


**DEMOCRATIC PARTY COMMITTEE ABROAD  
ELECTION CHALLENGE**

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	)	
<b>Claimant,</b>	)	
	)	<b>Filed: September 19, 2017</b>
v.	)	
	)	<b>Amended: October 27, 2017</b>
<b>NOMINATIONS AND ELECTION COMMITTEE OF DEMOCRATS ABROAD DOMINICAN REPUBLIC,</b>	)	<b>Decision: November 30, 2017</b>
	)	
<b>Respondent.</b>	)	

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**OPINION**

This case arises from a challenge<sup>1</sup> to the election of national officers of Democrats Abroad Dominican Republic (DADR), a membership organization recognized by the Democratic Party Committee Abroad as an official country committee. Claimant raises six issues in her challenge. *First*, she alleges that the Nominations and Election Committee violated its duties as set forth in the CCEP (Count I); *second*, that the election was invalid because it took place after June 30, 2017 (Count II); *third*, that she and other members of DADR had no opportunity to participate in a fair and equitable election (Count III); *fourth*, that the appointment of a candidate’s daughter to the NEC by the then-Chair running for re-election created the appearance of impropriety (Count IV); *fifth*, that the DADR bylaws have not been properly updated (Count V); and, *sixth*, that the DADR Executive Committee has failed to maintain adequate books and records (Count VI).

**SUMMARY**

1. *Facts*: The DADR NEC substantially complied with the procedural requirements of the Democrats Abroad Country Committee Election Procedures (CCEP);
2. *Burden and Standard of Proof*: To prevail on an election challenge, a claimant bears the burden of proving an election violation by clear and convincing evidence;

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<sup>1</sup> Claimant filed her original challenge with the DADR Nominations and Election Committee (Respondent or NEC) within 30 days of the election, as required by the Democrats Abroad Country Committee Election Procedures (CCEP). Respondent subsequently dismissed Claimant’s challenge in a comprehensive decision issued on September 28, 2017. The NEC, having sought the advice of DPCA International Counsel, agreed to allow Claimant time to file an amended challenge, which International Counsel set at 30 days. Claimant filed her amended challenge timely on October 27, 2017. On or about October 29, 2017, Respondent informed Claimant that it would take no action on the amended challenge, instead referring the matter through International Counsel and the Regional Vice Chair to the International Chair in conjunction with the International Executive Committee for adjudication. *See* Section 5.f.(4) of the CCEP. The matter was referred to International Counsel for a determination on legal issues. Although International Counsel considered Respondent’s legal arguments raised in the NEC’s initial comprehensive decision to dismiss Claimant’s Challenge, Respondent’s failure or refusal to issue a decision in response to Claimant’s Amended Challenge left Claimant’s factual allegations uncontroverted. Accordingly, Claimant’s factual allegations were deemed admitted as true, obviating any need for an evidentiary hearing.

3. *Standing*: Because the Claimant was an eligible DADR voter, she has standing to challenge the election regardless of whether she participated in the nomination or election process.
4. *Count I*: The Claimant failed to prove that the Respondent violated duties established under Section 3 of the CCEP, including the verification of the eligibility of nominees;
5. *Count II*: The Dominican Republic's democratic election of its own officers will not be nullified solely because the election was held 57 days late. However, the election itself does not automatically restore the Dominican Republic's DPCA voting rights, which can only be done upon the DPCA Executive Committee's grant of a waiver.
6. *Count III*: Providing registration forms to new members, providing a phone number or email address to answer questions, providing registration information on the DADR webpage, or providing information on NEC funds are not mandatory duties of the NEC under the DADR Bylaws or the CCEP.
7. *Count IV*: Under the facts of this case, the appointment of Helena Garcia O'Rourke, the daughter of the DADR Chair who was running for re-election, to the NEC did not have a significant impact on the fairness or legitimacy of the election. However, the Chair's appointment of her daughter to the NEC may have been exceedingly problematic had other candidates put themselves forward for nomination;
8. *Counts V and VI*: The NEC is not responsible for ensuring that the DADR bylaws have been properly updated (Count V) or for the DADR Executive Committee's alleged failure to maintain adequate books and records; however, the DADR Executive Committee is now on notice of the Claimant's request to inspect the records of the organization and must undertake all reasonable efforts to ensure that this right is respected by giving Claimant a meaningful opportunity to inspect and copy these documents.

## FACTS

The material facts of this election challenge are not in dispute. On April 23, 2017, Maria-Elena O'Rourke (the Chair), sent an email to the membership of Democrats Abroad Dominican Republic announcing that the Executive Committee intended to appoint a Nominations and Elections Committee (NEC) and expecting that elections would be held on May 27, 2017; however, no election took place. On June 14, 2017, the Chair sent another message to the DADR membership announcing the appointment of Amin Gonzalez, Isidro Alcantara and Feldrys Reyes as members of the NEC. That message also announced the date of the election as July 8, 2017. On July 7, 2017, another email was sent to the membership announcing that the July 8 election had been cancelled<sup>2</sup> and that the NEC would send another email in the next few weeks with notice of a new election date. On July 27, 2017, NEC Chair, Amin Gonzalez, emailed the 30-day election

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<sup>2</sup> Concerns regarding compliance with the CCEP were raised by the International Executive Committee.

notice to the DADR membership, scheduling the election for August 26, 2017. That email included instructions on submitting nominations to the NEC, and it listed the names of the NEC members, replacing Feldrys Reyes with “Helena Garcia”, the incumbent Chair’s daughter.

The following table lays out a timeline of the election procedures leading up to the date of the election (“DOE”.)<sup>3</sup> The ballot was posted to the DADR webpage ([www.democratsabroad.org/do](http://www.democratsabroad.org/do)) on August 12, 2017. All candidates for national office ran unopposed, including the Chair (Maria-Elena O’Rourke). DADR members were informed of the results of the election via email on August 28, 2017 by the NEC Chair. Claimant [REDACTED] is a member of DADR and was eligible to vote in the election.

<b>DEMOCRATS ABROAD DOMINICAN REPUBLIC</b>			
<b>2017 ELECTION TIMELINE</b>			
<b>Description</b>	<b>CCEP</b>	<b>Date</b>	<b>DOE+/-</b>
NEC appointed by Country Committee Chair or ExCom	-45	14-Jun-17	-80
*Helena Garcia O'Rourke appointed to fill vacancy on or before July 27, 2017			
Notice of election and calls for nominations	-30	27-Jul-17	-30
Nominations Close	-17	9-Aug-17	-17
Deadline for eligible voters to become DA members; mailing of postal/absentee ballots	-14	12-Aug-17	-14
Deadline for receipt of postal/absentee ballots received by post, hand, fax scanned/email; deadline for registration of in-person voters	-1	25-Aug-17	-1
<b>Day of Election (DOE)</b>	<b>DOE</b>	<b>26-Aug-17</b>	<b>0</b>
Deadline for notifying International Secretary and Regional Vice Chair of the results of the election, contact information for officers, and certified minutes of the election	15	30-Aug-17	4
Deadline for filing election challenges	30	19-Sep-17	24
Deadline for local NEC to resolve election challenges	45*	28-Sep-17	36
*Assumes challenge is filed on 30th day after the election			
Email from Int'l Counsel allowing 30 days to file amended challenge		28-Sep-17	
Amended challenge filed	30	27-Oct-17	29
Challenge rejected by NEC	15	28-Oct-17	1

<sup>3</sup> The column entitled “CCEP” states the required number of days before or after the DOE that the described action must take place pursuant to the Democrats Abroad Country Committee Election Procedures. The column entitled “Date” indicates the date on which the action was taken. The column entitled “DOE+/-” indicates the number of days before or after the DOE that the described action took place.

## BURDEN AND STANDARD OF PROOF

In any adversarial adjudicatory process, one of the contesting parties must bear the burden of proof, and that burden must be satisfied by some quantum of evidence. Generally speaking, those requesting that action be taken bear the burden of proof, and the standard of proof varies based on various policy considerations.<sup>4</sup> Although the Democrats Abroad Country Committee Election Procedures (CCEP) under Section 5.f provide various mechanisms for resolving election questions and challenges, the CCEP does not address the burden of proof or standard of proof.<sup>5</sup>

As it is well established under American jurisprudence that the movant bears the burden of proof in virtually all cases, this decision assigns the burden of proof to the claimant. Regarding the standard of proof, two standards are typically applied in civil (i.e., not criminal) cases. First, the preponderance standard requires the claimant to establish that his or her version of the facts is more likely than not to be true. Second, the clear and convincing evidence standard, which is an elevated standard of proof that falls between the preponderance and criminal standards of proof, requires the claimant to prove that there is a high probability that his or her version of the facts is true.

The clear and convincing evidence standard should be applied to election challenges for several reasons. First, because the will of the voters is of paramount importance to the legitimacy of our party and party elections, bodies ruling on election challenges should only invalidate democratic elections when there is a high probability that the fairness of the election has been compromised.<sup>6</sup> Second, a lower burden of proof might encourage spurious challenges that are politically motivated, intended to cause delay, or seek to undermine the legitimacy of an otherwise valid election. Third, the clear and convincing evidence standard was used for both credentials and rules challenges related to the 2016 Democratic National Convention,<sup>7</sup> and it was adopted by the 2016 DPCA Rules Committee.<sup>8</sup> Accordingly, the clear and convincing evidence standard is applied to this case, meaning that the Claimant must establish that there is a high probability that the facts of this case entitle her to relief.

## ANALYSIS

### I. Standing

As a threshold issue, a claimant must have standing to challenge a country committee election. Although the parties do not dispute that Claimant was an eligible DADR voter, the NEC asserts that the Claimant had no standing to file an election challenge because she did not

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<sup>4</sup> For example, a civil plaintiff in a personal injury lawsuit typically must establish the defendant's liability based on a preponderance of the evidence (i.e., that the plaintiff's version of the facts is more likely than not to be true), while a prosecutor in a criminal case must establish that the criminal defendant is guilty beyond a reasonable doubt.

<sup>5</sup> The DCPA Rules of Procedure, which may be invoked to challenge seating an elected country committee officer as a DPCA member, fail to address the burden and standard of proof; instead such challenges are resolved by vote of the International Executive Committee.

<sup>6</sup> This does not, however, require the claimant to produce evidence that is not in his or her possession. Upon making an initial showing that a rules violation or other prohibited conduct occurred, the Respondent may be required to produce evidence to rebut a presumption established by the claimant. In this sense, the burden of production of evidence may shift back and forth between the parties, yet the burden of proof always remains on the claimant.

<sup>7</sup> 2016 Call for the Democratic National Convention, Appendix A, Rules of Procedure of the Credentials Committee, Rule 8.G. ("A challenging party shall have the burden of proof by clear and convincing evidence on all factual issues necessary to the challenge, . . .").

<sup>8</sup> *In the Matter of the Clinton Challenge*, Rules Committee Decision (May 14, 2016).

participate in the election process. Specifically, the NEC argued: "...Mrs. [REDACTED] did not participate in the electoral process, she did not vote in person or by email or propose any candidate. So, it is not correct to challenge a process without participating in it, missing the opportunity to raise the questions then."<sup>9</sup>

Under the Democrats Abroad Country Committee Election Procedures (CCEP), challenges may be filed by "any eligible voter,..." CCEP, Section 5.f.(3). The CCEP does not require participation in the election as a prerequisite to filing a challenge. This policy discourages the manipulation of elections by failing to give proper notice to the membership. Otherwise, disenfranchised members who failed to participate in an election due to the lack of reasonable notice would be unable to challenge the fairness of the election. Accordingly, as Claimant was an eligible DADR voter, she has standing to challenge the election regardless of whether she participated in the nomination or election process.

## II. Violation of the NEC's Duties (Count I)

Claimant asserts that the NEC failed to perform its duties as established under the CCEP. Specifically, Claimant alleges that "As stipulated on DA-CCEP Procedures Article 3e: *It is the duty of the NEC to verify a candidate's eligibility*".<sup>10</sup> Claimant also alleges:

The NEC is charged with the responsibility of obtaining a proper email address or phone number from members in order to transmit information regarding the electoral process and being able to register new members. This procedure was not followed. The NEC stated that the text of the message was coordinated by the Regional Chair and that notice was sent on 7/27 and a second notice was sent on 08/08.<sup>11</sup>

Section 3 of the CCEP enumerates the duties of the Nominations and Elections Committee.<sup>12</sup> In sum, these duties include (1) providing notice of the election to the membership, (2) handling nominations, (3) distributing the ballot, (4) running the election meeting, (5) tallying and reporting the election results, and (6) resolving election challenges.

Although Claimant's challenge appears to focus on the nominations process, she broadly alleges that the election procedures deprived the DADR membership of a fair opportunity to

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<sup>9</sup> Email from NEC to Int'l Counsel (Sep. 28, 2017).

<sup>10</sup> Amend. Challenge, 1 (Oct. 27, 2017) (emphasis in original).

<sup>11</sup> *Id.*

<sup>12</sup> The duties listed in Section 3 of the CCEP are: a) Give notice of the election meeting and keep the minutes of that meeting, b) Define the rules and processes for the election, in line with local Bylaws, c) Call for nominations, d) Accept written nominations, e) Verify candidate eligibility, f) Ensure that all candidates are informed of nominations, seconds, elections calendar, and the process for posting candidate statements, g) In cases where no nominee has come forward for an open Executive Committee position, Election Committee members may reach out to solicit candidates and nominations from the general country membership, h) Issue a list of candidates for office, i) Write and distribute a ballot, j) Ensure that the election meeting is run by a member of the NEC, k) Be the recipient of any electronic ballots, transport these to the election meeting, and be responsible for opening these, l) Be the recipient of all proxies, verify the validity and proper execution of each proxy, and confirm the membership status of all proxy givers, m) Collect ballots and count the votes, n) Verify the final election tally, o) Report the results to the gathered membership immediately and again via a DA country webpage by posting to all committee members, to the International Chair, the appropriate Regional Vice-Chair, and the International Secretary, p) Hear and adjudicate any election disputes, q) Monitor the election to ensure a public, open, and fair process.

participate in the election of national officers. If the facts established meet the standard of proof adopted for this case (clear and convincing evidence), then the election must be invalidated.

The facts of this case demonstrate substantial, if not full, compliance with the election procedures set forth in the CCEP. The evidence reviewed clearly established that the NEC had sent timely notice of the election, and called for nominations, to the DADR membership 30 days prior to the election. Nominations closed 17 days prior to the election, and ballots were distributed 14 days prior. Pursuant to the DADR bylaws, an election meeting was held on August 26, 2017. Accordingly, the Respondent's election procedures were in substantial compliance with the deadlines set forth in the CCEP, and the election was presumptively valid, subject to other specific allegations of material non-compliance.

Claimant's further allegation was that the Respondent failed to verify the candidates' eligibility. Under Section 5.f.(3) of the CCEP, "Challenges to an election result or process may be filed by any eligible voter, should be made in writing, and include a statement of the legal and factual basis for the challenge." Claimant implies that the NEC failed to verify the eligibility of one or more of the candidates, but this implication is devoid of any factual support other than that the Claimant informed a member of the NEC of this requirement. Accordingly, Count I is decided in favor of the Respondent.

### **III. Untimely Election (Count II)**

Under Section 5.4(c) of the Democrats Abroad Charter:

Country Committees shall hold their elections no later than June 30<sup>th</sup> of odd-numbered years. Within fifteen (15) days of any election held by a Country Committee, the Secretary of such Country Committee shall certify the results of the election to the International Secretary and forward the minutes of the election meeting, with full address and contact information of the office holders so elected.

This rule is repeated in Section 1.a of the CCEP, which states that "CC elections should be held every two years in odd numbered years within the first half (i.e., by 30 June), in order to align with DPCA international executive committee election schedules."

There is no dispute that the challenged election took place on 26 August 2017, which is 57 days after the election deadline set by the Charter and the CCEP. In this sense, the election clearly did not comply with Democrats Abroad's election rules.

When a country committee fails to comply with any of the enumerated requirements set forth in Section 5.4 of the Charter, said country committee is stripped of its right to vote on formal matters that come before the DPCA, such as the election of officers, voting on DPCA resolutions, etc. "Each Country Committee in compliance with Section 5.4 and represented at the meeting in person, by proxy, or in accordance with Section 3.7 shall have the right to vote." Charter, Section 3.6(c). Importantly, the Charter contains only one other provision that imposes penalties against out-of-compliance country committees, but that provision is not relevant here.<sup>13</sup> Without any further sanctions being imposed on an out-of-compliance country committee, said country committee continues to operate and, as always, is responsible for its own internal management. Charter, Section 5.1.

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<sup>13</sup> The DA Charter was amended in July 2017 to provide a mechanism for removing country committees from the DPCA for remaining out of compliance for a period exceeding four years. DA Charter, Section 5.10; *See* Charter Resolution 8A (proposed May 12, 2017; adopted July 30, 2017).

If a country committee is out of compliance because it failed to hold elections according to DA's rules, one of the most obvious remedial steps is to hold an election in compliance with said rules. However, once a deadline (i.e., the June 30th election deadline) is missed, the country committee cannot go back in time to hold a timely election. If missing the June 30<sup>th</sup> deadline alone would be sufficient grounds to hold an election invalid, no country committee would ever be able to hold a valid election again without dissolving the committee and starting a new one.

Requiring a country committee to dissolve in order to regain its DPCA voting status is not required by the Charter, has not been the existing practice, and is not in the best interests of the Democratic Party, the DPCA or our country committees. Where a country committee is out of compliance for the sole reason that it has failed to hold elections by the deadline set in the Charter and the CCEP, a country committee may, on its own, hold elections as soon as possible in order to demonstrate its ability to return to a state of compliance. As country committees manage their own internal affairs,<sup>14</sup> an election that otherwise complies with DA rules is valid.

However, holding the elections does not, in and of itself, return the country committee to compliance. Following recent practice and common sense, the DPCA Executive Committee formally grants waivers, often based on conditions set at the discretion of the Executive Committee, to return country committees to a state of compliance and restore their DPCA voting rights. A valid country committee election that complies with the DA Charter and the CCEP is a necessary, but not sufficient, condition to restore DPCA voting rights.

Accordingly, this decision finds in favor of the Respondent on Count II and the Dominican Republic's democratic election of its own officers will not be nullified solely because the election was held 57 days late. However, the election itself does not automatically restore the Dominican Republic's DPCA voting rights, which can only be done upon the DPCA Executive Committee's grant of a waiver.<sup>15</sup>

#### **IV. Violation of DADR Bylaws (Count III)**

Claimant alleges that the election was held in contravention of the DADR Bylaws. These allegations include: (1) Respondent failed to provide a form to register new members, (2) Respondent failed to provide an email address or cell phone number to provide assistance to members who had questions or concerns about the election process, (3) Respondent did not provide information on registration via the DADR webpage or Vote From Abroad, and (4) Respondent never provided any information regarding NEC funds. Ultimately, Claimant concludes that, as a result of these omissions, "the members of the Dominican Republic were not properly advised and given an opportunity to vote in a fair and equitable election."

Claimant points to Section 3.4 of the DADR Bylaws, which states: "To become a member of DADR each member of the organization shall fill out and sign a registration form consisting of their name, email, mailing address, telephone and fax numbers and a U.S. Voting District/State. Proof of citizenship information contained on the membership list shall be presented to ExCom for approval." This section explains how new members may join DADR, but it does not establish any duty of the DADR NEC to promote membership or register new members.

Although Claimant's argument is based on the DADR Bylaws, an NEC's failure to perform the duties established by the CCEP may be sufficient to invalidate an election. Section 3 of the CCEP lists the duties of the NEC.<sup>16</sup> These duties include providing notice of the election, tallying

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<sup>14</sup> DA Charter, Section 5.1.

<sup>15</sup> As of the date of this opinion, DADR has not been granted a waiver for 2017 compliance issues.

<sup>16</sup> *Supra* at 5, n. 12.

and reporting the election results, and so on. Although good practices, none of the duties alleged by Claimant—providing registration forms to new members, providing a phone number or email address to answer questions,<sup>17</sup> providing registration information on the DADR webpage,<sup>18</sup> or providing information on NEC funds—are mandatory duties under the CCEP. Accordingly, Claimant has failed to establish that Respondent violated its duties under the DADR Bylaws or the CCEP, and this decision finds in favor of the Respondent on Count III.

#### **V. Appearance of Impropriety (Count IV)**

Claimant alleges that Helena Garcia O’Rourke (“Helena”) is the daughter of the Chair (Maria-Elena O’Rourke) and that the Chair appointed Helena to the NEC in violation of Section 4.a of the CCEP.<sup>19</sup> This allegation is accepted as true, principally because the allegation raised in the amended challenge was not disputed by the Respondent, upon which Helena serves. Second, Helena has been confirmed as a member of DADR by review of the DA membership database.

The relevant text of the CCEP, under the title of “Recusal of Candidates from Election-Related Matters”, states as follows:

The use of a local independent NEC is an essential part of maintaining the integrity of and avoiding any appearance of impropriety in our Country Committee elections. It is therefore essential that all candidates for office, especially incumbent holders of officer or At-Large positions, be recused from all aspects of election administration. A significant number of problems, misunderstandings and disputes can be tied to even well-meaning attempts by Country Committee leadership to assist with election related matters.<sup>20</sup>

Further, in its statement of purpose, under the heading of “Key Points”, the CCEP states, “This document is designed to help Democrats Abroad (DA) Country Committees organize and conduct successful, fair, and transparent elections for DA Country Committee (CC) Officers. These procedures are minimum standards based on the election practices of the Democratic Party Committee Abroad . . . and the Democratic Party of the United States . . .”<sup>21</sup> By reading the first page of the CCEP, there is no question that the procedures are intended to establish fair and transparent elections in which no appearance of impropriety exists because the appearance of impropriety is damaging to the Democratic Party, Democrats Abroad, and the idea of democratic elections in general. From this language alone, a prudent country committee officer would and should refrain from appointing a family member to a committee that administers an election in which that officer is a candidate.<sup>22</sup>

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<sup>17</sup> The NEC’s email address ([DR-NEC@democratsabroad.org](mailto:DR-NEC@democratsabroad.org)) was included in the election-related post to the DADR webpage on August 12, 2017. The ballot was also posted at that time, and it included the email address. The ballot was also emailed to the DADR membership on August 12, 2017.

<sup>18</sup> [VoteFromAbroad.org](http://VoteFromAbroad.org) is administered by DPCA, and neither country committees nor country committee NECs have administrative rights to post content to the site.

<sup>19</sup> Amend. Challenge at 2.

<sup>20</sup> CCEP, Section 4.a.

<sup>21</sup> *Id.* at p. 1.

<sup>22</sup> An incumbent officer’s appointment of a family member to an NEC may be exceedingly problematic. For example, in cases involving contested elections, or allegations that other nominees or candidates were not treated equally, the likelihood that the appearance of impropriety would have a significant influence on the fairness or legitimacy of the election may increase dramatically. To avoid this problem in the future, the Executive Committee may wish to consider the adoption of new rules that clarify such conduct as a conflict of interest sufficient to invalidate an election.



Yet the appearance of impropriety is subjective, and Democrats Abroad has not defined what conduct amounts to the “appearance of impropriety”. Given that there is no bright-line test to determine when an election is tainted by the appearance of impropriety, such a determination must be based on the facts and circumstances of each case. Further, facts demonstrating the appearance of impropriety should be balanced against a justified reluctance to invalidate the results of an otherwise properly held democratic election. In striking this balance, this decision holds that, to invalidate an election based on the appearance of impropriety, the claimant must prove that the appearance of impropriety had a significant impact on the fairness or legitimacy of the election.

In this case, there was no allegation of actual impropriety. In fact, this opinion has found that DADR was in substantial compliance with the procedural requirements of the CCEP. Thus, the sole question is whether the appointment by the incumbent Chair of her daughter to the NEC created the appearance of impropriety under the CCEP. In this case, it did not.

As presented, the facts of this case demonstrate that the appointment of Helena to the NEC did not have a significant impact on the fairness or legitimacy of the election. First, Helena was one of three members of the NEC. Even if she had intended to interfere with the election (which Claimant has not alleged), she did not have a controlling vote on the NEC.<sup>23</sup> She would need to have persuaded at least one other NEC member to participate in the scheme. Thus, her mere presence on the NEC is insufficient to impugn the fairness and legitimacy of this election, particularly in light of the non-contested nature of this election. Second, as referenced in the previous sentence, the slate of candidates ran unopposed, and Claimant did not identify any other DADR members who chose not to run for office due to concerns over the fairness or legitimacy of the election. Moreover, the challenge does not assert that any DADR member’s nomination was rejected by the NEC, nor does it assert that any other member had interest in running for elective office. As the DADR election was held by mailed ballots (absentee voting), subsequent nominations were not permitted.<sup>24</sup> Thus, Claimant has failed to establish that the appearance of impropriety had any significant influence on the fairness or legitimacy of the election. Beyond that, Claimant has failed to make such a showing for any other aspect of the election. Accordingly, this decision finds in favor of the Respondent on Count IV.

## **VI. Outdated Bylaws (Count V) and Failure to Maintain Records (Count VI)**

Claimant asserts that the DADR election on August 26, 2017 was invalid because the country committee has failed to update its bylaws and has failed to maintain other books and records required under the DADR bylaws and necessary for the proper administration of a transparent and accountable country committee.<sup>25</sup> Even accepting these allegations as true, these matters are outside of the scope of an election challenge under the CCEP.

The CCEP establishes a process for resolving “election-related concerns”.<sup>26</sup> The requirement to provide updated bylaws to International Counsel arises under Section 5.4 of the Charter and is not an election-related concern. Moreover, Claimant’s allegations that the DADR Secretary and the DADR Treasurer have failed to properly maintain the books and records of the DADR admit that these matters are not election-related concerns as the broad categories of

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<sup>23</sup> CCEP at Section 2.c.

<sup>24</sup> *Id.* at Section 5.c.6. “If absentee voting is allowed, and all offices have a candidate, there can be no nominations from the floor of the meeting, as those voting absentee will not have the same opportunity to vote for candidates nominated from the floor and voting will already be in process.”

<sup>25</sup> Amend. Challenge at 2-3.

<sup>26</sup> CCEP at Section 5.f.(1).

documents identified in the Amended Challenge have no clear connection to the election.

Claimant further asserts that members of DADR are entitled to inspect the administrative records of the organization. Indeed, Article VIII of the DADR Bylaws states that all files and administrative records, except membership lists, mailing lists, and the database, “shall be open for inspection by members”. In many organizations, the process to inspect records is initiated by sending a letter to the officer responsible for maintaining such records. As a formality, Claimant is encouraged to send such a letter to the DADR Secretary. However, the DADR Executive Committee is now on notice of the Claimant’s request to inspect the records of the organization and must, pursuant to the DADR Bylaws, undertake all reasonable efforts to ensure that this right is respected by giving Claimant a meaningful opportunity to inspect and copy these documents.

However, the instant challenge is related to the August 2017 election, not the management of the DADR. The NEC is not responsible for maintaining the general administrative records of the organization, and it has no authority to do so. Accordingly, Claimant has failed to establish that Respondent violated any duty with respect to the DADR Bylaws or other organization records, and this decision finds in favor of Respondent on Counts V and VI.

## CONCLUSION

Claimant has failed to establish by clear and convincing evidence<sup>27</sup> that the election procedures established and implemented by Respondent violated the CCEP or the DADR Bylaws. Accordingly, this decision finds in favor of the Respondent on all counts, and the Claimant’s election challenge is denied.

January 10, 2018<sup>28</sup>

Thomas L. Schmid  
International Counsel  
Democratic Party Committee Abroad

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<sup>27</sup> International Counsel’s findings in this case would have been the same had the preponderance standard been applied.

<sup>28</sup> Non-substantive edits were made to this opinion on May 15, 2019 to improve consistency and usage of terminology, and Claimant’s name was redacted for purposes of publication.