CRC Appeal of Expulsion of Greg Diamond from DPOC

This appeal is hereby being submitted to the Compliance Review Commission ("CRC") of the California Democratic Party ("CDP") pursuant to Article XII Secs. 2(a) and 5 of its Bylaws, and possibly under others discussed below. It addresses events that occurred on Monday, November 26, 2018 at the monthly meeting Central Committee of the Democratic Party of Orange County ("DPOC"), during which I was wrongly expelled from holding my elected office therein. Is being submitted by email by the close of business on Monday, December 03, 2018 to the following email addresses of following recipients, from each of whom I request notice of receipt:

GSS1@aol.com

MWagaman@aol.com

jennybach.mail@gmail.com

Chris@cadem.org

Alex@cadem.org

Clark@cadem.org

STANDING

I was elected to the position of Delegate to DPOC from Assembly District 55 in the 2016 primary election and have served in that position continuously since then.

JURISDICTION

Under Article XII, "CRC," Section 2, "Jurisdiction," Subsection (a). The CRC has initial jurisdiction over all challenges and/or appeals arising under Article II "(Membership) *[et al]* … " It is the proper body to hear Sec. 2(a): the committee shall consist of (iii) "Members elected by County Central Committees of the Party pursuant to Section 4 of this Article. I am a member of the State Central Committee via my membership in DPOC. This jurisdiction inherently requires it to interpret the bylaws of its constituent central committees where they affect membership. The CRC has the power to impose proper remedies.

Article XII, Sec. 5 ("Powers") (page 58) says that CRC "shall have the power and authority to take such actions as are necessary to provide a fair and just remedy including, but not limited to, the holding of new elections. To the extent to which this may be considered to involve selection procedures and qualifications, CRC also has jurisdiction under Art XIII, Sec. 5, 6, & 7.

REMEDIES SOUGHT

(1) A "temporary restraining order" barring DPOC from refusing to recognize Greg Diamond as the rightful holder of his seat representing the 55th AD within DPOC pending the resolution of this appeal, allowing him all perquisites of membership during this time, and directing it to cease and desist any efforts to replace him in this position.

(2) Vacation of the expulsion of Greg Diamond and reinstatement into office.

(3) Declaration that as written **DPOC Bylaws do not prevent individual endorsement** of non-Democratic candidates when (1) they not facing an endorsed Democratic opponent, (2) they are not facing a Democratic opponent of any kind, and/or (3) they have not sought and accepted endorsement by another party.

(4) Immunization of Greg Diamond from a re-vote on expulsion, or a vote other lesser sanctions such as censure, over the underlying actions putatively justifying his expulsion, given that the initial vote and poisoned process has made providing due process impossible.

(5) Vacation of the censure of Brett Murdock, who will be hobbled by it in future endeavors as one of the top-ranking Democratic officials in northern Orange County, because Greg Diamond was not allowed to vote on the measure or to speak to it, despite having extremely pertinent information regarding it.

(6) Formal admonishment of DPOC for its errors, including that Roberts Rules of Order is integrated as a critical part of its Bylaws and cannot be ignored or overridden with less than a 2/3 vote

(7) CDP-provided remedial training to both the Central Committee and Executive Committee, the latter more intensively, to be provided yearly until further notice, on how to run a meeting under parliamentary procedure without inappropriately suppressing dissent.

INTRODUCTION AND GENERAL OBSERVATIONS

First: Jonathan Adler has written an excellent analysis of these matters, which I have attached as **EXHIBIT A**. I ask that the committee incorporate its contents into this document, with which it in places overlaps, as if it appears herein.

My sense is that to argue that a given action is the result of factional fighting within a political party is to invite readers and listeners to tune out and avoid being embroiled in it. This is not merely such a case.

I do make the case that my expulsion was in part the wrongful result of longstanding factional fighting within the party, but in this appeal I do not do so simply in general terms. I note several specifics leading

up to the present action, each of which will be elaborated upon below, which may be taken to support a finding that the actions of DPOC must be rejected as arbitrary and capricious.

I will address some threshold matters before delving into the merits of the argument. These also speak to this attack on me being arbitrary and capricious, which I presume to be the applicable standard here (although my complaint should satisfy any plausible legal standard of which I am aware).

Lack of Proper Notice:

The Chair was required to provide me with 10 calendar days of notice before the meeting at which the hearing was scheduled, along with a notice of charges **See EXHIBIT B**. The action was apparently authorized at the DPOC Executive Committee meeting on Monday, November 12. The Central Committee meeting was scheduled on Monday, November 26. The five days before the meeting, beginning Wednesday November 21 were ones that might be expected to be (and in my case were) taken up with various family Thanksgiving celebrations. Chair Sdao waited until Friday to notify me about the meeting – which was rude and debilitating, by forcing me to choose between family events and proper preparation and making it very difficult to locate other DPOC members whose cooperation I may have desired, but while indicative of malice was not necessarily improper.

What was improper was the mode by which she informed me: an email, with a subject line so long that on its face I would not have known that it was significant enough to open it (as my name appeared only at the end of its title, beyond the number of characters visible in Yahoo email on my screen. Worse, it had several people cc'd on it and an indeterminate (and perhaps undeterminable) number bcc'd on it – which sent it into my Spam/Junk folder, which is apparently more common than non-Yahoo users realize but rarely this consequential. **See EXHIBIT C, Email from Jonathan Adler to Fran Sdao et al.** There was no contemporaneous additional communication by that Friday telling me to expect (or go search for) the email by phone call, voicemail, text, follow-up email sent only to me (and thus less likely to go to Spam), or personal delivery (a DPOC officer who does service of papers professionally lives in my city and is a frequent guest in my home.) I only found out about the charges at around 3:00 p.m. on Monday, November 19, just prior to a five-hour round-trip (given traffic) to San Diego to pick up my grandson for the Thanksgiving holidays. **See EXHIBIT D, Time-stamped Diamond Facebook posting.** The letter (sent by normal USPS First Class) was postmarked November 16, the deadline for the 10-day notice, and so could not possibly reach me on the same day without additional contemporaneous notification. **See EXHIBIT E, Diamond Facebook comment. Had I had that weekend available to prepare and reach out to others, I would not have been limited to doing so less effectively over the long holiday weekend.** When I received the letter, I presumed that Chair Sdao had blown the deadline and that the hearing could not go forward, even without notification of my scheduling conflict (see below.) It was not until Wednesday that I checked my email, I believe after a call from Brett Murdock asking about the procedure, that it occurred to me to check my Spam/Junk folder, which I do not monitor daily, to see if an email had been sent to me there. Only at this point did I find out that an

email had been sent – although not be a means reasonably calculated to make sure that I would be aware of it.

All references to notice in the DPOC Bylaws require written notice. It does not say what "written" notice is, so for that we would turn to Roberts Rules as a gap-filler. Roberts Rules says that rules in local, state and national law – and it would require additional time under CCP 1013. See RONR pages 3-4 of Section 1: "The Deliberative Assembly." In additional, Roberts states that email notice is only proper where the recipient of the notice has agreed to receive in advance. Page 89, Item B, within Section 9, "Particular types of business meetings," "Regular Meeting."

Lack of Proper Notice as to Rules:

I sent a demand letter to Chair Sdao (cc'ing others) at 4:44 p.m. on Wed. Nov. 21 making several arguments about the problems with the procedures and substance of the attack on me.) **SEE EXHIBIT F, DEMAND LETTER** *Inter alia* I requested from her notice of the operative procedures that would be in place for the hearing. (These would have been the proposed operative procedures, as the assembly would still have to approve them at the meeting, but I knew that they would have some precedential value**.)** I received back at 10:56 a.m. on Sat. Nov. 24 a response saying only that she acknowledged receipt of the letter. At 11:31, 35 minutes later, and approximately 55½ hours before the scheduled hearing, I sent out a response stating:

> I presume that if you had wanted to address any of my concerns, you would have done so, so I'll limit myself to questions of procedure.
>
> Please inform me in writing as to the specific procedures you intend to follow on Monday night:
>
> • how much time will I be allotted?
> • is that separate from that allotted to the three people I can have speak on my behalf?
> • how much time will they becallotted? *[sic]*
> • what voting procedures will be followed (ballot that I can review, ballot that I can't review, roll call, voice vote)?
>
> As you know, I suffer from some disabilities from a stroke, so telling me that I should know how it works from having sat through the hearing for Dan is not a reasonable accommodation.

SEE EXHIBIT G

(This last point derived from the fact that under Chair Sdao, complicated resolutions and proposals for adoption at DPOC meetings have often been projected onto a screen rather than produced on paper, making it extremely difficult for members so disposed to review and analyze the documents. Attempts to ask that the Chair scroll through the screen have elicited pronounced groans from the assembly, as if they were dilatory as opposed to fulfilling an actual responsibility of membership. I thought that I recalled what had happened at the previous meetings hearing, but could not trust in full veridical recall.)

I received a response from Chair Sdao at Nov. 25 at 2:05 p.m., fewer than 29 hours before the hearing.

Greg,
In response to your questions regarding procedures:

You will be permitted up to a total 10 minutes for you to present your position at the Central Committee meeting. You may use the time however you wish which may include having speakers address the Committee on your behalf. The speakers do not have to be members of the Central Committee. Please let me know who the non-members will be, if any. Those individuals must sign in as "guests" before the meeting begins. The total speaking time will be limited to 10 minutes. The Executive Committee will be allowed an equal total amount of time.

You may bring letters of support and will be permitted to distribute them before the meeting. Eighty copies should be adequate.

This discussion will occur in open session during the meeting.

Press is not permitted at this meeting. Any member of the media will not be permitted to sign-in and will be asked to leave.
Recording/filming of the meeting will not be permitted. Anyone violating this rule will be asked to stop and may be asked to leave the meeting if they persist in recording/filming.

Karen Russell is the appointed Parliamentarian. I will appoint a substitute should she not be at the meeting.

The committee will vote by show of hands. Removal must be approved by two-thirds vote of those present and voting.

I'm not sure what you are referring to in your comment about "the hearing for Dan". However, we will work to accommodate any special needs that you might have. Please let me know what those might be so that we are prepared before the meeting.

Fran Sdao, Chair

SEE EXHIBIT H

At 2:59 on Sunday Nov. 25, about 29 hours before the start of the hearing, I was sent the following correction. As it happened, while I had seen the former one when it came in, I did not see the correction until later that day. **See EXHIBIT 'I'.**

Greg,

It has been pointed out to me that unless otherwise expressly provided for in the bylaws, that "**all actions of the County Committee shall be by an affirmative vote of a majority of the members present and voting".** Article XVI. Voting, Section 2. Manner.

Therefore, removal must be approved by a majority vote, not two thirds as I previously stated.

I do apologize for sharing incorrect information.

Fran Sdao, Chair

That is the first notice I received that I would supposedly face a majority vote. I was fairly confident at this point that I would have more than 1/3 but probably less than 50% of the vote – I suspect Chair Sdao and her advisers had come to a similar conclusion – and of course it called for a completely different

approach. Earlier in the weekend I had taken on an emergency immigration appeal that had to be filed by 3:00 to allow a pair of children to stay in the country; I could not and would not drop that matter for this one and so had only a few hours to prepare for an entirely different scenario. I was aware of the 2/3 requirement in Roberts Rules and of RONR's incorporation into our Bylaws, so this seemed to be to be as much of a mistake as the proposition that it would be accomplished by a show of hands, which I knew that I could demand on my own (unless Chair Sdao simply refused to recognize me, as she had done on some previous occasions, the most recent of which she attributed to bad eyesight.) The only proper course at that point should have been to delay the hearing until January.

Spoliation of (via Prevention of Collecting) Evidence for Appeal:

At this point, I need to address a question that I think of as "spoliation of evidence" – that is, discarding or other destruction of evidence – even though there may be a more proper term for it when it refers to prevention the collection of evidence in the first place. You will note from Chair Sdao's letter to me that she was bent on being allowed to do all of this in a way that would make it as difficult as possible to hold members accountable for their votes. (This is less because I wanted to do anything with a list of them – aside from thanking my supporters – than to ensure that they undertook the vote with the proper gravity and concern for their own reputations.) She wanted no press, she wanted a vote by raised hands only (which makes identification of voters difficult from the rear and unadvisedly confrontational from the front), and most critically she wanted no recording of the events.

I objected to this, noting that I would require evidence of, primarily, what I had done and what she had done during the proceedings for my appeal to the CRC. She repeated the proscription against recording. I was at this point still expecting that she would be holding a vote based on choices of remedies – likely expulsion vs. censure – and so I did not want to be near the front of the room blatantly disregarding her demand. As a result, I have to proceed from my own memory of events, which is admittedly hampered by my stroke. When I raised my objection, she told me that no would be needed because the minutes of the meeting would be very detailed. I believe that I told her that that was insufficient and she essentially shrugged. So far as I know and recall, I preserved all objections for appeal and Chair Sdao's actions are as I assert.

I raise this because the penalty for spoliation in court is to grant all adverse inferences to the party harmed by the spoliation. I believe that that principle should apply here. If I can't provide better evidence as to whatever is in question, it is the Chair's doing and she should not profit from it.

I had originally thought of asking people for their recollections of the evening's events – but my first attempt demonstrated to me that "tell me everything you recall" is not a good prompt to pique people's memory. If the Executive Committee or its allies place any factual questions of what happened that day into doubt, at that point I will ask people if that matches their memory, but at this my own memory and the concept of spoliation should suffice for a prima facie case.

Lack of Promised Remediation of Spoliation:

As an aside, I ran into the DPOC Secretary at a Club meeting on Sunday Dec. 2 and asked him whether the minutes (or a draft thereof) would be available.

Lack of Vote to Adoption of Rules:

I was prepared to object to the rules when they were proposed to the body. Such a vote was never taken. When I point out this and other deficiencies, I was simply waved away and told that the rules were already set and any time for objection had passed. On other occasions, I could not gain the floor.

Lack of Accommodation of My Disability

Chair Sdao is aware of my disability and, far from accommodating it, she has capitalized on it: making the pace of events quick and confusing, making promises of future opportunities to speak that she does not keep, and asserting that I have used up my only opportunities to speak. These tactics are more successful at befuddling me than I wish they were, and I don't recall them working well prior to my stroke, when I would simply lose all sorts of challenges to the Chair.

Improper Imposition of a Simple Majority Voting Requirement:

This is addressed more fully in the "Statement of the Case" section.

Improper Denial of Separate Votes on "Guilt" and Penalty Phases

This is addressed more fully in the "Statement of the Case" section.

Lack of Opportunity to Rebut:

One of the most galling aspects of the hearing was that Chair Sdao kept saying that attempts to vindicate my rights were either too early or too late. Again, this capitalizes on my disability. Two from this meeting come most clearly to mind.

First, after various criticisms from members supportive of the Executive Committee, I spoke to rebut those comments. After more comments, I again sought recognition, and she told me that I would have a chance to rebut people's comments later. After many more comments, she refused to recognize me at all, including to rebut several flat untruths (such as that I wanted DPOC to endorse Spitzer), stating that I had already had my time to speak. The consequences of this are evident in the following email I received from one of the most intelligent and perceptive members of the Committee. **SEE EXHIBIT J**

On Tuesday, November 27, 2018, 1:42:10 PM PST, [redacted, though available if required] wrote:

> I regret the result of the vote last night.
> Some observations:
> It seems uncharacteristically stupid of you to have said "vote for Spitzer" instead of "vote against Raucaukas"
> Central Committee members also have a sworn duty to defend the constitution.

If Katie Porter had been a Central Committee member, she would have been forbidden to campaign

(The same goes for Harley Rouda.) No one with experience in political communications would equate the effectiveness of listing an opponent's last name on a slate mailer graphic, even with a "don't vote for" label that might be missed or fade from memory, with listing the name of the candidate one supports. Similarly, my inability to rebut the notions, raised from the floor, that this was a satisfactory alternative, that I had called upon DPOC itself to endorse Spitzer (I did not because I knew that we could not), and that speaks to the intentional and successful inadequacy of the process.

While this member is extremely bright and analytical, he is not an attorney. When I wrote to respond to this I laid out both the inefficacy of doing it his ways, he accepted that the Bylaws were ambiguous, but said that it would have been better for me to abide by the more restrictive possible interpretation. This is what's called a "chilling effect" in First Amendment law, and the reason that statutes held to be unconstitutional on this basis are regarded as "vague and ambiguous." If the rule is vague – and, again, this should have been updated since Top Two but was not – a statute is to be construed to allow action, not to forbid it. (Jonathan Adler made a similar point in his attached argument, which I note in many places mirrors arguments I make herein; I commend it to the CRC as if I have repeated it here verbatim.)

STATEMENT OF THE CASE

(1) The use of a simple majority vote to expel a member from DPOC was offered as a "one-time only" occurrence.

Removal of a member by a simple majority has not happened within recent memory, including as of the most recent meeting. As of the next regular meeting in January, a Bylaws amendment incorporating a explicit 2/3 vote requirement for expulsion will receive its second reading, ensuring that expulsion of a member with a simply majority never happen in the future. It will have **only** happened – unexpectedly and outrageously – once, in last week's meeting, to me. Presumably after making calls to members and discovering that it was unlikely to get a 2/3 vote to remove me, the Executive Committee created a spurious exception to the "2/3 vote for expulsion" requirement in Roberts Rules of Order, and quickly took action under that ersatz ruling. That trick having done its job, it will (unnecessarily) close the door to further abuse and pretend that nothing untoward ever happened. But their action was indefensible.

The DPOC Bylaws state that any vote without a required percentage expressly stated within the Bylaws is subject to a "gap-filler" provision stating that only a majority vote is required. While Roberts Rules, with its supermajority requirements for expulsion and approximately 35 other motions, is itself explicitly incorporated into the DPOC Bylaws, those supermajority requirements do not explicitly appear in these Bylaws other than by that incorporation by reference. The logic of the Executive Committee is that Roberts Rules, while explicitly incorporated into the DPOC Bylaws, was somehow not allowed to bring its supermajority vote requirements into the Bylaws along with it. They thus allow a "gap-filler" provision

to supersede the explicit requirement of Roberts Rules, defeating the protection of the minority view that is critical to parliamentary procedure. But they want to ensure that it will happen "just this once."

The selective incorporation of only one of the 36 "2/3 votes" provided by Roberts into the DPOC Bylaws both "proves too much" and is a sign of guilty knowledge: by the logic of the Executive Committee, it leaves a state of affairs wherein **any of the other 35 2/3 vote provisions** within Roberts Rules that is not specifically enshrined in the DPOC Bylaws **can be overridden by a simple majority** using **the exact same logic** as that used last week to reject the notion that a 2/3 vote was required to remove me.

This would be anarchic and completely oppressive of minority interests. The Executive Committee presumably understands this; that is why, having abused its power under its spurious exception, it now seeks to close the door to future abuse (at least for the one supermajority vote requirement it found inconvenient.) Logically, it would also have to enshrine the other 35 supermajority requirements into DPOC Bylaws to continue following Roberts Rules – but there is no peep about that, as even they don't believe their own theory that a gap-filler provision that should be construed to apply only to any vote not already covered by Roberts Rules should somehow be elevated to trump Roberts Rules itself.

I submit that this hocus pocus was not the act of a body acting in good faith, but one acting out of arbitrariness, capriciousness, and malice. Other evidence supports the same conclusion.

(2) The DPOC refused to honor a request for postponement my absence for business reasons.

When I received my belated notice of this hearing (discussed below), I realized that it would come the night before I was to take part in a court hearing, something that I rarely do since my stroke in August 2017 and my sharply curtailing my practice, and something that due to that disability requires far more preparation than before. There was no apparent reason why my expulsion would have to come in November as opposed to January: we do not have a "business meeting" in December (but rather only a holiday party), the election was already over, and making accommodations for members' personal and business conflicts has been routine in the past.

My request was met with a simple statement that the vote would be held in November – and, implicitly, that they were willing to try me *in absentia* if I were to prioritize my duty to clients over my right to defend myself. This gross discourtesy startled me at the time, but it turned out not to be an issue when the hearing was postponed. I later learned that there were at least three other reasons why the DPOC Officers, at least, wanted the hearing not to wait until December.

1. It would have led to my possibly evading the "trap" of the putatively necessary bylaw instituting a 2/3 being approved after I had already been expelled.
2. Char Fran Sdao, who seems to have been a prime mover behind this action, announced at the meeting (after I had already departed) that she was moving to Washington DC and would not be seeking reelection to the position of DPOC Chair
3. At least three of the four Regional Vice Chairs – Jeanette Burns (who is moving to Chula Vista), Farrah Khan (who has just been elected to Irvine City Council), and Diana Carey (newly elected

to a School Board) -- announced at the meeting that they too would not seek reelection to their positions. (I am unsure about the status of the the fourth, Bylaws Chair Jeff Letourneau.)

As the special meeting to elect officers takes place earlier in January, this would mean that the four of them would not be in a position to control the proceeding if it took place in January; the new Executive Committee itself could have decided not to go forward with an illegal vote. The only way to ensure success was to go forward now based on a spurious theory that a 2/3 vote was not required.

That organization meeting may suggest one more motive for my expulsion: by not waiting until January, they'd reformist elements of the party, with which I am aligned, of one more vote for the new Chair position and other officer positions, as well as making my own candidacy for any such position impossible. (This is one reason that I seek a "temporary restraining order.")

Once again, the action of the DPOC in rushing through a vote were arbitrary, capricious, and malicious.

(3) <u>The DPOC has been acting arbitrarily and capriciously in this matter</u>

Sad to say, there has been factional warfare within the DPOC for as long as I have been involved between that I would term "Establishment" and "Reformist" factions, with my being associated with the latter. Having served on the DPOC Executive Committee for I believe the past four years, as well as before that, I have long been a proponent of the never-dominant Reformist faction. In that capacity, I have long been a proponent of stricter prohibitions to protect numerical minority interests within the party, arguing both for no "Code of Conduct" until it could pass the "vagueness and overbreadth" tests in First Amendment law and specifically arguing for nothing less than a 2/3 vote for removal.

In all that time, I do not think that there has <u>ever</u> been a proponent for removal by a simple majority. Not once. Chair Sdao and the rest of the Executive Committee would be aware of this.

The fact that there is a 2/3 requirement for the Code of Conduct – which involves matters including (as in the case of Dan Chmielewski threatening two employees in ways that one construed as violent and the other could readily have construed as extortionate – speaks to the importance of this rule.

The fact that, when deciding to embed the supermajority requirement into the Bylaws, it was to be a 2/3 requirement also speaks to the intention of the Executive Committee in such matters.

As is evident in Fran Sdao's email answers to me about the processed to be used, <u>even she</u> thought that the vote would require a 2/3 majority until someone "corrected" her based on a theory that was raised and rejected during Dan C's hearing. It is based on a theory that the percentages in Roberts Rules simply don't apply within DPOC until and unless there are separately and expressly incorporated into the Bylaws – which is nonsense.

The reason that this rule was applied to me, and to me only, is that the Executive Committee wanted to get rid of me for reasons including personal animus – I have had one member, Deborah Skurnik, literally

screaming at my red-faced for several minutes, for my supposed (and in any event ineffectual) making things hard for Fran Sdao by providing oversight, while I yelled repeated for a point of order and was pointedly ignored by the Acting Chair (one of the DPOC officers) – and they either knew or feared that they couldn't get a 2/3 vote, so they stamped a "one-trip only ticket" to remove me. That is quintessentially arbitrary and capricious. The rules in the last section of Roberts Rules, dealing with disciplinary matters and incorporated into our Bylaws, are violated by such behavior.

4) <u>DPOC members have routinely and inarguably violated this provision when it has suited them</u>

I was the Orange County Coordinator for the Kamala Harris's campaign for Senate – as I routinely described it, "the Worst Job in the Campaign" – and I know very well from the experience that it was routine for many DPOC members to continue to support our "favorite daughter" Loretta Sanchez *well* after the point where she was endorsed by the CDP. This was not worth challenging at the DPOC level because there was no way that a majority would vote to condemn themselves, and the choice to address it at the CDP level was not mine to make. I suspect, but can't claim to know, that similar actions have taken place this past election regarding support for Dianne Feinstein over Kevin deLeon.

The choice to act here, and solely, forever, in this case is arbitrary and capricious. They did not like Todd Spitzer – were either unaware or did not much care about the nationally noted constitutional scandals in the DA's office – and frankly, judging from the difficulty I had arguing for endorsement of Brett Murdock in the primary election, many of them seem to have been supporting the corrupt and Republican Party endorsed Tony Rackauckas, who has always had his share of Democratic Establishment supporters.

Allowing DPOC to pick and choose when such a rule will be enforced enables a "tyranny of the majority" that our democratic process is supposed to prevent.

5) The Chair's Decision not to allow separate votes on "guilt" and penalty stages led me to waste my presentation.

While I did not feel that censure was a just outcome, I also knew that it was a likely one. Accordingly, I spent much of the limited time (and space on my handout) **SEE EXHIBIT K – Handout to DPOC** on the reasons for and merits of the decision I made.

Again, the rules for this meeting were never adopted by the body --and ended up being at variance with both what happened in the Dan C hearing, with what Fran promised me ahead of the meeting in writing, and with what Fran said verbally to the assembly during the meeting – but I still had reason to rely on them. Fran said specifically that we would be having separate votes on "guilt" and penalty. When someone from the body (I'm not sure whom, but I think that it may have been Marleen Gillespie) made a motion to substitute in a remedy of censure, Fran said that that motion was premature. (It wasn't.)

A time when it was no longer premature never arose: based on Fran's statements, the assembly treated the initial vote as dealing with guilt alone, expecting the ability to amend the remedy later, and at the end of the vote Fran informed me that I had been expelled from the assembly – without any opportunity to move for a different penalty. This goes beyond arbitrariness and capriciousness to pure bad faith.

(6) Regarding Brett Murdock

The Central Committee also decided to gratuitously damage ex officio Brett Murdock's career for his supposedly ill-advised endorsement of Todd Spitzer, who had incorporated five strong Democratic principles – ironically endorsed by the body at the same meeting as such, once it was too late to help the campaign of Spitzer's de facto ticket-mate, Democratic Party endorsed candidate for Sheriff Duke Nguyen – against the rules that would have applied to him. I am someone who has been and hopes one day to again be represented in office by Mr. Murdock. I was not allowed, despite being yielded to by Mr. Murdock's alternate, to speak against his censure, because I was deemed expelled from the party. Had I been, I would have told the Assembly that Murdock came to me for advice – as one who had been far more deeply involved in the party than he had – on whether an endorsement of Todd Spitzer would violate its bylaws and that all of his supposed guilt, if any, should be "placed on my tab." I told Murdock that I had looked into the matter closely and that in my opinion it would not, and that no fair-minded body would punish him for it.

I was right: no fair-minded body did. If the CRC finds that my interpretation of the substantive Bylaws is correct, its remedies should automatically extend to Mr. Murdock as well. If the CRC finds that my interpretation of the procedural bylaws but not substantive bylaws apt, they should also remove Mr. Murdock's censure (or force a revote) based on my being prevented from speaking and voting in his favor.

CONCLUSION

For the foregoing reasons, the CRC should provide the relief requested. Should opposing filings be provided in this action, the CRC should provide me an opportunity for timely response to them.

EXHIBIT A

JONATHAN ADLER
382 AVENIDA CASTILLA, # P
LAGUNA WOODS, CA 92637
(949) 581-2178
LAWGURULAGUNA@YAHOO.COM

Memo to: Greg Diamond
Date: December 2, 2018
Re: **Procedure at DPOC Central Cmte Meeting on Your Matter Monday Nov. 26, 2018**

This responds to your request that I assess the proceedings and actions in the matter referred to above pursuant to (or violating) Democratic Party of Orange Co. ("DPOC") Bylaws and Robert's Rules of Order ("Robert's", all citations to 11th ed. [latest]; "parliamentary law" means Robert's and said Bylaws).

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Preface re Respect for Parliamentary Law: I must say to start that parliamentary law is no "arcane dark art" serving only knowing "cognoscenti", as some believe – as indicated by impatient groans often heard from the body when a Point of Order is raised to try to apply it. Rather, the more it is understood, the clearer it is that it all makes sense, and its worthy main objectives are efficient meetings, with sufficient discussion, to help transient majorities reach decisions, yet fairly guard transient minorities' and individuals' equal right to be heard. Parliamentary law is "rule-of-law" in meetings. Its corners must be "squarely turned," not cut. It must be fully respected and applied fairly – *especially* by our Central Cmte, a body created by our Election Code, as part of our democratic political process, with members publicly elected.

Introductory Matters: This is *not* confidential. If you wish, you may share all or part of it. My role here differs greatly from a meeting Parliamentarian's. As you know, the Chair appointed me as Acting Parliamentarian at the above meeting (in the absence of permanent Parliamentarian Karen Russell, as the Chair also did in 2017-18 whenever Ms. Russell was absent). You also know that I was DPOC's permanent Parliamentarian in 2015-16. In that role, I answered the Chair's parliamentary queries, but I *initiated* advice only rarely (if the Chair or Central Cmte body was clearly off-course), as is usual for Parliamentarians at meetings. I am far less constrained here to freely assess the above meeting's procedure and actions. In so doing, my judgment deserves the weight of my experience (stated below in footnote) involving Robert's Rules as modified by bylaws (and also construing statutes and other documents).

Parliamentarian Experience: Besides the above service as permanent and acting Parliamentarian of DPOC: I am a long time member of its Bylaws Cmte, and now of its small Bylaws revision sub-cmte. Since 2005, I've been Laguna Woods Democratic Club's permanent Parliamentarian, and main drafter of its re-written bylaws as Bylaws Cmte Chair. Since 2006, I've also been informal Parliamentarian of another big Laguna Woods club and drafted its revised bylaws. I am V.P., and member since 2014, of Robert's Rules Study Club, a spinoff of Orange Co. Parliamentarians Assn. In 2005-07, I was a volunteer parliamentarian (among several) for a semi-official Robert's Rules website, answering publicly-posted questions. Over prior decades, I gained some parliamentary knowledge (like many others) at Calif. State Bar and American Bar Assn. conventions, and serving on boards of non-profit legal service groups.

Robert's yields to conflicting bylaws (its p. 580), and expressly applies general law rules on interpreting bylaws (and also statutes and most other documents; *id* at pp. xlviii, 588-591), so drafting and interpreting bylaws (and statutes, contracts, etc.) is also relevant experience. At a Wall St. law firm, then solo practice, for non-profit org'n clients, I drafted bylaws and argued interpretations of others; the same with contracts. As for interpreting statutes (applying the same principles as bylaws), my experience included clerking for a Calif. Supreme Ct. justice, and trial and appellate criminal prosecution and defense, and civil litigation.

Summary of Evaluation of Action on Your Matter:

You were ***not*** validly expelled from DPOC's Central Cmte. Its procedure had far too many prejudicial fatal violations of its Bylaws and Robert's. Not the least was that the 31-17 vote to expel fell short of the 2/3rds required by the Bylaws, whose silence on required vote percentage Robert's expressly fills in: "For expulsion, a two-thirds vote is required." (Chapter XX ["Disciplinary Procedures"], §63 ["Investigation and Trial"], "Steps in a Fair Disciplinary Process," step (e), p. 668; see also its "tinted pages" ["Charts, Tables and Lists"], §VI. ["... Motions Which Require a Two-Thirds Vote"], tinted p.45; Bylaws Art. XVII [Robert's is parliamentary law at all meetings].)

Also: No Calif. law, Bylaw, nor operating rule provided procedure on a motion to expel; the Chair just declared such procedure with no authority to do so; and the body wasn't asked to adopt any such procedure (on motion nor by consent). So, *no* procedure on the motion was *validly adopted*; the procedure Robert's required filled that gap; and so most procedure on it violated Robert's Rules. They also violated the precedents set at the prior Central Cmte meeting on a motion to expel another member (Dan C), and violated a few of the Chair's own assurances at the outset, of motions and procedure later to be allowed or occur, but not in fact permitted or recognized, nor otherwise allowed to occur. Such violations included:

• The 2/3rds vote the body required and adopted at the prior meeting on motion to expel the other member. • 2/3rds vote required to expel in the Bylaws amendment first reading to the Central Cmte later in the meeting – previously approved by the Bylaws and Exec. Cmtes. • Disallowing a motion to amend to lower proposed penalty from expulsion to censure. • Separate votes on guilt and penalty. • The Chair departed from required *neutrality*; rather, acted in many ways as a prosecutor advocating the motion. And • Untimely notice of the motion (especially notice at the start of Thanksgiving holiday week), causing some prejudice to your ability to prepare and present a defense.

Bylaws' Lack of Clear Prohibition of Act Charged Against You:

2010 Prop. 14 enacted the single all-party-Primary and "Top-2 Runoff" General Election, and made all county-wide races "Voter-Nominated Non-Partisan." Election Code §7216, enacted in *1994*, has not been amended since then. It lets a Democratic County Cmte "remove any member ... who gives support or avows a preference for a *candidate* ***of*** another party" – obviously referring to a candidate *nominated* ***by*** another party in the era when parties nominated candidates via a Primary. DPOC Bylaws accepted that authorization to remove by a simple "cut-and-paste" of §7216's language.

After 2010 Prop. 14, DPOC Chairs assumed and asserted that such prohibitory wording – *"candidate* ***of*** another party" – changed its meaning to any "candidate *registered* as a *member* of, or *preferring*, another party," regardless of the other party's actual endorsement. Assertions, even repeated, of an incorrect interpretation of a Bylaw term don't make it so, nor change its framer's intent in adopting or amending it – especially if it states a ground for the most extreme sanction of expulsion. Those must be clearly and narrowly construed for fair notice of prohibitions (by analogy to criminal laws).

In your defense, you asserted that since O.C. GOP endorsed Tony Rackauckas for O.C. DA, only he, if anyone, fit the phrase *"candidate* ***of*** another party," so your publishing reasons to oppose him and vote for his opponent Todd Spitzer did not offend the above Bylaws prohibition. Your view seems arguably correct, at least; and, given the requirement that the prohibition be narrowly construed, even stronger.

Effect of Just-Prior Meeting's Proceedings on Motion to Expel:

I was active in parliamentary actions and advisory conversations involving the motion to expel (Dan C) at the Central Cmte meeting just before that of your matter, and also the Exec. Cmte meeting that approved making that prior motion. (As an alternate to my absent appointing Exec. Cmte member, I spoke and voted at its meeting.) At that latter meeting (chaired by DPOC's Chair), I summarized Robert's "Steps in a Fair Disciplinary Process," including separate votes on guilt and penalty, availability of a lesser penalty (censure), need that the Central Cmte adopt some due process procedure on the expulsion motion, and requirement of a 2/3rds vote to expel. In support and explanation of Robert's (strongly-advised) due process

steps, I copied, formatted, printed, and gave to a few Exec. Cmte members, including the Chair and Bylaws Cmte Chair, most of Robert's "Disciplinary Procedures" Chapter XX.

Before the Central Cmte meeting began on that prior motion to expel, I spoke to Ms. Russell, the permanent Parliamentarian; found that we aligned on the above points; and we had a brief advisory conversation with the Chair. It included that the Chair should state proposed procedure on that motion to remove, and ask for a motion from the floor to adopt it as the body's procedure, including a 2/3rds vote needed to expel, availability of a motion for censure as a lesser sanction, and a bare majority vote needed for censure.

The Chair followed that advice when proceedings began on the motion to expel. In debate on the floor motion to adopt the Chair's proposed procedure, the Chair yielded to the Bylaws Cmte Chair to oppose the 2/3rds rule and to assert and argue the majority vote rule that I rebut below. I rose to a (successful) Point of Order that nothing gave the Bylaws Cmte Chair authority to declare the vote needed to expel. I also rebutted (as below) the Bylaws Cmte Chair's argument for a majority vote rule. The body *voted for* the *2/3rds rule* to expel, a majority to *censure*, and an *available motion* for a *penalty less* than *expulsion before* a vote to *expel*. In the end, that motion to amend the penalty was made, passed, and the Central Cmte voted to censure.

That prior meeting's adopted procedure is significant, at least, in that the Chair became aware of threshold procedures required of her and that the Central Cmte adopted; and also, very arguably, that the procedures the body adopted for a motion to remove became, under Robert's, *precedential* "special procedural rules" for *subsequent motions* to remove – amendable or repealable *only upon motion* and a 2/3rds vote (or at least requiring a motion and the body's majority vote to amend or repeal).

Bylaws Cmte Chair's Argument Against 2/3rds Vote to Expel is Baseless:

At the hearings both on your matter and the just-prior meeting on removing another Central Cmte member (Dan C), the Bylaws Cmte Chair made the same claim against the 2/3rds-vote rule to expel, that I find, frankly, silly (that isn't unkind or hyperbole, since it has so many deep flaws). He claims, in essence: By omitting any vote percent needed, the framers of DPOC Bylaws' member-removal sections – Art. II ["Membership"], §6.A. ["Removal"; non-automatic, discretionary ("may"), substantive grounds], and §7.A. ["Procedure for Removal" (bare; only agendize, 10 days written notice, and chance to be heard)], pp.8-9 – intended a *bare majority*, by letting that gap be filled by *this general section*, 28 pages and 14 articles further down the Bylaws, involving many *manner-of-voting* issues: Art. XVI ["Voting"], §2 ["Manner"], p.36:

> "All actions of the County Committee shall be by an affirmative vote of a majority of the members *present and voting*, unless otherwise expressly provided for in the Bylaws. The *manner of voting* shall be ... *voting cards* ... . [If] there is a *division* ... request ... for a *roll call* vote. ... [R]oll call ... *not be in order* when electing positions pursuant to [4 cited articles], which shall be done by *signed ballot*. ... [N]o *secret ballot* ... . [Emphasis added]

It should be clear, from the many reasons that follow, that (a) Omitting the vote percent needed to expel a member was *inadvertent*; (b) That gap was not intended to be filled by silent operation of a distant, unmentioned, general section on many *manner*-of-voting issues; and (c) The sentence containing the word "majority" focuses on "affirmative vote" and "present and voting" – in contrast to counting in the vote fraction's denominator (i) abstentions as if No votes, (ii) all those just "present", or (iii) all members of the body whether or not present. Other reasons why a bare majority vote to expel was not intended include:

1. Bylaws Art. XVII – making Robert's parliamentary procedural law at all meetings – is obviously "*expressly provided for in the Bylaws*," and Robert's *expressly provides* for a 2/3rds vote to expel ("For expulsion, a two-thirds vote is required." Chapter XX ["Disciplinary Procedures"], §63 ["Investigation and Trial"], "Steps in a Fair Disciplinary Process," step (e), p. 668; see also its "tinted pages" ["Charts, Tables and Lists"], §VI. ["... Motions Which Require a Two-Thirds Vote"], tinted p.45.)

2. It would be absurd to expect the Bylaws to expressly re-state all 669 pages of Robert's text, plus (between text and index) its 48 "tinted pages" titled "Charts, Tables, and Lists." So, the fact that the Bylaws

incorporate all of Robert's *by express reference* ("except when ... Bylaws conflict") – can't possibly lead to the silly conclusion, nor mean, that *none* of Robert's is "expressly provided for in the Bylaws."

3. It would "prove far too much" *if* Art. XVI §2's first sentence *did* lead to that silly meaning, because that would ***moot*** Robert's requiring a 2/3rds vote for ***all 36 motions*** (listed in its "tinted pages" 44-46, §VI., "List of Motions Which Require a Two-Thirds Vote") for bodies' *most serious actions* setting aside ordinary regular procedure and/or that a minority may oppose – including the most serious, expelling a member (§63, step (e), p. 668) – and others such as, (a) suspending the rules; (b) amending or rescinding "Something Previously Adopted"; (c) closing nominations, or the polls; (d) extending time; (e) limiting or extending debate; (f) objecting to considering a question; (g) reconsideration when prevailing-side voters are absent; (h) calling the previous question; or (i) adopting standing rules or special rules of order. It would substitute a *bare majority* for the 2/3rds vote Robert's requires for *all* such *serious actions*.

Indeed, the Bylaws Cmte Chair's argument against the 2/3rds-vote rule to expel is *so unlimited* – it would "*prove **so much** too much*" – that it might well require the (obviously) absurd result that *even any **Bylaw*** could be *suspended* by a *bare **majority** vote*, *despite* one of Robert's *most fundamental principles*: that a *bylaw cannot* be "suspended" (*only amended* under their own amendment procedure (with just a narrow exception for a bylaw that's *really* only a mere *rule of order* or *operating rule*, that allows its own suspension). (Robert's, Chapter I ["The Deliberative Assembly: ..."], §2 ["Rules of an Assembly ..."], "Rules of Order," p.17)

4. It would conflict with *specific express* requirement of a 2/3rds vote for the *less serious* action of removing an officer (Bylaws Art. IV, §4., ¶2.) It stretches credulity beyond its breaking point to argue that expressly *including* in our Bylaws the vote required to remove an officer ***was*** needed for *certainty*, but *omitting* the same to expel a Central Cmte member was ***not*** *needed* for certainty.

5. It would violate several general law *principles of interpretation* – some of them expressly stated in Robert's (§56 ["Content and Composition of Bylaws"], pp.588-591), such as [italics below are Robert's]:

"1) ... If a bylaw is ambiguous, it must be interpreted, if possible, in harmony with the other bylaws. The interpretation should be in accordance with the intention of the society at the time the bylaw was adopted, as far as this can be determined. ..."

"2) *When a provision ... is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning*."

"3) *A general statement or rule is always of less authority than a specific statement or rule and yields to it.* It is not practical to state a rule in its full detail every time it is referred to. General statements of rules are seldom strictly correct in every possible application."

6. The various other actions referred to above, at and just before your removal proceeding, that included the 2/3rds vote required to expel – such as the Bylaws amendment first reading detailing a lot more of the removal process; the procedure the Chair proposed and Central Cmte adopted for the motion to expel another member (Dan C) at its meeting just before that involving you; and the Code of Conduct adopted earlier in 2018 – all clearly evidenced DPOC officers', committee chairs' and members' belief and understanding that removal of a Central Cmte member did and should require a 2/3rds vote.

Conclusion: For reasons including those above, my judgment is that your purported removal as a DPOC Central Cmte member on Nov. 26, 2018 was, is, and should be held, *invalid* and *void*.

Please feel free to share this memo and/or to ask me to provide further details or reasoning.

[e-signed]

Jonathan Adler

EXHIBIT B

Notice of Action and Resolution to Remove Central Committee Member Greg Diamond Yahoo/Inbox

Fran Sdao <fran@ocdemocrats.org> Nov 16 at 5:11 AM

To: Greg Diamond

Cc: Jeff LeTourneau, Diana Carey, Farrah Khan, Dr. Emma Jeanette Burns, Florice Hoffman, Katerina Ioannides Hide

November 16, 2018

Notice of Action and Resolution to Remove Central Committee Member Greg Diamond

The Executive Committee of the Democratic Party of Orange County ("DPOC") hereby gives notice of its intent to seek the removal of DPOC Central Committee member Greg Diamond by resolution at the regularly scheduled Central Committee meeting on November 26, 2018.

It is hereby resolved that Greg Diamond be removed as a member of the Democratic Party of Orange Central Committee for violation of Bylaws, Article II Membership, Section 6 Removal, A. The office of any member, alternate or associate, may be declared vacant by resolution of the County committee if any member, alternate or associate, affiliates with or registers as a member of another party, publicly advocates that voters not vote for an endorsed nominee of the Democratic Party, **gives support or avows a preference for a candidate of another party** or a candidate who is opposed to a candidate nominated and endorsed by this party.

On November 2, 2018, Mr. Diamond posted this statement, "I do encourage voters to support the endorsed candidates of the Democratic Party, as well as the unendorsed reformist candidate for OC District Attorney, Todd Spitzer."

Mr. Spitzer is a registered Republican.

Mr. Diamond explained in a Facebook post that he resigned from the DPOC Executive Committee "specifically to make it clear that nothing I do between now and the end of the election is being done as a member of the governing policy board of the DPOC, so that no can say that I am purporting to "speak for the DPOC" in any fashion". Mr. Diamond remains a member of the Central Committee and is subject to bylaws as stated above.

He shared the following post on his Facebook page on November 3, 2018. (See attachment)

This item will be on the agenda for November 26, 2018. You will have the opportunity to address the committee at that time.

EXHIBIT C

Jonathan Adler <lawgurulaguna@yahoo.com> Nov 25 at 9:43 PM
To: Fran Sdao
Cc: Mary Carter, Greg Diamond, Fran Sdao, Mary Carter

Fran (+ other non-Yahoo email users; I CC'd only Greg and Mary, my Central Cmte Alternate,. whom I serve as her Exec. Cmte Alternate):

This involves only this narrow point: Greg (a Yahoo email user, as I am) said he happened to find your Fri. 11/16 email to him in his Spam folder Wed. 11/21. You and other non-Yahoo users may find that hard to believe, since your email service has no such problem, you and he surely have exchanged scores of emails over the last few years with no problem, and you're each surely in each other's Contacts list. How could your email have gone into his Spam and not his Inbox?

--For the same reason I found an email from you in my Yahoo Spam folder very recently.
--For the same reason I find in my Yahoo Spam, most days, a growing # of regular emails from folks with whom I've exchanged many hundred regular emails, with no problem, for years, including just before and after I find email from them in my Spam, despite their being in my Contacts, and despite having clicked "Not Spam" to move theirs from Spam to Inbox.
--For the same reason all or most Yahoo users are likely experiencing the same issue.
--For the same reason that today, & 4 months ago, & last year, when I began to Google the search string "Yahoo spam ...", before I could type another word, Google's first "type-ahead" suggestion was "Yahoo spam **filter not working**"
--For the same reason I've read on "Yahoo Users Community" websites scores upon scores of posts complaining of the same issue, then angrily replying to those who post "standard solutions" (i.e. enter senders in your Contacts, click "Not Spam," set "filters" to direct their email to Inbox) that those solutions just don't work.0
--For the same reason I send a periodic email to frequent correspondents explaining the above, and asking them to phone me with a "heads-up" if they email me an important request needing a fast reply or action.

If I thought you might doubt what I report above, I'd have included a link to 1 or 2 of such "Yahoo Users Community" websites, and pointed you to other Yahoo users' posts that also state it's a wide and growing issue Yahoo just can't seem to be able to fix (or to invest enough $$ to fix).

--Jonathan

EXHIBIT D

Greg Diamond

November 19 at 3:57 PM ·

About an hour ago, I opened my mailbox to find an unexpected and odd letter from the DPOC, postmarked Nov. 16. I post here at 3:50 p.m. on Nov. 19 simply to mark the time of its arrival.

More to come later after we return from picking up our grandson in San Diego to bring him here for his Thanksgiving visit.

EXHIBIT E

Greg Diamond OK, Erin -- despite my objecting to my not receiving 10 day's notice (the email sent to me went to spam and I didn't even think to look there until days after getting the piece in the mail), DPOC's Executive Board has decided to bring a resolution to remove me from the Central Committee (I had already resigned from the Executive Board) for the "offense" of endorsing Todd Spitzer for DA. This despite that the bylaws say only that one can't endorse a candidate OF another party -- that is, another party's endorsed candidate -- rather than merely a candidate FROM another party in a race not containing an endorsed Democrat.

In this instance, I endorsed the candidate who -- in addition to his having adopted much of his endorsed Democratic primary opponent Bret Murdock's reformist platform -- was OPPOSING the "candidate of another party": Republican Party endorsee Tony Rackauckas. And I was doing so not only because Rackauckas has committed constitutional violations and enormous breaches of ethics (having people lie to a judge!) in office, but because he had apparently chosen a white supremacist sympathizer, Michael Gates, to succeed him when he quit (probably early in this term -- a 3-2 majority of the Board of Supes would appoint whomever he wanted.) But obviously none of that is more important than an outdated (pre-Top 2) and misconstrued Bylaw.

Want to hear about the related *substantive* resolution they have planned?

Like · Reply · 1w

2

Erin Shawn Wow. It wasn't even a Dem vs Rep race! They just look for any excuse they can find to get rid of you and should openly admit that is their reason.

Like · Reply · 1w

2

Greg Diamond I think that many of them really hate Spitzer's record as a Supervisor and either don't know about or haven't thought deeply about Rackauckas's record as a DA. I understand the criticisms of Spitzer -- but they don't have much to do with who would do a better job as DA -- an office that DESPERATELY needs to be reformed.

So that's the substantive issue. But it shouldn't matter because what I did really does seem not to be a violation of the Bylaws -- and if it's ambiguous they're supposed to give me the benefit of the doubt if I was acting in good faith (which I was.)

But you're right -- it's a star chamber proceeding.

Like · Reply · 1w

3

EXHIBIT F

On Wed, Nov 21, 2018 at 4:44 PM Greg Diamond <gregdiamond@yahoo.com> wrote:

Fran, et al.,

Roberts Rules of Order Newly Revised, which is incorporated into our bylaws, spells out due process procedures to apply to sanctions against members of an organization. I do not believe that you have followed them or the Bylaws sufficiently, rendering this action against the Bylaws, void under state party rules, and for all I know in violation of the state's Election Code. The most critical problem posed can be solved by rescheduling my hearing for the January 2019 meeting, and so that is all I will demand at this time. (Other demands regarding the meeting itself, whenever it occurs, are towards the bottom of this message.)

The deficiency involves your failure to provide proper notice, which is required to be given 10 days before the meeting -- in this case, Friday Nov. 16. I received a letter from you, with a Nov. 16 postmark, on Monday, Nov. 19, seven days before the hearing date. I will accept that physical notice as applied to our regular January meeting.

You will presumably argue that you sent me an email notice by on the morning of Nov. 16. There is a good reason why one is not allowed to use email notices for a summons and complaint: they're not certain and reliable ways of timely conveying information. Sometimes, for example, they go directly to one's "spam" or "junkmail" folder -- as happened in this case. I only thought last night to go check and see if I had received anything from you other than the late notice, and found the email there, with the title "Notice of Action and Resolution to Remove Central Committee Member Greg Diamond". (Only the first five words were visible on my email preview, incidentally, which means that even if I had seen the email, I might not have thought it necessary to open it.)

If the email had been accompanied by a phone call or voicemail or even a text on Nov. 16 alerting me to it, I wouldn't dispute its sufficiency. You also have among you someone who lives in my city and whose professional business includes serving such notices, and whom I could not reasonably refuse entry to my home; he could have handed me a copy that day. But you did none of those things; you chose a suboptimal way to deliver notice to me - and it failed.

Had I received the notice at a time that did not lead me to conclude that it was on its face void for tardiness, I would have told you that I would not be able to attend the November meeting anyway,

Had I received the notice at a time that did not lead me to conclude that it was on its face void for tardiness, I would have told you that I would not be able to attend the November meeting anyway, because the following morning I will be in court in Los Angeles, addressing motions brought in Lenore Albert's lawsuit against me and others whom she thinks are part of a national conspiracy against her. I will be preparing for that hearing the night before. I presume that you did not know of that upcoming hearing -- although you did know that by giving me the least possible notice you would ensure that several of my days to prepare would fall on Thanksgiving weekend.

I do not plan to attend the December Holiday Party, so the delay does not prejudice you by forcing an unwelcome presence there in your midst. In fact, the delay would benefit DPOC as well. It would prevent my having to file with the CRC immediately to try to obtain an order from them. It would allow you time to research what the meaning of **"a candidate of another party"** actually is. The lawyers closest to you read it to mean **"anyone registered with another party"** -- and have obviously advised you accordingly. Based on conversations I've had over a year and more with those lawyers whose skill at legal interpretation I trust more, like me they read it as **"another party's candidate"**: i.e., someone that another party has "put forth" as its endorsed choice. (As with our party, that status could derive from either a formal endorsement or a default endorsement, if accepted, as that party's higher vote-getter.)

That was definitely NOT the case for Todd Spitzer in this race, which is the reason that I felt entitled to do what I did. The "candidate of another party" -- that is, **the chosen and endorsed candidate of the Republican Party -- was the incumbent Tony Rackauckas**. The candidate whom I was supporting was the one **opposed** to the "candidate of another party," Mr. Rackauckas -- whom, by the way, at least two DPOC officers seemed to be at least implicitly supporting due to their expressed hatred of Todd Spitzer.

The candidate I was supporting was the one who -- thanks to some degree to my actions -- won the election with Democratic support because I stepped into the leadership void created by the party. **He has not only promised equal respect for our party and its members, but it is an electoral imperative for him if he wants to be re-elected.** (If he does not follow through on the public promises that I and others got him to make, he'll also be easier for a Democrat to defeat would than Rackauckas's planned chosen successor, believed to have been Michael Gates, Huntington Beach City Attorney and defender of white supremacists. I doubt that many DPOC officers have even been aware of the role of

defender of white supremacists. I doubt that many DPOC officers have even been aware of the role of Michael Gates, or what that would be so catastrophic -- but, as a political reporter, I did know and it played a big role in motivating my actions.

The delay will also give you time to consider judicial canons such as "lenity" -- the rule that if there was doubt about the meaning of a punitive statute pr rule it is to be revolved in favor of the defendant -- and the question of whether **my own good faith belief in my interpretation** (for which I have consistently argued, in a more conclusory fashion than here, before the Executive Committee, which fact I expect should be unchallenged) is a mitigating factor in determining both culpability, given my intent, and any penalty.

I have four additional demands, related to the fact that I will need to provide evidence at least at the CRC level if not beyond:

1. **I demand that whenever the hearing occurs it be in a public portion of the meeting**. The facts are not at issue (although the interpretation of the governing law is), nor are they ones that I find shameful, nor is this a personnel matter.
2. **I demand that the debate and vote be allowed to be video-recorded**. I plan to invite press to the meeting -- as it's certainly of interest to have a member being potentially expelled for supporting the newly elected District Attorney against a corrupt Republican opponent.
3. I say this here so I can be sure that I have Fran's attention, **I demand the certainty of a roll call vote**. I don't want to rely on having to be recognized to make such a motion.
4. **I demand a less biased Parliamentarian be in place** than the woman who has been in that position for this term and who has continually deferred, often with hostility, to Fran's expressed interests without any exception that I can recall. Jonathan Adler has served the party capably in this role in the past. (Failing that, I would prefer Jeff LeTourneau, despite his obvious bias towards my removal, because at least he has reason to act in ways that preserve his reputation in the party.)

I make these demands consistent with my understanding of the implications and justifications of the procedures outlined in Roberts RONR.

I would prefer that my correspond with DPOC officers related to these matters be solely with Fran, as well as, when necessary to address matters over which he has control, with Luis. I have a full holiday schedule beginning this evening, but will try to make myself available by phone whenever possible.

I make these demands consistent with my understanding of the implications and justifications of the procedures outlined in Roberts RONR.

I would prefer that my correspond with DPOC officers related to these matters be solely with Fran, as well as, when necessary to address matters over which he has control, with Luis. I have a full holiday schedule beginning this evening, but will try to make myself available by phone whenever possible.

Sincerely,

Greg Diamond
Elected DPOC Delegate from California Assembly District 55

On Friday, November 16, 2018, 5:11:51 AM PST, Fran Sdao <fran@ocdemocrats.org> wrote:

November 16, 2018

Notice of Action and Resolution to Remove Central Committee Member Greg Diamond

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On November 2, 2018, Mr. Diamond posted this statement, "I do encourage voters to support the

EXHIBIT G

Greg Diamond <gregdiamond@yahoo.com> Nov 24 at 11:31 AM

To: Fran Sdao

Cc: Jeff LeTourneau, Diana Carey, Farrah Khan, Dr. Emma Jeanette Burns, Florice Hoffman, Luis Aleman Hide

I presume that if you had wanted to address any of my concerns, you would have done so, so I'll limit myself to questions of procedure.

Please inform me in writing as to the specific procedures you intend to follow on Monday night:

- how much time will I be allotted?
- is that separate from that allotted to the three people I can have speak on my behalf?
- how much time will they becallotted?
- what voting procedures will be followed (ballot that I can review, ballot that I can't review, roll call, voice vote)?

As you know, I suffer from some disabilities from a stroke, so telling me that I should know how it works from having sat through the hearing for Dan is not a reasonable accommodation.

Sent from Yahoo Mail for iPhone

> On Saturday, November 24, 2018, 10:56 AM, Fran Sdao <fran@ocdemocrats.org> wrote:
>
> Greg,
> I acknowledge receipt of your email.
> Fran Sdao, Chair
>
> DEMOCRATIC PARTY OF ORANGE COUNTY
> 1916 W. Chapman Avenue, Suite B
> Orange, CA 92868
> 714-634-3367 Office
> 949-230-2187 Cell
> fran@ocdemocrats.org

EXHIBIT H

Fran Sdao <fran@ocdemocrats.org> Nov 25 at 2:05 PM
To: Greg Diamond
Cc: Jeff LeTourneau, Diana Carey, Farrah Khan, Dr. Emma Jeanette Burns, Florice Hoffman
and 1 more...

Greg,
In response to your questions regarding procedures:

You will be permitted up to a total 10 minutes for you to present your position at the Central Committee meeting. You may use the time however you wish which may include having speakers address the Committee on your behalf. The speakers do not have to be members of the Central Committee. Please let me know who the non-members will be, if any. Those individuals must sign in as "guests" before the meeting begins. The total speaking time will be limited to 10 minutes. The Executive Committee will be allowed an equal total amount of time.

You may bring letters of support and will be permitted to distribute them before the meeting. Eighty copies should be adequate.

This discussion will occur in open session during the meeting.

Press is not permitted at this meeting. Any member of the media will not be permitted to sign-in and will be asked to leave. **Recording/filming of the meeting will not be permitted.** Anyone violating this rule will be asked to stop and may be asked to leave the meeting if they persist in recording/filming.

Karen Russell is the appointed Parliamentarian. I will appoint a substitute should she not be at the meeting.

The committee will vote by show of hands. Removal must be approved by two-thirds vote of those present and voting.

I'm not sure what you are referring to in your comment about "the hearing for Dan". However, we will work to accommodate any special needs that you might have. Please let me know what those might be so that we are prepared before the meeting.

Fran Sdao, Chair

DEMOCRATIC PARTY OF ORANGE COUNTY
1916 W. Chapman Avenue, Suite B
Orange, CA 92868
714-634-3367 Office
949-230-2187 Cell
fran@ocdemocrats.org

EXHIBIT ‘I’

Fran Sdao <fran@ocdemocrats.org> Nov 25 at 2:59 PM
To: Greg Diamond
Cc: Jeff LeTourneau, Diana Carey, Farrah Khan, Dr. Emma Jeanette Burns, Florice Hoffman
and 1 more...

Greg,
It has been pointed out to me that unless otherwise expressly provided for in the bylaws, that "**all actions of the County Committee shall be by an affirmative vote of a majority of the members present and voting".** Article XVI. Voting, Section 2. Manner.

Therefore, removal must be approved by a majority vote, not two thirds as I previously stated.

I do apologize for sharing incorrect information.
Fran Sdao, Chair

DEMOCRATIC PARTY OF ORANGE COUNTY
1916 W. Chapman Avenue, Suite B
Orange, CA 92868
714-634-3367 Office
949-230-2187 Cell
fran@ocdemocrats.org

> On Sun, Nov 25, 2018 at 2:05 PM Fran Sdao <fran@ocdemocrats.org> wrote:
>
> > Greg,
> > In response to your questions regarding procedures:
> >
> > You will be permitted up to a total 10 minutes for you to present your position at the Central Committee meeting. You may use the time however you wish which may include having speakers address the Committee on your behalf. The speakers do not have to be members of the Central Committee. Please let me know who the non-members will be, if any. Those individuals must sign in as "guests" before the meeting begins. The total speaking time will be limited to 10 minutes. The Executive Committee will be allowed an equal total amount of time.
> >
> > You may bring letters of support and will be permitted to distribute them before the meeting. Eighty copies should be adequate.
> >
> > This discussion will occur in open session during the meeting.

EXHIBIT ‘J’

On Tuesday, November 27, 2018, 1:42:10 PM PST [redacted]

I regret the result of the vote last night.
Some observations:
It seems uncharacteristically stupid of you to have said "vote for Spitzer" instead of "vote against Raucaukas"
Central Committee members also have a sworn duty to defend the constitution.
If Katie Porter had been a Central Committee member, she would have been forbidden to campaign.

Author redacted

Your email is a good example of how the lack of time provided for discussion (and my participation in it) harmed members' understanding.

Putting the person's name you are supporting in a mailer is FAR more effective than saying not to vote for their opponent. Literally, one wants to achieve "name recognition."

Still, it would have been foolhardy for me to do the more effective thing but for one factor that you don't note: **Based on my reading of the Bylaws, I fully believed that I was entitled to do it.** I don't think that there's a good faith argument to the contrary, except that the same people have been mischaracterizing the provision for a long time.

Because this point slipped past you in real time, and so likely did the same for less perceptive and analytical members of the assembly, I would like to include it in my appeal (which is due this afternoon.) I won't include your name in it (characterizing you simply as "an exceptionally perceptive and analytical member") unless you don't object. I hope that you would allow me to include it with you being anonymous, but if that would offend you also please let me know.

Greg

EXHIBIT K

Sun, Nov 25, 2018 at 2:05 PM <fran@ocdemocrats.org> wrote:

In response to your questions regarding procedures:

You will be permitted up to a total 10 minutes for you to present your position at [DPOC] meeting. You may use the time however you wish [including] having speakers address the Committee on your behalf. . …. The Executive Committee will be allowed an equal total amount of time.

You may bring letters of support and will be permitted to distribute them before the meeting. Eighty copies should be adequate.

This discussion will occur in open session during the meeting.

Press is not permitted at this meeting. Any member of the media will not be permitted to sign-in and will be asked to leave. **Recording/filming of the meeting will not be permitted.** Anyone violating this rule will be asked to stop and may be asked to leave the meeting if they persist in recording/filming.

[Members] will vote by show of hands.

This is why I have to raise my voice in protest sometimes.

I need to record this proceeding in order to be able to appeal it to the CDP's relevant body (CRC). (So you *may* hear me speak loudly.)

+ I have a right to a roll call vote under DPOC Bylaws Article XVI. ["Voting"], § 2 ["Manner"] (lines 822-831). **Why must I have to fight for this right?**

Why did I do what I did? It was the proper thing to do.

- It was **permissible** under our Bylaws. The Bylaws, which are outdated since the Top Two primary, say that you cannot endorse a "candidate of another party." That means another party's nominee – in the absence of a "nominee" the "other party's candidate" would be the one whom the other party endorses. Spitzer wasn't "the Republican Party's endorsed candidate," he was the only person **running against the other party's endorsed candidate.** (Ed Lopez will elaborate on this.) If you agree that I was acting permissibly, then you cannot ethically vote to expel me, no matter how much you may dislike me.

- As an attorney, I have to defend the Constitution. This was the first election that DA Rackauckas has faced since the jarringly unconstitutional "snitch scandal" that has made national headlines. (If you don't know what the snitch scandal is, you should move to postpone this action until January, as I asked, because it'd take too long to explain.) This was what our amazing Senior Public Defender **Scott Sanders** was able to uncover through the bravery and skill of Judge **Thomas Goethals**. The DA was not only trampling people's rights (to get innocent people to take plea deals), but he was hiding evidence of what the Sheriff's deputies did from the court, despite its demands. The DA was turning his attorneys who wanted to follow the law into conspirators to deceive the court. No decent attorney should accept that. There was only one way to get Rackauckas out of office: getting people to vote for Spitzer.

- As a Democrat, I knew that this was a good outcome.

Rackauckas used his office as a political weapon to protect friends and punish enemies – and he was highly biased against most Democrats. Spitzer ran on a platform of fairness – and while I don't trust him implicitly, that constrains what he can do in office. Frankly, he needs Democratic votes in the next election because he has deeply pissed off the Republican establishment. All we ask is fairness. **ALSO**, Spitzer had adopted the very platform planks you vote on today from Brett Murdock: a Blue victory! **IN ADDITION**, the DA was widely expected to retire early in his next term. He was expected to hand off his position to a hand-picked successor that the 3-2 majority on the Board of Supervisors that favors him would surely approve. The likeliest one? Young elected City Attorney for Huntington Beach Michael Gates, a major supporter of white supremacists. (Spitzer would also be easier for a Democrat to beat someday than Gates, who would become entrenched.)

- I believe that Democrats should LEAD. Our party's de facto position was to refuse to guide our voters in what most significant countywide election in decades. Of course we can't endorse as a party, but we needn't prevent members from filling the info vacuum. Petulant silence looks bad.