MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: May 22, 2019 (amended)

RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION RELATING TO A CHALLENGE FILED BY BASIL KIMBREW AND TAISHA BROWN

INTRODUCTION:


While the challenge was pending, on May 2, 2019, AAC Chair Darren Parker wrote to Mr. Kimbrew and advised Mr. Kimbrew that he was no longer a member of the Caucus and directed Mr. Kimbrew to cease and desist from contacting the Caucus, the Compliance Review Commission (CRC) or the California Democratic Party. On May 3, 2019, Mr. Kimbrew asked to amend his challenge to include this as an additional violation and evidence in support of his earlier challenge.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

Documents received and reviewed by the CRC associated with the challenge included the following:

2. Testimony submitted by Taisha Brown, Basil Kimbrew and Diana Love.
3. African American Caucus Bylaws
4. California Democratic Party 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.”
The challenge by Mr. Kimbrew submitted on April 15, 2019 relating to an incident which occurred on April 14, 2019 is within seven (7) days of the incident, thus the challenge is timely. The challenge filed by Ms. Brown is not, and, given that Mr. Kimbrew’s challenge encompasses the purported suspension and removal of Ms. Brown, there is no need to determine if there is good cause to waive this requirement.

Mr. Kimbrew’s proposed May 3, 2019, amendment to add the May 2, 2019, email from AAC Parker to his challenge is inextricably intertwined with the underlying challenge and is hereby allowed.

**STANDING:**

According to Article XII, Section 3:

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

Both Mr. Kimbrew and Ms. Brown are members of the African American Caucus, and, thus, both have standing to bring this challenge.

**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 article XII (Compliance Review Commission) Section 5 and XIII (General Policies) Section 5,6,7.

**FINDINGS:**

The relevant African American Caucus bylaw reads:

“Article XI; Removal from Office / Officers and Membership: An Officer and/or member of this caucus may be removed from office for cause—that is misconduct or neglect of duty in the office, differentiated from the party, and disloyalty are reasons for removing an Officer and/or member from membership---by the following procedures.

Section (A): At least two---thirds (2/3rd) of the Executive Committee must sign and submit to the recording secretary a written statement of charges containing the grounds for removal.
Section (B): The Recording Secretary upon receipt of the statement of charges and a letter stating that the accused officer may either resign or have a hearing by way of a motion for removal at the next regular meeting of the Executive Committee.

Section (C): If the accused officer does not resign, the Recording Secretary will send a copy of the statement of charges to all members of the Executive Committee along with the notice for the next regular meeting of the Executive Board.

Section (D): At the next regular meeting of the Executive Committee, the accused officer will be afforded an opportunity to respond to the charges; after such a hearing and upon a motion for removal made by one of the signatories to the statement of charges.

Section (E): The accused officer may be removed by a two-thirds (2/3) vote of all persons present.

Section (F): Provided there is present and voting at least 33 1/3rd of the membership of the Executive Committee.

Section (G): After a review by the Executive Committee on the study and evaluation of the evidence produced find that, the evidence is insufficient to warrant or justify penal or removal proceedings, the charge will be dismissed by the Executive Committee.

Section (H): If the Executive Committee finds the evidence is sufficient to warrant and justify removal proceedings against the member being charged the Executive Committee will hold a hearing after the due and timely notice or appoint a hearing committee to conduct a fact-finding hearing of the charges. A written response from the accused and a report of the case findings to the Executive Committee at its next regular or special meeting as the case may present itself. Witnesses for both the accused and the accuser(s) may be produced at the above-mentioned meeting when all evidence and deliberation have been presented to the committee in writing. In advance the hearing, committee will also make its report in writing at the proper time with its recommendation and solution of the charges.

After the remedy has been given and the accused is dissatisfied with the decision of either the hearing or the Executive Committee, the accused may appeal the decision to the membership of the Caucus at the next meeting. A two-thirds (2/3rd) vote of the membership present will be required to override the decision of the Executive Committee.”
Article XI, Section 1a of the Bylaws of the California Democratic Party, which governs Special Group Caucuses, provides as follows:

“ARTICLE XI: SPECIAL GROUP CAUCUSES

“Section 1. DEFINITION

“A caucus is a statewide organization:

“a. Which is a constituent part of This Committee1, governed by its decisions, and may not take official positions on legislation, resolutions, or other matters, which are contrary to positions taken by This Committee, but may call on This Committee to take action.”

Article XII of the CDP Bylaws govern the Compliance Review Commission, and provides in relevant part:

“Section 5. POWERS
The Compliance Review Commission 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.”

The Caucus officers have been afforded the opportunity to respond to the challenges, but have not done so. As a result, the only evidence in this challenge is that presented by the challengers.

Unlike chartered organizations or County Central Committees, under Article XI, Section 1.a, Caucuses are organs of the California Democratic Party and have only the authority and autonomy granted them by the California Democratic Party Bylaws and any applicable guidelines promulgated pursuant to the Bylaws. Further, the fact that a Caucus has no separate legal status means that the CRC need not afford Caucus officers and/or a Caucus Executive Committee the same deference in their interpretation of the rules governing their operations as are afforded bodies such as chartered organizations and County Central Committees.

In this case, the degree of deference due is not relevant as the AAC did not follow the process in its own Bylaws when removing Mr. Kimbrew and Ms. Brown from membership. Moreover, under its own Caucus Bylaws, the AAC does not have the authority to remove or suspend any member without affording the member the due process guaranteed by Article XI of the AAC bylaws as quoted above. Additionally, the AAC Bylaws do not have any provision which allows for the suspension of an officer or member pending a removal hearing.

In light of the foregoing findings, it is not necessary to reach Mr. Kimbrew’s allegation that the removal was retaliatory.

1 In the Bylaws of the California Democratic Party, “This Committee” refers to the State of California Democratic State Central Committee, which is the same as the California Democratic Party.
ORDER:

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

1) Mr. Kimbrew, Ms. Brown and anyone similarly situated are reinstated to membership with full rights of membership retroactive to the date of removal and, as a result, there is no break in their membership.
2) The charges against Mr. Kimbrew and Ms. Brown are vacated and any new charges must be initiated and prosecuted in accordance with the AAC Bylaws.
3) The CRC notes that there are no provisions in the AAC Bylaws for suspension of an officer or member pending hearing and admonish that any such action would run afoul of the AAC bylaws.

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 June 15, 2019, with the Sacramento office of the California Democratic Party, and shall be an appeal to the next meeting of CDP Rules 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 Rules Committee by 5 PM on June 27, 2019, at the Sacramento office of the California Democratic Party. The Rules 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 Rules Committee. CRC shall retain jurisdiction up until the time of an appeal, if any, is heard by the Rules Committee.

Respectfully submitted by a 5-0 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