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 49

INTRODUCTION:

On January 18, 2019, Ms. Melissa Michelson and Ms. Bobbie McGowan both candidates for delegate to the Democratic State Central Committee from Assembly District 49, filed a challenge to the Assembly District Election Meeting (ADEM), which occurred on January 13, 2019. Ms. Michelson alleged, “AD49 ADEM caucus did ballot tally in an error-prone fashion in direct contradiction to CADEM written procedures…Also hands were stamped but never checked and on varying hands.” Ms. McGowan alleged, “I am requesting a recount of the ballots because people in line had ballots, and people who did not live in AD49 voted. Chinese people were brought in for breakfast/after being told how to vote were taken to the voting area and voted. Most of the Chinese people in line didn’t speak/read English. They were shown who to vote for. All the noise made it difficult to pay attention to the vote counts. They all need to be checked. One Chinese lady said it was to easy to cheat as she passed out ballots.”

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

1. Challenges by Ms. Michelson and Ms. McGowan were submitted on January 16, 2019.
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 both Ms. Michelson and Ms. McGowan was submitted on January 18, 2019. The ADEM in AD49 occurred on January 13, 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:

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

Both Ms. Michelson and Ms. McGowan were both candidates and voters at the ADEM in AD49. The CRC finds they have standing, as they 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. Michelson in follow-up testimony alleges, “The man speaking talks about how they
conducted the vote count and didn’t double-count.”

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. It should be noted that Leticia
Rivera (5th ranked self-identified female) was found to be ineligible to hold an ADEM spot
and the runner-up was appointed as a delegate, so the second runner-up Bobbie McGowan
was moved up to the seventh spot. The recount also confirmed the winner of the Executive
Board as announced onsite.

Ms. McGowan alleged, “I am requesting a recount of the ballots because people in line had
ballots, and people who did not live in AD49 voted. Chinese people were brought in for
breakfast/after being told how to vote were taken to the voting area and voted. Most of the
Chinese people in line didn’t speak/read English. They were shown who to vote for. All the
noise made it difficult to pay attention to the vote counts. They all need to be checked. One
Chinese lady said it was to easy to cheat as she passed out ballots.”

Ms. McGowan alleges, that voters who may not live in the district or were registered
Democrats were allowed to participate.

The 2019 ADEM Procedures state,

F. The Convener should oversee the check-in process. With regard to this process:
1) The voter registration check should only be performed for those participants who
are themselves unsure or are challenged as to their eligibility. It is not proper to
check all participants, especially when such a process would cause long lines in the
check-in process. If, in the Convener’s opinion, one person or a group of persons is unduly delaying the registration process by frequent challenges, the Convener may cut off further challenges by that person or group of persons. Before taking this action, the Convener is encouraged, but not required, to call the CDP office for consultation.

The procedures state that voter registration checks should only be performed for those participants (voters) who are unsure of their eligibility or if their eligibility is challenged. If a participant was suspected of being ineligible then that participant should have been challenged onsite at the ADEM.

Additionally, photos and testimony provided by Ms. Michelson refutes the challenge by Ms. McGowan that people in line had ballots. Ms. Michelson states, “…the people in line did not have the ballots ahead of time while in line. That is untrue. That would imply that a stack had been pre-passed out to them, or that a voter got in line, signed in and took the ballot outside to hand to people in line. Why would they be waiting in line then to check in? I walked the lines and did not see people have the green or blue ballots.”

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, with the exception noted above of Ms. McGowan moving to the seventh spot thus gaining status as a delegate.

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