



August 7, 2017

California Democratic Party  
1830 9th Street  
Sacramento, CA 95811  
Attn: Compliance Review Commission

**RE: Compliance Review Commission Appeal**

To Whom It May Concern:

The following is the Ellis campaign's appeal to the Compliance Review Commission (CRC) decision, dated July 26, 2017.

**BYLAWS AND JURISDICTION**

A challenge to the outcome of a California Democratic Party (CDP) Chair's race is unprecedented in our Party's history. Conclusively, it is clear that our Bylaws failed to prescribe a mechanism to challenge the results of the Chair's race.

The Ellis campaign has objected to the process outlined by the CDP governed under Eric Bauman to address this matter. Despite public statements to the contrary, the CDP Bylaws never foresaw and consequently never provided a remedy for a challenge to a CDP Chair election.

At the heart of our objection to the ruling is the CRC's jurisdiction over the matter. The Bylaws clearly delineate the areas of the CRC – and Article III Officers – is not within its authority. Per the Bylaws:

Article XII, Section 2. JURISDICTION a. 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.

As part of its assertion for jurisdiction, the CRC says there is precedent with the CRC handling disputed elections, but it fails to distinguish that its involvement with other CDP elections are those clearly enumerated under its authority (e.g. Article VI – Assembly District and Assembly District Election Meeting or Article XI Special Group Caucuses). There is no precedent for the CRC to have jurisdiction over Article III Officer elections.

Also at issue is the role of Olson, Hagel, Fishburn. The firm has made it clear that it represents the interest of the CRC. With the CRC's jurisdiction in question coupled with the mandate for lawyers to solely represent their client's interest, it must be noted that Olson, Hagel Fishburn is there to advocate for the Commission, not the CDP as an entity. This is an important distinction because each ruling began with:

***"Counsel recommended** and the CRC determined... "*

This statement gives the appearance that the Party's legal counsel is asserting a legal argument to protect the CDP as an institution, when in reality Olson, Hagel Fishburn is advocating for the interests of the CRC, not the Party and its delegates.

But beyond jurisdictional issues, the Compliance Review Commission's findings demonstrated the subjective nature of their decisions, as the body solely comprised of one candidate's supporters cannot be objective by any reasonable standard. Noting the inherent conflict of interest in the composition of the CRC is not an assault on the character of its members nor an attempt to assail their reputations, rather it's recognizing that, as a body, they are not able to set aside personal bias, as they have no training to do so, as well as the fact that their well coveted committee appointments within the Party are subject to the outcome of the election.

Judges in the United States go through extensive training to recognize personal bias and guard against it in their rulings. No judge would be able to hear a case if they had a personal investment in the outcome, as the members of the CRC do, with respect to their appointed positions within the Party.

This conflict of interest has also produced unnecessary strife within the Party and created frustration with a significant portion of the delegation. Despite the claims for transparency and access, many delegates objected to the arbitrary and inadequate five-day timeline to provide testimony to the CRC's initial ballot review posting. Additionally, the CRC failed to respond to many issues raised by individual delegates. To be clear, the Ellis campaign is not supporting or endorsing all issues raised by individual delegates, rather we are noting the frustration by many who have raised their own issues that the CRC has failed to address. Consequently, this failure to respond to the totality of issues raised by all parties erodes confidence in the impartiality of the CRC and the legitimacy of its final ruling.

The byproducts of this conflict of interest cast shadows over the fairness of the process and bring us to a crossroads. As a Party, how can we accept an outcome from a body that is not impartial? To bring

reference to this dilemma, we can look to the 2000 presidential election and how subjective standards can create a desired result depending on how they are imposed.

### **SUBJECTIVE STANDARDS ON DETERMINING OUTCOME – Bush v. Gore**

After the Bush v. Gore election, media and academic organizations conducted comprehensive studies of the disputed ballots in Florida to determine who “actually” won. Overall, the studies ultimately found more voters went to the polls in Florida on Election Day intending to vote for Gore than for Bush; however, to produce this outcome through a recount process, the Courts would have to select a standard on how votes are to be counted. There were four general standards (Lenient, Strict, Palm Beach, Two Corner) – and depending on the standard, the outcome would result in a different winner.

Since then, partisans cherry-pick various scenarios that would have favored their presidential candidate; so, how do we know who really won? This is where the Chair’s election stands today – depending on the subjective standards the CRC imposed, the outcome would be different.

### **PREFERENTIAL STANDARDS**

In any election challenge, the objective of the challenger is to ensure that only eligible votes are counted, as there is no way to change the outcome of the election, subject to an arithmetic counting error, without invalidating votes in the original count. Those who aim to ensure the outcome is unchanged are empowered to claim that challenging a validity of a vote is at the expense of disenfranchising voters. This puts any challenger in the difficult position of arguing for fidelity to the rules, understanding the narrative put forth by the opposing side.

Often times, rules are not fair. It does not seem fair that PLEO appointees can fill proxies with any registered California Democrat while Central Committee Members and Assembly District Delegates must operate under a different set of standards. Is this fair? Not likely, but permissible under the rules none the less, and thus, allowable.

The CRC adopted the following principles to guide its decision making process. They do not manifest from the CDP Bylaws, rather they are a subjective criteria the CRC imposed, which directly favor the candidate who was determined the winner by the original vote count. They include:

- 1) A vote should not be counted as valid if it was cast in violation of the Bylaws as adopted by the Executive Board, even if the voter was not primarily at fault for the violation, or even relied on specific staff or volunteer advice.
- 2) **In all other circumstances, the CRC should utilize a standard that favored counting a vote whenever possible and that the Commission should lean in the direction of counting as opposed to rejecting a vote.** The CRC noted that such a standard was consistent with California election law.

3) A deviation from CDP practices or procedure, including volunteer guidelines, would not on its own constitute grounds to invalidate a vote, as long as that deviation did not violate the Bylaws or adopted Convention Rules.

4) Substantial weight should be given to first-hand testimony from the voter as to the circumstances surrounding their participation at the Convention and that substantially less weight should be given to testimony not based on first-hand knowledge.

It's important to note the vague language around the consistency with California election law and this race. What it does not distinguish is that California law pertains to secret ballot elections, whereas the CDP Statewide Officer Election is a publicly cast vote of a private entity, where the right to vote is not codified in constitutional law as it is in our public election process. Instead, a standard was selected that favored the candidate with the vote lead – rather than one based on individualized rulings from an impartial body – which the CRC is not.

To illustrate the subjectivity of this decision, below is a summary of the matters the CRC ultimately ruled on and the number of corresponding votes. It's clear to see that a number of decisions made by the CRC could have materially effected who would have been named the victor. It's important to note that the Ellis campaign is not objecting to every ruling, but instead is highlighting how some subjective rulings affect the final outcome.

- (63 votes) Signatures where the CRC had preliminarily determined the signatures required additional review but where responsive testimony had been received from the voter
- (17 votes) Signatures where the CRC had preliminarily determined the signatures required additional review and responsive testimony had not been received from the voter
- (103 votes) Signatures where the CRC had preliminarily determined the signatures matched, subsequent testimony challenged whether the signatures matched, but where responsive testimony had been received from the voter
- (32 votes) Signatures where the CRC had preliminarily determined the signatures matched, subsequent testimony challenged whether the signatures matched, and where responsive testimony had not been received from the voter
- (3 voters) Voters who were assisted in marking their ballot due to religious restrictions
- (2 voters) Proxy receivers who were already on the DSCC
- (4 voters) Proxies where the receiver could not be confirmed as a registered Democrat
- (3 voters) Proxies where the receiver was found not to be a registered Democrat
- (1 voter) Proxies from members elected at the Assembly District Election Meeting where the proxy receiver was found not to live in the same Assembly District as the proxy giver
- (4 voters) Proxies from members elected by County Central Committees where the proxy receiver could not be verified as a member of that county committee based on materials maintained by the Credentials Committee but where evidence of membership was found by the CRC among other materials submitted to the CDP prior to the close of registration on May 20, 2017

- (5 voters) Proxies from members elected by County Central Committees where the proxy receiver could not be verified as a member of that county committee based on materials maintained by the Credentials Committee but where evidence of membership was submitted by an officer of the county committee during one of the testimony periods
- (4 voters) Proxies not on the official CDP proxy form
- (2 voters) Proxies was not stamped as approved by the Credentials Committee
- (2 voters) Proxies where the original approved proxy form was not found but a copy of an approved proxy form was found among materials in possession of the Credentials Committee
- (8 voters) Proxies where the original approved proxy form was not found but testimony was submitted by the voter that either the form had been submitted to the volunteer (and presumably lost) or the volunteer had failed to collect the form
- (4 voters) Penalty of perjury statement not signed but the voter's name was handwritten somewhere on the proxy form
- (1 voters) Penalty of perjury statement not signed and no voter signature appeared anywhere on the form
- (22 voters) Voters whose signatures do not appear on the registration sign-in
- (1 voter) Voters whose signatures do not appear on the election sign-in
- (34 voters) Elected officials whose signatures do not appear on the registration sign-in because their credentials were picked-up by a member of their staff
- (7 voters) Non-elected officials whose signatures do not appear on the registration sign-in as their credentials were picked-up by a staffer, with responsive testimony from the voter confirming this circumstance
- (11 voters) Both dues and fees were showed as having not been paid and/or waived
- (7 voters) Dues were paid or waived but fees were not
- (6 voters) Payments were rejected for non-sufficient funds
- (1 voter) The voter was given another voter's [sic] ballot
- (1 voter) The voter's mark in the Chair contest was unclear
- (5 voters) Remaining voters where the person who picked up the credential was not the person who cast the ballot and where no proxy form was filed
- (4 voters) Delegates not appearing on the roster prior to the convention
- (1 voter) Proxy where the delegate reports the delegate voted against the delegate's wishes
- (2 voters) Proxy where the proxy receiver's address on the proxy form did not match the address on the voter file
- (13 voters) The CRC then considered with multiple issues, making individual determinations consistent with prior determinations

A clear example of how creating subjective standards directly affected the outcome of the vote is how the issue of nonpayment of registration fees was ruled by the CRC. If the CRC had ruled out votes of individuals who didn't pay registration dues – the net loss would be seven votes against Bauman.

The CRC asserted the following argument on this matter is:

Dues were paid or waived but fees were not (7 voters)- Counsel recommended and the CRC determined these votes should be validated. Counsel noted that while dues are specifically required by the Bylaws, **fees are part of the registration process.** Further while the guidelines given to volunteers refer to the collection of fees, Article IV, Section 7(b)(2) **simply requires to have one's vote counted a member must have, "registered for the meeting, if registration was required," without any specific fee requirement.** The CRC noted that according to testimony many of these voters thought their approved dues waiver also covered their fees. The CRC also noted that all the voters who did not submit responsive testimony had received such dues waivers, constituting evidence they may have been similarly confused.

While the CRC initially admits that payment of fees is part of the registration process, it further asserts that as registration fees are not specifically delineated, it is not required. There's an immense logical gap to say that something is part of a process that is required, yet since it's not specifically mentioned it is not a part of the process. It's beyond illogical to say that a person can complete a requirement, such as registering for an event, though the process was not complete. The Bylaws do not state that a person must "sign-up" for convention; it clearly says they must register. Further, anyone attending convention must pay registration, as hardship waivers do not apply to the convention registration dues. There is no mechanism for relief of paying registration. It is required; consequently, failing to pay registration fees is a clear failure to properly register for convention.

#### **UNRESOLVED ISSUE – Payments, Dues Waiver and Registration**

Despite the extensive efforts of the CRC, one issue that is a clear violation of our Bylaws that the CRC refused to address in its final determination, despite the Ellis campaign's continual raising of the issue, is written records of dues waiver requests. Per the Bylaws:

ARTICLE II, Section 11. DUES a. Dues shall be paid by This Committee's members. The Executive Board shall establish the time and manner by which these dues shall be paid before the next scheduled meeting of This Committee. b. Any member who fails to pay the prescribed dues may be removed from This Committee in the manner prescribed in Section 9 of this Article, **except that payment of dues shall not be obligatory for any member to whom it constitutes an economic hardship.**

Understandably, the CDP acknowledges that not every delegate is able to pay dues, as some have economic hardships. However, the CDP prescribed the manner by which hardship waivers would be granted through its clearly communicated emails to delegates, with the following notation at the bottom of all email communications from the CDP related to convention:

*\*NO CREDENTIAL=NO VOTE. In order to vote, and have one's vote counted, at this meeting, a member must have timely paid their dues to this committee **(or had them waived in writing by***

*the delegate), registered for the meeting, obtained their credential prior to the close of credentialing, and completed and returned to the proper authority any ballot that may be issued.*

The Ellis campaign repeatedly asked for a list of all delegates to be broken into two categories: those who paid dues and those who had dues waived. The campaign additionally asked that the CDP annotate if there was a written dues waiver from the delegate and if a copy could be furnished.

Instead, the Ellis campaign received the following information from the CDP:

As Director of Compliance and Accounting for the California Democratic Party (CDP), we (the CDP Accounting Department) have reviewed all available payment records related to the CDP Convention held in Sacramento on May 19-21, 2017. I have attached hereto a document that reflects those delegates who satisfy his or her due obligations pursuant to CDP Bylaws by payment or waiver in order to participate in the 2017 CDP State Convention and vote in the Statewide Officer Elections.

I hereby certify that the attached document is accurate and correctly reflects the dues payment or waiver for each delegate so listed.

[Signed] Chacha Guerra

The attached document only listed “paid” next to all 3,331 delegates and did not in any manner distinguish: 1) if there was a dues waiver and 2) if there was a written record of a dues waiver request. Through counsel, the campaign requested this information and was told it would not be provided.

It must be noted that, during the Ellis campaign’s review, the CDP staff notified the Ellis campaign that there was a substantially higher number of dues waivers granted this convention, with many involving proxies. Considering approximately 435 proxies were submitted to CDP for credentialing at convention, with the vast majority of proxies comprised of Bauman voters, coupled with the fact that a written waiver from the delegate was required, the Ellis campaign reasonable believes that the balance of the election could hinge on verification of written due waiver requests.

#### **ELLIS CAMPAIGN RECOMMENDATION AND REQUEST**

The Ellis campaign still seeks to find an amicable solution to this contested election. All sides face the challenge of finding a solution that adheres to both the black letter and spirit of our Bylaws, understating that our process does not provide a solution. Fortunately, much of the work to identify the issues related to this election has already been identified by either the Ellis campaign or the CRC’s review process.

As has been illustrated in this appeal, the CRC cannot render any impartial ruling in this matter as there is a clear conflict of interest with the CRC members and the result of the election. The Ellis campaign is

formally requesting that the CDP, Eric Bauman and Kimberly Ellis campaigns enter into a binding arbitration process with a licensed professional, agreed to by all sides, to make final a determination on the outcome of the election. While binding arbitration is traditionally prescribed in contracts in advance of a dispute, our campaign is proposing this solution as an alternative to the prescribed process of civil legal action. The intent of this proposal is to create closure, not prolong the controversy. We believe a binding arbitration process would offer the quickest, least contentious and most fair conclusion.

We, as a Party, have one more chance to avoid a long and painful process – to be put on public display for the world to watch and judge. Our campaign believes that it's time for us to move forward. It's time to put this issue to rest once and for all. We remain hopeful that all sides can find an expedient and dignified way to get ourselves out of this quagmire.

Like with our request for an independent forensic audit, we can live with the outcome of a truly independent arbitrator whose decision is final. The question now becomes: Can the other side? We hope so.

Sincerely,

/s/ Kimberly Ellis

Kimberly Ellis

Cc

Eric Bauman  
Alex Gallardo-Rooker  
Daraka Larimore Hall  
Jenny Bach  
Dan Weitzman  
Kathy Bowler  
Lois Hill  
Coby King  
Lara Larramendi  
Garry S. Shay  
Michael Wagaman  
Lance Olsen  
Steve Kaufman  
Chris Myers