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FILED  
JUL 2 1992

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SACRAMENTO

In re the Matter of:	No. 369837	Dept. 29
LYNDON H. LAROUCHE, JR., JAMES DUREE, CALIFORNIA STEERING COMMITTEE OF DEMOCRATS FOR ECONOMIC RECOVERY, LAROUCHE IN '92,	<b>ORDER ON PETITION FOR WRIT OF MANDATE</b>	
Petitioners,		
vs.		
MARCH FONG EU, SECRETARY OF STATE OF THE STATE OF CALIFORNIA,		
Respondent.		

Petitioners filed a writ of mandate pursuant to Elections Code section 10015 and Code of Civil Procedure section 1085 requesting that respondent be directed to place the name of petitioner Lyndon H. LaRouche, Jr. on the California Democratic Presidential Preference Primary Ballot for the June 2, 1992 primary.

Under article II, section 5 of the California Constitution:  
"The legislature shall provide for primary elections for partisan offices, including an open presidential primary whereby the candidates on the ballot are those found by

1 the Secretary of State to be recognized  
2 candidates throughout the nation or  
3 throughout California for the office of  
4 President of the United States, and those  
5 whose names are placed on the ballot by  
6 petition, but excluding any candidate who has  
7 withdrawn by filing an affidavit of  
8 noncandidacy." (Emphasis added.)

9 Election Code section 6311 which implements article II,  
10 section 5, provides in pertinent part:

11 "The Secretary of State shall place the  
12 name of \* \* \* a candidate upon \* \* \* the  
13 presidential primary ballot when he or she  
14 has determined that such a candidate is  
15 generally advocated for or recognized  
16 throughout the United States or California as  
17 actively seeking the nomination of the  
18 Democratic Party for President of the United  
19 States. The Secretary of State shall include  
20 as criteria for selecting candidates the fact  
21 of qualifying for funding under the Federal  
22 Elections Campaign Act as amended in 1974."

23 Respondent has construed the second sentence of section 6311  
24 as constituting a threshold requirement for placement on the  
25 primary ballot and has excluded all candidates, including  
26 petitioner LaRouche, who did not qualify for funding under the  
27 Federal Elections Campaign Act.

28 The Court finds that respondent's mechanical application of  
this criteria is inconsistent with Elections Code section 6311  
and article II, section 5 of the California Constitution.

Elections Code section 6311 does not state that  
qualification for federal funds is a threshold requirement for  
placement on the primary ballot.<sup>1/</sup> It is simply one of several  
criteria to be examined by the Secretary of State in determining

<sup>1/</sup> Application for federal funds is entirely voluntary. It is  
entirely possible that an acknowledged front runner could simply  
choose not to seek federal funds. This choice should not have  
the further effect of preventing such a candidate from being  
placed on the primary ballot.

1 whether a candidate is "generally advocated for or recognized  
2 throughout the United States or California as actively seeking  
3 the nomination of the Democratic Party for President of the  
4 United States." (Elec. Code, § 6311.)

5 In making such a determination, there are a host of other  
6 factors which should be considered, in addition to qualification  
7 for federal funding. These factors include whether the candidate  
8 has appeared on ballots in other states, whether the candidate  
9 has a significant level of support in California or the United  
10 States as a whole, and whether the candidate has appeared on the  
11 California ballot previously.

12 Applying these criteria in the present case, the Court finds  
13 that, notwithstanding his failure to qualify for federal funding,  
14 petitioner LaRouche is a "generally advocated for or recognized"  
15 candidate for the Democratic Party's Presidential nomination.  
16 Petitioner LaRouche has appeared on the primary ballots of some  
17 23 other states this year, he has appeared on the Democratic  
18 Party's ballot in California in two previous elections, and he  
19 has garnered more votes in two earlier primaries this year than  
20 two candidates who qualified for federal funds.

21 For the foregoing reasons:

22 IT IS HEREBY ORDERED that petitioners' writ of mandate is  
23 granted and that respondent is directed to place the name of  
24 Lyndon LaRouche, Jr. on the Democratic Presidential Preference  
25 Primary Ballot for the June 2, 1992 California primary.