

MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: April 14, 2023

RE: **DECISION OF THE COMPLIANCE REVIEW COMMISSION (CRC) RELATING TO A CHALLENGE FILED TO THE CONDUCT OF THE ASSEMBLY DISTRICT ELECTION MEETINGS (ADEMS)**

INTRODUCTION:

On February 15, 2023, Amar Shergill, Assembly District 10 candidate, filed a challenge along with 85 signatories relating to the process of the Assembly District Election Meetings (ADEMs). The challenge questions the validity of the ADEMs elections and alleges that the ADEMs process is inherently flawed, that the Party discriminated against immigrant voters and immigrant candidates, and that the Party supported/endorsed a slate of candidates through willful distribution of intellectual property and/or refusal to seek an end to theft of intellectual property. According to the Challenger, in districts with at least one Sikh candidate on the ballot, 27% of ballots were not counted while other districts had only a 14% rejection rate. The Challenger also asserts that the AAPI, Latino, and other immigrant communities were also disproportionately disenfranchised.

An amendment to the original challenge was filed on February 23, 2023; the amendment was submitted to make it clear that the 85 signatories listed in the initial challenged were not party to, nor did they join in, the portion of the challenge submitted by Mr. Shergill which alleged the theft of intellectual property, and called for the resignation of Rusty Hicks.

Staff notes that even before the amendment, the 85 signatories were included with the challenge submission but not signed as a Challenger.

The challenge calls into question the following allegations:

1. Some voters who did not receive a ballot and were not able to attend to vote in-person had their request for a replacement ballot denied.
2. Some ballots were sent during a natural disaster, and some ballots were sent to non-deliverable physical addresses instead of the mailing address that was given to the Party.
3. Some persons who were eligible to vote received their ballots at a time so close to the deadline that they were unable to return the ballot before the January 31, 2023 deadline and the Party refuses to publicize and/or count such ballots that were postmarked on or before January 31.
4. By creating a voting process that is harder for one group than another, the ADEMs process violates CDP By-Laws Article XIII, Section 1.
5. Where there was a higher percentage of voters of color in a district, it was more likely that ballots in the district would not be counted.

6. According to the Challenger, the CDP received 1,402 in-person ballots that were classified as unverified and not counted due to voter's entries into an online form that did not exactly match their voter record.
7. The CDP has refused to provide the Challenger with requested evidence which the Challenger alleges exists in-house and which the Challenger asserts would demonstrate negligence and/or discrimination in the ADEMs process.
8. Lastly, according to the Challenger, the Progressive Caucus informed the CDP of unknown associates of the Chair committing fraud on voters by using a website called 'CADem4All.com,' which, the Challenger asserts, was intended to confuse voters about the site's association with the CDP, but no action was taken in response to this information. The Challenger claims that this resulted in a violation of CDP By-Laws Article VIII, re: endorsements, and Article VIII, Section 1.d re: violation of the Party's one-voice rule.

The challenge requests the following:

1. The Challenger requests to have all unverified ballots and all ballots verified upon secondary review, be reevaluated to determine if the information provided by the voter in the online form substantially matched their voter file. All votes that are substantially matched should be counted and results amended.
2. Every voter who contacted the Party for a replacement ballot should be provided an additional opportunity to vote.
3. All ballots that were postmarked on or before the January 31, 2023 deadline should be counted.
4. The CRC should recommend that Chair Rusty Hicks resign rather than invalidating the entire ADEMs election.
5. The CRC should order all invalid ballots be tallied and included in the count.

Staff received no testimony in support of Mr. Shergill's challenge, nor additional evidence to substantiate the allegations made.

DOCUMENTS INITIALLY RECEIVED AND REVIEWED:

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

1. Challenge by Amar Shergill with an additional 85 signatories submitted to the CRC on February 22, 2023.
 - a. Exhibit A- ADEMs 2023 Ballot for those that were unable to vote (Responses)
 - b. Exhibit B - Data alleging discrimination in ADEMs
 - c. Exhibit C - 1.14.23 Letter to Party Officers re fraud by Chair's associates
 - d. Exhibit D - 1.19.23 Progressive Caucus email
 - e. Exhibit E - 2.13.23 Letter to CADEM re uncounted ballots
2. Amendment to the Challenge submitted by Amar Shergill on February 23, 2023
3. There were no responses supporting or opposing this challenge submitted.
4. The 2.15.23 Chair Hicks letter responding to 2.13.23 letter to CADEM re: uncounted ballots. Although not submitted in response to the challenge, at the CRC's request, staff shared the letter with the CRC.

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 November 2022, unless otherwise indicated.)

Mr. Shergill originally submitted a challenge February 15, 2023. On February 17, 2023 CDP Staff requested that the Challenger resubmit their challenge within 5 days in proper format as it did not adhere to the challenge submission requirements. On February 22, 2023, CDP Staff received an updated challenge.

The items challenged relate to: the mailing addresses used, and timeline, for the mailing of ballots; the process for voters who were not registered Democrats at the time they cast their ballot to submit verification of their registration/re-registration to vote as Democrats; the name used by a group of candidates on a website to identify themselves; and the denial of a request by some voters to be mailed a replacement ballot. The deadline for the receipt of ballots and verifications was January 31, 2023. The other events being challenged occurred prior to January 31, 2023. As a result, the latest deadline for any of the Challenger’s challenges was 7 days after January 31, 2023. Mr. Shergill did not file the original challenge within 7 days of the January 31, 2023, and, thus, the challenge was not timely.

By unanimous vote of the CRC, the CRC can find “good cause” to waive the untimeliness of a challenge and to consider it on the merits. Finding it significant that this was the first election with a prolonged and multifaceted election process and, further, finding that the challenge raises important allegations about the selection process used for the selection of a large segment of Convention delegates, the CRC unanimously found that it would be in the best interest of the Party to waive untimeliness and to deal with the challenge on the merits as allowed under Section 4.J of the CRC Procedural Rules.

STANDING:

According to Article XII, Section 3:

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

The CRC finds Mr. Shergill has standing as Mr. Shergill was both a candidate and a voter at the 2023 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 finds jurisdiction under Article VI (Assembly District and Assembly District Election Meetings).

FINDINGS:

1. Mr. Shergill alleged that unknown persons whom he asserts, without supporting evidence, to be associates of the Chair had committed fraud on voters by using a website ‘CADem4All.com,’ which he contends was intended to confuse voters into believing that these candidates were endorsed by the CDP. The allegations in this regard were difficult to understand, predicated upon assumptions that were unsupported by any evidence and the Challenger failed to cite to any substantial evidence that the complained-of conduct may have affected the outcome of the election. In such circumstances, the challenge was deemed without merit and dismissed.

2. The bulk of the remaining challenges attacked the design and structure of the ADEMs process. None of these challenges assert, in a concrete argument supported by facts and Bylaws citations, that any element of the design and/or structure of the ADEMs process was inconsistent with CDP Bylaws, and the CRC could discern no basis for such an allegation.

The ADEMs process was approved by the CDP’s Executive Board after an exhaustive hearing process conducted by the Rules Committee. No specific deficiency in the adoption process was asserted nor was any evidence in support of such an argument submitted.

That the process could have been designed to be more accommodating to persons whose first language is not English may be an appropriate basis for prospective changes to the ADEMs, but is not sufficient grounds for setting aside an election or the votes of persons who participated in the ADEMs process and complied with the published procedures. Similarly, a belief that the ADEMs elections would have been better or more inclusive if in-person balloting was not the principal – and, in some cases, the only – back-up for persons who did not receive vote-by-mail ballots or did not receive such ballots in time to return them by mail also may be a legitimate basis for prospective changes, but also fails to constitute sufficient grounds for setting the election aside.

Turning to specific allegations, none was proven to have been so deficient as to warrant setting the election aside.

In 2017, the CRC in a decision regarding the ADEM in AD47, and which applies to this case found that:

“In order to overturn an ADEM result, Challengers must meet the standard which demonstrates in a quantifiable way that the conduct and/or actions complained of

made a difference in the outcome that would not have been present absent that conduct and/or action. The challenge submission made various allegations, however there was no specific quantifiable allegation, which would have resulted in a different outcome.”

Applying the aforementioned CRC’s standards, as noted above, the challenge was fatally deficient in that there was no testimonial or documentary evidence submitted that demonstrated in a quantifiable way that the conduct and/or actions complained of made a difference in the outcome that would not have been present absent that conduct and/or action.

Additionally, despite the close margins in some districts (for example, the Challenger was 3 votes behind the lowest finishing OSIF in his district), the Challenger adduced no evidence that an outcome determinative number of disqualified voters were in fact qualified, nor that they submitted evidence of their qualification.

The CRC is faced with two questions:

1. Were the 2023 ADEMs Procedures a violation of the Bylaws?
2. Were the 2023 ADEMs Procedures violated?

As to the ADEMs Procedures being a violation of the Bylaws, the CRC could not discern any section of the CDP Bylaws that may have been violated based on the information provided in the challenge and by CDP staff.

In accordance with the Bylaws of the California Democratic Party, ADEMs are conducted every two years to elect 14 representatives (per Assembly District) from each of the 80 Assembly Districts to the California Democratic State Central Committee (DSCC) and one representative per Assembly District to the CDP Executive Board (E-Board). Further, the CDP Bylaws provide that the CDP Rules Committee shall promulgate procedures governing how the ADEMs are to be organized and conducted.

It is the practice of the CDP Rules Committee to conduct a review of the ADEMs process with the goal of improving the process in the next cycle. Last year, the Rules Committee undertook a lengthy process to update the ADEMs procedure. The Rules Committee held a series of hearings where they deliberated and heard testimony from delegates on improvements and changes that could be made to improve ADEMs. After an exhaustive hearing process conducted by the Rules Committee, the ADEMs process was approved by the CDP’s Executive Board in accordance with the CDP bylaws.

As to the ADEMs Procedures being violated, the CRC could not discern any section of the procedures that may have been violated based on the information provided in the challenge and by CDP staff.

With the approval of the Executive Board and in accordance with the CDP’s Bylaws, the ADEMs procedures have been significantly restructured twice since the 2019 ADEMs at least in part due to widespread dissatisfaction with the process. The CRC noted that, in July 2020, the E-Board adopted a much-improved process, in hopes of eliminating the need for most challenges, by ensuring that ballots were only cast by eligible voters and making other improvements to address the most common complaints about the process. Due to the unique

challenges of the Coronavirus Pandemic and safety concerns, the procedures were again changed to an all vote-by-mail process. This latter change took place with only a couple of months to design and implement a brand-new system from scratch to implement for the 2021 ADEMs.

The CRC had previously noted that some problems with the 2021 system could have been anticipated and noted that there should 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.

And the CRC notes that, in 2022, the Rules Committee again undertook a thorough review of ADEMs procedures with the object of improving security, scalability (due to ever-increasing participation in the ADEMs), and opportunities for participation in a post-pandemic world. Coming out of the pandemic, the Rules Committee also focused on creating a hybrid election process that allowed for the ability to vote by mail or in person; for in person voting, the Rules Committee implemented a vote center model so delegates can cast a ballot at any voting location in the state, and it established a process to allow for undocumented persons to run as candidates for ADEMs. The July 2022 E-Board adopted this upgraded process.

The 2023 ADEMs were the first to be conducted with a prolonged and multifaceted election process. And a great many of claims brought forth in the challenge are more appropriately viewed as critiques of the structure and design of the revised ADEMs procedures.

The demand of the Challenger to count the 1,402 unverified ballots is inconsistent with the ADEMs process and in conflict with the ADEMs procedures approved by the Executive Board.

Moreover, the challenge ignores substantial steps taken by the Party in response to initial concerns about the unverified ballots not being counted. Contrary to the Challenger's assertions significant efforts were made to qualify every voter as Chair Rusty Hicks stated in a detailed letter thoroughly spelling out the efforts that staff undertook during the ADEMs to verify previously unverified ballots in accordance with the ADEMs procedures.

In this regard, the CRC notes the letter from Chair Hicks which tangibly demonstrates the process and procedures used by the Party in a painstaking effort to qualify voters and which explains in detail why, despite those efforts, the votes in question were not counted. Accordingly, the CRC felt it was important to include in this decision the letter's contents in their entirety. The letter states as follows:

February 15, 2023

Congressmember Lee, Congressmember Khanna, Congressmember Porter, et al -

Thank you for your communication of February 13, 2023 regarding the counting of 1,402 unverified ballots in the California Democratic Party's (CADEM's) 2023 ADEM's elections.

We share a commitment of ensuring the voices in our Party continue to reflect the great diversity of California. As such, I and the CADEM Team take the concerns you have raised seriously and herein

provide a detailed response to your communication. Below is an outline of the related issues, applicable procedures, and the actions of CADEM and others to proactively address this matter.

As more clearly outlined below, CADEM has taken every reasonable step possible to ensure every vote is counted - including multiple notifications to and various avenues for all participants to verify their registration and retained the services of Political Data Inc (PDI) personnel specifically to ensure additional steps were taken to verify previously unverified registrations. In light of all it has done, CADEM cannot take further action on this matter at this time.

Background

Following CADEM's 2021 ADEM's elections, Party leaders engaged in a thorough review of the process and sought to revise that process to increase access for historically disadvantaged communities, lower costs for CADEM, and improve the security and integrity of the process. As a result, the CADEM Executive Board accepted a series of updated procedures promulgated by the CADEM Rules Committee at the August 2022 Executive Board Meeting. Among the many improvements for 2023 were (1) the ability to both vote by mail or to vote at an in-person location, (2) the ability to cast one's ballot at any location in the State, and (3) the ability for persons ineligible to register to vote to file as candidates for ADEM Delegate. Since their acceptance, the CADEM Regional Directors, staff, and volunteers have executed the process in line with those procedures.

Applicable Procedures Related to Unverified Ballots

According to the procedures, every participant who sought to vote in the 2023 ADEMs elections either by mail or in-person was required to register to receive a ballot. In response to prior issues of either unregistered or ineligible voters participating in ADEMs elections, registration was directly connected to the PDI voter database to simplify verification of voter registration.

In the event a potential voter was unable to locate their name in the voter database, they were given the option to (1) re-enter the information to secure a valid match with the PDI voter database or (2) choose to verify their registration at a later date by clicking "Verify Later." When a participant selected "Verify Later," they were permitted to vote. However, they were also immediately notified - both on screen and via email - they were required to complete the verification process before the voting deadline on January 31, 2023 for the ballot to be counted.

The applicable procedures related to unverified or "Verify Later" ballots reads as follows:

"For all "Verify Later" participants, CADEM will have PDI do a secondary check of the information submitted, to see if any additional participants' information is verified.

"For those participants for whom verification could not be completed, CADEM will send an email instructing them to go to the My Voter Status - California Secretary of State Website to provide proof of their registration. Participants will need to upload a photo, print out, pdf, etc. of their voter registration information. An upload link will be emailed to participants who need to submit verification. The information they submitted when registering must match the information on the SOS form.

"Only records from the Secretary of State will be accepted. Registration records and voter affidavits from County Registrars may not be accepted. If a participant is not able to complete the verification process (either through the system or by

submitting proof of registration to CADEM) by January 31, 2023, their ballot will NOT be counted."

The applicable guidelines and procedures were specific about the manner in which unverified ballots were to be handled. CADEM strictly adhered to that guidance.

CADEM's Efforts to Verify Previously Unverified Ballots

Throughout the 2023 ADEM's elections, CADEM remained diligent in its efforts to notify participants who chose to verify their voter registration at a later date. Specifically, CADEM took two primary actions.

First, CADEM engaged PDI personnel to ensure that they took all appropriate steps to verify previously unverified registration requests without the prompting of the participant. This ongoing process included attempting to match additional details like address, age, or other available demographic data. As a result, of the **1,996** unverified registrations, PDI verified **450** registrants as Democrats. An additional **261** were rejected as registered other than Democrat.

Second, CADEM actively communicated with participants with an unverified registration status via the email the participant provided when they initially attempted to register. CADEM first sent participants an email outlining the steps needed to verify registration, but prepared to communicate more following the final weekend of in-person voting on January 21-22, 2023. In fact, in light of the occasional issues related to the delivery of email communications, CADEM sent multiple emails to increase the odds of delivery to participants.

Below is a summary of the email communications sent directly to participants following the final weekend of in-person voting.

January 24, 2023 Email #1 with the subject line "**ACTION REQUIRED: ADEM Voter Registration Incomplete**" sent to **1,430** participants.

January 27, 2023 Email #2 with the subject line "**ACTION REQUIRED: ADEM Voter Registration Incomplete**" sent to **1,367** participants.

January 30, 2023 Email #3 with the subject line "**DEADLINE APPROACHING: ADEM Proof of Democratic Registration Required**" sent to **1,322** participants.

In addition, while participants were provided with a prescribed process for submitting verification through the ADEM portal, CADEM staff continued to assist participants who emailed or texted verification by uploading the information on their behalf.

As a result of the efforts of CADEM staff, prior to the prescribed deadline of January 31, 2023, an additional **224** participants submitted documentation of registration to CADEM. Of those, **144** participants provided the appropriate documentation from the Secretary of State as required under the guidelines and procedures. They were verified and their ballots were counted.

Summary

As outlined above, CADEM sought to adhere to the guidelines and procedures required by the CADEM Executive Board. CADEM also went to great lengths to facilitate voter participation in the process. The below provides a summary of initially unverified registrants:

1,996 Total unverified registrations

450 Total unverified registrations verified by PDI staff as Democrats & ballots were counted 144

Total unverified registrations verified by CADEM staff as Democrats & ballots were counted 1,402

Total remaining unverified registrations

261 Total unverified registrations matched as other than Democrats & ballots not counted 80

Total unverified registrations providing insufficient documentation & ballots not counted 1,061

Total unverified registrations who did not provide any documentation & ballots not counted

The 2023 procedures were designed to give all California Democrats a fair and equal opportunity to participate in the 2023 ADEMs elections. In fairness to all participants, these procedures must be strictly adhered to by CADEM. As a result, CADEM is unable to take any further action on this matter at this time.

Further, the process for appropriately engaging the Compliance Review Commission (CRC) is outlined in Section XII of the CADEM Bylaws. If CRC engages in this matter pursuant to that process, CADEM leadership and staff will readily support its review and comply with any decision it makes.

Again, I thank you for your dedication to our shared commitment of building a stronger Party that uplifts and inspires every Californian. I look forward to continuing to work with you in the important fights ahead.

Democratically Yours,
Rusty Hicks
Chair

cc: CADEM Statewide Officers

ORDER:

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

1. The CRC denies the challenge as the Challenger failed to prove that the ADEMs procedures violated the CDP Bylaws. Furthermore, there was not sufficient proof that the ADEMs Procedures were violated.
2. The CRC encourages the Challenger and others listed on the initial challenge letter to attend the first ADEMs testimony hearing at the 2023 May Organizing Convention in Los Angeles to give oral testimony and offer your suggestions on how the ADEMs process can be improved to increase access for both voters and candidates. Your advice and opinions are welcome and appreciated.

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 April 26, 2023 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 Wednesday, April 26, 2023, 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

Laurence Zakson, Member, Rules Committee

Nicole Fernandez, Co-Chair, Rules Committee

Valeria Hernandez, Co-Chair, Rules Committee, and Co-Chair of the CRC

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

Paul Seo, Co-Chair, Credentials Committee