MEMORANDUM

TO: All Interested Parties
FROM: Compliance Review Commission (CRC)
DATE: March 28, 2019
RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO A CHALLENGE FILED IN THE ASSEMBLY DISTRICT ELECTION MEETING (ADEM) IN ASSEMBLY DISTRICT 46

INTRODUCTION:

On January 30, 2019 Judith Klapper, a candidate for delegate to the Democratic State Central Committee from Assembly District 46, filed a challenge to the Assembly District Election Meeting (ADEM), which occurred on January 26, 2019. Ms. Klapper alleges the “ballot counting did not follow the rules set out by the sub-committee. The ballots were counted only once, not twice as they ‘should’ be counted according to the rules.” Clifford Tasner also alleged, “There were 813 ballots cast in our district, with up to 14 votes per ballot, which means upwards of 11,000 votes cast. In counting so many votes, there’s always the possibility of an error here and there.” Finally, Nick Roth’s testimony alleged, “It is not ideal to have individuals who have actively supported candidates counting ballots together in these elections with no oversight, but if the ballots had been rotated between groups and independently counted a second time as outlined in the ADEMs Procedures, this issue (no doubt an unfortunate but necessary outcome of the lack of availability of volunteers to count for these elections) would have been rendered moot.”

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

2. Testimony submitted by Mary Ellen Early, Shanna Ingalsbee, Cindy, Kalman, Steve Pierson, Nick Roth, Clifford Tasner and Larry Gross (Late).
3. 2019 ADEM Procedures
4. 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 Ms. Klapper was submitted on January 30, 2019. The ADEM in AD46 occurred on January 27, 2019. The submission was within 7-days of the alleged incident; thus the CRC finds the challenge timely.

STANDING:

According to Article XII, Section 3:

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

Ms. Klapper was both a candidate and a voter at the ADEM in AD46. The CRC finds Ms. Klapper has standing, as she would be adversely affected.

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 II (Membership) and Article VI (Assembly District and Assembly District Election Meetings).

FINDINGS:

CDP Bylaws, Article XIII, Section 5 provides that the Party is responsible for publication of selection procedures:

“Section 5. FULL PUBLICATION OF SELECTION PROCEDURES
The Democratic Party shall publicize fully and in such a manner as to assure notice to all interested parties a full description of the legal and practical procedures for selection of Democratic Party Officers and representatives on all levels.”

CDP Bylaws Article VI, 1, h provides the Rules Committee is to promulgate procedures governing the Assembly District Election Meeting:
“h. The Rules Committee of This Committee shall promulgate procedures governing the conduct of the Election Meeting, including the election of 14 delegates to This Committee as set forth in Article II, Section 5, and one representative to the Executive Board, as set forth in Article VII, Section 2(c), which Rules shall include, for candidates for delegate and for candidates for Representative to the Executive Board, a filing fee of $30 (which may be waived due to hardship and such waiver shall be available as an option online and on all written forms), a filing period 30 days prior to the biennial Assembly District Election Meetings and call for the posting of eligible candidate names (to be updated no less than once per week starting with the opening of the filing period) on the Party's website, along with statements by the candidates, with the proviso that such statements be no longer 2400 characters and shall not mention the name of any other candidate. Statements shall be published as submitted; no additions, corrections, or other edits shall be made once submitted.”

Ms. Klapper alleges “The ballots were counted only once, not twice as they ‘should’ be counted according to the rules.” Mr. Tasner and Mr. Roth also allege there could be discrepancies in the vote totals since the ballots were only counted once.

The 2019 ADEM Procedures state,

C. The ballot counting should be done twice. If more than one group is counting, rotate the ballots among the groups.

According to the ADEM procedures, the ballot counting should be done twice. Since that was not done, the CRC requested the CDP staff to conduct a full recount of the ballots. The results from the CDP staff recount confirmed the top-7 self-identified females and top-7 non-identified females, as they were announced onsite. Additionally, the recount also confirmed the winner of the Executive Board as announced onsite.

In 2017, the CRC in a decision regarding the ADEM in AD47, and which applies to this case found that:

“In order to overturn an ADEM result, challengers must meet the standard which demonstrates in a quantifiable way that the conduct and/or actions complained of made a difference in the outcome that would not have been present absent that conduct and/or action. In the testimony submitted, there were a myriad of general allegations, however there was no specific quantifiable allegation, which would have resulted a different outcome. In the testimony submitted, there was none which proved that the actions of those involved were deliberately and purposefully biased, unfair or taken with ill intent. There was no evidence provided that an eligible person was not allowed to vote, was turned away from voting, or due to the circumstances left without voting.”

Accordingly, the CRC’s standards, as noted above, were not met in that there was no testimonial or documentary evidence submitted that demonstrated in a quantifiable way that the conduct and/or actions complained of made a difference in the outcome that would not have been present absent that conduct and/or action.
ORDER:

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

1) The CRC rejects the challenge, as the challengers failed to show how failing to count the ballots twice would achieve the standard necessary to invalidate an ADEM result.
2) Further, the rejection is based upon CDP Staff’s recounting of the ballots which the verified top seven self-identified females and the “other than self-identified females,” were the same as announced on site.
3) The original voting results are affirmed.
4) The CRC will forward all testimony submitted to the CRC to the Rules Committee as they consider revising the ADEM Procedures for 2021.

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 April 9, 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 6b, 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 April 21, 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,

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