

MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission

DATE: March 3, 2021

RE: **DECISION OF THE COMPLIANCE REVIEW COMMISSION RELATING TO CHALLENGES FILED IN THE ASSEMBLY DISTRICT ELECTION MEETINGS IN ASSEMBLY DISTRICTS 50, 59, AND 74**

INTRODUCTION

In accordance with the By-laws of the California Democratic Party (CDP), Assembly District Election Meetings (ADEMs) are conducted every two years to elect from each Assembly District 14 representatives to the California Democratic State Central Committee (DSCC) and one representative to the CDP Executive Board (E-Board). After the 2019 elections, the CDP undertook a process to restructure the ADEMs to improve their security and scalability. However, the coronavirus pandemic made those plans impractical and perhaps dangerous, and the E-Board decided to hold the 2021 ADEMs through a mail-only process.

After the process was completed, including an extraordinary extension of time to receive the ballots, three challenges were received by the Compliance Review Commission (CRC). These challenges were as follows:

- 1) Anne Mohr, challenging the results in AD 74
- 2) Marcial Romero, challenging the results in AD 59
- 3) Sue Himmelrich, challenging the results in AD 50 and statewide

MOHR AD 74 CHALLENGE

Anne Mohr was an ADEM Candidate from AD 74 for the 2021-2023 DSCC and E-Board. The challenge requested a review of 2021 ADEMs in general and reform of the rules and procedures with a focus on missing ballots.

The challenge was received on February 17, 2021. Due to lack of compliance with the CRC Regulations, CDP Staff sent an email February 18 requesting a revised submission within 5 days following the guidelines. Mohr submitted her revised challenge February 22, 2021.

The challenge calls into question the following items:

- That certain candidates were given top exposure and priority because candidate statements were not posted on the website in a timely manner.
- People had difficulty registering due to the CDP website issues and in multiple instances registered Democrats were wrongly told that they were not registered Democrats.

- That registered Democrats registered for a ballot through the CDP website and did not receive a Vote-by-Mail ballot.
- That candidates had not received a Vote-by-Mail ballot, were not able to receive a ballot in time to vote, and were misinformed by CDP staff that there was a deadline to request a replacement ballot by a certain date thereby negating the opportunity for candidates to vote.
- That those that registered through the CDP website received Vote-by-Mail ballots so late in the process that it was impossible for their ballots to be returned by the February 3 deadline

Mohr further claims that approximately 170,000 ballots were requested statewide yet less than half (approximately 38%) were counted either due to voters never having received the ballots or delays in delivery of said ballots. On February 9, 2021, a list went out via email congratulating winners. In several instances, the winners found out much later that they did not win. Additionally, digital copies of all counted ballots were posted days after February 9.

The challenge requested that the ADEMs be reviewed and that all persons that registered to vote be given the opportunity to check that their ballot was counted or the opportunity to receive a ballot, submit their ballot and have it counted.

Mohr also asked for verification of the postmark of the missing 1281 ballots. Lastly, Mohr asked that a provision be made that, in the future, ADEM elections are treated just as Special or Regular elections whereby all registered Democrats in the state of California receive a ballot pertinent to their respective Assembly Districts.

Staff received no testimony in support of the Mohr challenge and one submission in opposition by Regional Director Deborah Cunningham-Skurnik.

ROMERO AD 59 CHALLENGE

Marcial Romero and Joe Rose were AD59 ADEM candidates and filed a challenge on February 19, 2021, challenging the results of the ADEM election in Assembly District 59.

Due to lack of compliance with the CRC Regulations, CDP Staff sent an email February 20 requesting a revised submission. The revised challenge was submitted February 22, 2021.

The challenge claims that:

- The so-called “Fighting 59th slate” perpetrated or benefited from an operation in which they requested and registered ballots for voters en masse without voter consent and harvested the private Voter ID numbers for mailers and text messages.
- People attempted to register but were not able to, due to the CDP website issues and in multiple instances registered Democrats were wrongly told that they were not registered Democrats.

Romero claimed that the following CDP Bylaws were violated by the Fighting 59th slate:

- Article VI. Section 1. G, which provides that in order to receive a ballot, each Election Meeting participant shall agree, via a form provided by the Secretary of the CDP, to allow the Party to use the contact information they submit as part of the registration process for outreach purposes
- Article XIII. Section 10. A, regarding email notice
- Article XIV. Section 1. C, regarding sending notice by electronic means

Romero specifically objected to certain actions by the Fighting 59th slate:

- Voter ID harvesting
- No consent for registration
- Use of robotexts
- Use of door-to-door canvassing

The proponents of this challenge requesting the following remedies:

- Immediately invalidate and nullify the victories of the entirety of the Fighting 59th slate.
- Allow for the next highest vote recipients to become the proper duly elected delegates in AD59.

CDP staff received testimony in support of the challenge from Melinda Amato, Salvador Diaz, Elisa Gomez, Patricia Melendrez and Joe Rose

CDP Staff also received testimony in opposition from Arturo Flores

HIMMELRICH AD 50 / STATEWIDE CHALLENGE

Sue Himmelrich was an ADEM Candidate in AD 50. She filed a challenge on February 22, 2021, challenging the results of the 2021 ADEM.

The challenge cites violations of CDP bylaws Article VI, regarding the ADEM process. The challenge alleges that per the CDP Bylaws amended due to COVID-19 ramifications, each ballot was to be counted as long as it was postmarked by January 27, 2021, and received by January 30, 2021. The challenge notes that on January 23, 2021, the statewide officers of the CDP unanimously decided to extend the deadline for receipt of all ballots to February 3, 2021, regardless of postmark.

The challenge further notes that she was made aware of over a thousand uncounted ballots received at the CDP headquarters after the February 3 deadline but postmarked on or before that date.

Himmelrich finished in 8th place in the AD 50 results for self-identified females, one vote behind the 7th place delegate position. She believes that the uncounted ballots could provide

her with enough votes to win a delegate position, which would make her eligible to run for statewide party office.

She is requesting for all remaining uncounted ballots be counted and incorporated into the ADEM results.

CDP Staff received testimony in support of the Himmelrich challenge from Rocio Aguayo, Timothy Beyer, Michelle Boley, Jo Ann Bollen, Maribel Castillon, Maria Elena Diaz, Rabi'a Keeble, Chris Krohn, Olivia Reck, Mike Rose, Ann Schneider, Karen Stevens, Juan Vazquez, Julia Vega and Rodney Woodard.

CDP Staff received testimony in opposition from Susan George, Doug Kessler, Matthew Rhoa and Pedro Spindler.

The themes among the supporting testimony were:

- Voters had difficulty registering online
- Voters had difficulty receiving a response from staff
- Not all registered participants received their ballot
- All ballots that arrived at a specified point in time should be counted and the existing deadlines were insufficient for issues to be resolved
- CDP should provide an election where all Democratic registered voters received a ballot and vote online
- There were issues with the posting of results

In general, the opposition testimony stated:

- People were given enough time to send ballots
- Notice was advertised extensively through website and social media channels
- There's no evidence as to why every ballot wasn't returned
- Not all ballots requested were requested with the consent of the voter
- Counting the ballots after the February 3 deadline would also be unfair because not all were requested by voter
- Rules were clear, extension was clear but to allow ballots after the clear deadline wouldn't be fair to everyone who followed the rules
- Supporting this challenge would allow any appeal with an excuse, which can result in a new election

DOCUMENTS INITIALLY RECEIVED AND REVIEWED

In addition to the documents noted above, the CRC took notice of the following:

1. 2021 ADEM Procedures
2. CDP Bylaws
3. Various news reports regarding delays in delivery by the United State Postal Service

CONSOLIDATION

After hearing staff reports for each of the above challenges, the CRC moved and unanimously voted to consolidate the three challenges, finding that the overlapping issues presented in the challenges were best resolved by hearing them together.

TIMELINESS

According to CDP Bylaws, Article XII, Section 2c:

“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 January 2021, unless otherwise indicated.)

The three challenges were filed as noted above. The final and corrected ADEM results were posted on the ADEM website on February 10, 2021. While some challenges were filed within the 7-day deadline and some were not, a motion to waive the timeliness requirement for all three challenges, citing the important and broad issues cited in the challenges, was adopted unanimously by the CRC.

STANDING

According to Article XII, Section 2b:

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

The CRC unanimously adopted a motion finding standing for all three challengers, noting in particular that Himmelrich, as a potential statewide challenger, had standing to challenge the results in each of the 80 ADEMs.

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 unanimously adopted a motion finding jurisdiction under:

- Article XII, section 2, which establishes the CRC and governs its jurisdiction and ability to craft “fair and just remedies.”

- Article VI, providing for the ADEMs, including the bylaws that were adopted at the Special E-Board in January 2021.
- Temporary Article III-A, which among other things, establishes rules governing CRC procedures in the days prior to the state Convention starting in April 2021.

DISCUSSION

The CRC noted that in January 2019, the previous set of ADEMs were conducted and various challenges were processed by the CRC. Due to the limitations of the structure, there was widespread dissatisfaction with the process.

The CRC noted that the CDP Rules Committee always conducts a review of the process, including testimony on how to improve the next cycle. However, when Rusty Hicks ran for Chair, one of his pledges was to conduct a reworking of the entire process. In September of 2019, now-Chair Hicks established and appointed members to an Ad Hoc Committee on ADEMs. After hearings and dozens of meetings, in July 2020 the E-Board adopted a much-improved process, which would, it was hoped, eliminate the need for most challenges by ensuring that ballots were only cast by eligible voters and making other improvements to address the most consistent complaints about the process.

However, the CRC noted that by then the pandemic was in full swing, but had not hit its full force. The CRC noted that a gubernatorial declaration of emergency had been issued regarding the pandemic, making an in-person process extremely difficult.

When the time came at the November 2020 E-Board to adopt the Procedures for the new system, it was clear that there was little support for any kind of in-person process, and a bylaws amendment was recommended to the E-Board to conduct the entire process by mail. When the E-Board ratified the mail-only system in January, it gave voters extra time to register and return ballots.

From the November 2020 E-Board, CDP staff had only about two months prior to the election to design and implement a brand-new system from scratch. The CRC noted that some problems with the system could have been anticipated and noted that there will be a thorough review of the system, its shortcomings, ideas for improvement and a recommendation of how to conduct the ADEMs for the next cycle in 2023.

Nonetheless, at the end of the day, those involved, including staff, party officers and leaders, and others all did the best they could to design a system that was secure, workable, fair, and scalable. And for the most part, it worked.

The CRC noted that while it was understood that the ability to register people without their permission was possible and permissible in the new system, and some had expressed disquiet about this, leadership and staff thought that it would be workable and would add to participation in the ADEMs.

And the CRC further noted that the fail-safe was, and still is, that all ballots were mailed only to the voter's official address on record. This is an extremely important point to

remember. But the ability to register people this way, and the fact that some figured out how to automate the process, resulted in an unprecedented and unanticipated number of registrants.

This had a variety of unintended consequences. The number of requested ballots required the repeated reprinting of ballots. This, and the newness of the system, resulted in both printer and mailhouse delays.

Finally, and critically important, the CRC noted the effect of severe delays on the part of the United State Postal Service. The CRC noted that if the Postal Service has performed to service standards that were common just a few years ago, and before Donald Trump set out to deliberately damage that great institution, the system would have run much more smoothly, and it was unlikely that that the present challenges would have been filed.

The CRC noted that the Trump-caused crippling of the Postal Service, combined with the problems and delays noted above, meant that all election-related mail, ballots going to voters, and ballots mailed back, were clearly and unacceptably delayed.

The CRC specifically noted that the Postal Service problems were not a result of failures by line staff, which news reports made clear worked diligently and even heroically to deliver the mail, but in fact were the result of deliberate actions by Trump Administration-installed management, including reducing overtime and removing critical mail-sorting equipment. The CRC looks forward to a restoration of the integrity of the Postal Service under the Biden Administration.

When the delays described above became apparent in mid-January, an extension of the deadlines by which the ballots needed to be received by the CDP was implemented by Chair Rusty Hicks, with the unanimous consent of the statewide officers. The new deadlines provided that to be counted, all ballots had to be received by the CDP by February 3, 2021. The CRC noted that it received no challenges to that decision.

FINDINGS

The CRC is now faced with two primary issues:

- 1) Should registration without permission be allowed to stand?
- 2) Should ballots that arrived after February 3rd be counted?

As to the issue of registration of ADEM voters without their permission, the CRC notes that such registration is clearly within the rules. And due to the nature of the system, it would have been technically very difficult to layer on a method to prevent people from being registered without their knowledge or permission.

Even if that could have been done, such changes would clearly favor those who took advantage of the original rule to the disfavor of who were going to take advantage of it later. Further, it would not be possible (as some have suggested) to simply exclude the ballots that

were not requested by the voter, especially since many voters who were registered without their permission would have registered on their own.

At the same time, there is no doubt that some people abused this loophole. There is no doubt that such behavior is regrettable and unfortunate, especially those who used the loophole to gather voter identification numbers.

However, the CRC finds that since it was technically within the rules, there is no basis to either disqualify candidates or rerun the election.

As to the issue of whether the deadlines for receipt should be extended beyond February 3, 2021, there are clearly good arguments on both sides. Probably the best argument against extending the deadline is that changing the rules in the middle of the process is certainly frowned upon.

On the other hand, the deadlines had already been extended once, with no objection. Further, and most relevantly, the postal service delays were severe, unexpected and unprecedented. The CRC also notes that judges and elections officials around the nation also extended deadlines in light of the extraordinary challenges presented by both the pandemic and the postal delivery delays.

ORDER

Based upon the above facts, discussion and Bylaws of the CDP, the CRC makes the following Order:

To instruct CDP staff

- (1) to accept and count all ADEM ballots that were postmarked by February 3, 2021 and received at one of the two designated P.O. Boxes by February 20, 2021;
- (2) to recalculate the results in all ADEM contests;
- (3) to scan all newly accepted ballots and post those ballots in the same manner as the previously accepted ballots;
- (4) to post the new results on the CDP website;
- (5) that to the extent this decision changes the results, the newly-designated winners shall be included in the DSCC roster and be able to participate in the 2021 Convention, notwithstanding the February 22, 2021 roster final deadline;
- (6) that for those candidates who had won a slot before the new ballots were counted but are now being bumped as a result of this decision, grant special guest and/or observer status for all conventions for the remainder of the term.

To the extent the consolidated challenges requested remedies that are consistent with the above order, such remedies are granted. To the extent that such requested remedies are not consistent with the above order, those requested remedies are rejected.

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Due to the adoption of temporary Article III-A by the E-Board in January 2021, this decision is final and not appealable. It is effective immediately.

Finally, the CRC notes that this decision is primarily driven by the unique challenges presented by the pandemic and as such shall not be cited as precedent unless there are similarly unique circumstances requiring similar relief.

Respectfully submitted by a 6-0 vote of the members of the CRC.

Tim Allison, Co-Chair, Credentials Committee

Kathy Bowler, Co-Lead Chair, Rules Committee

Nicole Fernandez, Co-Chair, Rules Committee

Coby King, Co-Chair, Rules Committee, and Co-Chair of the CRC

Lara Larramendi, Co-Lead Chair, Credentials Committee, and Co-Chair of the CRC

Keith Umemoto, Co-Chair, Credentials Committee