

MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: June 25, 2017

RE: **INTERIM ORDER OF THE COMPLIANCE REVIEW COMMISSION (CRC)
RELATING TO A CHALLENGE TO THE CDP OFFICER ELECTION FOR
CHAIR POSITION AT MAY 19-21, 2017 STATE CONVENTION**

INTRODUCTION:

The annual California Democratic Party State Convention took place over the weekend of May 19-21, 2017. At the Convention statewide officer elections were held for the positions of Chair, Male Vice Chair, Female Vice Chair, Secretary and Controller on May 20, 2017. In the Chair election the final results as reported by the CDP were: Eric Bauman 1,493, Kimberly Ellis 1,431, and Lenora Lenore Albert-Sheridan 7. Kimberly Ellis (Challenger) filed a formal challenge to the results on May 27, 2017. That challenge is now before the Compliance Review Commission (the CRC).

DOCUMENTS RECEIVED AND REVIEWED

Documents received and reviewed by the CRC were the following:

1. Letter by challenger requesting review of materials (undated, but believed to be from May 21, 2017).
2. Challenge letter by Challenger dated May 27, 2017.
3. Preservation letter by Tidrick Law Firm dated May 30, 2017.
4. Email from Chris Myers dated June 1, 2017.
5. Request for extension by Challenger dated June 5, 2017.
6. Email from CRC dated June 6, 2017.
7. Formal challenge by Challenger dated June 8, 2017.
8. Response by Lenore Albert dated June 23, 2017.
9. Response by Eric Bauman dated June 23, 2017.

These materials are available at <http://www.cadem.org/our-party/compliance-review-commission/>

In a previous order, the CRC set a deadline of June 23, 2017 for interested parties to submit testimony/evidence. In addition to the documents by candidates referenced above, the CRC also received over 80 responses from non-candidates prior to that deadline. While the CRC has not had the opportunity to review all these documents prior to issuing this order, they will be reviewed prior to issuing any final orders as to the challenge.

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

(All By-Law references are to the California Democratic Party Bylaws, as amended through May 18, 2017, unless otherwise indicated.)

The original complaint challenging the results of the May 19-21, 2017 convention was filed on May 27, 2017; thus, the CRC finds this challenge 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 XII (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 by-laws provide that The Chair is an automatic member of both this Committee and its Executive Board and the CRC has jurisdiction arising under Article II (Membership), and Article VI (Executive Board). In this case, while the Challenger was a member of the DSCC at the time of her election, that membership expired at the close of the Convention, and thus her continuing membership is contingent on whether she was the election. Further, the CRC also has jurisdiction over Article XIII, Section 9(a)(2) of which prohibits secret ballots and creates a right to know how any official Democratic Party body cast their ballot, including an implicit right to know that vote was cast in a valid manner. In addition, the CRC by practice has historically had jurisdiction over, and resolved, matters related to the conduct of elections. Therefore the CRC finds it has jurisdiction.

STANDING:

According to Article XII, Section 3:

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

The Challenger was a candidate in the Chair election, and would therefore be impacted by the proper conduct of the election and its resulting successful candidate. Therefore the CRC finds the Challenger has standing.

PRIOR PRECEDENT:

Article XII, Section 5 of the CDP bylaws states:

“The Compliance Review Commission shall have the power and authority to take such actions as are necessary to provide a fair and just remedy including, but not limited to, the holding of new elections.”

Under past precedent, the CRC has overturned the results of an election when the challenger has 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.

For example, in 2015 a challenge was filed to the results of the Assembly District Election Meeting (“ADEM”) for the 43rd Assembly District. The CRC decision on this challenge reads in part:

“There are four main allegations the challengers are presenting.

1. Multiple voters cast multiple ballots
2. Ineligible voters casting ballots – fake names or addresses
3. Failure to enforce eligibility requirements
4. Other factors including location issues and convener bias”

In rejecting the challenge the CRC concluded in part:

“As to the first three allegations, the CRC unanimously found the challengers failed to provide any specific challenge to a specific voter and did not exhaust all remedies onsite at the time of the meeting.”

After the rejection, challengers filed an appeal citing specific names of individual voters who were alleged to be ineligible to vote. In order to verify the challengers’ claims, at the direction of the CRC, CDP staff checked and verified all participants and concluded that 117 ineligible voters participated. In addition 107 participants could not be verified as eligible or ineligible.

As ADEM elections are conducted using secret ballots, it was not possible for the CRC to determine for whom the 117 ineligible voters cast their ballots. As a result, the CRC vacated the declared results and ordered a new election for the 12 DSCC slots and 1 Executive Board slot where 117 ineligible votes could have affected the outcome, while allowing the declared results to stand for the 2 DSCC slots where 117 ineligible votes could not have affected the outcome.

FINDINGS OF FACT:

As noted previously, the Challenger filed a challenge with the CDP on May 27, 2017. The body of the challenge stated in its entirety:

Pursuant to Article XII of the By-Laws & Rules of the California Democratic Party, this letter serves to formally file a challenge to the election results of the 2017 California Democratic Party Chair (the “Challenge”). We request an

opportunity to meet and confer with your organization in connection with the Challenge early next week. If you have any questions, comments, and/or concerns regarding this notice please contact my campaign representative [*name and contact info redacted*]. Thank you for your time and consideration in this matter.

In response, on June 1, 2017, in consultation with CRC Members Garry Shay and Michael Wagaman, CDP Executive Director Chris Myers responded in part

Your challenge was filed within 7-days of the election, but did not provide any factual basis for the challenge. In consultation with the Credentials Committee Lead Chair Michael Wagaman and the Rules Committee Lead Chair Garry Shay, and in the interests of fairness and notice, the Compliance Review Commission will grant an additional 7-days to submit the factual basis for the challenge.

On June 5, 2017, the Challenger responded requested an extension to the June 8, 2017 deadline to submit the factual basis for the challenge. In its rejection of the request for an extension, the CRC responded on June 6, 2017 in part:

“The CRC again requests the Challenger submit any factual basis supporting the challenge based on documents reviewed to date. The CRC specifically requests that the Challenger submit information on any specific ballots they are challenging and the reason for the challenge. The CRC stipulates the Challenger’s belief that further factual basis for the challenge may be created through a review of documents previously reviewed and/or additional documents not previously reviewed as referenced in the letter of June 5, 2017.”

In their updated challenge dated June 8, 2017, the Challenger states that they reviewed ballot materials during the following periods:

- May 23- 9:30 AM to 5:30 PM
- May 24- 9:30 AM to 5:30 PM
- May 25- 9:30 AM to 4:45 PM
- May 30- 9:30 AM to time not listed

This response also states:

“Campaign is unable to provide a list of specific ballots due to our inability to finish the review process, as halted by the CDP. Without the requested documents outlined in the June 5 letter, the campaign is unable to comply with the CRC’s request. As it stands now, the campaign would need to question a minimum of 300 ballots, with varying degrees of concern for each ballot.”

On June 13, the CRC sent a notice to all candidates for the office of Chair that read in part:

The State Party has received a formal challenge on Thursday, June 8, 2017 from the Kimberly Ellis Campaign to the Statewide CDP Officer Elections for the Chair position which occurred at the State Convention May 19-21, 2017. As an

interested party, you are welcome to submit any written testimony/evidence to either support or refute these challenges/responses.

Responses were received from the two other candidates for Chair, Lenore Albert and Eric Bauman, along with other non-candidate interested parties, but no additional documentation was submitted by the Challenger.

The Challenger does not allege any ballots were improperly counted for the wrong candidate but rather that certain ballots should not be counted at all. If 55 ballots cast for the first place candidate were disqualified, no candidate would have reached the greater than 50% margin required to avoid a runoff.

While the challenge does not cite any specific ballots being challenged, it states the review of ballot materials by the campaign found six categories of “weaknesses and inadequacies in the general administration of the election”, specifically:

- “1. Verification of Identity
2. Verification of Fiscal Eligibility
3. Signature Discrepancies
4. Duplicate Voting
5. Proxy Eligibility
6. Anecdotal Indications of Inaccuracy/Illegitimate Ballots”

INTERIM ORDER:

The challenge states over 300 ballots are potentially questionable. However, the challenge also states it is unable to provide any specific information on these ballots, even with a caveat any such information would be preliminary and not comprehensive.

The CRC is unclear why the Challenger cannot provide at least preliminarily factual information to support its general claims after having at least four days to review election materials, particularly after the CRC previously stipulated to the Challenger’s belief that further factual basis for the challenge may be created through a review of documents. For example, the challenge states:

There are approximately 200 ballots that have signatures that don’t match credential sign-in signatures or are missing signatures.

However the challenge provides no examples of signatures it believes do not match for the CRC to consider. The lack of such information severely inhibits the ability of the CRC to weigh the challenge and make determinations as to future findings and orders. No member of the CRC can remember a previous challenge where the Challenger stated they had identified concerns with specific ballots and then refused to provide information on the ballots in question.

While the filings of both Ms. Albert and Mr. Bauman make reference to a press release from the Ellis campaign dated June 21 which cites specific ballots the campaign questions, this information has not been submitted by the Challenger for the

consideration of the CRC. To date the Challenger has submitted no specific ballots it questions to the CRC.

Finally, the challenge requests that the CRC order an independent outside review of election materials. Such a request is unprecedented, is not contemplated by the Party bylaws, and, as noted previously, the Challenger has not provided any specific information on potentially questionable ballots to justify such a request.

Under these unprecedented circumstances, the CRC must exercise its power and authority and order such steps necessary to provide a fair and just remedy, including endeavoring to reach a timely resolution to the challenge.

Therefore, based upon the above facts and the Bylaws of the CDP, the CRC makes the following interim Findings and Orders:

- 1) To generate information helpful to the CRC in its future deliberations, representatives of the CRC and members of the Credentials and Rules Committee, as designated by the CRC, in conjunction with CDP staff shall conduct a review of election materials relating to the election of CDP Officers at the May 19-21, 2017 State Convention.
- 2) This review shall include all ballots and be limited to the following issues:
 - a. Payment, or waiver, of required fees and dues.
 - b. Verification of signatures, including but not limited to a review of credential sign-in sheets, ballot sign-in sheets, and ballots as necessary.
 - c. Multiple ballots being cast by one individual, including any voided ballots.
 - d. Validity of proxies.
- 3) Representatives of all candidates for Statewide Officer may observe the review, but shall not be permitted to question, participate in, or otherwise interfere with the process. Observers shall not be permitted to copy, duplicate or take pictures of ballot or election materials, staff, Commission members, or Committee members but shall be allowed to take notes. CRC reserves the right to limit the number of observers as necessary to allow for the orderly conduct of the review.
- 4) The review shall be conducted on a timeline determined solely by the CRC and shall not be influenced or delayed by the availability of observers on behalf of any candidate. All candidates for Statewide Officer shall be provided advanced notification as to times when the review shall be occurring, including at least 48 hours' notice before the first day of the review and shall be informed at the conclusion of each day of any subsequent review of materials including the day and time when materials will be reviewed, at least 12 hours in advance of such review.
- 5) No persons whose employment with CDP began after May 18, 2017 shall be permitted to participate in an official capacity on behalf of the CDP in the ordered review or in any other function of the CRC.
- 6) Olson, Hagel and Fishburn, LLP shall serve as legal counsel for the CRC as relates to this challenge and acting at its sole discretion.
- 7) Any decisions to count or reject a ballot during the review shall be made in writing on a form prescribed by the CRC and shall be preliminary in nature. Upon completion of the review, copies of these forms shall be posted online. Upon posting of the forms interested parties will be allowed five days to submit

- additional written testimony, evidence and arguments to the CRC. Such written testimony or evidence shall be limited to matters arising out of the review process.
- 8) Any final determination to count or reject a ballot shall be made by the full CRC after the close of this period.
 - 9) While all members of the CRC are encouraged to participate in all days of the review, the inability of a CRC member shall not preclude that member from reviewing the results of the ballot review or from participating in further deliberations of the CRC.

Consistent with past practice, the review shall include all ballots. The scope of the review is limited to issues described under the “Initial Findings” of the challenge where the CRC believes a review of election materials can reasonably be expected to generate additional information for the CRC to consider.

The challenge raises broader issues relating to the administration and conduct of the election under both “Verification of Identity” and “Anecdotal Indications” sections of the “Initial Findings.” The challenge also includes other issues in other parts of its filings. The lack of the inclusion of these issues in the interim order does not reflect any determination by the CRC as to any of these issues.

The CRC reserves the right to modify the scope of the review or order additional review, but shall do so only by written order. The CRC notes that nothing in this interim order shall preclude the additional review of election materials either by the CRC, the Challenger, other interest parties, or a third party, should it be ordered at a later date.

Please note that neither the filing of an appeal or this interim order stays the declared results of the election.

Appeal of this interim 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 July 7, 2017 with the Sacramento office of the California Democratic Party, and shall be an appeal to the next meeting of the CDP Credentials Committee, regularly scheduled, or otherwise.

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 Credentials by 5 PM ten days prior to the next scheduled meeting of the CDP Credentials Committee. 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 an

appeal, if any, is heard by the Credentials Committee, and, depending on the outcome of any such hearing, may continue to exercise appropriate jurisdiction thereafter.

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