MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: April 26, 2019

RE: FOLLOW-UP MEMORANDUM ON THE AFRICAN-AMERICAN CAUCUS ELECTIONS

On March 25, 2019 the Compliance Review Commission (CRC) distributed a unanimous decision, with Member Shay abstaining, relating to the challenge filed by Mr. Kimbrew regarding the officer elections of the African American Caucus (Caucus). As part of the order in the aforementioned decision, CRC Member and Rules Co-Chair Laurence Zakson has been charged with facilitating and monitoring the compliance of the Caucus with the CRC order. He has advised the CRC that the Caucus officers have rejected his efforts to assist, but recognizes the Caucus officers have undertaken some steps in response to the CRC order. Mr. Zakson has requested direction from the CRC. In particular,

- Mr. Zakson has forwarded the written election procedures adopted by a majority of the officers of the Caucus along with an inquiry whether the adoption of the procedures by the officers of the Caucus satisfies the CRC's March 25, 2019, order.
- Mr. Zakson has also forwarded an email sent on behalf of Caucus Chairman Darren Parker, Caucus Secretary Mister Phillips and Caucus Treasurer Mark Henderson purporting to opt out of email communications during the pendency of this challenge.

The CRC order contemplated the calling of a special membership meeting of the Caucus and the adoption of election procedures by bylaws amendments at that meeting. [See Appendix A to Guidelines for Certification, Re-Certification and Decertification of Caucuses as promulgated by the Rules Committee (Procedures for the Conduct of Caucus Officer Elections), which requires these changes be effectuated through bylaws amendments by providing that "[e]lection procedures for Caucus Officers shall be set forth in the Bylaws of the Caucus…”] This did not occur. As a result, the procedures adopted by the Caucus officers do not satisfy the requirements of the CRC's remedial order and an election cannot go forward at the May 2019 Convention.

Substantively, the procedures adopted by a majority of the Caucus officers also fail to satisfy the requirements for compliant Caucus officer election procedures promulgated by the Rules Committee. The procedures were deficient in the following ways:

1. Dues payment/waiver appears to be a condition of voting, but the dues payment/waiver process in Article II, A. of the bylaws is unclear and not clarified in the proposed procedures. Moreover, Article VII, C. of the Caucus bylaws lacks a clear cutoff date for dues payment/waiver in order to be eligible to run for office. This is not clarified in the proposed procedures.
2. Article X, A. of the Caucus bylaws does not provide a clear identification of the membership/roster to be used for issuance of voting credentials and determination of whether a purported member is entitled to a ballot or must vote a provisional ballot. This is not clarified in the proposed procedures.

3. Although the absence of a clear nomination period is replaced with a ten-day window of 40 days before the meeting to 30 days before the meeting, the nomination period has begun before the procedures were disseminated to all interested persons and appears likely to end before such dissemination.

4. Although the appeals process does describe the two steps in the process and does provide for an immediate recount if the difference in votes (a not entirely clear, but somewhat self-evident standard) is less than 3 percent, it lacks time periods for filing appeals, and procedural requirements--such as whether the appeal must be in writing. The procedure also appears to attempt, impermissibly, to deprive the CRC and the Rules/Credentials Committees and other CDP organs of the right to review decisions made on appeal.

5. The procedure does not provide for the resolution of all provisional ballots as required by applicable guidelines.

6. The procedure does not provide for securing and preserving ballots after the election and during any appeals process.

In addition, two of the proposed rules seem inconsistent with efficient election administration and a free and fair election campaign.

1. The procedures ban campaigning before a candidate is qualified to run for office, and disqualify candidates who do so. This is inconsistent with member free speech rights and gives incumbents the ability to control the campaign conduct of non-incumbents. This rule should be revisited.

2. It is not clear that the election committee will consist of more than one person. This is not necessarily prohibited by any guideline or rule, but it does not ensure that the process will not break down if that person fails to discharge her/his duties or is incapacitated or otherwise unable to discharge those duties.

**ORDER:**

In light of the information provided by Mr. Zakson, the CRC further orders:

1. Any election rules must be disseminated to Caucus members and other interested persons.

2. The subcommittee of the Rules Committee charged with making a recommendation regarding re-certification of the caucus and review of the Caucus bylaws is directed to draft revisions to the Caucus bylaws to address the foregoing shortcomings and the new timing of the 2019 election (at the August Executive Board meeting rather than the May Convention) and those revisions along with the procedures drafted by the Caucus are to be converted into draft amendments to the Caucus bylaws by Mr. Zakson and submitted to the members of the Caucus for a vote at the Caucus meeting in conjunction with the May Convention. Mr. Zakson shall be present at the time of the vote and shall read this
order and explain the applicable requirements to the Caucus members. If the Chair of the Caucus is unable or unwilling to conduct the necessary votes, the next highest-ranking officer of the Caucus shall do so. If no Caucus officer is willing to conduct the necessary votes, Mr. Zakson will preside over a portion of the meeting at which an interim presiding officer shall be elected and that officer shall then conduct the necessary votes.

3. Once the Caucus has adopted rules, the CDP staff shall disseminate them and shall charge the Caucus’ account for the cost of the mailing.

4. The election shall be conducted at the Caucus meeting in conjunction with the State Party’s August Executive Board meeting.

5. In accordance with, CDP Bylaws, Article XIV, Section 1(a) & (b), Caucus officers, so long as they retain office, are not free to opt out of receipt of CDP communications via email during their terms and, more specifically, during a challenge to actions of the Caucus occurring during their terms. Any request purporting to opt-out under these circumstances shall be invalid.

6. Mr. Zakson is to monitor process leading up to the opening of balloting at the August Caucus election to assure that an election is conducted by that time and is to report his findings to the CRC. In the period between this order and the opening of balloting in the Caucus election in August, Mr. Zakson is directed to seek further authority from the CRC as he deems necessary.

Respectfully submitted by a 5-0-1 vote of the members of the CRC, with Member Shay abstaining:

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