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 74

INTRODUCTION:

On February 1, 2019 Anne Mohr, a candidate for delegate and Executive Board to the Democratic State Central Committee from Assembly District 74, filed a challenge to the Assembly District Election Meeting (ADEM) which occurred on January 26, 2019.

Specifically, Ms. Mohr alleges (in her words):

The decision that permitted top vote getter, and sitting Mayor of Costa Mesa, Katrina Foley the unfair use of her title, Mayor, where she was elected to ADD at the 2019 ADEM. This challenge also calls into question whether or not elected officials should be allowed to participate as candidates in the ADEM election. Furthermore, this challenge also calls into question whether or not elected officials should be allowed to participate and support candidates by forming slates, endorsing candidates, providing lists and sending out mailers before the election in order to support their preferred candidates, and even going as far as, in the case of Katie Porter that arrived with donuts and flyers and campaigned both the outside line as well as inside the voting hall where no campaigning was allowed by other candidates.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

2. Testimony submitted by Dinah Frieden, and Linda Nearing
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. Mohr was submitted on February 1, 2019. The ADEM in AD74 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:

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

Ms. Mohr is both a candidate and voter at the ADEM in AD74. The CRC finds the Ms. Mohr 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.”

In Ms. Mohr’s challenge she alleges that Katrina Foley had an unfair advantage because of the use of her title as Mayor on the ADEM ballot. She also challenges whether elected officials should be able to participate in an ADEM or be allowed to support candidates or form slates. There is nothing in the CDP Bylaws or the ADEM Procedures, which prohibits the use of titles. The CRC notes that even though no rule prohibits the use of titles on ballots, such a use could potentially yield an unfair advantage. However, even if the use of a title on the ballot for Mayor Foley and not for any other candidate was in error, there was no evidence that this error affected the outcome of the election. Thus, it is not appropriate to set aside the result of a vote of 860 Democratic voters based solely on speculation of such an affect.

The complainant also calls into question whether or not elected officials should be allowed to participate and support candidates by forming slates, endorsing candidates, providing lists and sending out mailers before the election in order to support their preferred candidates, and alleging that Congresswoman Katie Porter, brought donuts and flyers and campaigned both the outside voter registration line as well as inside the voting hall where no campaigning was allowed by other candidates.

The CRC notes that the complainant produced no evidence that one group of candidates had exclusive access to an area inside the voting hall where other candidates were prohibited from campaigning. The CRC has repeatedly found that participation by elected officials in the ADEM process is not prohibited, nor is the forming of slates and advocating to voters waiting to sign-in and receive their ballot.

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

“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 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 one would need 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 especially those involving the use of titles on election materials especially ballots.

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 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 14, 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