TO: All Interested Parties
FROM: Compliance Review Commission (CRC)
DATE: February 13, 2018
RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO THE CHALLENGE FILED BY MR. PAT HARRIS RELATING TO THE U.S. SENATE ENDORSEMENT CONTEST

INTRODUCTION:

On February 2, 2018, Mr. Pat Harris filed a challenge regarding the decision of the Statewide Officers to not include Mr. Harris on the endorsement ballot, due to a determination he didn’t reach the threshold to be considered viable.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

1. Challenge submitted by Mr. Harris on February 2, 2018
2. Additional testimony submitted Mr. Harris on February 12, 2018
3. Testimony submitted by the CDP Statewide Officers and Mr. David Atkins on February 12, 2018

TIMELINESS AND JURISDICTION:

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, 2017, unless otherwise indicated.)

The filing by Mr. Harris was submitted on February 2, 2018 challenging the January 31, 2018 memorandum from the Statewide Officers regarding the decision on candidate
viability in the U.S. Senate race was within 7-days and thus the challenge is considered timely.

Article XII, Section 2a states:

“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.”

The CRC has jurisdiction under Article VIII (Endorsements) and Article XIII (General Policies).

STANDING:

According to Article XII, Section 3:

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

Mr. Harris is a candidate for office who requested (filed and paid fee) the endorsement of the California Democratic Party and thus has standing to bring this challenge as he was adversely affected.

FINDINGS OF FACT:

Mr. Harris requested the endorsement from the CDP. As part of the endorsement process for statewide candidates, each candidate must be deemed viable and eligible to seek the endorsement.

The Convention Rules state:

Candidates seeking statewide endorsement must submit a 250-word statement on why they should be the eligible to be endorsed. The Chair, in consultation with the Statewide Officers of This Committee, will determine which Democratic candidates for Statewide Offices are viable and eligible to seek our endorsement. (2018 CDP State Convention Rules

A memo from CDP staff “Statewide Candidate Endorsement Registration Process and Viability Assessment for California Democratic Party Endorsement Consideration Eligibility in the 2018 Elections” dated December 2017 further defined viability in four specific methods.
Candidate Viability Assessment Methods

As noted above, a statewide candidate must meet the requirement of one of the four methods. Below are the four methods:

1. **DSCC Delegate Petition** – Submit a petition signed by 300 Democratic State Central Committee (DSCC) Members (state delegates) to the CDP Office by the CDP candidate endorsement consideration registration deadline;

2. **Public Office Elected** – Have been elected to a public office (federal, state, or local/municipal public office, excluding Party County Central Committees) representing a population of at least 50,000;

3. **Polling** – Meet a polling threshold of 6% or more support according to independent, nonpartisan public poll within the last six (6) months from the date of the CDP candidate endorsement consideration registration deadline; or

4. **Fundraising** – Has raised a total amount of at least $250,000 for the public office sought by the date of the CDP candidate endorsement consideration registration deadline.

The CDP Statewide Officers’ testimony stated:

“...it was decided that "raised" indeed meant the word's common-sense and natural language definition: bringing in money from other sources. This discussion also happened without candidates' names attached. Our reasoning is as follows:

"Raised" has a common sense meaning. If a reasonable layperson were to define fundraising as an activity, they would not answer "write yourself a check". **For fundraising to be a test of viability, the test must be a candidates' ability to get other people to give them money for their campaign.** The level we set, $250,000, is well below the amount reasonably needed to run a successful statewide campaign, but our emphasis here is on inclusion, not exclusion.

However, if someone cannot actually raise that very bare minimum amount from the community, they are not demonstrating viability. **Stretching the definition of fundraising to include self-funding is anti-democratic.** Wealthy individuals already enjoy numerous advantages and benefits in our political system. We should not add one more by allowing a candidate to meet the threshold of viability for our endorsement because they have the means to invest personal wealth. What we would be saying to the broader Democratic community and progressive movement is that having up to $250,000 of personal wealth to spend is co-equal to gathering support from delegates or having a background in elected office. That's wrong on its face.”

Mr. Harris in testimony supporting his challenge states,

“In the end, it is just basic fairness. The four criteria were laid out in the rules sent to our campaign. The fourth criteria was having “Raised “ over “250,000 . Nowhere in the rules or bylaws did it state that funds raised would not include self-funding even though the commonly accepted definition and the FEC definition do include “Raised” to include self-funding. If the intent of the party is to eliminate self-funding from the amount ‘Raised”, then the solution is to make that clear in the rules for the 2020 election. But it would be grossly unfair to
penalize me for interpreting the criteria in a manner that is consistent with common usage and the FEC definition.”

**Findings and Order:**

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

1) The CRC finds Mr. Harris shall be eligible to participate in the CDP Endorsement process.

2) The CRC finds that rules of exclusion when articulated should be specific and not vague; and when vague, should be interpreted in favor of the one who would be impacted. The harm to others in this case of including Mr. Harris is minimal as the record of the vote is public, while the harm to Mr. Harris is significant if not included when voters cast their ballot.

3) The CRC finds that the officers, in their opposition, spelled out a reasonable standard for determining viability, including concluding giving yourself money does not equal raising it. Had such a standard been articulated earlier, or had they not published any standards at all, the CRC would not have grounds to intercede. However, as they failed to do either, the CRC must weigh the adopted convention rules against Article XIII.

4) The CRC finds while under Article XIII we generally consider fairness and when all other factors are equal erring on the side of inclusion, candidates have and should be held to a higher standard than voters.

5) In this case, the key is that a reasonable argument can be made that the candidate met the requirements of the convention rules as further specified by the published viability assessment methods, and thus the Bylaws emphasis on inclusiveness should govern.

6) The ruling of the CRC is not a determination as to the actual viability of Mr. Harris. It is simply a determination of whether the standard under the published criteria were reasonably met.

7) As noted in the preliminary order, the CRC instructs CDP staff to include Mr. Harris on the statewide ballot in the following order: Kevin de Leon; Dianne Feinstein; Pat Harris; and No Endorsement.

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 February 25, 2018 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 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 March 09, 2018, 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,

Kathy Bowler, Co-Chair, Rules Committee  
Coby King, Co-Chair, Rules Committee  
Lara Larramendi, Co-Lead Chair, Rules Committee  
Garry S. Shay, Lead Chair, Rules Committee  
Keith Umemoto, Co-Chair, Rules Committee  
Michael Wagaman, Lead Chair, Rules Committee