

August 18, 2017

VIA E-MAIL & U.S. MAIL

Credentials Committee
California Democratic Party
1830 9th Street
Sacramento, CA 95811
(via Email: secretary@cadem.org)

Re: Response to Appeal of Kimberly Ellis

Dear Committee Members:

We are writing on behalf of Eric Bauman in response to the appeal submitted by the Kimberly Ellis campaign on August 7, 2017, of the Compliance Review Commission's (CRC) decision, dated July 26, 2017, upholding the election of Mr. Bauman as California Democratic Party (CDP) Chair. We respectfully request that you deny the Ellis campaign's appeal, for the reasons set forth below.

A. The Ellis Campaign was Given Unprecedented Access to Election Materials and has Failed to Present Evidence to Overturn the Election.

The Ellis campaign has had almost three months and multiple opportunities to present evidence supporting its contentions. Yet, it has failed again and again to provide any factual basis for overturning the results of the election. Mr. Bauman was elected chair by the delegates attending the CDP Convention on May 20, 2017, by a 62 vote margin. The balloting and vote counting was conducted in full-view of representatives of all the candidates. A recount confirming the results was conducted that same evening in the presence of all parties.

Following the election, the CDP provided the Ellis campaign with unprecedented access to the ballots and related election materials. During a four-day period at the end of May, the Ellis campaign had the exclusive right to review the materials and compile information from the ballots and supporting election materials. With all the time and access the Ellis campaign has been given, it has been unable to put forth any specific evidence to support even a plausible claim that the election results should have been different.

B. The CRC Conducted an Independent Objective Audit and Correctly Found that Kimberly Ellis' Challenge was Insufficient to Overturn the Results of the Election.

After the Ellis campaign filed its challenge to the election results, the CRC conducted an exhaustive audit of the election materials and ballots, over the course of 6 days, in the presence of representatives of the three candidates for Chair. Members of the CRC – who were all appointed by prior CDP Chair John L. Burton -- reviewed the credential sign-in sheets, ballot sign-in sheets and the ballots themselves to compare signatures; researched each proxy for eligibility; and researched dues and registration payment information for each delegate.

At the conclusion of its preliminary review, the CRC sought testimony from all affected parties whose ballots raised potential issues during the CRC's review. The CRC also conducted another recount of the ballots in full view of all parties, which again confirmed Eric Bauman as the winner of the Chair election.

On July 22, 2017, the CRC conducted a full hearing of the issues raised by the Ellis campaign. The CRC hearing was attended by representatives of the parties and broadcast to the public via the internet. At the hearing, the CRC reviewed all the issues which members of the CRC preliminarily identified during their review of the election materials. The CRC also considered 152 additional signature challenges lodged by the Ellis campaign (submitted long after the deadline for doing so had passed and all of which involved delegates and/or proxies who voted for Eric Bauman in the Chair election). It is noteworthy that the Bauman campaign *never* has challenged the signatures of *any* voters – including delegates and proxies who voted for Kimberly Ellis. As a result, the issues considered by the CRC were heavily weighted against individuals who supported Eric Bauman.

After a thorough and methodical hearing at which the CRC was advised by its independent counsel, the CRC issued a decision invalidating a total of 47 votes – 25 of which voted for Eric Bauman, and 22 of which voted for Kimberly Ellis. Because of the CRC's impartial determination, the election results were adjusted to reflect a 57 vote margin of victory for Eric Bauman, a net change of only 3 votes. The CRC's decision was based on first-hand evidence submitted by supporters of *both* Eric Bauman and Kimberly Ellis.

The CRC's decision was well-reasoned and consistent with the CDP's by-laws and prior practices -- albeit to the detriment of Mr. Bauman and some of his supporters. In the end, the independent audit conducted by the CRC revealed that the issues raised by Kimberly Ellis' challenge affected both parties equally. Furthermore, the CRC found no evidence of fraud or other nefarious conduct by the Bauman campaign. Consequently, the CRC rejected the Ellis campaign's request to overturn the results of the election, "as the challenger failed to achieve the standard one would need to invalidate the results." (July 26, 2017 CRC Decision, p. 21, no. 7.)

Kimberly Ellis' statements in her Appeal and in the press, indicate that she will not be satisfied with any result other than being declared the winner. Indeed, a New York Times article dated

August 9, 2017, stated; “The party is expected to issue a final ruling on Ms. Ellis’s allegations by Aug. 20; in an interview, she said she would go to court if the party ruled against her.” (“Democratic Fight in California is a Warning for the National Party,” *New York Times*, August 9, 2017.)

The CRC conducted its audit with the utmost integrity and transparency. It left no stone unturned in making the determinations reflected in its 25-page Decision. Therefore, the Credentials Committee should reject Kimberly Ellis’ appeal, and uphold the decision of the CRC and the delegates who cast their ballots in this election.

C. The CRC Properly Determined that it had Jurisdiction to Hear Kimberly Ellis’ Challenge.

The CRC is made up of six experienced members who are well-familiar with the Party’s by-laws and practices. The CRC determined that it had jurisdiction to hear Kimberly Ellis’ appeal under Article II (Membership), Article VI (Executive Board) and Article XIII, Section 9(a)(2) (right to know how ballots cast). The CRC carefully considered this issue, and determined it had jurisdiction over this matter. Kimberly Ellis never challenged the CRC’s jurisdiction prior to this Appeal. She conveniently raises it now while attacking the credibility of the CRC and its lawyers. The Credentials Committee should reject Ms. Ellis’ jurisdictional challenge, and defer to the CRC’s decision on this issue.

D. The CRC Appropriately Resolved the Issues of Dues Payments, Waivers and Registration Fees.

The CRC made difficult, but appropriate, decisions regarding the payment of dues, waiver of dues and payment of registration fees for the Convention. The CRC’s decisions were based on a strict reading of the by-laws, which require the payment of dues or the granting of a waiver to serve as a member of the DSCC. (*See* CDP By-laws, Article II, Section 11.) As a result of the standard adopted by the CRC, the CRC invalidated the ballots of 22 delegates whose dues had not been paid or waived as of the date of registration. While those invalidated ballots disproportionately affected Eric Bauman, we agree that the standard applied by the CRC was objective and fair.

The Ellis campaign argues – without a shred of support – that it “reasonable [sic] believes that the balance of the election could hinge on verification of written waiver requests.” (Appeal, p. 7.) While the CDP has consistently and appropriately refused to provide delegates’ confidential financial information, the CDP’s accounting department nonetheless provided documentation verifying those delegates who satisfied their dues obligations by payment or waiver. Contrary to the implications made in the Ellis’ appeal, the CDP’s by-laws do not require a written dues waiver, nor do they proscribe the manner in which a waiver must be granted. Thus, the CRC properly relied on the financial information regularly maintained by the CDP’s staff in issuing its decision.

E. Binding Arbitration is Inappropriate to Resolve this Matter.


The CDP's by-laws provide no mechanism for referral of an election challenge to an outside arbitrator. While binding arbitration may, at first glance, look like a reasonable way to resolve this dispute, it can result in a long and drawn out process that might well bankrupt the Party and result in ongoing uncertainty at a time when the Party needs to focus its energy and resources on the current recall efforts against its elected state legislators and the 2018 Statewide and Congressional mid-term elections. Further, it would be next to impossible to find a qualified arbitrator with the depth of knowledge and experience possessed by members of the CRC and this committee. These logistical and financial considerations should inform any response to Ms. Ellis' request and recommendation.

F. Conclusion.

The Ellis campaign's so-called "Appeal" seems less an appeal and more a continued attempt to disenfranchise qualified delegates who cast their ballots at the convention. It is further an attack on the credibility of the members of the CRC (appointed by former Chair John Burton), who capably, thoughtfully, and publicly considered and ruled on every issue raised by the Ellis campaign – even going beyond the issues identified by the CRC in its own review. Another costly and drawn-out legal process does a disservice to the voting members of the DSCC – not to mention all California Democrats – and will not provide any more satisfying result for the Ellis campaign. Therefore, we ask the members of the Credentials Committee to deny the appeal, and uphold the decision of the CRC and the Convention delegates.

We thank the members of the Committee for their time and consideration.

Very truly yours,



Stephen J. Kaufman

cc: Members of the Compliance Review Commission (via email: crc@cadem.org)
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