MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: March 30, 2018

RE: DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO THE CHALLENGE OF THE ENDORSEMENT PROCESS FOR STATEWIDE PUBLIC OFFICES

INTRODUCTION:

On Saturday, February 24, 2018 endorsement votes were held for statewide public offices, with the following final results detailed below:

- U.S. Senate- No consensus
- Governor- No consensus
- Lt. Governor- No consensus
- Attorney General- No consensus
- State Controller- Betty Yee
- Insurance Commissioner- Ricardo Lara
- Secretary of State- Alex Padilla
- Superintendent of Public Instruction- Tony Thurmond
- State Treasurer- Fiona Ma
- Board of Equalization, District 1- No consensus
- Board of Equalization, District 2- No consensus
- Board of Equalization, District 3- No consensus

The tally for the office of Secretary of State was:

- Alex Padilla 2,176 (78%)
- Ruben Major 436 (15%)
- No Endorsement 190 (7%)

A challenge was filed by David Bright acting on behalf of Ruben Major for California Secretary of State (campaign) on March 3, 2018.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

1. Challenge submitted by the campaign on March 3, 2018
2. Email submitted by Mr. Bright on March 3, 2018
3. Statement submitted by Mr. Bright dated March 2, 2018
4. Letter submitted by Mr. Major on March 3, 2018
5. Email submitted by Mr. Bright on March 26, 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 the campaign was submitted on March 3, 2018 regarding an endorsing caucus held on February 24, 2018 which 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).

STANDING:

According to Article XII, Section 3:

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

The challenge is ambiguous as to whether it is specific to the endorsement for Secretary of State or applies to all endorsements for statewide public office, stating both:

This is a Challenge to the 2018 Secretary of State endorsement process for the California Democratic Party in accordance with Article XII of the By Laws and Rules of the CDP.

Therefore the Ruben Major campaign files notice of a challenge to the state-wide endorsement voting process that took place at the State Democratic Endorsing Convention held in San Diego on Feb. 23 through Feb. 25, 2018.

As relates to the endorsement for Secretary of State, Mr. Major is a candidate for the office and thus has standing to bring this challenge as he was adversely affected.
As related to the other endorsements for public office, Mr. Major is not a candidate for those positions. Further neither Mr. Major nor Mr. Bright were state delegates. Thus to the extent the intent was to challenge the results of those contests, neither the campaign, Mr. Major, or Mr. Bright have standing and thus such challenges are rejected.

**FINDINGS AND ORDER:**

The challenge raises various complaints and concerns about the elections process.

First, the challenge raises questions whether ballot boxes were checked to ensure they were empty of any ballots prior to the beginning of voting. The CRC notes that Mr. Bright’s statement indicates he was not present at the start of the voting process. The CRC further notes that observers from this Committee were present and verified the boxes were empty prior to the start of the voting process.

Second, the challenge objects to procedures for observers monitoring the counting process. However, the CRC notes the challenge states those procedures were either changed before the counting process began or were ignored by observers who were able to observe the counting process without interfering with ballot counters.

Third, the challenge raised concerns that when starting a new ballot, the results from the previous ballot were not cleared from computer screens. Subsequent review found no evidence this design change changed the recorded results.

Fourth, the challenge raised questions whether a log was created when a vote was recorded in error and then corrected during the initial count. Subsequent review found in some circumstances both the vote recorded in error and the corrected vote were recorded in the tally.

The tally was then updated and corrected accordingly. In the contest for Secretary of State, this review found 4 fewer votes for Mr. Padilla, 13 fewer votes for Mr. Major, and 5 fewer votes for no endorsement, for a revised total vote count of 2,780. In no contest for statewide public office was the final outcome changed by this review.

Fifth, the challenge questions the difference between the number of delegates who received ballots and the number of ballots cast in the Secretary of State contest. The CRC notes delegates are not required to vote in every contest and when a delegate elects not to vote in a particular contest they are not included in the final tally used to determine if a candidate has received enough votes to be endorsed in that particular contest. The CRC further notes these undervotes are not an indication of ballots being missing.

Fifth, the challenge requests a hand count of ballots. The CRC notes the physical ballots are available for review by interested parties. The CRC further notes in Mr. Bright’s March 26th email he indicated individuals acting “in parallel” with the campaign did review the ballots. His email further indicates that review found discrepancies between the announced tally and the number of ballots found for Mr. Major.
Subsequent inquiry has determined when the review in question took place some ballots, while physically present and visible in the observation room, had not been sorted among the bulk of the ballots.

Sixth, the challenge requests various other remedies including a review of various materials and records relating to the tally software and its use during the endorsement process.

In Mr. Bright’s March 26th email he further requests a database of each delegate’s name and their vote as records. The CRC notes that such a database has subsequently been made available to Mr. Bright and other interested parties and can be found on the state party’s website at www.cadem.org.

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

1) Under the amended tally Mr. Padilla received 2,172 of 2,780 votes (78%) which is more than the 60% required to be endorsed.
2) The challenge to the election result and request for a hand count of the physical ballots is rejected as the challenger has failed to achieve the standard one would need to invalidate the results.
3) The request to review various materials relating to the tally software is rejected as the physical ballots remain available for inspection and comparison to the electronic tally.
4) Observers from the campaign shall, upon request, be given the opportunity to conduct a second review of the physical ballots, including but not limited to, any ballots not sorted among the bulk of the ballots during the prior review. Arrangements for such review shall be handled consistent with past practice and procedures.
5) Any new challenge by the campaign submitted within seven days of the completion of such a review shall be considered timely.
6) The mere existence of discrepancies between the physical ballots, the announced tally, and/or the electronic record of individual votes are not grounds to overturn an election result or request the additional review of additional election materials.
7) Consistent with past practice, the standard remains demonstrating in a quantifiable way that the conduct and/or actions complained of make a difference in the outcome that would not have been present absent that conduct and/or action.
8) All testimony submitted to the CRC shall be forwarded to the Statewide Officers, to improve and clarify any issues relating to the use of electronic software to tally ballots in subsequent elections, including but not limited to, how over and under votes are recorded and reported.
9) All testimony submitted to the CRC shall be forwarded to the Rules Committee as they consider revising the endorsement procedures, as they normally do after every election cycle, to improve and clarify any issues that arise during the course of the endorsement process.

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 11,
2018 with the Sacramento office of the California Democratic Party, and shall be an appeal to the next meeting of CDP Credentials 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 Credentials Committee by 5 PM on April 23, 2018, at the Sacramento office of the California Democratic Party. 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.

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, Credentials Committee  
Garry S. Shay, Lead Chair, Rules Committee  
Keith Umemoto, Co-Chair, Credentials Committee  
Michael Wagaman, Co-Lead Chair, Credentials Committee