

1 Joseph Ryan
2 Defendant
3 In Pro Per
4 PO Box 1135
5 Pine Valley, Ca 91962
6 619-473-8032

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN
8 DIEGO EAST COUNTY DIVISION

9 THE PEOPLE,) Case No:C287588
10 Plaintiffs,)
11 vs.) Notice of Motion to Demur to
12 JOSEPH RYAN) Complaint; Memorandum of Points
13 Defendant) and Authorities in support of
14) motion, defendant's declaration,
15) Exhibits, and appendix.
16)
17) No Hearing Dates set. Estimated
18) time for motion hearing is one
19) hour

20 I. NOTICE OF MOTION

21 To The Above Entitled Court, and to The District Attorney of San
22 Diego County, California; Please take note that on _____, 2009, at
23 _____, (or as soon thereafter as the matter may be heard) in Department
24 _____, of the above-entitled court, the defendant, Joseph Ryan, will
25 appear specially, and move the court for an order dismissing the People's
26 complaint in it's entirety pursuant to the authority granted the Court by
27 Penal Code §1004 (1) (2),(4), (5), and the due process clauses of the
28 federal and state constitutions.

Alternatively, the Defendant, Joseph Ryan, will move the Court to
dismiss count One of the complaint (DISTURBANCE OF PUBLIC MEETING) pursuant
to authority vested in the court by Penal Code §1004 (1), (2),(4), and(5).
Defendant, Joseph Ryan, will also move the court to dismiss count two of

1 the People's complaint (PREVENTION OF ELECTORS FROM ASSEMBLING) pursuant to
2 authority granted by Penal Code 1004 (1) (2), (4), and (5).

3 Furthermore, the defendant will move the court to sustain his demur,
4 since Penal code §403, and Elections Code § 18340 are unconstitutionally
5 vague as applied to the conduct at issue in this case, and they both
6 violate constitutional prohibitions regarding statutes, that when applied
7 in particular situations, sweep too broadly and prohibit conduct that is
8 protected by the State and Federal constitutions.

9 This demur will be based on the attached Points and Authorities;
10 Defendant's declaration; the attached exhibits (including copy of People's
11 complaint); and any other, relevant oral arguments or material that the
12 defendant may properly address or properly submit to the court when the
13 hearing on this demur is held.

14
15 Respectfully submitted by Defendant Joseph Ryan

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17 Joseph Ryan
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1 I. INTRODUCTION:

2 Defendant was detained on October 22nd, 2008. Within a half hour, the
3 defendant, Joseph Ryan, was released from custody. Upon his release,
4 defendant Joseph Ryan was issued a citation to appear in court on December
5 3rd, 2008. *See defendant's exhibit #2, copy of citation.* One statute (Penal
6 Code 403) used by the officer who detained the defendant (and who issued
7 the aforementioned citation) is also included as a charge in the People's
8 complaint against the defendant (see defendant's exhibit #1, the
9 prosecutor's notice of complaint or complaint); but one statute (Penal Code
10 626) that was previously cited on the first citation issued to the
11 defendant, has been dropped from the complaint instrument, and the second
12 count of the complaint now cites an entirely different Elections Code
13 Statute (Elections Code 18340) as the grounds for the second charge.

14 The notice sent to defendant Joseph Ryan, by the prosecutor, states
15 that a complaint has been filed in East County Superior Court, naming
16 Joseph Ryan as defendant; however Superior Court personnel will not
17 acknowledge the existence of a complaint, or allow defendant Joseph Ryan
18 any access to any material that might be in the case file. *See defendant's*
19 *exhibit #1, notice of charges from prosecutor; and see Defendant's*
20 *declaration, part 1.*

21 Local Rules of Court prohibit ex-parte contact with the judge or ex-
22 parte motions in criminal cases; therefore, defendant Joseph Ryan has not
23 been able to address issues, related to his lack of access to whatever
24 complaint might exist, prior to the date of this hearing (3/4/09).

25 Now, the wording of the Charging-Titles of each of the two separate
26 counts are as follows:

27 Count 1) **DISTURBANCE OF PUBLIC MEETING**

28 Count 2) **PREVENTION OF ELECTORS FROM ASSEMBLING**

1 II. POINTS AND AUTHORITIES

2 I. THE PEOPLE'S ACCUSATORY PLEADING FAILS TO CONFORM WITH PENAL CODE
3 SECTION 952, AND THEREFORE, IT DOES NOT PROVIDE SUFFICIENT NOTICE

4 California Penal Code §1004 (2) states that "the defendant may demur
5 to the accusatory pleading at any time prior to an entry of a plea, when it
6 appears on the face thereof . . . 2) That it does not substantially conform
7 to the provisions of §950 and §952, and also §951, in case of an indictment
8 or information. *See California Penal Code §1004 (2).*

9 The Entire complaint is defective and a demur lies under CCP §1004
10 (2), since Due Process Requirements of the State and Federal Constitution
11 require that a defendant receive adequate notice of the charges they face,
12 so that he or she may have a reasonable opportunity to prepare a defense
13 and not be taken by surprise at trial. (See, e.g., *In re Oliver* (1948) 333
14 US 257, 273, 92 L Ed 682, 694, 68 S Ct 499; *In re Jamil H.* (1984), 158 CA3d
15 556, 559, 204 CR 816; *Gaylord v. Municipal Court* (1987) 196 CA3d 737, 150
16 CR 543.

17 Section 952 of the Penal Code requires that an accusatory pleading
18 contain a statement of the public offense charged. *See Penal Code §952, and*
19 *see Gaylord v. Municipal Court, 196 Cal. App3d 1348; 242 Cal.Rptr. 486*
20 *(1987)*. Section 952 provides that such statements "may be in any words
21 sufficient to give the accused notice of the offense of which he is
22 accused". *See Cal Penal Code §952.*

23 Here, the prosecutor's complaint does not meet the standard
24 annunciated in California Penal Code §952, since the first count listed in
25 the prosecutor's complaint includes some text from the California Penal
26 Code §403, mixed with a descriptive word taken from the statute that forms
27 the basis of count two of the complaint (Elections Code §18340). Penal Code
28 §403 refers to a party willfully disturbing "any assembly or meeting", and

1 Elections Code § 18340 refers to someone who "prevents electors from
2 assembling in Public meetings . . . ". See defendant's exhibit #3, part A,
3 full text of PC §403; and see part D, full text of Elections Code §18340.

4 Here, the prosecutor has dropped the word 'public' from the count two
5 charging-title, and has instead incorporated the word 'public' into the
6 charging-title of count one.

7 Even if one assumes that the word "public", as used in the Count one
8 charging-title, was not borrowed from the text of the charging statute that
9 forms the basis of count two (Elections Code § 18340), it does not follow
10 that the prosecutor can insert new language into the text of the statute,
11 at their pleasure. And it can be assumed that if the legislature wanted the
12 word 'public' to be part of the text of Penal Code §403, it would have
13 placed the word in the statute. Consequently, the complaint issued to the
14 defendant does not provide the defendant with a level of notice that §952's
15 'substantial compliance' standard requires. See Penal Code §952.

16 Also, the statutory text of Penal Code 403 specifically prohibits its
17 application to an event described in Elections Code 18340 (See Penal Code
18 Section 403, wherein it says, "Every Person . . . breaks up . . . an
19 assembly or meeting referred to in section 18340 of the Elections Code . .
20 .is guilty of a misdemeanor), and the two statutes used as the basis of
21 Counts one and Two do not contain any common elements. In *People v Clenney*,
22 The Court ruled that in order for an offense to be considered a lesser,
23 included offense, it is necessary that each element of the included offense
24 be incorporated into the corpus delicti of the greater offense". *People v*
25 *Clenney* 165 Cal.App.2d 241, at 248; 331 P.2d 696, at 701. Consequently,
26 neither offense (Count one or Count two of the complaint) can be considered
27 a lesser, included offense in relation to the other count (see Full text of
28 statutes in defendant's appendix attached to this demur); a scenario that

1 might provide justification for the borrowing of text that was done here.
2 Rather than being related statutes, Penal Code §403 repels Elections Code
3 section 18340 by expressly rejecting its application alongside Elections
4 Code Section 18340. See Penal Code §403, and defendant's exhibit #3 for
5 full text of statute.

6 **II. EVEN IF COURT FINDS SUBSTANTIAL COMPLIANCE WITH PENAL CODE §950-952,**
7 **DUE PROCESS CLAUSE REQUIRES THAT COUNT ONE AND COUNT TWO, OF THE COMPLAINT,**
8 **CONTAIN A MORE SPECIFIC NOTICE OF THE BASIS OF THE OFFENSES CHARGED, AND**
9 **THE NATURE OF THE ACTIVITY THAT IS THE BASIS OF THE PROSECUTION'S CHARGES**

10 A "pleading which satisfies section 952 will not invariably, when
11 tested by demurrer, satisfy due process notice requirements". See *Lamarid*
12 *v. Municipal Court* (1981) 118 cal App3d 786, 790-791, 173 Cal.Rptr.599;
13 *in re Jamil* (1984) 158 Cal. App3d 556; 204 Cal.Rptr. 816.

14 In *People v Clenney* (165 Cal.App.2d 241; 3331 P.2d 696) the court
15 noted that "section 952 of the Penal Code provides that an offense may be
16 charged in the words of the enactment describing the offense or in any
17 words sufficient to give the accused notice of the offense of which he is
18 accused"; but the court also noted the limitations on the significance that
19 can be attached to a complaint or indictments adherence with section 950-
20 952 requirements when it ruled "A defendant may be charged with terms of
21 the statute when the statute is sufficient in itself to define the
22 offense". The Clenney court went on to conclude and find that "in cases
23 where a violation of the statute depends on the violation of another
24 section, the statute is in itself not sufficient to define the offense". In
25 *Clenney* (165 Cal.App.2d 241; 3331 P.2d 696) the court also concluded that
26 in cases where the defendant is charged under a statute that has several
27 alternate provisions, each of which can act as an independent basis for a
28 conviction, in order to satisfy due process notice requirements of the

1 California and U.S. Constitutions, the prosecutor must reveal in their
2 complaint, which provisions they intend to rely upon to prove their case.
3 *People v Clenney* (165 Cal.App.2d 241; 3331 P.2d 696).

4 *In Re Jamil* (158 cal.App. 3d 556; 204 Cal.Rptr. 816) The Court ruled
5 that a defendant who was charged with entered school grounds to do a
6 'forbidden act', must be apprised of the act he was alleged to have had had
7 the purpose of committing, or the complaint lacks sufficient notice. In
8 *Jamil* the Court found that "when a statute defines a material element of an
9 offense by reference to other forbidden acts, the accusatory pleading must
10 be more specific than the statute." Both Count One and Count two of the
11 prosecutor's complaint are based on statutes that depend on the doing of a
12 separate forbidden act, that would constitute the commission of a crime if
13 done separately. *In Re Jamil* (158 cal.App. 3d 556; 204 Cal.Rptr. 816)

14 California Penal Code §403 refers to 'breaking-up' or 'disrupting' a
15 meeting. While there may be some situations where someone could cause a
16 disruption of a meeting without committing some act forbidden by the
17 California Penal Code, it's almost impossible to envision the doing of an
18 act that would result in a meeting being 'broken-up'; without the
19 commission of a separate crime involving illegal threats of violence or
20 violence itself. *See California Penal Code §403.*

21 Similarly, Count Two is based upon a statute (Elections Code §18340)
22 that contains three alternate elements (or provisions) that each in itself
23 can be a method or way to 'prevent electors from Assembling'. A defendant
24 might be accused of making threats sufficient to 'prevent electors from
25 assembling', or they might be accused of intimidating people to 'prevent
26 electors from assembling', or the defendant might be accused of committing
27 "unlawful violence", in order to prevent electors from assembling. Unlawful
28 violence, as the phrase is used in §18340 of the Elections Code, is akin to

1 the use of the phrase 'a forbidden act' (from in re Jamil); and
2 consequently, as the Court in Jamil pointed out, where a statute refers to
3 another code violation, more certainty is required in the pleading, *In Re*
4 *Jamil*, 158 Cal.App. 3d 556, at 559; 204 Cal.Rptr. 816, at 817.

5 **III. COMPLAINT NOTICE MUST IDENTIFY WHICH ELEMENTS OR PROVISIONS THE**
6 **PROSECUTOR INTENDS TO RELY UPON**

7 In *People v. Mandell* (35 cal.App2d 368,; 95 P.2d 704) the court held
8 that "where a statute contains several provisions, the violation of any
9 which is an offense, the statement of the offense should be such as to make
10 the provisions relied upon apparent". Clenney Supra at pg.22-23). In
11 *Mandell* the court commented upon the amount of information the defendant
12 had been provided, and observed that "allegations in the pleading gave him
13 no clue as to what act he violated or what duty he neglected". Here, the
14 defendant also has no clue as to what act he did that is triggering
15 charges, and he has no clue what provision the state is relying upon going
16 forth; since the statutes cited in the charging document also contain
17 multiple provisions that can be met through a variety of actions. See
18 *defendant's exhibit #1, the charging document that contains all the*
19 *information provided the defendant about the case at hand*).

20 Besides choosing to notify the defendant of what provisions of a
21 multi-provision statute the complaint or information relies upon, due
22 process requires that the prosecutor specify, what act is an "essential
23 element of an offense". See *Gaylord v. Municipal Court*, 196 Cal. App.3d at
24 1351; 242 Cal.Rptr. at 487 (1987). In *Gaylord*, the Court noted that,
25 "absent an allegation of such an act, a complaint does not advise the
26 defendant of the charges against him". And it "thereby denies him due
27 process of the law . . ." since it " . . . fails to comply with the
28

1 requirements of section 952". See *Gaylord v. Municipal Court*, 196 Cal.
2 App.3d at 1351; 242 Cal.Rptr. at 487 (1987).

3 **IV. COMPLAINT NOTICE DOES NOT IDENTIFY WHICH ELEMENTS OR PROVISIONS THE**
4 **PROSECUTOR INTENDS TO RELY UPON AS THE BASIS OF THE COUNT ONE OFFENSE**

5 Count One of the prosecutor's complaint in this case contains two
6 alternate provisions, either of which could be the basis of a conviction.
7 Penal Code section 403 allows for the conviction of a defendant who either
8 "disturbs" or "breaks up" a meeting. See *Penal Code section 403*. The ways
9 in which someone could disturb or break up a meeting are almost infinite;
10 so this multi-provision statute becomes hard to defend against, where it is
11 combined with a charging document lacking specificity and certainty
12 (regarding which provision the prosecutor intends to rely upon).

13 **V. COMPLAINT NOTICE DOES NOT IDENTIFY WHICH ELEMENTS OR PROVISIONS**
14 **CONTAINED IN ELECTIONS CODE SECTION 18340, THE PROSECUTOR INTENDS TO RELY**
15 **UPON AS THE BASIS OF THE OFFENSE CHARGED IN COUNT TWO**

16 Similarly, Elections Code section 18340 (the statute cited in count
17 two) contains three alternate provisions, any of which can by itself be the
18 basis of a finding of guilt. Elections Code section 18340 reads, "Every
19 person, who by threats, intimidations, or unlawful violence, hinders or
20 prevents electors from assembling, is guilty . . .". See *Cal.Elec.Code*
21 *section 18340*. So, there are six possible combinations of acts and
22 provisions that the prosecutor might rely upon at trial, and the defendant
23 can only surmise that the prosecutor only intends to accuse the defendant
24 of 'preventing' electors from assembling, and not 'hindering' electors from
25 assembling; since the Count Two Title is "PREVENTION OF ELECTORS FROM
26 ASSEMBLING". See defendant's exhibit #1. here, the defendant is being made
27 to guess what possible acts (handing out handbills and pamphlets, speaking,
28 moving onto the stage, answering questions directed at the defendant from

1 audience members, etc) might be applied to any one of the three alternate
2 ways the defendant can hinder or prevent electors from assembling (by
3 threats intimidations or unlawful violence), leaves the defendant with
4 almost no hope of preparing for trial and planning for trial in a manner
5 that is relatively efficient and practical to accomplish. The defendant
6 will have to prepare to defend against at least eighteen different avenues
7 to guilt, while the prosecutor is probably focusing on just one avenue to
8 guilt.

9 **VI. COMPLAINT NOTICE DOES NOT IDENTIFY THE ACT, OR ACTS THAT THE**
10 **PROSECUTOR INTENDS TO RELY UPON AS THE BASIS OF COUNT ONE**

11 Count One of the prosecutor's complaint in this case is based upon
12 the application of Penal Code section 403, and it's application to the
13 defendant involves the doing of some 'act' by the defendant. The complaint
14 does not specify what that act may be or how it triggered. The act could
15 have involved pamphletting, speaking, walking to a certain spot in space, or
16 who knows what. The defendant doesn't know what act is at issue, and he
17 does not know what provision of Penal Code section 403 is being used as the
18 basis of the offense. Penal Code 403 allows for conviction of persons who
19 might break up a meeting, or alternately, the statute also focuses upon
20 someone who disrupts a meeting. There exists various permeations that could
21 be attached to the phrase "breaks up", and an almost infinite number of
22 possibilities regarding what act or acts could serve to 'disrupt' a
23 meeting. *See Penal code section 403. In Lamarid v. Municipal Court*, where
24 the court was considering whether a defendant received 'sufficient notice',
25 it was noted that, "appellant was entitled to be advised with some
26 particularity, which of several available factual theories the People would
27 rely upon". *Lamarid v Municipal Court, 118 Cal.App. 3d at 791; 173*
28 *Cal.Rptr. at 601*. Also, in *People v Jordan*, the Court ruled that the people

1 must make an election as to acts relied on for each count, or the complaint
2 lacks sufficient notice. The Court even went further and declared that it
3 was the defendant's "duty" to demur, "when the particulars of an offense,
4 or ... the particular result of the defendant's actions, were not stated
5 with sufficient clarity, to satisfy the defendant, or to enable him to more
6 ably present his defense . . .". *People v. Jordan*, 19 Cal.App. 3d at 371;
7 97 Cal.Rptr. at 577 (1971).

8 **VII. COMPLAINT NOTICE DOES NOT IDENTIFY THE ACT, OR ACTS THAT THE**
9 **PROSECUTOR INTENDS TO RELY UPON AS A BASIS OF THE OFFENSE CHARGED IN COUNT**
10 **TWO**

11 Count Two of the prosecutor's complaint in this case is based upon
12 the application of Elections Code section 18340, and its application to the
13 defendant also involves the doing of some 'act' by the defendant. Again,
14 the complaint does not specify what that act may be at issue, or how the
15 doing of the act is the basis of the charges filed against the defendant.
16 As with a 403 violation, violating section 18340 of the elections code
17 could involve handing out printed matter to various persons, speaking,
18 walking to a certain spot in space, or who knows what. In *Lamarid v.*
19 *Municipal Court*, where The Court was considering whether a defendant
20 received sufficient due process notice of the charges they faced, it was
21 noted that, "appellant was entitled to be advised with some particularity,
22 which of several available factual theories the People would rely upon".
23 *Lamarid v Municipal Court*, 118 Cal.App. 3d at 791; 173 Cal.Rptr. at 601.

24 In *Peer V Municipal Court*, The Court ruled that a defendant had not
25 received sufficient notice of the nature of the charges they faced, even
26 where the complaint in question had a pile of police reports (related to
27 the incident that was the basis of the charges) attached to the complaint.
28 In *Peer* the court found that - despite the existence of the police reports

1 attached to the complaint, the defendant had not received sufficient notice
2 of what act or acts the people intended to rely upon. See *Peer v Municipal*
3 *Court*, 128 Cal.App. 3d 733; Cal.Rptr. 137. Here, both offenses (counts)
4 were contained in one complaint that does not have any attachments or
5 detail whatsoever. See *defendant's exhibit #1*.

6 In *In re Jordan*, the Court found that the People must make an
7 election as to acts relied upon for each count, or the charging device does
8 not provide the level of notice (of the charges faced) that the due process
9 clause of the constitution requires. The court also found that "when a
10 consideration of the pleading leads to a conclusion uncertainty
11 puts the accused to a material disadvantage, the court acts within its
12 discretion by sustaining the demurrer and requiring more specific
13 pleading." *In Re Jordan*, 19 Cal.App. 3d 362; 97 Cal. Rptr. 570.

14 **VIII. DISCOVERY CANNOT PROVIDE REQUISITE NOTICE TO SATISFY DUE PROCESS**

15 Courts have ruled that proceeds of the discovery process available to
16 a defendant, do not provide notice that will satisfy process requirements.
17 *Lamarid v Municipal Court*, 118 Cal.App. 3d 786; 173 Cal.Rptr. 599; *Williams*
18 *v Garcetti*, 5 Cal.App. 4th 561; 583 P.2d 507; 20 Cal.Rptr. 2d. 341 (1993).
19 California Courts have already ruled on the issue of whether or not
20 'discovery' procedure results can provide the defendant with sufficient
21 notice of the offenses they face. In *Lamarid v Municipal Court*, the court
22 firmly declared that "Neither discovery nor an assumption that the accused
23 has pertinent knowledge may be relied upon to furnish the requisite notice
24 ...". *Lamarid v Municipal Court*, 118 Cal.App. 3d 786; 173 Cal.Rptr. 599. The
25 Court in *Lamarid* further ruled that discovery procedures occurring after
26 the arraignment cannot provide constitutionally sufficient notice to a
27 defendant of the charges they face. *Lamarid v. Municipal Court*, 118 Cal.App
28 3d 786; 173 Cal.Rptr. 599.

1 **IX. DUE PROCESS SCRUTINY HEIGHTENED IN MISDEMEANOR CASES**

2 Courts have ruled that detail and specificity concerns are heightened
3 in misdemeanor cases when circumstances dictate that a preliminary hearing
4 is not going to take place, and when the complaint was not reviewed by a
5 grand jury or similar body. *Sallas v Municipal Court*, 86 CA3d 737 (1978);
6 *Peer v Municipal Court*, 128 Cal.App. 3d 733; 180 Cal.Rptr. 137. "But such
7 information is not available to the misdemeanor defendant." And patently,
8 the procedures for criminal discovery will not substitute for the due
9 process requirement of a notice to an accused of the charge against him.
10 *Sallas v Municipal Court* 86 CA3d 737, at 739 (1978). The Courts have
11 recognized that "in misdemeanor prosecutions no transcript or preliminary
12 examination or grand jury proceedings will be available to augment the
13 allegations of the complaint"; *Lamarid* quoting *Sallas v. Municipal Court*,
14 *supra*, 86 Cal.App. 3d 737, 742-743; *People v. Clenney*, *supra*, 165
15 Cal.App.2d, 241, 253-254. *Lamarid v Municipal Court*, 118 Cal.App. 3d 786;
16 173 Cal.Rptr. 599; and therefore, more certainty and specificity is
17 required than might be required in a felony case, or a case stemming from a
18 grand jury indictment.

19 **X. THE COURT LACKS JURISDICTION OVER DEFENDANT DUE TO FAILURES BY**
20 **PROSECUTOR TO FILE COMPLAINT IN A TIMELY MANNER AND ACCORDING TO RULES**

21 California Penal code section 1004 (1) allows a defendant to file a
22 demur when it appears on the face of the complaint, that the court has no
23 jurisdiction over the offenses charged. *See Penal Code section 1004 (1)*.
24 California Penal Code section 853.6 governs the procedures surrounding the
25 issuance of citations by officers who make misdemeanor arrests, and it
26 governs the procedures applicable to how prosecuting attorneys must handle
27 those cases after the officer issues a citation. *See California Penal Code*
28 *§853.6*. When an officer makes an arrest, they may release a defendant after

1 issuing the defendant a citation with a 'notice to appear date' that is at
2 least ten days after the date of the arrest. *See California Penal Code*
3 *§853.6 (b)*. Then the officer files a copy of the citation (a duplicate
4 notice) with the local prosecuting attorney. *See California Penal Code*
5 *§853.6 (E) (3)*. Then the local prosecutor may initiate prosecution by
6 filing the notice or a formal complaint with the magistrate specified in
7 the duplicate notice (El Cajon Municipal Court in this case) within 25 days
8 from the time of arrest. Furthermore, if the prosecution chooses to not go
9 forth within the 25 day time limit, they are required to notify the
10 defendant of that fact by mail. *See California Penal Code §853.6 (E) (3);*
11 *and see defendant's exhibit #2, the citation issued to defendant by*
12 *arresting officer).*

13 Defendant was arrested on October 22nd, and issued a citation wherein
14 the magistrate with jurisdiction is listed as the El Cajon Municipal Court
15 (not the San Diego County Superior Court). Defendant Joseph Ryan did not
16 receive notice from any prosecutor regarding a decision to-not-prosecute
17 within 25 days after his arrest; and at no time between the date of the
18 defendant's arrest (October 22nd 2008), and January 27th 2009, did the
19 defendant receive any notice regarding the case at all from any prosecutor.
20 Then on the defendant's birthday (January 27th), the District attorney for
21 the County of San Diego sent the defendant a notice that stated that a
22 criminal complaint had been filed by her office, in the Superior Court of
23 San Diego County, naming Joseph Ryan as the defendant.

24 While the failure of a prosecutor to proceed within 25 days of a
25 defendant's arrest with a prosecution, and the failure of the prosecutor to
26 notify the defendant of that fact, do not preclude the same prosecutor from
27 filing charges at a later point in time; but once a prosecutor has violated
28 the 25 day post-arrest prosecution time limit, they must go to a judge and

1 have an arrest warrant - based on probable cause determination - issued, or
2 they must have the arresting officer or their agency issue a new citation
3 to the defendant, before they can proceed.

4 According to the law reviewed above, Bonnie Dumanis's office (The San
5 Diego County District Attorney's office) does not have jurisdiction over
6 this case because her office is not the prosecutor granted the authority by
7 Penal Code section 853.6 to prosecute this case (based upon the only
8 citation issued in this case; which indicates jurisdiction lies with the El
9 Cajon Municipal Court's prosecutor). An arrest warrant has not been issued
10 by a judge of the El Cajon municipal court or any other court, and the
11 notice sent to defendant Joseph Ryan by the San Diego County does not
12 qualify as a "citation" per Penal Code section 853.6; since it does not
13 state a date that any alleged offense took place, and it does not state a
14 location where an alleged offense was committed. *See defendant's exhibit*
15 *#1, (the only notice he has received regarding the case filed against him).*

16 Accordingly, the case filed by the San Diego County District attorney
17 must be dismissed for lack of jurisdiction, and the defendant's demur
18 should be sustained, without leave to amend, until such time as a new valid
19 citation is issued by the arresting officer or their agency, which names
20 the San Diego superior Court as the location where a copy of the case will
21 be filed, or until such time as a valid arrest warrant, for the defendant's
22 arrest, is issued by a court or judge with valid jurisdiction to do so.

23 **XI. PENAL CODE 403 AND ELECTIONS CODE SECTION 18340 ARE**
24 **UNCONSTITUTIONALLY VAGUE AND THEIR REACH IS UNCONSTITUTIONALLY BROAD AS**
25 **APPLIED TO DEFENDANT'S CONDUCT; AND THEREFORE THE FACTS DO NOT STATE A**
26 **PUBLIC OFFENSE**

27 California Penal Code section 1004 (4) allows for the filing of a
28 demur by a defendant in a criminal case, whenever the facts stated in the

1 charging document "do not constitute a public offense". See *Penal Code*
2 §1004 (4). In addition to the grounds for demur available in *Penal Code*
3 §1004, a defendant may also file a demur based on the common law, "as a
4 vehicle for constitutional and other attacks on the sufficiency of a
5 accusatory pleading". See *People v Jackson*, 171 Cal.App. 3d 609, at 615;
6 217 cal.Rptr. 540, at 543-544.

7 The constitutional interest implicated in questions of statutory
8 vagueness is that no person be deprived of Life, Liberty, or property
9 without due process of law, as assured by both the federal constitution,
10 and the California Constitution. See *U.S. Const., Amends. V, XIV*; and see
11 *Cal.Const., art. 1 §7*. And See *Williams v Garcetti* 5 Cal.4th 561, at 567,
12 P.2d 507, at 509, 20 Cal.Rptr. 2d 341, at 343. Freedom of speech (within
13 limits) is guaranteed by the first amendment to the federal constitution.
14 See *U.S. Const., Amends. I*.

15 **XII. VAGUENESS AND OVERBREADTH ISSUES:**

16 The application of Section 403 of the Penal code was analyzed in *In*
17 *Re Kay* (1 Cal. 3d 930; Cal.Rptr. 686 (1970)). In *Kay* the Supreme Court of
18 California dealt with a scenario where a congressman who was running for
19 office gave a speech, and during the speech he was heckled, booed, and
20 repeatedly interrupted by rythmec clapping. The court made a number of
21 observations regarding the constitutionality of literally applying the
22 terms listed in section penal Code section 403. The court especially
23 focused on the vagueness of the term 'disturb', and how concerns would be
24 raised if the statutory definition of the word 'disturb' became too loosely
25 drawn; thereby raising a grave risk that constitutionally protected conduct
26 could be swept up in the statute's broad application, and other
27 constitutionally protected activity would be discouraged. See *In Re Kay* (1
28 Cal. 3d 930; Cal.Rptr. 686 (1970)). The *Kay* court focused on the political

1 nature of the meeting the defendant's were charged with disturbing, and
2 they made a number of observations pertinent to the present case (People v
3 Ryan).

4 In Kay the Court recognized there are limits on 'free speech' rights.
5 The court noted that those rights differ greatly, according to the context
6 of the meeting in question. Solemn church or fraternal events are to be
7 considered differently than a political event. The court recognized that
8 political events are a unique type of event that is volatile by its very
9 nature. The court noted that "it's neither unusual or unexpected that some
10 people at a public street meetings will mutter, mill about, push, shove, or
11 disagree, even violently, with the speaker. Indeed, it is rare where
12 controversial topics are discussed that an outdoor crowd does not do all of
13 these things". Quoting Landry v Daley (N.D. Ill. 1968) the court noted that
14 Political campaigns . . . produce loud, confused or senseless shouting not
15 in accord with fact, truth or right procedure, to say nothing not in accord
16 with propriety, modesty, good taste, or good manners. The happy cacophony
17 of democracy would be stilled if all improper noises in the normal meaning
18 of the term were suppressed. *In Re Kay* (1 Cal. 3d 930, at 940; Cal.Rptr.
19 686 (1970)). The court also noted that "by custom and usage non-violent
20 demonstrations of political views are reasonably to be expected at such a
21 meeting."

22 The complaint device issued by the prosecutor indicates on its face
23 that the conduct being regulated occurred at a political meeting. *See Count*
24 *two charging-title; PREVENTION OF ELECTORS FROM ASSEMBLING*, defendant's
25 exhibit #1. Unless the complaint is amended to reflect that the defendant
26 committed a serious, unlawful violation of particular, certain nature, the
27 broad application of the two statutes is at issue; and a demur lies per PC
28 1004 (5), and the California and federal constitutions due process clauses.

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II. DEFENDANT'S DECLARATION

1. On February 27th defendant Joseph Ryan called the court to inquire about the existence of a complaint referred to in the notice received by defendant from the San Diego County District Attorney. Defendant was told he would have to visit the court building to access the file. Defendant visited the East County courthouse on March 2nd, 2209. at that time he was told that he could not be furnished with any information whatsoever regarding the case filed against him. Defendant Joseph Ryan was told that the only way he could access or look at complaint that might be on file, would be through the use of the discovery process, after his arraignment.

Respectfully submitted

Joseph Ryan

Defendants in Pro Per

1 **INDEX OF POINTS AND AUTHORITIES:**

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3 **STATUTES CITED:**

- 4 1. PENAL CODE §403
- 5 2. PENAL CODE §950
- 6 3. PENAL CODE §952
- 7 4. PENAL CODE §853.6
- 8 5. PENAL CODE §1004
- 9 6. ELECTIONS CODE §18340

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11 **CASES and CONSTITUTIONAL LAW CITED:**

- 12 1. In re Oliver (1948) 333 US 257, 273, 92 L Ed 682, 694, 68 S Ct 499
- 13 2. In re Jamil H. (1984), 158 CA3d 556, 559, 204 CR 816
- 14 3. Gaylord v. Municipal Court (1987) 196 CA3d 737, 150 CR 543
- 15 4. *People v Clenney*, 165 Cal.App. 2d 241, 331 P.2d 696
- 16 5. *Peer v Municipal Court*, 128 cal.App 3d 733, 180 Cal.Rptr. 137 (1982)
- 17 6. *People v Jordan* 19 Cal.App. 3d 362; 97 Cal.Rptr. 570 (1971)
- 18 7. *Williams v. Garcetti* 5 Cal.App. 4th 561, P.2d 507. 20 Cal.Rptr. 2d 341
- 19 (1993)
- 20 8. *Lamarid v Municipal Court*, 118 Cal.App 3d 786, 173 Cal. Rptr. 599
- 21 9. *People v. Mandell* (35 cal.App2d 368,; 95 P.2d 704)
- 22 10. *People v Jackson*, 171 Cal.App. 3d 609; 217 Cal.Rptr. 540
- 23 11. *in In Re Kay* (1 Cal. 3d 930; Cal.Rptr. 686 (1970)
- 24 12. *U.S. Const., Amends. V, XIV*
- 25 13. *Cal.Const., art. 1 §7*
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LIST OF DEFENDANT'S EXHIBITS:

1. Notice of Complaint received by defendant from San Diego County Attorney
2. Copy of Citation issued October 22nd to defendant Joseph Ryan
3. Copy of informal discovery request sent by defendant Joseph Ryan to the San Diego District Attorney (with attn: Glenn McAllister) on February 18th, 2009 (showing delivery on February 19th, 2009).
4. Copy of registered mail receipt for informal discovery request (exhibit #3).