

MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: October 28, 2022

RE: **COMPLIANCE REVIEW COMMISSION (CRC) DECISION RELATING TO A CHALLENGE FILED BY ALEX GUTIERREZ**

INTRODUCTION:

On July 21, 2021, Mr. Alex Gutierrez submitted a challenge relating to the actions of the Tulare County Democratic Central Committee (TCDCC). The Challenge alleges the following, which Mr. Gutierrez submits constitutes conduct warranting CRC intervention:

1. During the July 15, 2021 regular meeting, acting Chair Arturo Rodriguez and Parliamentarian Brock Neeley upheld a “personal point of privilege” and conducted a closed session to review charges against Mr. Gutierrez without proper notice or the accused party being present. The discussion of the charges was conducted in July despite the fact that a meeting to hear the charges against Mr. Gutierrez had previously been scheduled for August and Mr. Gutierrez had planned to attend that meeting and defend himself against the charges at that time.
2. During the closed session, nonmembers were removed from the meeting to the Zoom waiting room. Mr. Gutierrez alleges that allowing this exclusion over the objections of some members in attendance exhibits bias.

Mr. Gutierrez is requesting the following:

1. CRC finds the July 15, 2021 secret meeting of TCDCC unlawful, irregular and, or prohibited on the following grounds:
 - a. Secret meetings and voting are in violation of CADEM Bylaws:
 - b. Failure to notify all members of written allegations being circulated by the Officers against one of the members violates the CADEM Bylaws concerning notice.
 - c. Failure to notify All members of written allegations being circulated by the Officers against one of the members in violation of the TCDCC Bylaws concerning notification.
 - d. This conduct is harassment in violation of the CADEM code of conduct adopted by the TCDCC.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

Challenge submitted by Alex Gutierrez on June 21, 2021. Includes Exhibits 1-6.

Exhibit 1 July 15, 2021 TCDCC Agenda

Exhibit 2 Minutes of Regular July 15, 2021 TCDCC by acting Secretary Carmen Becerra draft

Exhibit 3 Declaration from Ruth Musser-Lopez

Exhibit 4 Minutes of Regular July 08, 2021 Executive Board Minutes draft

Exhibit 5 Charges for Officer Removal from Brock Neeley, John Coffee and Edith LaVonne (5 pictures)

Exhibit 6 Minutes of Regular March 18, 2021 TCDCC Vote of No Confidence on Chair SAM draft

TIMELINESS:

According to CDP Bylaws, Article XII, Section 4:

“All challenges must be commenced by the filing of a written challenge with the Secretary of This Committee, with copies served on the Chair of This Committee, as well as the appointing person, and the chair of the relevant organization, where applicable no later than seven (7) calendar days after the alleged violation occurred. Upon a showing of good cause, sustained by unanimous vote, the Compliance Review Commission may waive this requirement.”

(All By-Law references are to the California Democratic Party Bylaws, as amended through January 2021, unless otherwise indicated.)

Mr. Gutierrez submitted a challenge on July 21, 2021 for an incident that took place on July 15, 2021. The submission was within 7 days of the TCDCC meeting on July 15, 2021, and, thus, the challenge was timely.

STANDING:

According to Article XII, Section 3:

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

Standing did not have to be reached as there was no jurisdiction found in this challenge.

JURISDICTION:

Article XII, Section 2 states:

“The Compliance Review Commission shall have initial jurisdiction over all challenges and/or appeals arising under these Bylaws.”

Further, the CRC Procedural Rules, Section 2, B. 2. state in pertinent part that a challenge must,

“Explain[] the basis of CRC’s jurisdiction... If the CRC cannot discern the section of the CDP Bylaws alleged to have been violated or which grants jurisdiction to the CRC, it may dismiss the challenge.”

Mr. Gutierrez does not allege that any action was taken during the closed session, including any final action. Mr. Gutierrez does not explain any efforts to seek an explanation of the purpose of the closed session or to affect any remedy of any perceived violative conduct at a subsequent open meeting. This is an inherently fatal deficiency and not a mere failure to cite to an appropriate Bylaws provision in the objection documents and, thus, no opportunity to cure is warranted.

In such circumstances, while Mr. Gutierrez is correct that it is desirable for there not to be unnoticed closed session discussions, he has failed to allege that any action was taken in closed session that must have been taken, instead, in open session nor has he alleged that any action was taken without being noticed. Given this and the policy of limited intervention of the CDP (through the CRC) in the business of a county committee, the CRC did not find that the challenger met his burden of clearly identifying a basis for jurisdiction over the challenge.

FINDINGS:

As noted above, the challenge submitted by Mr. Gutierrez failed to provide any basis for jurisdiction and the CRC could not discern any section of the CDP bylaws to have been violated according to the challenge.

As the CRC has explained in many previous decisions, the CRC is not a general appellate body for county committees, which under state and federal law are separate legal entities from the CDP. While there are exceptions to this rule, in general, the CDP (through the CRC) will not intervene in the business of a county committee unless the actions being complained about directly affect the county committee’s representation on the CDP State Central Committee or Executive Board or, in the case of a county committee whose endorsements are deemed to be the CDP’s endorsements, directly affect the endorsement process.

ORDER:

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

The CRC denies the challenge and has voted to dismiss due to the lack of jurisdiction.

Appeal of this order, if any, must be filed with the CDP Secretary, with copies to the Chair of the CDP State Central Committee, within twelve days of the date of this decision. Thus, any appeal must be filed on or before November 9, 2022 with the Sacramento office of the California Democratic Party, and shall be an appeal to the next meeting of CDP Rules Committee upon conclusion of the response period.

Please note that per CDP Bylaws, Article XII, Section 2e, the filing of an appeal shall not stay any decision of the CRC. Parties may additionally respond in person or virtually, depending on how the meeting is being conducted, if so desired, provided there has been a timely filing of an appeal and notice of intent to testify is provided in writing to the Lead Chair of the Rules Committee by 5 PM on Monday, November 9, 2022, at the Sacramento office of the California Democratic Party. The Rules Committee may accept such additional testimony, written or oral, considering the nature and import thereof, as well as the time available for its proper consideration, as it deems appropriate, in its discretion.

Accordingly, this decision is so ordered, and is in effect, unless, and until, a successful appeal is made, decided, and contrary orders made whether by the CRC, or by the Rules Committee. CRC shall retain jurisdiction up until the time of an appeal, if any, is heard by the Rules Committee.

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

Tim Allison, Co-Chair, Credentials Committee
Nicole Fernandez, Co-Chair, Rules Committee
Valeria Hernandez, Co-Lead Chair, Rules Committee
Lara Larramendi, Co-Lead Chair, Credentials Committee
Paul Seo, Co-Chair, Credentials Committee
Laurence Zakson, Co-Chair, Rules Committee