

## MEMORANDUM

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: May 25, 2023

RE: **COMPLIANCE REVIEW COMMISSION (CRC) DECISION RELATING TO A CHALLENGE FILED BY DAVID ROSS JR.**

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### **INTRODUCTION:**

On May 16, 2023, CDP Progressive Caucus Member, David Ross Jr., filed a challenge relating to the actions by the CDP Progressive Caucus regarding the election of Caucus officers scheduled to be held from 10:00 am- 6:30 pm electronically through Election Buddy.

### **DOCUMENTS INITIALLY RECEIVED AND REVIEWED:**

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

1. Challenge submitted by CDP Progressive Caucus Member, David Ross on May 16, 2023 and supporting documents
  - a. Exhibit A – Email notice from the Progressive Caucus
  - b. Exhibit B – Google Form
2. Testimony submitted by the CDP Progressive Caucus Chair, Amar Shergill, Sudi Farokhnia and Anthony Konstantine in opposition
3. There were no responses supporting this challenge submitted
4. Late Testimony submitted by Emma Jenson

### **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.)

There is an argument to be made that the challenge by Mr. Ross is untimely, since the official notice of a hybrid meeting at the convention by the Progressive Caucus occurred prior to the 7-day time limit. However, Mr. Ross was not a member of the Caucus when the initial violation occurred; the day he became a member of the Caucus, he was adversely affected and he filed a challenge immediately.

This is a pre-election challenge, which was submitted before the election has commenced and the challenge was made on May 16, 2023, the day that Mr. Ross joined the Caucus and the first day that Mr. Ross had standing. Given such, and the fact that the election has not yet been conducted, there is no basis for finding that the complaint is untimely.

Section 4. J of the CRC Procedural Rules allows for a waiver of the time limit for good cause. Given the importance of the compliance issues presented here, the CRC unanimously found that even if it were not timely, the best interests of the Party would warrant a waiver of the 7-day time limit in the circumstances here.

#### **STANDING:**

According to Article XII, Section 3:

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

Mr. Ross is a member of the Progressive Caucus and made plans to attend the Caucus meeting in person to participate in the election. Mr. Ross contends that Caucus members not present and voting remotely would have the same rights as those attending in person despite the fact that they are not entitled to so under the CDP Bylaws.

The CDP stands strongly in support of the voting rights of all persons who are entitled, under the applicable rules, to vote. Here, the allegation, which the CRC sustains, is that those entitled to vote are only those who attend the meeting in person, who sign in for the meeting and are duly credentialed at that time, and who cast their ballot before the closing gavel. The extension -- in violation of the applicable rules -- of voting privileges to those who are not entitled to vote under the bylaws adversely affects the interests of those who are entitled to vote and who do so. Accordingly, Mr. Ross is adversely affected and has 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 CRC finds jurisdiction under Article XI of the CADEM Bylaws, which establishes special group caucuses as constituent parts of the CADEM, and because the alleged violation is of Article XIV, Section 3.A, which governs constituent parts of the CADEM, including Caucuses.

## **DISCUSSION/FINDINGS**

The challenger claims that the Progressive Caucus issued a notice that the officer election at the upcoming Convention will be processed through Election Buddy and that voting will be from 10:00 AM to 6:30 PM and that participants who attend both in person and virtually will be allowed to vote at the election.

The challenger further claims that the Progressive Caucus is in violation of Article XIV, Section 3. A. of the CDP Bylaws which state as follows:

*It is the express preference of This Committee that meetings should, when possible, be held in person; however, notwithstanding any other provisions of the bylaws, the Chair of This Committee may, in the event of:*

- 1. the existence of official government orders prohibiting or limiting the gathering of persons, or,*
- 2. a finding of similarly extraordinary circumstances by the Chair of This Committee with the concurrence of 2/3rds of the State Officers of This Committee, as defined in Article III, Section 4, a, allow for any meetings of This Committee or its constituent parts to be conducted by appropriate remote communications technologies provided that the Chair of This Committee shall assure full and fair access to the meeting by the members of This Committee and all members of the Democratic Party consistent with the provisions of Article XIII of these bylaws and the Policy Statement By the Rules Committee of the California Democratic Party on the Open Meeting Rule. Any such determination shall be final.*

The Progressive Caucus, in its opposition to the challenge, stated that Article II (Voting Eligibility and Procedures for Caucus Business and Officer Elections), Section E, 3 of their Bylaws, specifically permits remote voting. The section only states:

*All members in good standing of the Caucus will be eligible to vote for Caucus business or in Officer elections.*

Furthermore, Article II Section E , 1 states:

*Those who wish to vote for any Caucus business including the Officer elections must be Members in good standing, defined as meeting the criteria outlined in Article II Section C of these bylaws, at the time specified for voting. Anyone who becomes a new Member on the date of an officer election is eligible to vote.*

Article II Section E, 4 of the bylaws state that *“The period for any balloted vote, including Officer elections, shall commence from the opening gavel and close at the closing gavel.”*

Also, *“the ballot box is to be placed in the meeting room in full view of the membership throughout the course of the meeting both the balloting and counting period.”*

Upon review of the CDP Bylaws and the Progressive Caucus Bylaws, the CRC determined that *a hybrid meeting of Progressive Caucus* where members who were not present at convention is not in alignment with the Bylaws of the CDP nor with the Bylaws of the Progressive Caucus.

The balloting period on Saturday, May 27th from 10 am - 6:30 pm violates the Progressive Caucus bylaws that dictate balloting from opening gavel to closing gavel of meeting.

The March 23, 2023 Progressive Caucus Bylaws, Article II Section E, 4 provides the process for conducting in person balloted votes, including the placement of the ballot box. The ballot box has to be in full view of the membership in the meeting room during the meeting and ballot counting.

The CDP sought clarification from staff to determine whether the Progressive Caucus sought approval to hold a remote or virtual meeting. Staff stated that the Progressive Caucus chose to meet in person, declining the opportunity to meet fully remotely. Only once it was determined that an outdoor location for the meeting was not feasible did the Caucus decide to move to a hybrid meeting structure; and it did so without submitting a request or receiving authorization by 2/3rds of the officers. By so doing, the Caucus violated the CADEM Bylaws.

The Progressive Caucus further contends that they chose to move to a hybrid meeting structure in light of many Caucus members expressing a concern for COVID exposure risk at an in-person meeting, despite no public ordinances being in effect in the County of Los Angeles or in the State of California limiting in person gatherings.

On February 28th Governor Gavin Newsom issued a proclamation officially marking the end to the COVID-19 Pandemic in the state of California after nearly three years. The proclamation states:

**“I, GAVIN NEWSOM,** Governor of the State of California, having found pursuant to Government Code section 8629 that the conditions of extreme peril to the safety of persons and property declared in the State of Emergency proclamation listed below no longer exist, therefore proclaim that the State of

Emergency proclaimed on the following date and in the following jurisdiction no longer exists, effective at 11:59 p.m. on February 28, 2023.”

**ORDER:**

Based upon the findings and the Bylaws of the CDP, the CRC makes the following determinations:

The Progressive Caucus must conduct its election in person on Saturday, May 27, 5:30 pm - 7:15 pm at the JW Marriott Hotel, 900 West Olympic Boulevard, Los Angeles, Meeting Room: Platinum D. The only eligible voters will be current members of the Caucus who have signed in and are attending the meeting in person.

Balloting shall conform to the Progressive Caucus Bylaws.

In accordance with Progressive Caucus bylaws the balloting period shall only extend from the opening gavel to the closing gavel of the meeting of the Progressive Caucus, and no remote balloting will be permitted.

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 6, 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 Saturday, June 6, 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