MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: January 20, 2019

RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO A CHALLENGE FILED BY GREG DIAMOND

INTRODUCTION:

On December 3, 2018, Mr. Greg Diamond, submitted a challenge to the CRC relating to the meeting of the Democratic Party of Orange County (aka Orange County Democratic Central Committee hereinafter DPOC) and the actions that took place on November 26, 2018. During the DPOC monthly meeting, Mr. Diamond was removed from membership on the DPOC and, accordingly, his delegate position on the DSCC.

Mr. Diamond makes multiple allegations including that:
1. The DPOC Bylaws do not allow for his removal from the County Committee;
2. The DPOC did not provide adequate notice of the time and procedures for the hearing;
3. The DPOC should not have used majority vote and did not provide adequate notice of the rules for the membership removal including a change from two-thirds vote to majority vote; and
4. The DPOC procedures were discriminatory due to the lack of accommodation for his disability.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

Documents received and reviewed by the CRC associated with the challenge included the following:
1. Challenge by Mr. Diamond submitted on December 3, 2018.
2. Testimony in support submitted by Robert Leahy, Ed Lopez and additional testimony by Greg Diamond.
3. Testimony in opposition by Lenore Albert, Bruce Johnson, Fran Sdao, and Deborah Skurnik.
4. DPOC Bylaws
5. CDP Bylaws

TIMELINESS:

According to CDP Bylaws, Article XII, Section 4:
“All challenges must be commenced by the filing of a written challenge with the Secretary of This Committee, with copies served on the Chair of This Committee, as well as the appointing person, and the chair of the relevant organization, where applicable no later than seven (7) calendar days after the alleged violation occurred. Upon a showing of good cause, sustained by unanimous vote, the Compliance Review Commission may waive this requirement.”

(All By-Law references are to the California Democratic Party Bylaws, as amended through November 2018, unless otherwise indicated.)

The challenge filed by Mr. Diamond was submitted on December 3, 2018 which is within seven (7) days of the actions taken by the DPOC on November 26, 2018 thus the challenge is timely.

STANDING:

According to Article XII, Section 3:

“Any party to a challenge must be adversely affected to bring the challenge.”

As relates to his removal from the DPOC, Mr. Diamond has standing as he was a member of the DPOC and was adversely affected by the actions taken at the meeting. As relates to the censure of Brett Murdock, Mr. Diamond’s standing is discussed later in this decision.

JURISDICTION

Article XII, Section 2a states:

“The Compliance Review Commission shall have initial jurisdiction over all challenges and/or appeals arising under these Bylaws.”

The CRC has jurisdiction under membership under Article II, Section 4 (Membership, Members Elected by County Central Committee Members) as Mr. Diamond is a Democratic State Central Committee (DSCC) member by virtue of his membership on the DPOC. The CRC additionally had jurisdiction under Article XIII, Sections 5, 6, and 7 as relates to Full and Timely Publication of Selection Procedures and Qualifications and Article XIII, Section 1 as relates to discrimination.

FINDINGS:

First allegation: The DPOC Bylaws do not allow for Mr. Diamond’s removal from the County Committee.

The Democratic Party of Orange County’s Bylaws contain a membership removal section which states,

DPOC Bylaws, Article I, Section 6.a.:
“The office of any member, alternate or associate, may be declared vacant by resolution of 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.”

In Ms. Sdao’s testimony, she states: “Mr. Diamond violated this section of the Bylaws with 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.’” Ms. Sdao also states, “Mr. Spitzer is ‘a candidate of another party’; he is a registered Republican.”

In a Mr. Diamond Attachment, Jonathon Adler states: “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.”

The question the CRC asked was, in a non-partisan contest, does “candidate of another party” mean the endorsed candidate of another party as put forth by Mr. Diamond or a candidate registered in another party as put forth by the DPOC? The CRC debated both interpretations at length. While the CRC does not find Mr. Diamond’s interpretation was unreasonable, it also does not find the DPOC to be unreasonable. Given the reasonableness of both interpretations, the CRC gives deference to the DPOC to interpret their own Bylaw.

The CRC also considered the argument that where an interpretation would result in the diminishment of rights, the interpretation that did not so diminish those rights should be favored. However, the CRC further notes that had the DPOC wished the phrase “candidate of another party” to mean “candidate endorsed (or nominated) by another party” it could have used the word “endorsed,” (or nominated) as it did in the following clause (“candidate nominated and endorsed by this party”). But it did not, and thus, the best interpretation of the phrase “candidate of another party” is “candidate registered with another party.”

In reaching its determination to give deference to the DPOC in this specific circumstance, the CRC notes Mr. Diamond cannot reasonably claim that he was unaware of potentially different interpretations given his multiple conversations with Mr. Murdock. The CRC finds no record that Mr. Diamond took actions to verify his interpretation prior to his endorsement and advocacy. The CRC also notes that Mr. Diamond cannot reasonably claim that he was unaware of the potential consequences, given his prior involvement in disputes relating to the endorsement/advocacy provisions of both the DPOC and CDP Bylaws.

The CRC agrees with Mr. Diamond his removal was not mandated under the DPOC Bylaws. However, the CRC again gives deference to the membership of the DPOC to weigh the totality of the circumstances and determine whether removal was warranted.
absent evidence that determination was made in violation of the General Policies of the CDP Bylaws.

**Second allegation:** The DPOC did not provide adequate notice of the time and procedures for the hearing.

In Greg Diamond’s testimony, he states, “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.”

In Fran Sdao’s testimony, she states, “Emails are standard procedures for all DPOC communications. All meeting notices and informational notices are sent to the email addresses provided by members. The Notice of Resolution to Remove was sent to Mr. Diamond by email on November 16, 2018 at 5:11AM. The email informed him that the resolution to remove him would be on the agenda for the November 26, 2018 Central Committee meeting therefore meeting the requirement of ten-day written notice.”

The CRC finds the notice of resolution to remove sent by Ms. Sdao via email on November 16, 2018 for a meeting to occur on November 26, 2018 was sufficient notice in this case. There was nothing in the testimony that indicated that Mr. Diamond opted out of receiving notice by email and just because the email went into Mr. Diamond’s spam folder it doesn’t relieve him from being noticed in a timely manner, nor was the DPOC obligated to subsequently delay the hearing due to this circumstance or Mr. Diamond’s stated business conflict.

Mr. Diamond objects to various procedures that were used in the hearing. However, Mr. Diamond did not make clear which of these objections were raised at the meeting and whether he exhausted his local remedies. The CRC does note the DPOC was not obligated to accommodate his request to tape the proceedings. The lack of such a recording could be considered by the CRC in weighing contradictory testimony and evidence as to what objections were raised, but does not alleviate Mr. Diamond of the responsibility to provide a viable claim that such objections were raised and he exhausted his local remedies.

**Third allegation:** The DPOC should not have used majority vote and did not provide adequate notice of the rules for the membership removal including a change from 2/3rds vote to majority vote.

On November 21, 2018, Mr. Diamond sent a “demand” letter which contained four (4) demands: 1) Hearing occurs in public portion, 2) Allow to video-record the debate and vote, 3) Vote be done via roll call, and 4) Demand for a different parliamentarian. On November
24, 2018, Mr. Diamond requested specific procedures DPOC Chair Sdao planned to follow on November 26, 2018.

DPOC Chair Sdao responded to Mr. Diamond on November 25 at 2:05 pm with the procedures to be used for the meeting which was occurring the next day including that “Removal must be approved by two-thirds vote of those present and voting.” According to the testimony submitted by Mr. Diamond and Ms. Sdao, 54 minutes, later she corrected herself and informed him “removal must be approved by majority vote.” The relevant DPOC Bylaws are as follows:

DPOC Bylaws, Article XVI, Section 2.
“*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.*”

DPOC Bylaws, Article XVII, Section 1.
“*All regular and special meetings of the County Committee shall be conducted in accordance with Robert’s Rules of Order, except when the County Committee bylaws conflict.*”

Mr. Diamond accurately points out that Robert’s Rules of Order would require a two-thirds vote for removal. He also accurately notes that two-thirds votes are required for other punishments of members including under the removal of officers and for removal of members under the DPOC Anti-Bullying and Harassment Policy. He also accurately notes the DPOC at the time was considering amending its rules for removal to require a higher vote threshold.

However, the DPOC Bylaws at the time explicitly stated that the vote threshold for any motion shall be a majority unless explicitly provided for otherwise. As the DPOC Bylaws are silent as to the threshold for removal under the endorsement/advocacy provision, the threshold would be a majority.

The CRC further finds through the testimony submitted that while the initial voice vote was a majority, the roll call vote was by more than two-thirds. The CRC notes the latter reflects the final official vote and that this roll call was requested by Mr. Diamond.

Finally, the CRC notes that while her initial email was in error, the error was quickly corrected by Ms. Sdao and that the Bylaws speak for themselves regarding a majority vote. Thus Mr. Diamond was properly noticed as to the vote threshold and that the proper threshold was used in the vote.

**Fourth allegation:** The DPOC procedures were discriminatory due to the lack of accommodation for his disability.

Although Mr. Diamond asked the Chair for accommodation, he did not pursue the matter further and, thus, the CRC denies the challenge due to the failure to exhaust local remedies.
ORDER:

Based upon the above facts and Bylaws of the CDP, the CRC makes the following Orders:

1) Based on the above findings, the CRC denies the challenge based on the DPOC’s authority to reasonable interpret their Bylaws which provides flexibility in terms of punishment.
2) The CRC rejects the various other remedies sought by Mr. Diamond including but not limited to the request for admonishment of the DPOC and mandated training of its members.
3) The CRC directs that the DPOC shall make the minutes of the hearing available to Mr. Diamond in a timely manner.
4) The CRC encourages the DPOC to determine which motions other than those already prescribed should appropriately require a vote more than a simple majority and then consider conforming amendments to its Bylaws.
5) The CRC notes due to this decision, Mr. Diamond is no longer a member of the Democratic State Central Committee and thus any challenge to remove him from the current DSCC membership is moot.
6) Mr. Diamond is eligible to be a candidate for ADEM because he qualifies under the CDP Bylaws.
7) As Mr. Diamond had been removed from the DPOC at the time, he lacks standing to challenge the censure of Mr. Murdock.

Appeal of this order, if any, must be filed with the CDP Secretary, with copies to the Chair of the CDP State Central Committee, within twelve days of the date of this decision. (Article XII, section 6(a).) Thus, any appeal must be filed on or before February 1, 2019 with the Sacramento office of the California Democratic Party, and shall be an appeal to the next meeting of CDP Credentials Committee upon conclusion of the response period.

Please note that per CDP Bylaws, Article XII, Section 7b, the filing of an appeal shall not stay any decision of the CRC. Parties may additionally respond in person, if so desired, provided there has been a timely filing of an appeal and notice of intent to testify is provided in writing to the Lead Chair of the Credentials Committee by 5 PM on February 13, 2019, at the Sacramento office of the California Democratic Party. The Credentials Committee may accept such additional testimony, written or oral, considering the nature and import thereof, as well as the time available for its proper consideration, as it deems appropriate, in its discretion.

Accordingly, this decision is so ordered, and is in effect, unless, and until, a successful appeal is made, decided, and contrary orders made whether by the CRC, or by the Credentials Committee. CRC shall retain jurisdiction up until the time of an appeal, if any, is heard by the Credentials Committee.

Respectfully submitted by a 6-0 vote of the members of the CRC. Member Laramendi did not participate in the meeting, but concurs with the decision.

Coby King, Co-Chair, Rules Committee
Lara Larramendi, Co-Lead Chair, Credentials Committee
Garry S. Shay, Lead Chair, Rules Committee
Keith Umemoto, Co-Chair, Credentials Committee
Michael Wagaman, Lead Chair, Credentials Committee
Laurence Zakson, Co-Chair, Rules Committee