(2).) The situation presented by the instant Complaint implicates the second definition.

Federal Election Commission regulations provide that, with some exceptions, the "payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee *for any purpose*" is a

or her consent, "has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000." (11 CFR 100.3(a)(1) and (2); see 2 U.S.C. 431(2)(A) and (B).) Mr. DeVore has satisfied these criteria.

contribution to the political committee. (11 CFR 100.54 (emphasis added); *see also* 11 CFR 114.2(b)(1).)

The California State Legislature is now (or in the very near past, was) paying the salary of two of its staff members while those staff members spent significant amounts of time supporting the political campaign of Mr. DeVore. We are informed and believe that the provision of free campaign staff services to Mr. DeVore's campaign committee would not come within the exception for services provided without compensation by an individual volunteer on behalf of a candidate or political committee. (See 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74.)

An individual may volunteer his or her personal services to a campaign without making a contribution as long as the individual is not compensated by anyone else. (11 CFR 100.74.) Here, however, the two staff members at issue were in fact compensated by the State Legislature, resulting in multiple in-kind contributions to Mr. DeVore's campaign. No such in-kind contributions have been reported by Mr. DeVore in violation of the Act.

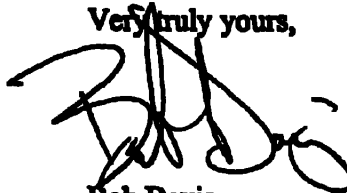
III. Conclusion

We are informed and believe that Assembly staffers described herein are apparently compensated for their services by a third party (the State Legislature). If this is true, their activity is not considered volunteer activity and the payments, because they are made by an entity other than the campaign itself, result in an in-kind contribution from the State Assembly to Mr. DeVore's campaign. These contributions must be disclosed by the campaign. (11 CFR 100.54.) However, we are informed to date, Mr. DeVore has failed to make such disclosures.

We believe that the above information is sufficient evidence to warrant an investigation into Mr. DeVore's actions. We respectfully request the FEC investigate this matter and take appropriate actions regarding Mr. DeVore's failure to report in-kind contributions from California State Assembly in furtherance of Mr. DeVore's campaign for U.S. Senate.

Thank you for your review of this request.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Bob Davis', written over the typed name.

Bob Davis.
President

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Formal Complaint and Request for Investigation
April 6, 2010
Page 4 of 4

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 7 day of April 2010, at Sacramento, California.



Bob Davis

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CALIFORNIA JURAT WITH AFFIANT STATEMENT

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], not Notary)

X

X

X

X

X

X

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

State of California

County of Sacramento

Subscribed and sworn to (or affirmed) before me on this

7th day of April, 20 10, by

(1) Robert Dennis Davis

proved to me on the basis of satisfactory evidence to be the person who appeared before me (.) ☒

Yes

X

Name of Signer

proved to me on the basis of satisfactory evidence to be the person who appeared before me.)

Signature Shannon Diaz

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Further Description of Any Attached Document

Title or Type of Document: Formal FEC complaint

Document Date: 4/6/10 Number of Pages: _____

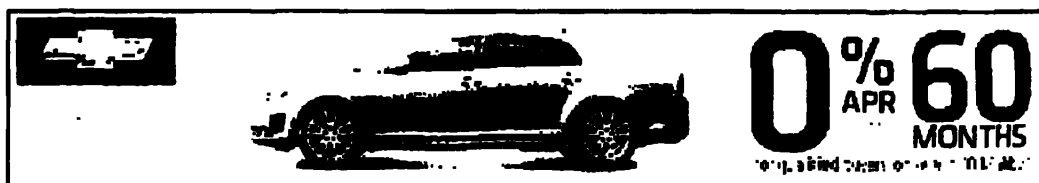
Signer(s) Other Than Named Above: None

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Exhibit A



REAL ESTATE JOBS CARS DEALS CLASSIFIEDS PLACE AN AD

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WATCHDOG

Your tax dollars at work

Should legislative staffers be allowed to volunteer for their bosses' political campaigns?

March 24th, 2010, 3:00 am · 8 Comments · posted by BRIAN JOSEPH, Sacramento Correspondent



As you might have noticed from the recent blitz of Meg Whitman ads, we've got an election coming up. And in Sacramento, election season means heavy workloads for many Capitol staffers. Loyal staffers often pull double duty this time of the year, working regular shifts in a lawmaker's state office and then volunteering in their spare time on the lawmaker's campaign. John Scribner serves as Orange County State Sen. Lou Correa's chief of staff during the work week; on nights and weekends he volunteers for the senator's re-election campaign. Gina Zari works part time as OC State Sen. Mimi Walters' chief of staff and also was paid to consult, part time, on Walters' State Treasurer campaign.

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OC State Sen. Tom Harman's chief of staff, Tiffany Conklin, also works for Harman's attorney general campaign.

And the list goes on and on. Almost every lawmaker has a staffer or two like this and over the years the State Assembly and the State Senate have developed practices to prevent staffers from doing campaign work on state time.

But even with those safeguards, such an arrangement is so fraught with ambiguity that it's often difficult for an outsider to distinguish a scrupulous lawmaker from an unscrupulous one.

Take, for example, Republican Assemblyman Chuck DeVore of Irvine, who is running for the U.S. Senate. From the outside looking in, it would be easy to conclude he's using his taxpayer-funded Assembly office to subsidize his underfunded Senate campaign, while, in reality, he and his staff say nothing could be further from the truth. A historically weak fundraiser with limited name ID, DeVore says he has to run a no-frill campaign in order to compete with the resources and notoriety of former U.S. Rep. Tom Campbell, former Hewlett-Packard CEO Carly Fiorina and, if he beats them in June, Incumbent Democratic Sen. Barbara Boxer. Unable to afford huge media buys or expensive consultants, DeVore is focusing on building support through speaking engagements and through the strategic use of Twitter and Facebook. At the same time, DeVore's campaign relies on two staffers who also have worked in his Assembly office. Those aides, both of whom also run their own private political firms, have been paid next to nothing by the campaign but have received tens of thousands of dollars from DeVore's taxpayer-funded Assembly office.



DeVore's Chief of Staff in the Assembly, Laisa Brug Kline, doubles as his campaign manager. She runs her own public relations firm, Van der Brug, but was paid only \$4,299.78 for campaign work in 2009, according to campaign finance records. Meanwhile, she's considered a full-time employee of the State Assembly, which pays her \$8,125 a month, according to state payroll records.

DeVore's campaign communications director, Joshua Trevino, also worked part-time as a senior consultant for DeVore's Assembly office. Trevino started with DeVore's Assembly office as press secretary in September 2008. Back then, he earned \$2,084 a month for working a part-time schedule that required him to be on the job for 50 percent of the work week. Trevino left DeVore's Assembly office the next month, but returned in March 2009 as a "senior consultant" earning \$5,000 a month on a 60 percent schedule. At the same time, Trevino wrote on his Facebook page that he joined the DeVore for Senate campaign in March 2009.



According to campaign finance records, Trevino, who also runs a firm called Trevino Strategies and Media, Inc., was paid \$1,500 by DeVore's Senate campaign in 2009.

In August, Trevino sent out an e-mail explaining his relationship with DeVore.

It has become clear to me that I need to be explicit about my involvement with the Chuck DeVore for U.S. Senate campaign out here in California. You've heard a lot about him from me, and you will probably continue to — at minimum through June 2010, and hopefully through January 2017. Don't worry, the time will fly.

Here's the deal:

- 1) *Yep, I work for the campaign: as a volunteer. Everything campaign-related that I do is 100% unpaid.*
- 2) *HOWEVER, I also put in 20 hours a week at DeVore's Sacramento office. A few points on that:*
 - a) *It's the minimum allowed by CA Assembly Rules.*
 - b) *It's so I can get face time with Chuck. (Of course, I also serve invaluable office- and Assembly-related functions....)*
 - c) *It doesn't pay the bills. (You former staffers know what I'm talking about.)*
 - d) *No campaign work whatsoever goes on there. It's illegal, and Chuck is scrupulously conscientious about it.*

So:

— Is Chuck DeVore and/or his campaign a client of Trevino Strategies and Media, Inc.? No.

— Do I work for the Chuck DeVore for U.S. Senate campaign? Yes, as a volunteer.

— Do I work for the Office of Assemblyman Chuck DeVore? Yes.

Bottom line is that I'm not making meaningful money off DeVore — especially not compared to what I'd make with a similar commitment to a TSM client. I do what I do because I sincerely believe in him and his chances.

Given DeVore's thrifty campaign, it's easy to look at the Assembly payroll records and the campaign finance expenditures and think the Assemblyman is using the budget of his elected office to pay his campaign workers. But the last line of Trevino's e-mail offers a different explanation.

When asked about the relationship between the Assembly office and the campaign, DeVore, Trevino and Brug Kline all were candid with The Watchdog, describing in detail the extent to which they work to ensure that there's a clear separation between state duties and duties in the campaign — efforts that include keeping journals of their activities and monitoring their time closely. Brug Kline even waited several hours, until

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her lunch break, to call The Watchdog back simply because "I do not discuss campaign issues while at work in the State office."

But all of that is secondary to their bigger point: Trevino and Brug Kline say they sincerely believe in DeVore. They say they're willing to donate their services as "in-kind contributions" to DeVore's campaign, or be paid below what they would normally charge a client, because they deeply support the Assemblyman and his message. And indeed, DeVore's campaign, which touts his credentials as a true conservative, is based on appealing to true believers.

"I'm actually happy to work for Chuck because I believe in Chuck," said Trevino, who said he took a leave of absence from his Assembly job in early February in order to focus on the campaign full time.

Brug Kline, meanwhile, continues to work in her Assembly job and said she is not involved in the campaign on a day to day basis. She called DeVore and his family her "best friends" and added that volunteering for the Assemblyman gives her "job security." If DeVore wins another office, he may bring her along to with him and give her another job.

DeVore says he's lucky to have supporters like this, he says a "grassroots" campaign like his would never succeed without talented volunteers because he could never afford their services on his budget. He says this is a shining example of democracy.

What do you think?

Should legislative staffers be permitted to volunteer for their bosses' political campaigns?

Yes. They're just showing support for someone they know, who just happens to be their boss.

60

No. It raises too many questions about motive and the use of public funds.

62

Total Votes: 112

Started: March 23, 2010

More Watchdog:

Should legislative staffers be allowed to volunteer for their bosses' political campaigns?

State optometry board rejects criticism of glaucoma regulations

Report: State rehired bad nursing assistants

Correa: Pass tax relief for 'short sellers' now

Lawmakers, governor still battle over tax liability of 'short sales'

Politicians tossed from office may be denied unemployment checks

Lost money on house? 'Short sellers' face huge tax bills anyway

Federal lawmakers profit from per diems, too

State lawmakers use their office to duck uncomfortable questions

'You don't want to be poor and old in California'

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Cost of Palin talk, Toyota suit, may be extracted at state hearings

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Should legislative staffers be allowed to volunteer for their bosses' political campaigns?

State optometry board rejects criticism of glaucoma regulations

State exec earned \$1.6 million in two years, then quit

Dozens of public university buildings pose major risk in earthquake

Report: State rehired bad nursing assistants

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1. Keep it civil and stay on topic.
2. No profanity, vulgarity, racial slurs or personal attacks.
3. People who harass others or joke about tragedies will be blocked.

8 Comments

wosomo says:

March 24, 2010 at 11:03 am

In America a person should be able to work for anybody they want, anywhere they want, anytime they want, and get as much money as they can doing it, because the people of the United States of America are the most intelligent, honest, fair, informed, educated bunch of people the world has ever seen, and on top of that they all can't wait to do their civic duty at the courts. The only time things go bad paying or giving anybody money in politics is when the citizens of the country are mostly dead from the neck up, there by allowing the politicians to sell out or pay off everybody and everything.

Post Reply

When the Taxpayer is paying the salary, the employee should only be doing the job which they are being paid to do. They should also dedicate themselves fully to that endeavor—anything less is stealing.

Post Reply

Mildynwtg says:

March 24, 2010 at 6:08 pm

After I clock my time is mine and no one not even a "taxpayer" as I am is going to tell me where and when I conduct myself. Off hours are mine. If I choose to volunteer my time to a campaign or the Red Cross or yahoody down the road it is no ones business but my own!!!!!!!!!!!!!! And that is the way I feel about staffers who volunteer. It is there time and they can do whatever they choose with it. That is afterall the called freedom.

Post Reply

Ann says:

March 25, 2010 at 4:27 pm

I'm a volunteer for Chuck DeVore. I'm new at this but I'm sold on the man, his ethics, and his positions on issues. I've wanted to do things for fund raising and he wouldn't allow me to do it, because it was "illegal." The man is scrupulous on these matters. If I work in an office for a man or woman that I truly think is a great candidate, and I want to volunteer my persoal time for the election, no problem. I think Ms Kline acted properly not to return the call until it was on her time. THAT TELLS YOU A LOT ABOUT HIM AND HIS STAFF. Try that one on the administration in D.C. Trust me it ain't happening. Yes, the "ain't" is intentional.

Post Reply



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