MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: March 21, 2019

RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO A CHALLENGE FILED IN THE ASSEMBLY DISTRICT ELECTION MEETING (ADEM) IN ASSEMBLY DISTRICT 53

INTRODUCTION:

On January 19, 2019 Christopher Myers, on behalf of 25 complainants who were candidates and/or voters to the Democratic State Central Committee from Assembly District 53, filed a challenge to the Assembly District Election Meeting (ADEM), which occurred on January 12, 2019. Specifically, the complainants allege:
1) Willfully neglecting to enact voter check-in procedures that verified all voters,
2) Willfully neglecting to provide a centrally-located, accessible ADEM location,
3) Willfully violating both CDP Bylaws and ADEM procedures,
4) Allowing Mark Gonzalez to act as the “de facto Convener,” and
5) Being complicit in enabling Mark Gonzalez to create a hostile environment of threats, harassment, and intimidation.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

2. Testimony submitted by Jasmyne Cannick, Veronica Casarez, and Amber Maltbie.
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.”
The challenge filed by Mr. Christopher Myers on behalf of 25 candidates and voters was submitted on January 19, 2019. The ADEM in AD53 occurred on January 12, 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.”

The complainants were both candidates and voters at the ADEM in AD53. The CRC finds the complainants 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.”

The complainants raised allegations that voters who may not live in the district or who were
not registered as 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) 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. Additionally, the sign-in sheets, ballots, and tally sheets
were available for inspection at the CDP Headquarters which would have allowed the
challengers to provide specific evidence that the participants were not Democrats or did not
live in the district. The CDP staff is not aware of anyone reviewing the materials or
requesting to review the materials. This is critically important as time constraints, volunteer
membership and competing demands on the Party’s budget and staffing means that the CRC
is not, and cannot be, an independent investigative body, but, rather, is a body charged with
reviewing the challenge and supporting evidence provided by the challenger and other
interested parties.

The complainants also allege that the ADEM location was not centrally-located and
accessible.

According to the ADEM Procedures:

A. Location: The ADEM location must fulfill the following characteristics:
   1) Attempt to be Centrally-located with respect to the Assembly District,
      especially for rural districts.
   2) Location MUST be ADA-compliant. This means that the location is
      accessible to persons with disabilities. “Disabilities,” with respect to an
      individual, means a physical or mental impairment that substantially
limits one or more of the major life activities of such individual. A location with stairs, steps, or any impediment to wheelchair access despite the presence of someone available to assist or pick up someone in a wheelchair is not considered accessible.

3) Easy to describe location and easy to find for participants.

The evidence submitted failed to establish that the location was not ADA accessible or that anyone was unable to vote due to accessibility issues. In addition, the evidence established that there was accessible parking reasonably near the polling place and failed to establish that individuals in a van carrying disabled voters were unable to unload its passengers despite the alleged conduct of Mark Gonzalez vociferously complaining that the van had stopped in an area where it was blocking traffic.

As Assembly District 53 is one of the geographically smallest districts in the state. While the center of this relatively small district is in downtown Los Angeles, this is an area where parking and ADA accessibility issues are more severe. In these circumstances, the location chosen for the conduct of the ADEM was not unreasonable as it did not pose any serious accessibility issues for any participants from the district to participate. The complainants alleged that the convener should have asked for a variance to hold the meeting at multiple sites; however, when requesting a variance, the ADEM procedures state:

“Good cause” may include the necessity of traveling very long distances, in hazardous weather conditions, or in heavy traffic through dense population centers.

No evidence was presented to establish “good cause” for a variance in the case of Assembly District 53.

The complainants allege that Mark Gonzalez acted as the “de facto Convener,” and he created a hostile environment through threats, harassment, and intimidation. The CRC reviewed the role of Mr. Gonzalez and the preponderance of the evidence established that he was a very active participant in the ADEM process, but there was insufficient evidence that he functioned in a decision-making role at the ADEM, especially in the time period as to which any challenge would be timely.

The complainants also allege that Mr. Gonzalez interfered with candidates helping voters cast their ballots and also interfered with individuals translating, particularly for Korean Americans. The videos supplied by Mr. Gonzalez, through counsel, appear to corroborate the allegation that Mr. Gonzalez objected to the convener about someone who may have been assisting a voter with a ballot and about someone translating for a voter. There is nothing in the rules that prevents the conduct about which Mr. Gonzalez complained. However, the evidence does not support the allegation that this conduct was threatening or harassing. And there is no evidence of a quantifiable effect on the outcome of the election due to Mr. Gonzalez’s objections.

Finally, the complainants allege that Mr. Gonzalez handled ballots and participated in the counting process, but the preponderance of the evidence does not support this. Rather, the preponderance of the evidence suggests only that Mr. Gonzalez was permitted to review the tally sheets after all the ballots were counted and tallied.
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 achieve the standard necessary to invalidate an ADEM result. The original voting results are affirmed.
2) The CRC will forward all testimony submitted to the CRC to the Rules Committee as they consider revising the ADEM Procedures for 2021, and recommends that the Rules Committee consider making clearer that voters can receive language assistance, and assistance completing their ballots, so long as that assistance is welcome.

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 2, 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 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 Rules Committee by 5 PM on April 14, 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 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