

MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: March 27, 2019

RE: **DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO A CHALLENGE FILED IN THE ASSEMBLY DISTRICT ELECTION MEETING (ADEM) IN ASSEMBLY DISTRICT 51**

INTRODUCTION:

On February 2, 2019, Ron Birnbaum, a candidate at the AD51 Assembly District Election Meeting (ADEMs) filed a challenge to the AD51 ADEM which occurred on January 26, 2019, and in which he was a candidate. Mr. Birnbaum alleges that the AD51 ADEM was not run in accordance to the California Democratic Party (CDP) ADEM Procedures pursuant to the CDP Bylaws. Mr. Birnbaum alleged that there was no system in place to verify the voter status of all voters, and also that there was no verification for the voters who did complete an onsite voter registration form to confirm they were actually registered in the Assembly District.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

1. Challenge by Ron Birnbaum was submitted on February 2, 2019.
2. Testimony submitted by Ron Birnbaum, Patty Horton, Ronald Gonzalez-Lawrence, Mark Ramos, and Jeanine Rohn.
3. CDP Staff Report on AD51
4. 2019 ADEM Procedures
5. 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 Mr. Birnbaum was submitted on February 2, 2019. The ADEM in AD51 occurred on January 26, 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.”

Mr. Birnbaum was a candidate and a voter at the ADEM in AD51. The CRC finds that he has standing, as he 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.”

Mr. Birnbaum alleged that the “Convening authorities knowingly allowed paid preferential access to venue facilities for one specific group of candidates.” Photos and testimony provided by Ms. Horton and Mr. Ramos refute this allegation. Ms. Horton spoke with the facility director and made her aware of the first-come, first-serve basis to uphold fairness for all candidates.

Additionally, Mr. Birnbaum alleges the Convener failed to adequately verify voter registration addresses and the verification of registered Assembly Districts.

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 that are unsure of their eligibility or if their eligibility is challenged. If someone was suspected of being outside of the district then they should have been challenged onsite at the ADEM.

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 in fact met in that there was quantifiable evidence provided by Ms. Rohn showing discrepancies relating to eligible participants. Of the 126 pages of AD51 sign-in sheets; 12 participants did not provide a signature, 27 participants provided no street addresses, 14 were alleged to live outside of the Assembly District and 3 addresses could not be verified.

Based upon the testimony submitted, the CRC requested the CDP staff perform a full review of the sign-in sheets. The CDP staff review found 79 participants as not registered as Democrats and 18 participants not registered in the district.

Onsite Results as Submitted by Convener				
	Executive Board			
1	Juan Carlos (JC) Cruz	326		
2	Eileen Hatrick	216		
	ADEMs			
	Other than self-identified female	Votes Received	Self-identified female	Votes Received
1	Mike Fong	359	Jamie Tijerina	363
2	Juan Carlos Cruz	354	Chrissie Castro	343
3	Vicente Gonzalez-Reyes Jr.	345	Jessica Craven	331
4	Christopher Arellano	316	Maggie Daret-Quiroz	325
5	Jason Berlin	315	Cecilia Dominguez	316
6	Jim Smith	309	Justine Gonzalez	315
7	Seamus Garrity	308	Eileen Hatrick	313
RU#1	Michael Contreras	304	Kristie Hernandez	307 W
RU#2	Jared Rivera	290	Rocio Rivas	307 L

The precedents established by the CRC in the ADEM AD43 decision issued on April 27, 2015, was to focus only on participants who were confirmed by staff as ineligible. In this case, the total number of ineligible voters is 97.

The CRC finds that the ballots cast by the 97 ineligible voters could be enough to affect 10 of the ADEM winners (6 self-identified female/4 other than self-identified female) and the representative to the Executive Board. The difference between the second-place female and fourteenth-place female was 79 votes. The difference between the fourth-place non-female and fourteenth-place non-female was 84 votes. The difference between the first-place and second-place candidates in the Executive Board election was 37 votes.

ORDER:

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

- 1) The CRC upholds the challenge and confirms the election of the ADEM's first-place self-identified female (Jamie Tijerina) and the top three other than self-identified female (Mike Fong, Juan Carlos Cruz, and Vicente Gonzalez-Reyes) as delegates to the State Party Convention.
- 2) The CRC vacates all other results for both Delegates to the State Party Convention and Representative to the Executive Board and orders a new election be conducted at the earliest time possible consistent with proper notice, with every effort for it to occur by May 18, 2019.
- 3) The CRC orders that candidates be limited to those eligible at the prior election (excluding those already confirmed to be elected in Order Number 1).
- 4) The CRC orders that participants be limited to those who were eligible at the original ADEM and remaining eligible as of the date of the new election meeting.

- 5) The CRC orders that notice be provided to all those required to be noticed for the original meeting plus those who participated at said meeting.
- 6) The CRC orders that such an election be conducted by CDP staff or their designee.
- 7) The CRC orders that all voters' eligibility be verified prior to the issuance of ballots.
- 8) The CRC orders that if such election can be conducted prior to the May convention, the winners of such election shall be seated.
- 9) The CRC orders any dues/fees paid by any individuals not eligible to be seated (either due to not having been elected at the first ADEM meeting, or if such meeting cannot be conducted prior to the convention) shall be refunded and such individuals shall be provided floor passes (non-voting "Observer" passes) without additional cost.
- 10) 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 8, 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 20, 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