MEMORANDUM

TO: All Interested Parties
FROM: Compliance Review Commission (CRC)
DATE: January 2, 2017
RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO THE STAFF DECISION REGARDING POTENTIAL ADEM CANDIDATE BOPARAI

INTRODUCTION:

On the weekend of January 8-9, 2017 Assembly District Election Meetings (ADEMs) will occur in all 80 Assembly Districts. At each meeting 14 delegates (7 women / 7 men) will be elected, representing the assembly district as a Democratic State Central Committee (DSCC) Member for the 2017-19 term.

Candidates for the ADEM Meetings registered their candidacy on the California Democratic Party’s (CDP) website. They deadline to registered their candidacy was 30-days prior to the meeting in which their election occurred. CDP Staff would verify each candidate’s registration information including: Party affiliation, registered address, and which Assembly District were they registered in. Once verified, a candidate’s name was placed on the website under the district they were eligible to run in. If the CDP staff could not verify an individual, they were notified.

In the case before us, the CDP staff reviewed Mr. Boparai’s ADEM application and notified him that he was not eligible to be an ADEM candidate due to the fact that he was not a registered Democrat as of the candidate filing deadline on December 8, 2016.

DOCUMENTS RECEIVED AND REVIEWED

Documents received and reviewed by the CRC were the following:

1. Appeal letter by Mr. Shergill on behalf of Mr. Boparai on December 28, 2016
2. Response letter by Mr. Shergill on behalf of Mr. Boparai on December 29, 2016
3. Email correspondence between Mr. Boparai’s counsel Mr. Shergill and CDP’s Executive Director Chris Myers

TIMELINESS AND JURISDICTION:

According to CDP Bylaws, Article XII, Section 2a:

“The Compliance Review Commission shall have initial jurisdiction over all challenges and/or appeals arising under Article II (Membership); Article VI
(Assembly Districts and Assembly District Election Meetings); Article VII (Executive Board), Article VIII (Endorsements, etc.), Article X (Charters), Article XI (Special Group Caucuses) and Article XIII (General Policies). The Compliance Review Commission shall have jurisdiction to hear and decide any challenge that is initiated before the 42nd day prior to any meeting of This Committee or its Executive Board.”

(All By-Law references are to the California Democratic Party Bylaws, unless otherwise indicated.)

“All other challenges initiated after the 42nd day prior to any meeting of This Committee or its Executive Board may either be heard and decided by the Compliance Review Commission or referred to either the Standing Committee on Credentials or the Standing Committee on Rules in the discretion of the Compliance Review Commission.”

The initial complaint was filed on December 28, 2016, 1 day after CDP Membership Director Emma Harper informed Mr. Boparai the reason his application was ruled ineligible; the CRC finds this challenge timely.

The CRC has jurisdiction as this matter arises under Article VII (Assembly Districts and Assembly District Election Meetings) and Article XIII (General Policies).

The CRC notes it did not seek testimony from anyone else that could be affected by this challenge and based its decision solely on the challenge filed by Mr. Shergill.

**STANDING:**

According to Article XII, Section 3:

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

Mr. Boparai is currently a registered Democrat, in the district, and was adversely affected by virtue of staff decision to deny his application to run for ADEM delegate. The CRC finds Mr. Boparai has standing as an affected party.

**FINDINGS OF FACT:**

Mr. Boparai did file as an ADEM candidate prior to the candidate filing deadline of December 8, 2016. At the time of the candidate filing deadline Mr. Boparai was not a registered Democrat. As stated in Mr. Shergill’s appeal, Mr. Boparai registered as a Democrat on December 24, 2016.

The main thrust of Mr. Boparai’s challenge as stated by Mr. Shergill is as follows;
“…the filing period was required to be at least December 7 to January 6, 2016. Mr. Boparai registered to vote as a Democrat on approximately December 24, 2016, well before the end of the filing period.”

The December 8, 2016 candidacy filing deadline is noted in several places on the CDP’s website. It is noted in the following: (1) the CDP’s Bylaws, (2) the two most recent Rules Reports, as well as (3) in the ADEM Quick Reference Guide, and (4) Procedures for ADEMs which can be found on the ADEM section of the website. In addition, the practice of requiring ADEM delegate candidates to register in advance of the ADEM has been in place for at least ten years. The references can be found below:

The CDP’s Bylaws, which were amended at the November 2016 Executive Board Meeting, states:

**CDP Bylaws, Article VI, Section 1.a.(3):**

Persons eligible to be candidates for Assembly District representative or Assembly District Representative to the Executive Board shall be all registered Democrats who were eligible to participate as such in the preceding General Election; provided however, that if a person turned 18, or became a United States citizen by virtue of naturalization, after the last day for registration for said election, **execution on or before the end of the filing period referred to in Section 1(i)** of the Article of a legally valid voter registration form showing a residence within the Assembly District shall constitute prima facie evidence of eligibility to participate. (emphasis added)

**CDP Bylaws, Article VI, Section 1.i.:**

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 $20 (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.(emphasis added)

The ADEM Quick Reference Guide (found at www.cadem.org) states:

“Democrats interested in running to be an Assembly District Delegate must file with the State Party by 5:00PM, Thursday, December 8, 2016. The application to file for AD candidates will open Wednesday, November 16, 2016. There is a filing fee of $20.00 to run as an ADEM Candidate, which may be done online.”
4. Who may run for Assembly District Delegate to the Democratic State Central Committee?
The qualifications for running for Assembly District Delegate to the Democratic State Central Committee are the same as those for voting participants in the Assembly District Election Meeting, with four important caveats

- **Candidates must submit their names to the California Democratic Party at least 30 calendar days prior to the Assembly District Election Meeting.**

  **NOTE:** For 2017, the ADEM Application deadline is 5pm on Thursday, **December 8, 2016 at 5 pm.** Candidates should confirm receipt of filing prior to the deadline. The CDP will not be responsible for failed, delayed, unreadable, or corrupted filings whether by hardcopy delivery or electronic filings such as faxes or emails or the editing of candidate statements.

- Candidates must pay a $20 filing fee to the CDP (which can be waived if the candidates declares hardship) (emphasis added)

- Candidates must be a Democrat, registered to vote in the Assembly District by the October 24, 2016 voter registration deadline, unless the candidate turned 18 or was naturalized after the deadline and is registered to vote at the time of candidacy filing

- A candidate does not need to be present to be eligible for election.

Mr. Shergill’s argument that the Bylaws require the allowance of Mr. Boparai’s candidacy and Mr. Shergill’s interpretation that the phrase “filing period 30 days prior” allows for this candidacy disregards the consistent interpretation of that phrase in all the sources that give the phrase meaning.

First of all, to accept this argument would require that the applications of all candidates who filed prior to December 7 would have to be rejected as not being within the “30-day filing window” for which Mr. Shergill argues. This interpretation would eliminate the applications of the vast majority of the over 3000 candidates who properly filed the applications between November 16 and December 8, 2016.

Second, Mr. Shergill claims that his interpretation is the “only” correct interpretation of the Bylaws phrase at issue. However, his argument is inconsistent with the principles of statutory interpretation. One of those main principles is to seek to determine what the drafters (in this case, The Rules Committee, more specifically, the ADEM Subcommittee) meant. Additionally, we look to whether there any documents that cast light of what that meaning was.

There are, in fact many documents that cast such light. The ADEM Subcommittee Report, The Rules Report, and the EBoard Report, as noted above. But the main document is in fact, the Procedures, which was drafted at essentially the same time as the Bylaws amendments, and was meant, at its core, to implement the meaning of the Bylaws, as most recently amended.

**Procedures for Assembly District Election Meetings** (which can be found at [www.cadem.org](http://www.cadem.org)) on pages 5-6 states:
Who May Run for Assembly District Delegate to the California State Central Committee

The qualifications for running for Assembly District Delegate to the California State Central Committee are the same as those for participating in the Election Meeting, with four important caveats: 1) the candidate must submit their names to the CDP at least 30 calendar days prior to the Election Meeting to be checked for eligibility, 2) the candidate must pay a $20 filing fee to the CDP (which will be waived if the candidate declares a hardship); and 3) the candidate must be registered to vote in the Assembly District by the October 24, 2016 voter registration deadline, unless the candidate turned 18 or was naturalized after the deadline, and is registered to vote at the time of candidacy filing; and 4) a candidate does not need to be present to be eligible for election. Prospective candidates should use Form B to apply to be a candidate. (emphasis added)

For 2017, the deadline is 5 pm on Thursday, December 8, 2016 (for meetings taking place on January 7) or on Friday, December 9, 2016 (for meetings taking place on January 8). Candidates should confirm receipt of filing prior to the deadline. The CDP will not be responsible for failed, delayed, unreadable, or corrupted filings whether by hardcopy delivery or electronic filings such as faxes or emails.

The Procedures, cited above, make crystal clear, with no ambiguity whatsoever, that the candidate filing deadline ENDS 30 days prior to the ADEM. The Procedures, and the deadlines contained therein, were all conveniently available to all candidates on the CDP website. In addition, the Party sent out numerous communications regarding the filing deadline.

The reason for deadline to be 30 days prior to the ADEM is an eminently practical one: A deadline must be established in order for the CDP staff to verify the registration status of over 3,000 applicants and create ballots for all Assembly District Election Meetings occurring in at least 80 different locations throughout California. And as noted above, the deadline 30 days prior to the ADEMs has been in effect for many previous years.

ORDER:

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

1) The CRC finds that Mr. Boparai was not a registered Democrat at the close of candidate filing on December 8, 2016 and thus is ineligible to be an ADEM candidate.

2) The CRC finds that the reference in the Bylaws to, “a filing period 30 days prior to the biennial Assembly District Election Meetings” created a deadline for candidacy filing 30 days prior to the ADEM and not a filing window starting on that day and ending on the day of the ADEMs.
3) The CRC finds Mr. Shergill’s assertion that a candidate has up until January 6, 2017 to register as a Democrat is illogical and has not merit. A deadline was established to allow for the verification of registration status of candidates and the creation of ballots.

4) The CRC notes that Mr. Boparai was the only candidate to run afoul of the deadline and to claim that it does not apply to him. Additionally, as noted above, to hold otherwise would mean the vast majority of other candidates are disqualified for filing too early.

5) 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 XI, section 6(a).) Thus, any appeal must be filed on or before January 14, 2017 with the Sacramento office of the California Democratic Party, and shall be an appeal to the CDP Rules Committee at their meeting in Sacramento during the weekend of May 19-21, 2017.

Please note that per CDP Bylaws, Article XI, Section 7b, 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 January 26, 2017, 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 an appeal, if any, is heard by the Rules Committee.

Respectfully submitted by a 6-0 vote of the members of the CRC:

Kathy Bowler, Co-Chair, Rules Committee
Lois Hill, Co-Chair, Credentials Committee
Coby King, Co-Chair, Rules Committee
Lara Larramendi, Co-Lead Chair, Credentials Committee
Garry S. Shay, Lead Chair, Rules Committee
Michael Wagaman, Lead Chair, Credentials Committee