

M E M O R A N D U M

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: May 24, 2023

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

---

**INTRODUCTION:**

On May 15, 2023, CDP Black Caucus Member and Candidate, Kendra Lewis filed a challenge relating to the actions by the CDP Black Caucus regarding the election of Caucus officers scheduled for Saturday, May 27 at 5:15pm.

**DOCUMENTS INITIALLY RECEIVED AND REVIEWED:**

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

1. Challenge submitted by CDP Black Caucus Member and Candidate, Kendra Lewis, on May 15, 2023, and four supporting documents
  - a. Exhibit A – Email from the Black Caucus – noticing the April 28 Registration deadline;
  - b. Exhibit B – Email from Election Committee member, Temika Cook to candidates sharing the list of 214 2023 Black Caucus Members who were eligible to vote;
  - c. Exhibit C – Final email notice from Carolyn Fowler of the corrected list of eligible members which now included missing members bringing the total to 264; and
  - d. Exhibit D - Official email form the Black Caucus Election Committee with voting memo attached
2. Testimony submitted by the CDP Black Caucus Chair Corey Jackson and Black Caucus Parliamentarian Michael Saunders in opposition
3. Testimony submitted by Black Caucus member Jimmie Woods-Gray in Support
4. Late testimony submitted by Rhodesia Ransom

## **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.)

As a result, challenges must be filed within seven calendar days of the alleged violation. The challenge was filed on May 15, 2023. The Complaint relates to a decision of the Election Committee of the Black Caucus communicated by letter dated May 11, 2023. The underlying decision appears to have been made on May 8, 2023, although it is not clear if that decision was publicly communicated before the May 11, 2023, letter. In such circumstances, the challenge is timely.

## **STANDING:**

According to Article XII, Section 3:

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

Kendra Lewis is a member of the Caucus and a candidate for election in the 2023 Caucus officer election. Uncertainty about the number and eligibility of voters and the ability of the candidates to ascertain the universe of potential voters affect her candidacy in a manner that affects her sufficiently to confer standing.

## **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.”

The Caucus is a constituent part of the CDP and the allegations that the Caucus did not provide clear, substantially accurate notice of who was eligible to vote to either the

candidates or the voters in a timely manner and that the last-minute change in eligibility criteria, as well as the inaccessibility of the assertedly true and correct Caucus bylaws all are a sufficient basis to confer jurisdiction under Article XIII, Section 6 (Timely Publication of Selection Procedures) of the CDP Bylaws. The CRC also notes that, given that the Caucus Chair is a member of the CDP Executive Board, there is probable jurisdiction under Article XIII, Section 5 (Full Publication of Selection Procedures)

## **EXHAUSTION OF REMEDIES**

The Challenger, Ms. Lewis, does not allege exhaustion of internal remedies and there is no evidence of any effort to exhaust such remedies within the Caucus by bringing Ms. Lewis' complaint before the Election Committee. Ordinarily, in such circumstances, the CRC would dismiss the charge for failure to exhaust internal Caucus remedies.

However, the CRC finds that there is a need for a limited exercise of jurisdiction here to preserve the right to a meaningful review of any decision on voter eligibility in the event of a subsequent appeal with respect to this election.

First, Appendix A, paragraph 5 of the Party's Guidelines for Certification/Recertification/Decertification of Caucuses provides for Caucus elections to have fully publicized provisional ballot procedures. The purpose of this rule is to allow a mechanism for recording the vote of every Caucus member who has a good faith belief in their right to cast a ballot so that a determination can be made with respect to the right to vote of that voter and whether to count the ballot that voter has cast. Here, it is uncontroverted that the Caucus has failed to create a balloting/provisional balloting process that makes the identity of those whose voting rights are in issue readily identifiable so that a post-election determination of their voting rights – including in the event of any appeal – can be made. The absence of such a system affects the rights of over 170 Caucus members who met the published membership deadline for participation in the Caucus election, but did not meet the deadline the Caucus later decided to use.

The CRC finds that it is vital to a final determination of these Caucus members' voting rights that a system be created that allows these ballots to be cast, ensures that these ballots are readily identifiable and allows for a determination of their validity in a post-election challenge and, if applicable, on subsequent appeal. Accordingly, interim relief is warranted.

Second, the imminence of an election makes interim relief by the CRC rather than a remand to the Caucus for a decision on balloting processes appropriate, especially inasmuch as the CRC has broader authority under the CDP Bylaws to fashion a remedy than the Caucus Election Committee would have under the Caucus Bylaws.

In making this determination, the CRC notes that the CDP is committed to making sure that challenges can be decided based on the best available evidence. Additionally, a failure to provide a meaningful opportunity to cast a ballot to potential voters who received information -- that appeared to be authoritative -- from the Caucus that almost certainly led them to believe they were entitled to vote would not be consistent with the fundamental values of transparency and fairness to which our Party is committed. These factors bolster the need for an interim remedy here.

Further, in making a determination to provide interim relief despite the absence of evidence of exhaustion, the CRC emphasizes that any exercise of jurisdiction where, as here, a challenger has not exhausted internal remedies is extraordinary and not undertaken casually. The fact that the CRC has exercised limited jurisdiction here is not intended to be, and should not be regarded as, an invitation to submit challenges to the CRC without attempting to exhaust internal remedies in any but the most extraordinary of circumstances.

As the foregoing discussion makes clear, the CRC finds that there are extraordinary circumstances here that warrant a limited exercise of CRC jurisdiction notwithstanding the failure to exhaust internal remedies within the Caucus.

## **DISCUSSION**

The principal issue here is brought about by confusion about the applicable Caucus bylaws. It appears that the bylaws cited by the Caucus officers as having been duly adopted and operative were not posted until, at the earliest, May 2, 2023, although these bylaws assertedly were adopted in November 2022. The bylaws cited by the Caucus officers as duly adopted and operative were apparently unknown to the Election Committee, which proceeded based on some other version of the bylaws, until sometime in May 2023.

This is not the first time this Caucus has encountered issues arising out of there being competing versions of its bylaws and, in a previous Caucus election cycle, the CRC had to intervene to assure that the election was conducted in accordance with the duly adopted Caucus bylaws, as well as the CDP Bylaws.

Although the new guidelines for the Certification/Recertification/Decertification of Caucuses, operative for Caucuses certified/recertified in 2023 and later, provide for greater protocols for assuring that everyone is aware of Caucus bylaws, that Caucus bylaws are promptly posted and that Caucus bylaws are largely uniform, those guidelines are not applicable to this election.

As noted above, the Challenger alleges that from about April 2, 2023, until an Election Committee meeting on May 8, 2023, the Caucus sent emails and other notices indicating that April 28 was the cutoff for eligibility to vote in the Caucus election. During that time, the Caucus published to candidates on May 2, 2023, that there were 214 eligible voters and, on May 8, 2023, that the final list of voters contained 264 members including those who had requested a dues waiver and had not been included in the May 2, 2023 count. Later that day, the Election Committee reversed course and determined that under the Caucus bylaws only 89 Caucus members were eligible to vote.

The Challenger also alleges that the Election Committee's determination to use "Election Buddy" for the conduct of the election deprived Caucus members of the right to cast provisional ballots.

The Guidelines for the Certification/Recertification/Decertification of Caucuses applicable to this election provide for adequate notice of selection procedures for Caucus officers (Section 4. D.6.i) and for notice of meeting agendas (Section 4.D.6.f.ii) and for the use of

provisional ballots in Caucus elections and the timely determination of the validity of ballots cast provisionally (Appendix A, paragraph 5). The foregoing notices and procedures do not conform to these standards and do not provide adequate procedures for the casting, and resolution of issues raised by, the ballots of the over 170 members who joined the Caucus by April 28, 2023, but were not members as of November 2022.

**ORDER:**

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

To allow the election to go forward as noticed, the voters in the election shall be divided into three categories, each of whom is to be given a different color ballot.

- Those current Caucus members who were eligible to vote BOTH because they were members as of November 19, 2022, AND who were eligible to vote because they were members as of April 28, 2023, are to be given blue ballots. These voters are entitled to vote under any version of the bylaws and, thus, their ballots should be counted no matter what the outcome of any resolution of the issues presented here. These voters should have their ballots placed in an envelope stating, “Both Lists.”
- Those current Caucus members who may be eligible to vote SOLELY because they were members of the Caucus as of April 28, 2023, are to be given pink ballots. These voters should have their ballots placed in an envelope bearing the April 28, 2023, date. The Election Committee shall determine the eligibility of these voters as soon as possible. In any event, the determination must be made before tallying the ballots.
- Although it is doubtful there are any, any current Caucus member who may be eligible to vote solely because they are current members and also were members of the caucus as of November 19, 2022, are to be given green ballots. These voters should have their ballots placed in an envelope bearing the November 19, 2022, date. The Election Committee shall determine the eligibility of these voters – should there be any -- The Election Committee shall determine the eligibility of these voters as soon as possible. In any event, the determination must be made before tallying the ballots.
- Any other provisional voters shall be given white ballots. These voters should have their ballots placed in an envelope bearing the word “NOT on LISTS.” The Election Committee shall determine the eligibility of these voters – should there be any – after balloting has closed, but before tallying the ballots.
- Each category of ballots shall be tallied separately, and envelopes shall be used to verify the number of blue, pink, green and white ballots cast. Notwithstanding the separate tallies, the vote totals published to the membership as the election results shall reflect the total votes received by each candidate cast by voters found eligible by the Election Committee.

- To facilitate the voting process, the Election Committee shall compile lists of voters in each of the following categories as soon as possible, but in no event later than 24 hours before the Caucus meeting. An observer from each slate of candidates shall be afforded the opportunity to meet with the Election Committee no later than 24 hours before the Caucus meeting to review the lists to verify the accuracy of the list. By not later than the gaveling in of the Caucus meeting, the Election Committee shall provide the CRC, through the following email address, with the final list of voters in each category: [caucuses@cadem.org](mailto:caucuses@cadem.org). For purposes of the lists, the following are the categories:
  - Those current Caucus members who were eligible to vote BOTH because they were members as of November 19, 2022, AND who were eligible to vote because they were members as of April 28, 2023.
  - Those current Caucus members who may be eligible to vote solely because they were members of the Caucus as of April 28, 2023.
  - Any current Caucus member who may be eligible to vote solely because they were members of the caucus as of November 19, 2022.

Additionally,

- The Election Committee shall designate not more than two of its members to issue ballots to voters as they check in. An observer for each slate may observe each of the designees distributing ballots. In addition, the CRC shall have two designees present at the distribution of ballots to assist with any questions concerning the meaning of this order and to help ensure compliance with the ballot issuance process. Issues concerning the issuance of a correct ballot and the correct labeling of the ballot envelope shall be resolved at the time ballots are issued to the maximum extent possible.
- As noted above, the issues concerning eligibility of current Caucus members to vote shall be decided by the Caucus Election Committee as soon as possible. In any event, the determination must be made before the tallying of any votes. The CRC shall have two designees present at the meeting concerning the eligibility of current Caucus members to vote to assist with any questions concerning the meaning of this order and to help ensure compliance with the requirement that the eligibility determination is made and made in a timely manner.
- In resolving the issues concerning the eligibility of current Caucus members to vote, the Election Committee should consider:
  - the competing Caucus bylaws;
  - the fact that the CDP Bylaws require adequate notice of selection procedures, including Caucus election procedures;
  - the fact that the Guidelines for the Certification/Recertification/Decertification of Caucuses applicable to this election provide for adequate notice of selection procedures for Caucus officers (Section 4. D.6.i) and for notice of meeting agendas (Section 4.D.6.f.ii); and

- the CRC's admonition that failure to provide a meaningful opportunity to vote, and have that vote counted, to potential voters who received information -- that appeared to be authoritative -- from the Caucus that led them to believe they were entitled to vote would not be consistent with fundamental values of transparency and fairness to which our Party is committed.

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 June 5, 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 June 5, 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  
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, Member, Rules Committee