MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: January 20, 2019

RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO A CHALLENGE FILED BY MR. KATZ AND MS. FOX

INTRODUCTION:

On November 17, 2018, Mr. Howard Katz and Ms. Suji Fox, submitted a challenge to the CRC relating to the Riverside County Democratic Central Committee (RCDCC) and the actions that took place at their meeting on November 12, 2018.

The Challenge concerns allegations that:

A. The procedure used for the introduction and approval of a revised set of bylaws for the RDCCC was invalid, due to a failure to actually read and debate each Article individually.
B. Certain individuals elected (or “nominated”) for the 2016 – 2018 term should not have participated and voted, and
C. The procedure used for the election of officers was invalid due to a failure of the Executive Board of the RDCCC to adopt rules for the election.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

2. Testimony in support submitted by Suji Fox.
3. Testimony in opposition by Tisa Rodriguez and John Kopp.
4. RCDCC Bylaws
5. CDP Bylaws

T IMELINESS:

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 Mr. Katz was submitted on November 17, 2018, and the challenge filed by Ms. Fox was submitted on November 19, 2018, both are within seven (7) days of the actions taken by the RCDCC on November 12, 2018, thus the challenges are timely.

STANDING:

According to Article XII, Section 3:

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

Mr. Katz and Ms. Fox are members of the RDCCC and therefore are adversely affected, should the bylaws they oppose and officer election they challenged is upheld.

JURISDICTION

Article XII, Section 2a states:

“The Compliance Review Commission shall have initial jurisdiction over all challenges and/or appeals arising under these Bylaws.”

Jurisdiction exists by virtue of CDP, Article XII, Sections 5, 6, and 7:

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.

Section 6. TIMELY PUBLICATION OF SELECTION PROCEDURES
Publication of these procedures shall be done in such fashion that all prospective and current members of the State Democratic Party will be fully and adequately informed of the pertinent procedures in time to participate in each selection procedure at all levels of the Democratic Party Organization.

Section 7. TIMELY PUBLICATION OF SELECTION QUALIFICATIONS
The Democratic Party shall publicize fully and in such a manner as to assure notice to all interested parties a complete description of the legal and practical qualifications of all officers and representatives of the State Democratic Party. Such publication shall be done in timely fashion so that all prospective candidates or applicants for any elected or appointed position within the State Democratic Party will have full and adequate opportunity to compete for office.
The adoption of bylaws setting forth procedures, and the election of officers, fall under these provisions.

**FINDINGS:**

**Revision of Bylaws**
There is a distinction drawn in Robert’s Rules Newly Revised 11th ed., (hereinafter “RRONR 11th ed.”) between the adoption of Amendments to Bylaws, and the adoption of Revised Bylaws, the difference in applying each procedure determined by the extent of the amendment.

Both sides appear to agree that this was a revision, and not an amendment.

Challengers rely primarily on Sections 28 and 57 of RRONR 11th ed., which in pertinent part states (emphasis added):

**RRONR 11th ed., Section 57:**
“PROCEDURE OF CONSIDERATION. A revision of bylaws or a lengthy amendment involving more than one section should be considered seriatim as describe in section 28 [RONR §28. CONSIDERATION BY PARAGRAPH OR SERIATIM, page 276].

**RRONR 11th ed., Section 28:**
“CONSIDERATION BY PARAGRAPH OR SERIATIM [page 276]: A report or long motion consisting of a series of resolutions, paragraphs, articles, or sections that are not totally separate question can be considered by opening the different parts to debate and amendment separately, without a division of the question. If the chair does not follow such a course of his own accord, and the assembly wishes to do so, the procedure can be ordered by adopting a motion to Consider by Paragraph (or to Consider Seriatim). Several distinct main motions on different subjects cannot be considered seriatim if a single member objects.

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“CASES IN WHICH THE CHAIR NORMALLY APPLIES THIS METHOD.
In adopting a set of bylaws or the articles of a platform, consideration by paragraph is the normal and advisable procedure, followed as a matter of course unless the assembly votes to do otherwise. The chair, on his own initiative, can apply this method to any elaborate proposition susceptible to such treatment, unless he thinks the assembly wishes to act on the question as a whole; or the manner of consideration can be settled by unanimous consent. Should the chair neglect this, a member can move “that the resolution be considered by paragraph” (or “seriatim”).

“MOTION TO CONSIDER AS A WHOLE. If the chair suggests consideration by paragraph and a member feels that time could be saved by acting on it as a whole, the member can move “that it be considered as a whole.” This motion is governed by rules identical to those for Consideration by Paragraph or Seriatim.

Interestingly the challengers notes the following in that portion of his challenge concerning the Election of Officers:
“The Proposed Bylaws referenced it the first procedure had been approved earlier in the meeting, and, therefore, were in effect when the election took place.”

The CRC declines to rely on this as an admission, instead wishing to decide this matter on the merits; but warns those who file challenges that facts admitted in the documents submitted could form the basis of a CRC Decision and care should be used in drafting.

It is noted that Section 57 of RRONR 11th ed. uses the permissive term “should” when discussing how a Revision to Bylaws are to be considered. It does not use either the mandatory term “shall” (there is some debate if even that word is truly mandatory) or “must”. Section 57 then references Section 28 of RRONR 11th ed., which specifically allows for the body to adopt by considering the document as a whole, which both sides agree was the motion that was made and adopted and followed by the RDCCC in adopting a revised set of bylaws.

Mr. Katz’s objections to not actually reading aloud and considering seriatim the proposed Revised Bylaws, while admittedly founded on a belief supported by Section 57 of RRONR 11th ed., that the best method for doing so is actually reading and considering the proposal Article by Article, ignores the fact that Section 28 of RRONR 11th ed., which is specifically referred to as the example of how to consider such matters in Section 57, also provides for circumventing that very procedure by the method employed by the RDCCC in adopting the Revised Bylaws. This is supported by the allegations of the parties and the draft minutes of the meeting of 11/12/18.

**Participation of two ex-officio members**

Challengers alleges that certain individuals, Jorge Lopez (2016 AD 67 nominee), and Tim Sheridan (2016 CD 42 nominee) should not have participated and voted. Whether or not the old bylaws allowed for these individuals to participate and vote would not have affected the outcome in terms of the vote count as the vote to adopt was well in excess of the two-thirds vote required. The vote to adopt was 34 – 7. Assuming these two voted to adopt, if they were disqualified, the result would have been 32 – 7, which is 82%. To the extent the challenge is predicated on the fact that Mr. Lopez made the motion to adopt the Revised Bylaws, the CRC also notes that the Draft Minutes of the Meeting of 11/12/18 failed to disclose any challenge to the participation of either Mr. Lopez or Mr. Sheridan despite their evident participation in the meeting. Thus, there was no exhaustion of local administrative remedies as neither the presiding officer nor the body was afforded an opportunity to address the issue.

**Election of Officers**

The challenge to the election of Officers is predicated on the Executive Board of the RDCCC allegedly not adopting a set of Rules to govern the election.

However, the Executive Board did approve them at their 10/22/18 meeting. [NOTE: If the challenge is based on it not being the Executive Board constituted under the Revised Bylaws, CRC notes that the Executive Board is a continuing body, at least during the terms...
of the central committee, though its membership may have been changed by the adoption of a Revised set of Bylaws, that does not negate the actions of the previously constituted Executive Board at its 10/22/18 meeting.]

Additionally, there is no indication of any objection to the Rules utilized at the time of the meeting, nor any challenge to any ruling of the chair in utilizing these rules.

**ORDER:**

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

1) The CRC finds that the RCDCC properly waived the oral reading of the Bylaw revisions and denies the challengers interpretation of Roberts Rules of Order (RONR) in this challenge.

2) The CRC finds the challengers never challenged or objected to the draft minutes in any of the documents submitted by them; the draft minutes do not show there was an objection to the participation of Mr. Lopez and Mr. Sheridan, and even if there was a sustained objection, the participation of the two individuals wouldn’t change the outcome, thus the challenge is denied.

3) CRC denies the challenge to the election of officers based on a finding of compliance with the procedures required and the lack of exhaustion of administrative remedies.

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 1, 2019 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 February 13, 2019, 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. Member Laramendi did not participate in the meeting, but concurs with the decision.

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