

Policy Statement

By the Rules Committee of the California Democratic Party on the Open Meeting Rule

Adopted in Committee – July 14, 2018
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The Democratic Party is dedicated to openness and transparency, to the extent practical, in all of its public meetings. This ideal has been a bedrock principle since the adoption of the “*Six Basic Elements*” in 1966 as a result of the work of the Special Equal Rights Committee, chaired by Iowa Gov. (and later Sen.) Howard Hughes. The Special Equal Rights Committee was established by the 1964 Democratic National Convention and charged with developing the anti-discrimination guidelines to be enforced by the 1968 Convention Credentials Committee.

1. The Principle Behind the Open Meetings Rule

The Democratic Party is the party of inclusion. The Party’s so-called “open meetings rule” is intended to promote the principle that all members of the community who identify with the Democratic Party should be afforded meaningful, realistic and practical opportunities to access and, where applicable, participate in the Party’s meetings, functions and events. This means that Democratic Party organizations should undertake all reasonably practicable steps to ensure that their public meetings are open to all members of the Democratic Party, and should also make reasonable accommodations for persons whose ability to attend or participate in a meeting might be hampered by their disabilities or by physical or other barriers to such attendance or participation, particularly those barriers which adversely affect disabled persons. Such steps should ordinarily include establishing the time and location of meetings--as well as the technologies available to those wishing to observe or, where appropriate, participate from a location other than the meeting site--with an eye toward maximizing the opportunity for participation on a nondiscriminatory basis, particularly by persons historically deprived of a full and equal opportunity to participate by physical and other barriers. As with any principle, the implementation of these goals should also take into account the reasonableness of any given accommodation. Among the relevant factors in any given case may be: the constraints imposed by the size of the meeting and the number of meeting participants; the purpose, nature and character of the meeting and the need of participants to interact with one another, witnesses, staff and other interested persons; the financial and practical constraints of the Democratic Party organization conducting the meeting; and the need to conduct the organization’s business in a reasonably expeditious manner. This is a non-exhaustive list as the factors bearing on reasonableness may vary with the situation. In each determination of reasonableness, the ability of all interested persons with standing to participate fully and equally should be considered to be a core value to be vindicated by the Party organization in its planning and implementation of any public meeting.

The “open meetings rule” has two aspects: an aspirational aspect and a more practical one. The aspirational aspect of the rule urges the Party to be innovative and proactive in its efforts to foster inclusion, openness and transparency, particularly with respect to those not historically given an equal opportunity to participate. More practically, the rule operates as a touchstone--or motivating principle--for concrete rules governing behavior by Democratic Party organizations. This Section 1 sets forth the aspirational aspects of the rule. In the rest of this Policy Statement, we attempt to set forth the concrete rules governing Democratic Party organization behavior.

This policy statement is not legal advice and should not be relied upon as such. Democratic Party organizations with employees, particularly those with 5 or more employees, should obtain independent legal advice about their employment-related responsibilities.

2. **Applicable Bylaws**

The Open Meeting principle finds its expression in Article XIII, Section 1, of the Bylaws of the California Democratic Party:

ARTICLE XIII: GENERAL POLICIES

Section 1. PUBLIC MEETINGS

All public meetings at all levels of the Democratic Party shall be open to all members of the Democratic Party regardless of race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation, gender identity, persons with disabilities as defined by the Americans with Disabilities Act of 1990 or economic status. Further, the scheduling and location of public meetings and other public affairs of the Democratic Party at all levels must take into account the ability to fully and fairly participate with reasonable accommodations, where appropriate, of persons with disabilities as defined in the Americans with Disabilities Act of 1990. The scheduling and location of such public meetings and other public affairs must also take into account the ability to fully and fairly participate with reasonable accommodations, where appropriate, of any religious minorities of significant numbers of concentration whose level of participation would be affected.

This Section has many components:

1. First, it speaks to meetings.
2. Second, it concerns a particular type of meeting: public meetings.
3. Third, any such public meetings are open to ALL members of the Democratic Party, and,
4. Fourth, the openness of the meeting cannot be restricted based on race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation, persons with disabilities as defined by the Americans with Disabilities Act of 1990 or economic status.

We shall address each of these components separately.

a. Meetings:

- i. What Is, and Is Not, a Meeting?

Roberts Rules of Order defines a meeting of an assembly as “a single official gathering of its members in one room or area to transact business for a length of time during which there is no cessation of proceedings and the members do not separate, unless there is a short recess” [Robert’s Rules of Order Newly Revised, 10 Ed. (hereinafter RRONR 10th) at pages 79-80].

This is important to note and consider. It is also particularly important to note what a meeting is not. A meeting is not merely a gathering of persons, nor simply a conversation, nor electronic storage or transmission of data or video.

Unless specifically provided for, a meeting cannot be held except in person by physical attendance of the member. That is one of the primary reasons groups provide for proxies or alternates in their bylaws; if the member cannot attend, an alternate or proxy is sent in place of the member. Unless specifically provided for, the use of a telephone, email, instant messaging, list-serves, video or WEB conferencing, or other alternative means, as a substitute for physical presence is not allowed (RRONR 10th at pages 79-80 and 482-3). Furthermore, there is nothing in the Party Rules that mandate the allowance of attendance by telephone, video feed, or other alternative means.

A list-serve, such as a Yahoo! Group, is not a meeting, nor can it operate as a substitute for a meeting, unless specifically provided for in a group's bylaws. Robert's Rules of Order specifically recommends against attempts to conduct a meeting via postal or electronic mail, or facsimile transmission, and explicitly notes the need for express authorization and special rules to support such efforts due to many unprecedented situations and general inapplicability of parliamentary law to such attempts (RRONR 10th at page 2, see footnote). Accordingly, great care should be used to ensure that decisions are made in actual meetings and not in such alternative forums.

The Democratic Party is not bound by the strictures of the Brown Act which limits members of a governmental decision-making body from discussing matters outside of a meeting. Accordingly, as long as the decisions are made in a properly noticed meeting, there is no prohibition on members discussing matters outside the meeting itself.

ii. Balancing the Principle of Equal Access With the Fundamental Characteristics of a Meeting

As noted above, a fundamental characteristic of a "meeting" is that it is a gathering in one space to transact business. For this reason, unless specifically provided for, a meeting cannot be held except in person by physical attendance of the member.

However, under the open meetings rule, the mere fact the rules of the specific body require a "meeting" and do not provide for alternative means of attendance is not, standing alone, a sufficient basis for concluding that a meeting must be conducted in person. Rather, Democratic Party organizations should consider whether their existing rules requiring physical attendance may be maintained consistent with their obligations under the open meetings rule.

The touchstone is reasonableness. An element of reasonableness is whether the rule is reasonably necessary. If allowing one or more other forms of participation does not impose any undue burden and does not fundamentally alter the nature of the proceeding, the principle of equal access underlying the open meetings rule ordinarily should cause the organization to modify its rules to allow those specific alternative forms of participation and access. In contrast, if allowing other forms of participation would impose an unreasonable financial or practical burden or would fundamentally alter the

nature of the proceedings, the requirement of in person (physical presence) participation is necessary and may stand.

For example, it very well may be that when there is a need to review documents produced at or near the time of the meeting, or when the ability to assess the credibility of a speaker is required, non-physical meetings render fulfillment of those needs difficult, if not impossible, and would fundamentally alter the character of the meeting. Accordingly, in these circumstances, given the present state of technology, the need for a physical meeting may be paramount; and, as a result, it would generally not be necessary to waive the requirement of a physical meeting.

One of the biggest problems with utilizing any means of holding a public meeting at which decisions are made in any context other than those requiring the physical presence of persons at the meeting, is how to allow for attendance of the non-member Democratic Electorate and the press. If a group holds a meeting by phone, email, instant messaging, list-serves, video conferencing, or other alternative means, it must consider how to include the Democratic Electorate and the press. For that reason, phone meetings such as conference calls, or other forms of meetings that do not include physical presence, should be avoided, particularly in situations that do not fit into an exception to the general rule of holding public meetings. Clearly, if the meeting need not be public, the problem is largely eliminated, as long as the group's bylaws allow for the alternative form of meeting. However, if such alternative, non-physical meetings are specifically authorized, provided for, and utilized, provision for "attendance" by others, such as the Democratic Electorate and the press, via telephone "listen only" mode, or some sort of "view only" mode if one of the various methods of Internet communication is employed, must be made. Otherwise, the meeting is not open. Additionally, when providing for such rules on a State-wide basis (or for some other large geographical area) consideration of the possibility of regional sites linked electronically at which members may gather, could be considered.

The policy of the Democratic Party requiring open meetings also calls upon Democratic Party organizations when holding a meeting to consider two things: (1) whether auxiliary aids (such as assistive listening devices, use of written materials or the like) are necessary to ensure equal access to all participants; and, (2) if so, if making these aids available imposes an undue burden on the organization or requires a fundamental alteration of the proceeding. To assure equal access, those auxiliary aids which constitute, in context, a reasonable accommodation should be made available. Those which impose an unreasonable financial or other unreasonable burden or fundamentally alter the nature of proceeding need not be made available.

In conclusion, it very well may be the case that financial and practical constraints limit the ability to offer some or all of the technologically feasible alternatives that would maximize equal opportunity to access and participate in a meeting. This is to be expected. There, quite simply, is no requirement that every possible auxiliary aid or other form of accommodation be made available; nor is there any requirement that any specific participant be given the specific aid or accommodation he or she requests. What is required is that reasonable steps be taken to assure all participants have equal

access to the extent such access is consistent with the organization's financial and practical constraints and without changing the fundamental character of the proceeding.

b. Public Meetings:

“What meetings are public?”

The text of the rule itself offers no answer to this fundamental question. Yet, in order for the rule to have any meaning, and not be swallowed up by the exception, the rule must be interpreted with an eye toward openness. All meetings of the Democratic Party, at all levels, should be considered public meetings, with very few exceptions.

In order to close a meeting to the Democratic Electorate, there must be certain very limited circumstances clearly necessitating closure. Borrowing from the public sphere, three examples of the type of meeting which can, and likely should, be closed and held in Executive Session, are generally accepted. These three types of meetings are those which deal with:

- i. Personnel Issues,
- ii. Contract Issues, and,
- iii. Litigation Issues.

Given the nature of any political party, a fourth example readily springs to mind, and that is:

- iv. Campaign Strategy.

And, finally,

- v. Member Disciplinary and Other Proceedings Involving the Right to Privacy

The purpose of the open meetings rule is to ensure that the affairs of the Democratic Party are conducted in a manner that is transparent and allows all Democrats, and others in the public, a full and fair opportunity to see and understand how the Democratic Party makes its decisions. Nevertheless, even open processes sometimes require dealing with information which is confidential, either because it involves an individual's right to privacy or proprietary information/trade secrets of those with which the Democratic Party does business. For this reason, customary methods of maintaining privacy used in our courts, the proceedings of which are also open, are not inconsistent with the open meetings rule. For example, there are times when it is essential to the integrity of a disciplinary or other similar hearing for witnesses not to hear one another's testimony. Courts deal with this by ordering the sequestration of witnesses so that witnesses are not in the courtroom when other witnesses are testifying and witnesses are not conversing with one another about their respective testimony. The open meetings rule is fully consistent with the use of a witness sequestration order.

Documents often contain information, such as an individual's Social Security number, credit card, bank account or medical information, which is private. Such information can be redacted (or removed) from the documents used in a public meeting. Similar concerns can result in a vendor's trade secrets being redacted from documents used in public meetings.

On rare occasions, customary efforts to protect the confidentiality of certain information are insufficient to allow the facts of a particular matter to be fully investigated or discussed. In such instances, where requested by the person whose confidentiality interests are at issue and where the body finds that customary efforts to protect that confidentiality will not suffice if the meeting is conducted in public, the body may conduct a portion of the proceedings in closed session. As noted, this should be rare as there is a strong presumption in favor of conducting Democratic Party affairs in public.

Even where a closed session is required, the general rule that meetings should be conducted as much in public as possible means that the portion of the meeting conducted in closed session should be as limited as possible. In particular, wherever possible, all deliberations should be conducted in public. In any event, all votes or other final determinations must take place in a public meeting.

Where a portion of the meeting will take place in closed session, there must be a vote in the open part of the meeting to go into closed session. There should be a self-contained and understandable explanation in the open part of the meeting of the reason for the closed session, why customary efforts to protect confidentiality other than going into closed session are not sufficient, and what portion of the meeting will be conducted in closed session. Whenever possible, a brief summary of what occurred in closed session should also be given in the open part of the meeting. The explanation of the reason for the closed session and the summary report of what occurred in closed session should be made part of the minutes of the meeting.

A sixth example might be one in which the bylaws of an organization allow for shortened notice to the members for exigent circumstances that could not have been foreseen. In such cases the issue is not so much openness, as it is notice. The best public notice that can be given under such circumstances should be given and would have to suffice. Needless to say, an organization should not rely on this as a general method of operation.

Care should be used not to strive to stretch the above categories to cover a given situation as the Democratic Party does believe in openness.

This is not meant to be an exhaustive listing of the exceptions to the "Open Meeting Rule", but any other reason for closing a meeting would have to be justifiable and likely would be of the nature and level of importance of one of the exceptions noted above.

c. Open Meetings:

Openness is first and foremost predicated on notice. Given the open meeting rule, openness also requires that meeting sites (and ancillary facilities such as dining rooms, restrooms and, where applicable guest rooms) be physically accessible and free of structural,

acoustical and other barriers to participation to the extent “readily achievable.” Finally, the meeting site needs to be of sufficient size and space to allow for all who desire to attend to do so. [A discussion of accessibility to the public and press of meetings conducted other than in person is found in part 2.a.ii, above.]

Article XIII, Section 3 of the CDP Bylaws speaks to these issues:

ARTICLE XIII: GENERAL POLICIES

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Section 3. NOTICE OF AGENDAS AND MEETINGS

The time, place and agendas of all public meetings of the Democratic Party on all levels shall be publicized fully and in such manner as to assure timely notice to all interested persons. Such meetings must be held in places accessible to all Party members and large enough to accommodate all interested persons.

i. Notice

If a member of an organization, or for that matter the Democratic Electorate, does not have a reasonable and timely opportunity to find out about the time, date and place of a meeting, it is a sham to say that it is open.

The Rules Committee notes that less than seven (7) days written notice by first class mail, or five (5) days personal notice, actually received and acknowledged, or five (5) days email notice if allowed by their bylaws is impermissible, except in emergency situations, in which case additional means of notice such as the telephone, hand-delivery, or other similar means should be provided for and employed to the maximum extent practicable.

It should be further noted that in order for electronic notice to be valid, it must be specifically provided for in the bylaws of an organization, and the member should individually consent to receive notice on that basis. We raise these concerns due to the fact that not all members of Democratic Party Organizations, and/or for that matter the Democratic Electorate, have access to computers, and there does still exist a digital divide.

In the use of email for notice, the CDP has adopted the following rule which should serve as a model for other organizations considering the use of such means of notice:

ARTICLE XIII: GENERAL POLICIES

Section 10. E-MAIL NOTICE

a. Publication of any Democratic Party notice via email will be considered valid if:

- (1) The sender and receiver have both consented, in writing, to sending and receiving notice in this manner,*
- (2) The notice was sent to or from the email address specified when giving consent, or most recent email address specified on a subsequent notice of change of address by sender or receiver,*
- (3) The obligation to inform and procedure for informing of any change in email address has been specified in writing, and*
- (4) There is an opportunity to opt out of such consent at an appropriate time.*

However, it must be noted that the membership of an organization is not the only recipient intended to receive notice under these rules. Every reasonable attempt to notice the Democratic Electorate of public meetings should be attempted. The Rules Committee specifically notes that the mailing of press releases to daily newspapers of general circulation and/or the posting of meeting notices on organizational websites within sufficient time to have afforded reasonable notice to all interested persons will provide a rebuttable presumption that this requirement has been satisfied whether or not the press release is actually printed. Proof of intent to subvert this notice requirement based on the manner, mode, and nature of the attempt at notice such as the known policies of the newspaper mailed to, or the manner and placement of the web posting will be considered in rebuttal.

ii. Accessibility:

At the core of open meetings rule is the principle that every member of the Democratic electorate should have an equal opportunity to observe—and every member of a Democratic Party organization should have an equal opportunity to participate—in the Party’s public processes without architectural or communications barriers. Party organizations should try to live up to this aspirational goal to the extent it can reasonably be achieved under the circumstances. For example, meeting sites should have wheel-chair access and not be on a second floor walk-up, without elevator access. The purpose of the rule is to eliminate discriminatory barriers to access, not to impose a requirement of maximum convenience. In other words, meetings should always be held in a facility that is physically accessible to those with disabilities. In facilities under the Party’s control, where a barrier’s removal is easily accomplished and it can reasonably be eliminated, it should be removed. In contrast, the principle of accessibility does not necessarily mean that a Democratic Party organization must provide for telephonic participation or meeting times only when public transportation is available as these types of accommodations carry with them financial, practical and other burdens—or changes in the fundamental character of the proceeding--that must be evaluated. As a result of that evaluation, it will often be the case that certain accommodations are reasonable while others are not.

iii. Size of Meeting Space:

A meeting site that will only hold 20 people, when it is clearly known that 400 will participate, does not qualify as large enough to accommodate all interested persons. Reasonable attempts to estimate the number of attendees should be made. Past experience, and current issues and events, should help guide organizers.

A. Party Members:

The Open Meeting Rule, and the Rule addressing size of meeting space, is targeted to Democratic Party members. While a meeting may be open to the General Public, as noted above, there are times when it need not be.

B. The Press:

A strong and vibrant democracy requires the participation of a free press. Simply put: Absent one of the exceptions to a meeting of the Democratic Party being public, the press cannot be barred from observing a public meeting of the Democratic Party. To do otherwise closes the meeting to all but “insiders”, and renders the “open meeting” rule all but void.

d. Non-Discrimination:

The Democratic Party does not discriminate in its openness of meetings, its membership, oaths or tests of loyalty, or in registration based upon race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation, persons with disabilities as defined by the Americans with Disabilities Act of 1990 or economic status.

The non-discrimination rules with regard to membership, both actual and prospective, will have an impact on the location of even non-public meetings.

Specifically, Article XIII, Sections 2 and 4 state:

ARTICLE XIII: GENERAL POLICIES

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Section 2. TESTS AND OATHS

No test for membership in, nor any oaths of loyalty to, the Democratic Party shall be required or used which has the effect of requiring prospective or current members of the Democratic Party to acquiesce in, condone or support discrimination on the grounds of race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation, gender identity, persons with disabilities as defined by the Americans with Disabilities Act of 1990 or economic status.

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Section 4. REGISTRATION

The Democratic Party, on all levels, should support the broadest possible registration without discrimination on grounds of race, color, creed, national origin, sex, age, religion, ethnic identity, sexual orientation, gender identity, persons with disabilities as defined by the Americans with Disabilities Act of 1990 or economic status.

As a result, it must be recognized that a non-public meeting is still subject to the non-discrimination rules noted above.

This is particularly true with regard to meetings concerning personnel, which includes hiring, firing and employment actions, as well as contract and litigation matters, which can involve non-members of the body, who may be in need of a physically accessible meeting site.

Accordingly, even non-public meetings must be subject to the same non-discriminatory rules in their application to not only members of the body, but to all eligible attendees which will of necessity include speakers, guests, and invitees.

To recap: All persons entitled to attend a meeting, public or non-public, should, in fact, be provided with a meeting site physically accessible to them. When the meeting is public, the physical site should always be accessible, as every Democrat, physically disabled or not, is entitled to attend the meeting. When the meeting is non-public, the physical site should always be accessible for all of the eligible attendees, including those with disabilities. As a result, great care should be exercised if a private home is selected as a meeting site for a non-public meeting, and the use of private homes should likely be avoided when the meeting is public in nature.