

M E M O R A N D U M

TO: All Interested Parties

FROM: Compliance Review Commission (CRC)

DATE: August 3, 2023

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

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**INTRODUCTION:**

On June 1, 2023, CDP Black Caucus Member and Candidate, Eugene Fields (Mr. Fields or Challenger), filed a challenge relating to the actions by the CDP Black Caucus regarding the election of Caucus officers scheduled for Saturday, May 27, 2023.

On June 6, 2023, CDP staff requested that the Challenger resubmit the Challenge in the proper format. The deadline for that submission was June 11, 2023. On June 11, 2023, CDP staff received the revised Challenge.

**DOCUMENTS INITIALLY RECEIVED AND REVIEWED:**

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

1. Challenge submitted by Eugene Fields on June 11, 2023 along with 5 exhibits.
  - a. Exhibit 1 – Table of membership and candidate eligibility status
  - b. Exhibit 2 – Email disputing the candidacy of Taknesha Allen for the Black Caucus Parliamentarian
  - c. Exhibit 3 – Letter from Dr. Margaret Fortune, Recording Secretary disputing the eligibility of Kampala Taiz-Rancifer for Recording Secretary
  - d. Exhibit 4 – CDP Black Caucus Membership List
  - e. Exhibit 5 – CDP Black Caucus Bylaws
2. Responses of Black Caucus Election Committee members Taknesha Allen submitted on July 5, 2023 and Latressa Alford submitted on June 30, 2023.

3. The CRC posed the following two questions to the Black Caucus Election Committee, and requested a response by July 5, 2023. To date, no response has been received.
  - What date did the Caucus or its Election Committee notify the Caucus of the election results, including the tallies? Please provide a copy of that notice.
  - Did the Election Committee advise the Treasurer of the depositing of the ballot box with the Party and a copy of any notice to that effect?

**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 initial challenge was filed on June 1, 2023. The Complaint relates to the Election Committee decision on, and the CDP Black Caucus Election conducted on Saturday, May 27, 2023. The Challenge revised in response to CDP staff’s request was received by the stated deadline. 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.”

Eugene Fields 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 eligibility of candidates who stood for election affect his candidacy in a manner that affects him 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 acted in derogation of its Bylaws in allowing ineligible candidates to run and ineligible voters to run, as well as issues of notice 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 evidence submitted by the Challenger, Mr. Fields, does not reflect exhaustion of internal remedies as the exhaustion effort he references is an effort undertaken before the operative events took place. Thus, the final decision on eligibility and the election both took place on May 27, 2023, but the purported effort to exhaust took place on May 26, 2023. As Mr. Fields notes,

“I appealed to the Elections Committee via email on May 26, 2023 regarding all of these issues. A representative of the Elections Committee responded, refusing to investigate my claims (and others), responding:

‘Ms. Unique Fields(sic) has your petition. She can forward it to the Rules Committee. We have been charged by the Rules Committee to perform the election with transparency and fairness. At this time, we cannot determine whether a candidate does not qualify to run. It would require an investigation. We are an ad hoc committee, and our job is over at the end of the election tomorrow. There are complaints on both sides that candidates are not eligible.’”

Ordinarily, in such circumstances, the CRC would dismiss the charge for failure to exhaust internal Caucus remedies. However, under CRC Rules of Procedure, Section 3.C.2.c, exhaustion may be excused where exhaustion would be futile. In response to Mr. Fields’ May 26, 2023, challenge, the CDP Black Caucus Election Committee erroneously stated that “our job is over tomorrow” and that an investigation was outside its purview. These

circumstances provide a sufficient factual basis for finding that exhaustion would have been futile.

Further, where, as here, compliance with a previous order of the CRC – here, the CRC’s order issued on May 24, 2023 – is implicated *and* there are serious questions about whether internal exhaustion would have been futile, the CRC finds that the best interests of the Party are served by the CRC resolving this dispute notwithstanding the failure to exhaust.

Accordingly, the CRC will address this matter on the merits. In so doing, 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 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.

## **DISCUSSION**

At the heart of this dispute is the same issue raised in the May 15, 2023, challenge filed by Kendra Lewis, which the CRC addressed in its decision dated May 24, 2023. Accordingly, the decision and discussion in that case are relevant to the disposition of the Challenge here.

As the CRC decision of May 24, 2023 noted, for this election, there was an issue about what were the operative CDP Black Caucus Bylaws prior to the election and there were also significant notice issues associated with the use of the Bylaws cited by Mr. Fields. In this regard, the CRC stated:

“ . . . 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 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.

\* \* \*

. . . [T]he 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 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 . . . [then-proposed and challenged] 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.”

The CRC sought to allow the CDP Black Caucus Election Committee to resolve these issues itself and provided guidance as to how to do so in its May 24, 2023, order, which is quoted below:

**“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.”

There were no then-current Caucus members who were eligible to vote solely because they were members of the caucus as of November 19, 2022. Accordingly, the Elections Committee resolved these questions by finding eligible to vote anyone who was a Caucus member as of April 28, 2024. The Elections Committee also segregated by color the ballots of the two groups of voters — those Caucus members who (1) were potentially eligible to

vote either because they were members as of November 19, 2022, and as of April 28, 2023; and (2) who were potentially eligible to vote solely because they were members of the Caucus as of April 28, 2023. The Elections Committee also allowed any other then-current Caucus member to cast a provisional ballot.

These decisions were consistent with the CRC's May 24, 2023, order. These decisions afforded appropriate weight to (1) the fact that the CDP Bylaws require adequate notice of selection procedures, including Caucus election procedures; (2) 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 (3) 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.

In these circumstances, we find no error by the CDP Black Caucus Election Committee's decision to count the ballots of all those who did not cast a provisional ballot and who were members as of April 28, 2023. Accordingly, we find no merit to the allegation that ineligible voters were allowed to cast a ballot or to the allegation that ineligible candidates were allowed to run for Caucus officer positions. As a consequence, these aspects of the Challenge are hereby dismissed.

With respect to the provisional ballots, the Challenger contends that the provisional ballots were somehow inadequately labeled because they don't indicate the basis for disqualification or the name of the challenged voter and that somehow this may have affected the outcome of the election. Given the nature of the allegations, the CRC directed staff to open the sealed ballot box and retrieve the tally sheets and provisional ballots.

A review of the provisional ballots shows that substantially all of them listed the basis for disqualification of the voter and categorization of ballot as provisional, which was that the individual's name was not on the list of eligible voters. The evidence convincingly demonstrates that this was the basis underlying the categorization as provisional of all of the ballots designated as provisional.

A review of the list of provisional voters shows that the names of all provisional voters was recorded on the provisional voter list, although not on the voting envelope.

Under CRC Rules of Procedure 6.I, "Proponents of a challenge to an Assembly District Election Meeting or other election or decision must demonstrate by a preponderance of the evidence that there is a reasonable likelihood 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 and that said conduct or actions resulted in an outcome adverse to the Proponent(s) of the challenge." Under CRC Rules of Procedure 6.I, "Proponents of a challenge to an Assembly District Election Meeting or other election or decision must demonstrate by a preponderance of the evidence that there is a reasonable likelihood 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 and that said conduct or actions resulted in an outcome adverse to the Proponent(s) of the challenge.” That standard was not met here. While it was an error not to note the name of the provisional voter on the outside of the provisional ballot envelope, given the CRC’s disposition of the eligibility questions, there was no error in disqualifying the ballots of voters who were not on the eligibility lists. Errors in entering data on the outside of the provisional ballot envelope – and, in particular, the omission of the listing of the name of the voter casting the ballot on the outside of each provisional voter’s ballot envelope – was not the kind of error that plausibly could have affected the outcome of the election.<sup>1</sup>

## **ORDER**

All of the allegations in the Challenge are found without merit and the Challenge is denied. The election results are upheld in all respects.

Staff is directed to make the tally sheets available to all CDP members by posting them along with this decision on the CRC website.

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 August 15, 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 August 15, 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, Vice-Chair, Credentials Committee  
Nicole Fernandez, Vice-Chair, Rules Committee  
Valeria Hernandez, Co- Chair, Rules Committee  
Lara Larramendi, Co-Chair, Credentials Committee  
Paul Seo, Vice-Chair, Credentials Committee  
Laurence Zakson, Vice-Chair, Rules Committee

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<sup>1</sup> This would appear to be especially true given the very large margin of victory in all but one of the contested races.