MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: March 25, 2019 (amended on 03/26/19)

RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO THE AFRICAN AMERICAN CAUCUS

INTRODUCTION:

On February 15, 2019, Chef Basil Kimbrew challenged the denial of his candidacy for the position of Vice-Chair of the California Democratic Party African-American Caucus (AAC) due to his purportedly missing an AAC filing deadline. Mr. Kimbrew also requested clarification of the AAC’s officer election procedures.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

3. AAC Bylaws.

TIMELINESS:

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. Kimbrew was submitted on February 15, 2019, which was within seven (7) calendar days after the alleged violation which occurred on February 13, 2019 thus the challenge is timely.
STANDING:

According to Article XII, Section 3:

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

As Mr. Kimbrew is a member of the AAC and was denied the opportunity to run for the position of Vice-Chair of the AAC, he was adversely affected by the denial, and, so, the CRC finds that he has standing.

JURISDICTION:

Article XII, Section 2a states:

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

The CRC has jurisdiction under Article XIII (General Policies) Sections 5-7 which states:

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.

FINDINGS:

In the challenge, Mr. Kimbrew alleges that he was informed by Darren Parker, Chair of the AAC, that Mr. Kimbrew had missed a February 13, 2019, deadline to submit his candidacy for the position of Vice-Chair of the caucus. Mr. Kimbrew states that he provided notice of this candidacy before the deadline as outlined in the draft AAC Bylaws posted on the CDP website at the time he provided such notice.
The CRC finds that the draft AAC Bylaws upon which Mr. Kimbrew relied were not, in fact, the AAC Bylaws. As further explained below, they were mistakenly posted based upon the belief that the AAC had adopted new By-laws at its meeting at the November 2018 CDP Executive Board meeting, but in fact had not done so. These mistakenly posted By-laws were removed from the website shortly after Mr. Kimbrew’s notice to the AAC of his candidacy. The currently effective AAC Bylaws are the Bylaws posted on the CDP website as of the date of this decision and were last amended on May 20, 2017, to modify the dues structure.

As part of a recertification process that applies to all CDP caucuses, the AAC had been notified by the CDP Rules Committee prior to its November 2018 meeting that its Bylaws did not sufficiently set forth caucus election procedures. However, the AAC has not yet finalized new Bylaws with sufficient procedures nor has it otherwise promulgated and disseminated written election procedures to its members and other interested persons. In these circumstances, the CRC finds that the AAC did not adequately publicize its election procedures required by the notice requirements contained in Article XIII of the CDP Bylaws. To be compliant, the Bylaws would need to satisfy the following requirements:

- Article XIII, Section 5 of the CDP Bylaws require that the procedures for the selection of various types of party officer (including caucus officers), give a full description of the legal and practical procedures for selection.
- Article XIII, Section 6 requires that notice of the procedures be in a fashion such that all perspective and current members of the party are informed. This is normally done by a Caucus including explicit election procedures in its Bylaws and posting those Bylaws online on the CDP website.
- Article XIII, Section 7 requires the publication to be in a timely fashion so that all perspective candidates or applicants would have a full and adequate opportunity to compete.

Although it appears that the Chair of the AAC was forthcoming and tried to be helpful to at least one Caucus member who contacted him with questions about the election process, the absence of explicit written election procedures and the failure to disseminate such procedures prejudiced Mr. Kimbrew and had the potential to prevent others from seeking election.

In addition, the AAC’s decision to base the cutoff date for officer candidate self-nomination on a hypothetical date when the Winter Executive Board meeting would have adjourned, had there been one, introduced additional uncertainty to the timeline/process.

While non-compliant with Article XIII for the reasons set forth above, the CRC finds no evidence that AAC officers deliberately violated CDP Bylaws in their attempt to conduct the election in a manner consistent with past practices.

AAC Secretary Mister Phillips alleged the erroneous posting of the draft AAC bylaws to the CDP website and the timing of the posting of CRC submissions demonstrated intentional inference by the CDP staff in the AAC Chair’s race. The CRC finds that while the erroneous posting of the draft AAC bylaws did contribute to the misunderstanding of the election qualification cutoff date underlying this challenge, there is no evidence of malice or
intentional interference or any other deliberate effort by CDP staff to interfere with the election process.

**ORDER:**

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

1) The CRC upholds the challenge and finds that the AAC’s officer election process should be, and hereby is, halted and that the candidate qualification process should be, and hereby is, vacated.

2) The absence of explicit, written election procedures and the failure to disseminate such written procedures to members of the Caucus and other interested persons must be remedied. Accordingly, the Caucus is directed to promulgate and disseminate such procedures. Because the absence of such procedures from the AAC Bylaws is also an obstacle to full re-certification of the AAC, the CRC strongly urges the Caucus to include the procedures in its Bylaws.

3) The AAC clearly wishes to go forward with its election at the May Convention. And the CRC believes that it is imperative that the election occur by no later than the August Executive Board, especially inasmuch as the incumbent officers will continue to possibly serve in the interim despite the expiration of their otherwise applicable terms. To assure that the process takes place according to this timeline, the CRC hereby:
   a. Appoints Laurence Zakson, Co-Chair, CDP Rules Committee, to assist the AAC Chair and any other relevant Caucus officers in drafting compliant procedures.
   b. Directs the AAC Chair to call, by no later than April 10, 2019, and hold by no later than April 25, 2019, a special meeting to adopt these procedures. This will allow the election to be held at the May Convention and create a 35-day period within which a new candidate qualification process can occur and candidates can campaign. The CRC further directs the AAC Chair, immediately after the special meeting, to disseminate these procedures by email and US Mail to all AAC members and other interested persons as required by Article XIII of the CDP Bylaws.
   c. In the event a special meeting has not been called by April 10, 2019, is not held by April 25, 2019, and/or the newly adopted procedures are not disseminated by the working day after the special meeting, Mr. Zakson will work with the caucus to prepare procedures to be presented to the caucus at the May convention so they can be publicized and disseminated in time to hold the election at the August Executive Board meeting.

4) Further, the CRC encourages the AAC to conclude its Bylaw revision process so the caucus can be fully (as opposed to provisionally) recertified.

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 April 6, 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 6b, 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 April 18, 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 5-0 vote of the members of the CRC, with member Shay abstaining.

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