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## MEMORANDUM

DATE: June 23, 2017

TO: Members of the CDP Compliance Review Commission

FROM: Lance H. Olson and Richard R. Rios

RE: **Procedures for Use in Event Commission Orders Review of Ballots**

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Although the Commission is currently accepting written testimony and evidence from interested parties, we are aware that the Commission may wish to conduct its own review of the ballots at the end of the period for submission of evidence. In order to avoid any unnecessary delay, we are providing this memorandum on procedures the Commission may wish to employ in the event it conducts its own review of the ballots.

Both of us have extensive experience in conducting vote canvasses and recounts in connection with public elections. We have applied this experience along with guidance from several major County elections officials (i.e., Contra Costa, Los Angeles, Orange, and Sacramento) and state election law in crafting these proposed procedures. If the Commission determines to conduct its own review of the ballots, then we propose that it also adopt these procedures, or similar procedures as modified by the full Commission.

### I. GENERAL PRINCIPLES

#### Follow the Bylaws

First and foremost, the Commission will be guided by the CDP bylaws in determining whether to count a ballot or reject it. The bylaws in many instances provide clear rules. For example, a delegate to the CDP convention may not also cast a proxy ballot. Similarly, no person may cast more than one proxy ballot.

However, in other instances, the bylaws are either silent or subject to interpretation. By way of example, the bylaws do not provide guidance on how to determine if a signature on the ballot matches the ballot sign-in signature. In this instance the Commission will have to exercise its best judgment.

#### Bias in Favor of Counting Ballots

In reviewing the ballots and applying the rules outlined in the CDP bylaws, we think it important that the Commission apply a standard that

favors counting a vote whenever possible without violating a provision of the CDP bylaws. Stated another way, when exercising its discretion in determining if a ballot should be counted, the Commission should lean in the direction of counting as opposed to rejecting the ballot. This standard should be applied equally to all votes regardless of which candidate they were cast for. This does not mean that the Commission may ignore a clear provision of the bylaws, but if the bylaws are silent or subject to interpretation, then the Commission should exercise its discretion in favor of counting a ballot. Such an approach is consistent with state law and generally applied by elections officials throughout the state. (See, for example, Elec. Code, § 15106 [challengers to vote by mail ballots shall have the burden of establishing by extraordinary proof the validity of any challenge since the voter is not present]; Elec. Code, § 14251 [(a)ny doubt in the interpretation of the law shall be resolved in favor of the challenged voter]; Elec. Code, § 14312 [provisional voting laws must be liberally construed in favor of the provisional voter]; Elec. Code, § 3000 [vote by mail statutes in this division must also be “liberally construed in favor of the vote by mail voter]; Elec. Code, § 15342.5 [the recount process must be liberally construed to ensure that each ballot is counted if the voter’s intention can be determined]; and Cal. Const. art II, § 2.5 [A voter who casts a vote in an election in accordance with the laws of this State shall have that vote counted.]])

### Rules for Observers

We also recommend that the Commission adopt a firm policy that precludes interference or direct challenges to the Commission’s review of the ballots. While we believe the entire review process should be open to observers from all three candidates for Chair (and the Commission may also wish to allow observers from other campaigns for Statewide Officer who could be impacted), the Commission may impose restrictions on the observer’s participation in the process. We suggest no videos or pictures be allowed during the review, and that observers should not be allowed to copy election materials, but do not object to note taking by observers. Observers should observe only and not comment, challenge, question or otherwise interfere with the Commission’s review of the ballots. Any observer violating this rule should be asked to leave the site of the review. As part of this process, we recommend that at the completion of the ballot review the Commission provide a five business day window for any interested party to submit written testimony or evidence relevant to the ballots cast. For example, if an observer believes a signature does not match, they may submit any written evidence, including their own testimony, to the Commission. Such written testimony or evidence should be limited to matters arising out of the review process.

### Overall Process

Finally, before getting into the details of the review process, we want to outline the overall process we recommend be followed. Initially, the Commission should ask the CDP staff employed prior to the date of the review to sort the ballots and prepare them for Commission review. Specifically, the staff should organize all ballot materials (i.e., ballots, proxy forms, election sign-in sheets, unused credentials, record of delegate dues payment, registration sign-sheets, and list of eligible delegates). In addition, staff should provide voter registration records

for proxy holders. Based on initial communications with staff, we believe this process will take about 3 days. We recommend staff assisting in the review be limited to those who were employed by the CDP before the start of the convention.

Assuming the Commission makes its determination to review the ballots the weekend immediately following the close of the written testimony/evidence period, we recommend the staff commence this process beginning on the morning of Wednesday, June 28. Since this piece of the review process will be open to observers, we suggest interested parties, in particular the candidates for Chair, be given immediate notice via email over the weekend and that follow up phone calls to counsel for each campaign be made on Monday, June 26. We also recommend that either a Commissioner or its counsel be present during this staff process.

Next, we would envision the Commission commence its review. Staff and counsel can be present to assist, but any preliminary determinations should be made either by members of the Commission or members of the Credentials or Rules Committees designated by the Commission. Since it will not be practical for all six members to be present every day, we suggest at least one Commissioner be present each day ballots are reviewed. This will provide continuity and consistency to the process. We further suggest that either a Commissioner or Commission counsel be present when CDP staff begin the preparation work, although it is not likely they will be needed the entire time when staff is preparing the ballot materials.

We also suggest that decisions to count or reject a ballot be preliminary in nature with the full Commission making the final determination at the close of the second period for receipt of written testimony or evidence. To allow for these final determinations we suggest that the Commission document preliminary determinations in writing.

In addition, we recommend, after materials have been organized by staff, the Commission conduct its review in the following stages:

- Stage I (Proxy Review): Review of the validity of proxies.
- Stage II (Spoiled/voided ballot review): Review of spoiled/voided ballots. For voters who had a spoiled/voided ballots, the Commission may simultaneously complete steps described under stage III, including reviewing any replacement ballots.
- Stage III (Sign-in/ballot review): Review of registration sign-in sheets, election sign-in sheets and ballots.

Finally, we recommend that the Commissioners conducting the review of ballots determine whether 1) the ballot is valid and should be counted, 2) the ballot is invalid and should not be counted or 3) the ballot requires further deliberation and the exercise of Commission discretion. As to those ballots in category 3, the Commission should exercise its discretion consistent with the Bylaws and make a determination to count or reject the ballots. We have

attached to this memorandum a recommended Ballot Review Form to be used by Commissioners as they review each ballot.

## **II. SPECIFIC INSTRUCTIONS FOR REVIEW OF BALLOTS**

### Stage I: Proxy Review

1. Under “Proxy Name” write the proxy’s name.
2. Check if on an official CDP form that includes delegate’s signature on bottom. This includes if the proxy is not on the correct CDP proxy form (i.e. an ADEM proxy on a county committee form) or if the proxy is a fax, scan or Xerox of an official CDP form.
  - A. If on an official CDP form that includes delegate’s signature on bottom mark “YES” next to “Signed CDP Form”.
  - B. If not on CDP form, mark “NO” and skip to instructions for “Proxy not on CDP form” under “Potential Invalid/Commission Review Scenarios.”
  - C. If on CDP form but not signed, mark “NO” and to instructions for “Proxy form not signed” under “Potential Invalid/Commission Review Scenarios.”
3. Check if form has Credentials Committee Stamp.
  - A. If it does mark “YES” next to “Stamped”.
  - B. If not, mark “NO” and skip to instructions for “Proxy form not stamped” under “Potential Invalid/COMMISSION Review Scenarios.”
4. Check proxy’s registration status in PDI (or copy of registration record printed by staff).
  - A. If a registered CA Democrat mark “YES” next to “Proxy Registered CA Dem”
  - B. If not, mark “NO” and skip to instructions for “Proxy ineligible” under “Potential Invalid/Commission Review Scenarios.”
  - C. If proxy’s address is different from that on the form, under “Proxy Notes” write both addresses.

5. If DSCC # starts with a number other than 4, skip to step 6. If DSCC # start with 4, check binder of county committee members to find proxy's name. The second and third numbers indicate the county number. i.e. D430001 is the 30<sup>th</sup> county (Orange).
    - A. If proxy name appears on a roster, mark "YES" next to "If County..." and under "Proxy Notes" write "On roster"
    - B. If proxy name appears on a certificate of membership, mark "YES" next to "If County..." and under "Proxy Notes" write "Cert of Memb" and the name of who signed.
    - C. If proxy name does not appear in binder, mark "NO" and skip to instructions for "Proxy ineligible" under "Potential Invalid/Commission Review Scenarios."
  6. If DSCC # starts with a number other than 7, skip to step 7. If DSCC # start with 7, check voter registration to see if in same AD as the delegate. The second and third numbers indicate the AD number. i.e. D730001 is AD 70.
    - A. If in same AD, mark "YES" next to "If AD..."
    - B. If not, mark "NO" and skip to instructions for "Proxy ineligible" under "Potential Invalid/COMMISSION Review Scenarios."
  7. If answers to all questions have been "YES" mark "VALID PROXY" next to "Preliminary Proxy Determination."
- If not follow instructions from "Potential Invalid/Commission Review Scenarios."
8. Initial next to space next to your initials under "Proxy Reviewed by" and date next to "Date"
  9. Return form to alphabetical order for later review under Stage III.

### Stage II: Spoiled/Voided Ballot

Determine why the ballot was spoiled/voided.

VOTER WAS NOT ELIGIBLE- A ballot was created for a voter who was not eligible to vote. Such ballots were voided before voting began.

1. Check that a ballot was not cast for the individual.
2. If a ballot review form exists for the individual:

- Mark “NO (With Blank)” next to “Ballot Cast”
- Under “Notes” indicate voter was not eligible and ballot was voided.
- Mark “VALID VOTE/DID NOT VOTE” under Preliminary determination
- Otherwise process as described under Stage III.

**VOTER MISMARKED BALLOT-** Voter mismarked their ballot and requested a replacement.

1. If a replacement ballot was cast for the individual.
  - Mark “REPLACEMENT” next to “Ballot Type”
  - Under “Notes” indicate voters original ballot was spoiled/voided.
  - Otherwise process as described under Stage III.

**VOTER RECEIVED WRONG BALLOT-** Usually this is the result of two delegates with similar sounding names, and one delegate receiving the ballot for the wrong person. As that ballot usually had already been put in the secure ballot box by the time the error is discovered, a replacement ballot has to be created. The voided ballot should have the name of both the delegate who had to cast a replacement ballot and the voter who cast their vote on the wrong ballot.

1. For the voter who cast a replacement ballot:
  - Mark “REPLACEMENT” next to “Ballot Type”
  - Under “Notes” indicate voter’s original ballot was accidently given to the wrong voter, noting that voters name and DSCC #.
  - Mark “COMMISSION REVIEW” under “Preliminary Determinations”
  - Otherwise process as described under Stage III.
2. For the voter who cast their vote on the wrong ballot:
  - Mark “WRONG BALLOT” next to “Ballot Type”
  - Under “Notes” indicate voter was given the wrong ballot, noting the name and DSCC # of the ballot on which that vote was cast.
  - Mark “COMMISSION REVIEW” under “Preliminary Determinations”
  - Otherwise process as described under Stage III.

### Stage III: Sign-in/Ballot Review

1. Check if voter cast a ballot.
  - A. If yes, mark “YES” next to “Ballot Cast” and skip to Step 4.
  - B. If not, proceed to Step 2.
2. Check if voter has a blank ballot.

- A. If yes, mark “NO (With Blank)” next to “Ballot Cast” and proceed to Step 3.
- B. If no, Mark “NO (No Blank)” next to “Ballot Cast” and proceed to Step 3.
3. Mark “VALID VOTE/DID NOT VOTE” under “Preliminary Determination” and skip to Step 12.
4. Mark “Original” next to “Ballot Type” (note any replacement or wrong ballots should have been identified under Stage II).
5. Mark the voter’s selection for Chair. Mark “Blank” if they indicated no vote. Mark “Invalid” if their vote was not valid (i.e. voted for two candidates).
6. Check if the voter signed their ballot.
  - A. If they did mark “YES” next to “Ballot signature”.
  - B. If not, mark “NO” and skip to instructions for “Missing signature(s)” under “Potential Invalid/Commission Review Scenarios.”
7. Check if the voter signed the registration sign-in.
  - A. If they did mark “YES” next to “Registration signature”.
  - B. If not, mark “NO” and skip to instructions for “Missing signature(s)” under “Potential Invalid/Commission Review Scenarios.”
8. Check if the voter signed the election sign-in.
  - A. If they did mark “YES” next to “Election sign-in signature”.
  - B. If not, mark “NO” and skip to instructions for “Missing signature(s)” under “Potential Invalid/COMMISSION Review Scenarios.”
9. Compare signatures based on COMMISSION established guidelines for review.
  - A. If signatures match, mark “YES” next to “Signature match”.
  - B. If signatures do not match or unclear if they match, mark “COMMISSION REVIEW” and skip to instructions for “Signature match” under “Potential Invalid/Commission Review Scenarios.”

10. Check record of timely payment/waiver of required dues/fees.
  - A. If there is a record, mark “YES” next to “Record of timely payment/wavier”
  - B. If there is not a record, mark “NO” and skip to instructions for “No record of timeline payment” under “Potential Invalid/Commission Review Scenarios.”
11. If answers to all questions have been “YES” mark “VALID VOTE/DID NOT VOTE” under “Preliminary Determination.”

If not follow instructions from “Potential Invalid/Commission Review Scenarios.”

12. Initial next to space next to your initials under “Reviewed by” and date next to “Date”

### **III. POTENTIAL INVALID/COMMISSION REVIEW SCENARIOS**

The purpose of this document is to ensure various potential issues are handled in a consistent matter during the review. Preliminary determinations that additional review by Commission do not necessarily suggest that there is a problem with the ballot. Rather they may simply be situations that require additional documentation for the Commission in issuing future findings and orders. The fact a scenario is described below does not suggest that such ballots actually exist. Similarly, the fact a scenario is not described does not mean Commission will not examine if discovered during the review.

#### Potential Duplicate Ballot Issues

- A. Assisted Voting: Voter could not sign in or complete their ballot on their own and required the assistance of someone else. This is a separate and distinct category from proxies.
  - Under “Registration signature,” “Election sign-in signature” and/or “Ballot signature” mark “NO” if not signed by delegate/proxy
  - Under "Notes" state that voter was assisted, list names of person assisting voter and if reasons for assistance is known.
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
- B. Delegate carrying a proxy: A delegate also carrying a proxy. This is a separate and distinct category from assisted voting.
  - Under "Proxy Not Already on DSCC" mark "NO"
  - Under "Preliminary Proxy Determination" mark "INVALID PROXY"
  - Under "Preliminary Determination" mark "INVALID VOTE"

- C. Individual carrying multiple proxies: One individual attempting to carry multiple proxies.
  - For both ballots under "Proxy Notes" note that multiple proxies are being carried by same individual. Include the delegate name and DSCC # for both ballots. Further note any differences in the vote selections on either ballot.
  - Under "Preliminary Proxy Determination" mark "COMMISSION REVIEW"
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
  
- D. Replacement ballot: Voter's original ballot was spoiled or otherwise voided and the ballot was cast on a replacement ballot.
  - Under "Ballot Type" mark "REPLACEMENT"
  - Under "Notes" list if voided ballot also reviewed
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
  
- E. Duplicate ballot: Two counted votes associated with the same DSCC slot. This is distinct from all aforementioned duplicate ballot issue categories.
  - Under "Ballot Type" mark "DUPLICATE"
  - Under "Notes" note any differences between the two ballots.
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"

#### Potential Proxy Issues

- A. Proxy ineligible: Proxy holder is ineligible to hold proxy for any reason (i.e. not a registered Democrat in California).
  - Mark box in checklist indicating reason proxy is not eligible
  - Under "Preliminary Proxy Determination" mark "INVALID PROXY"
  - Under "Preliminary Determination" mark "INVALID VOTE"
  
- B. Proxy not on CDP form: Proxy is on a form other than the official CDP form. Note that this does not apply to proxies that are on an official CDP form, but not the form associated with that proxy category (i.e. an ADEM proxy on a county committee form), which should be processed as normal. Note this also does not apply to faxes, Xerox, or scans of completed and approved official CDP forms, which should be processed as normal.
  - Under "Signed CDP Form" mark "NO"
  - Under "Proxy Notes" describe: A) Form of proxy (i.e. email), B) Whether it has an actual signature, C) Whether it has a digital signature; D) Whether it is signed under penalty of perjury.
  - Under "Preliminary Proxy Determination" mark "COMMISSION REVIEW"
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
  
- C. Proxy form missing (copy can be located): Original approved proxy form is missing, but a copy can be found in records submitted prior to close of registration Saturday. Most common scenario would be proxy form is missing, but a record of

the proxy exists in the list of proxies submitted and approved prior to the opening of convention.

- Under "Signed CDP Form" mark "NO"
  - Under "Stamped" mark "NO"
  - Complete rest of proxy section as normal based on copy of proxy
  - Under "Proxy Notes" note that information based on copy of proxy and why vote is believed to be a proxy (i.e. proxy indicated on registration sign-in).
  - Under "Preliminary Proxy Determination" mark "COMMISSION REVIEW"
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
- D. Proxy form missing (copy cannot be located): Original approved proxy form is missing and a copy cannot be found.
- Under "Signed CDP Form" mark "NO"
  - Under "Proxy Notes" note why vote is believed to be a proxy (i.e. proxy indicated on registration sign-in).
  - Under "Preliminary Proxy Determination" mark "COMMISSION REVIEW"
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
- E. Proxy form not stamped: Proxy form does not have an approved stamp from the Credentials Committee.
- Under "Stamped" make "NO"
  - Under "Preliminary Proxy Determination" mark "COMMISSION REVIEW"
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
- F. Proxy form not signed: Proxy form is not signed by the designating delegate.
- Under "Signed CDP Form" mark "NO"
  - Under "Proxy Notes" note that on a CDP form but not signed
  - Under "Preliminary Proxy Determination" mark "INVALID PROXY"
  - Under "Preliminary Determination" mark "INVALID VOTE"

#### Potential Signature Match Issues

- A. Signature match: Signature on ballot and registration sign-in do not match or unclear if they match based on Commission established guidelines for review.
- Under "Signature Match" mark "COMMISSION REVIEW"
  - Under "Notes" indicate why signatures may not match.
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"
- B. Missing signature(s): Registration, election sign-in and/or ballot signature is missing.
- Under "Registration signature," "Election sign-in signature," and/or "Ballot signature" mark "NO"
  - Under "Signature Match" mark "COMMISSION REVIEW"
  - Under "Preliminary Determination" mark "COMMISSION REVIEW"

### Potential Payment Issues

- A. No record of timeline payment: Ballot was cast but there is no record of timely payment or waiver of required fees/dues.
- Under "Record of timely payment/waiver" mark "NO"
  - Under "Preliminary Determination" mark "INVALID VOTE"

## **IV. SIGNATURE REVIEW GUIDELINES**

In reviewing signatures the following categories of signature match can be used:

- Exact Match
- Similar Character Recognition
- Signature Variation
- Non-match

For exact match the person's signature on his or her ballot is an exact match to his or her signature on the ballot sign-in sheet. The signature may be script or printed. For similar character recognition the person's signature will appear similar in hand writing with identical light or heavy impressions or small or large loops in the signature characters. Signature variation will occur when a name has change (e.g., due to marriage), a shorted name is used (e.g., Will instead of William or initials used for first and middle names) or there are other slight variations, but the majority of the characters on the documents match.

Notably an exact match IS NOT required for the Commission to determine that the same individual signed both documents. As discussed previously we think it important that the Commission apply a standard that favors counting a vote whenever possible without violating a provision of the CDP bylaws.

Examples of factors the Commission can consider to determine is signature's match include:

- Individual Characteristics: Example: how they cross T's, at the top, at the bottom, on a slant. Other examples of similarity in writing include resemblance in cursive loops, slants, etc., likeness in crossing F's, dotting I's, etc., and similar traits in a letter or part of the name.
- Hand Pressure: Do they increase the pressure when making a downward (upward) stroke causing the line to be heavier?
- Slant: They will usually slant the same direction all the time
- Height of a letter: Where does it fall on the line? Above, below?

- How the letters are connected: Are the letters connected at the top or at the bottom?
- Spacing between letters: A little, a lot?

In attempting to verify signatures, reference to other writing by the person whose signature is being examined may be used for comparison. For example, if a person has written his or her name on the election sign-in or on a proxy form available to the Commission, then the Commission may compare that writing to the signature or other writing on the ballot to confirm that the ballot was completed by the same individual. You can compare printing to printing and numbers (such as dates). Also remember that age and health can affect handwriting. For example, younger voters tend to have the least consistent signatures.

If the signatures do not appear to match in any way and there is insufficient evidence to conclude that the ballot was completed by the eligible voter, then this is a non-match signature.