Case No. S257302

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

JESSICA MILLAN PATTERSON
And
CALIFORNIA REPUBLICAN PARTY

Petitioners,

v.

ALEX PADILLA,
California Secretary of State, In His Official Capacity

Respondent.

PETITIONERS' REPLY TO RESPONDENT'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE AND OTHER EXTRAORDINARY OR IMMEDIATE RELIEF

ELECTION LAW MATTER ENTITLED TO CALENDAR PREFERENCE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE § 35; ELECTION CODE § 13314(a)(3).

IMMEDIATE STAY REQUESTED
IMMEDIATE RELIEF REQUESTED – NO LATER THAN NOVEMBER 4, 2019

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I. INTRODUCTION

Respondent California Secretary of State Alex Padilla's Preliminary Opposition to the Petition is surprising in that he disclaims his own constitutional obligation, indeed the crown jewel of his constitutional authority under the California Constitution, in favor of partisan legislative interference with that duty.

First, Respondent denies that Article II, Section 5(c) imposes any duty on him that provides for mandamus. Petitioners are not asking this Court to issue a writ of mandate directing Respondent to place any candidate's name on the ballot under the Constitution. Petitioners are asking this Court to order Respondent to ignore the Legislature's attempt to impose a duty on him that violates the Constitution – SB 27. However, even Respondent's denial of any duty at all turns the Constitutional provision on its head. What if the Respondent simply chose not to identify and place the names of any Presidential candidates other than himself on the ballot? Would this Court conclude it could not issue a writ of mandate compelling him to perform his constitutional duty? Of course not.[1] The constitutional provision is clear and SB 27 imposes a *statutory* duty that is completely inconsistent with that provision; namely to identify and place on the primary ballot the name of all nationally, and California, recognized presidential candidates.

Second, Respondent cites federal law applicable to federal officers as justification for California's asserted state interest in prohibiting any Presidential candidate who fails to disclose his or her personal income tax returns from the California Open Presidential Primary ballot. Whatever California's and Californians' informational interests may be, SB 27's

[1] For example, in 1992 Democratic presidential candidate Lyndon LaRouche obtained a writ of mandate in the Sacramento County Superior Court compelling the Secretary of State to include his name on the ballot in the Democratic Presidential Primary. (*LaRouche v. Eu* (Super. Ct. Sacramento County, 1992, No. 369837) – Judgment attached as Ex. A.)

unconstitutional use of the hammer of denial of ballot access to Presidential candidates is not authority to subvert the People's right to an Open Presidential Primary as enacted by Proposition 4 in 1972.

Third, Respondent asserts without any reference to legislative history that the 1972 Proposition 4 amendment, which begins with "The Legislature shall provide for primary elections," somehow authorizes SB 27's unprecedented shackle on his own exclusively delegated authority as set forth in the very words that follow the quoted language. Such an interpretation ignores the fact that Proposition 4 affirmed the right of an Open Presidential Primary and specifically delegated to the Secretary of State the sole authority to find and place Presidential candidates on the Open Presidential Primary ballot to ensure for California voters the widest possible choice to vote for Presidential candidates. Article II, Section 5(c)'s reference to the Legislature's authority has been, and must be, seen as reserving to the Legislature the power to adopt time, place and manner regulations for primary elections, which the Legislature has done. (Elec. Code § 1202 [establishing the date of the presidential primary election].)

Fourth, Secretaries of State have performed their constitutionally mandated duty under Article II, Section 5(c) for forty years (from 1976 to the last Presidential Primary election in 2016) without legislative interference or help, and without any public controversy, until this year. Respondent counters that truth by directing the Court to compare the requirement in SB 27 with other "California law [that] expressly defines who may be a 'recognized candidate'" to undercut Petitioners' claim that the Constitution delegates the authority to identify Presidential candidates and place their names on the ballot, citing Elections Code Section 6000.1. What Respondent fails to inform the Court is that the law referenced was also passed at the same time as SB 27 as an urgency measure (SB 505). Though not challenged

here, SB 505 likewise unconstitutionally impinges on Respondent's performance of his constitutional duties under Article II, Section 5(c).

Fifth, Respondent contends that Petitioners lack standing to bring this Petition, citing federal case law and ignoring California's well-established precedents that authorize standing for voters and political parties bringing public interest claims of the type set forth in their Petition.

Finally, Respondent contends Petitioners have failed to assert irreparable injury. However, Petitioners' claims of First Amendment voting and associational injury, including the likelihood of voter suppression of Republican voters, widely recognized, are more than sufficient basis for this Court to grant relief as requested in their Petition.

Petitioners' request for a stay directed to Respondent to prohibit his enforcement of SB 27 in the upcoming Presidential primary election, and ultimately the grant of their Petition to permanently prohibit enforcement of SB 27, is appropriate for this Court to resolve in the public interest of all Californians. Petitioners respectfully request the Court's immediate action.

II. LEGAL STANDARD

Petitioners have no quarrel with Respondent's general statement of the legal standard applicable to legislative enactments. However, when the Legislature enacts law that conflicts directly with a provision of the Constitution, as here, it is this Court's duty to prohibit the Constitutional violation and to declare the enactment unconstitutional. As indicated more fully below, Elections Code Sections 6883 and 6884 (enacted by SB 27) clearly, positively, and unmistakably violate Article II, Section 5(c).

III. JURISDICTION

This Court has frequently exercised its original jurisdiction in cases of great public importance – particularly in connection with upcoming elections. (*Scheafer v. Herman* (1916) 172 Cal. 338, 339; *Gage v. Jordan* (1944) 23 Cal.2d 794; *Perry v. Jordan* (1949) 34 Cal.2d 87; *Miller v. Greiner*

(1964) 60 Cal.2d 827; *Farley v. Healey* (1967) 67 Cal.2d 325; *AFL v. Eu* (1984) 36 Cal. 3d 687; *Jolicoeur v. Mihaly* (1971) 5 Cal.3d 565; *Young v. Gnoss* (1972) 7 Cal.3d 18; *Senate v. Jones* (1999) 21 Cal.4th 1142; *Vandermost v. Bowen* (2012) 53 Cal.4th 421.)

Respondent is incorrect that this Petition must be filed in the Superior Court of California, County of Sacramento. The language of Elections Code Section 13314(b)(1) is that if the "Secretary of State is named as a respondent" then "[v]enue for [the] proceeding… shall be exclusively in Sacramento County." The statute does not create a jurisdictional limitation. Respondent confuses jurisdiction with venue. That provision means only that "if" the case is filed in "a" superior court, then that superior court must be in the County of Sacramento. The instant writ petition was filed in the Supreme Court, not a superior court. Thus, the venue provision does not apply. Importantly, Petitioners do not rely exclusively on Elections Code Section 13314 for their claim for relief. This action is also brought pursuant to Article VI, Section 10 of the Constitution and Code of Civil Procedure Sections 1085 and 1086. Thus, the Court has jurisdiction to issue the requested stay and writ of mandate under those provisions of law, as well.

IV. ARGUMENT

A. Article 2, Section 5(c) Imposes a Mandatory Duty on the Secretary of State to Identify Candidates for President Recognized Throughout the State, and Nation, and To Place the Names of Those Candidates on The Ballot. SB 27 May Not Interfere with that Delegated Duty.

Respondent argues that this Court can issue no writ of mandate directed at him because Section 5(c) of article II "does not impose on the Secretary any duty to print names on primary ballots as a mandatory or ministerial act, without reference to laws or criteria that might affect who can be a 'recognized candidate'" (Respondent's Opp. at p. 15). One wonders how the names of any Presidential candidates found their way onto primary

election ballots for the last forty years in the absence of SB 27? Perhaps all the prior Secretaries of State simply read the Constitutional provision to mean what it says, to wit:

> The Legislature shall provide for a partisan primary election for President (and political central committees), and I, the Secretary of State, shall identify all of the recognized candidates for President and place their names on the ballot. If someone qualifies by petition to have his or her name on the ballot as a candidate for President, I will also place their name on the ballot. I will not keep a recognized candidate's name off the ballot unless that candidate informs me by affidavit that he or she is not a candidate.

Faced with this clear directive, Respondent argues himself into a circle. Respondent states: "Rather, the Secretary places persons on the primary ballot that he has 'found… to be recognized candidates throughout the nation or throughout California for the office of President of the United States. Because this constitutional provision does not dictate any specific action that the Secretary must take, mandamus cannot issue.'" (Respondent's Opp., at pp. 11-12) ("Opp.") Is not the "specific action" identified in Respondent's own description – namely that the Secretary must "place" the name of persons "on the primary ballot" that he has identified "to be a recognized candidate for the office of President?"

All of Respondent's argument in this regard is entertaining but misses the point of the relief requested. In the absence of this Court's order, SB 27 imposes a mandatory and ministerial duty on Respondent which he intends to follow. Elections Code Section 6883 requires the Secretary of State to exclude the name of an otherwise "recognized" candidate for President of the United States from the primary ballot if that candidate has failed to provide the Secretary five years of personal and private tax returns. A writ of mandate must be issued to prohibit the exercise of a ministerial act that is violative of

the Constitution and causes Petitioners' harm. For example, in *Knoll v. Davidson* (1974) 12 Cal.3d 335, this Court issued a writ of mandate directing the Alameda County Registrar of Voters to accept the petitioners' application for declarations of candidacy and to place their names of ballot for primary election without payment of filing fees. In doing so, this Court noted that "[m]andamus is clearly the proper remedy for compelling an officer to conduct an election according to law." Such is the case in the instant matter as well, Petitioners seek to restrain Respondent from enforcing the provisions of SB 27, and to instead conduct the election according to law, which is set forth in Article II, Section 5(c) of the Constitution. (*Young v. Gnoss* (1972) 7 Cal.3d 18 ["mandamus… may be sought when it is clear from the circumstances that the public officer does not intend to comply with his obligation when the time for performance arrives"].)

A writ of mandate is appropriate where the Legislature has decided for itself that it can interfere with the Secretary's sole and exclusive constitutional duty in this regard. There is no doubt that the Secretary of State would, in the absence of SB 27, place the name of the incumbent President on the Republican Party primary election ballot. If SB 27 had never been passed and the Secretary of State chose not to place the name of the incumbent President on the ballot because the candidate had refused to provide him with five years of tax returns, there is no doubt that this Court would issue a writ of mandate compelling him to do so.

B. Legal Requirements for Presidential Candidates to Be Placed on The Ballot Imposed by Statute Cannot Supersede Clear Constitutional Commands.

Respondent argues that the statutory provisions enacted by SB 27 – Elections Code Sections 6883 and 6884 – merely "guide the Secretary in determining who to place on that ballot." (Opp., at p. 15.) This is nonsense. SB 27 does not "guide" the Secretary of State. Rather, it specifically directs

him: "the Secretary of State ***shall not*** print the name of a candidate for President of the United States on a primary election ballot, unless the candidate… files with the Secretary of State copies of every income tax return the candidate filed with the Internal Revenue Service in the five most recent taxable years." (Elec. Code, Section 6883(a), emphasis added.)

Respondent's argument focuses almost exclusively on the opening phrase in Section 5(c) of article II: "The Legislature shall provide for partisan elections for presidential candidates, and political party and party central committees" as authority to enact SB 27. Standing alone, Respondent might have something to say, but that phrase does not stand alone; that phrase is immediately followed by the constitutional delegation of authority and duty in the Secretary of State to identify the candidates whose names will be placed on the primary election provided for by the Legislature. Moreover, that phrase must be read in the context of the legislative history of its adoption by the voters. Respondent ignores all of that analysis provided by Petitioners in their opening brief, and offers no history of his own.

1. The Legislature's Authority to Provide for Elections and Primary Elections is Well-Understood and Not at Issue Here.

Petitioners do not question the Legislature's authority to call elections and provide for the time, place, and manner of conducting such elections, even partisan primary elections (those that remain following enactment of Proposition 14 in 2010). Over the course of the forty years that followed the voters' approval of Proposition 4 in 1972, the Legislature has enacted several types of laws. For example, the date of the election is set by statute and the Legislature has moved the date of the primary from time-to-time. At present, Elections Code Sections 1201 and 1202 establish the election at issue here as March 3, 2020.

Since the Constitution requires a "partisan" Presidential primary election and partisan party central committee elections, the Legislature has enacted "party-specific" statutes for each of the recognized political parties. (Elections Code, 6000.1 Ch 1-5.) Other laws, generally applicable to the conduct of all elections in California are equally applicable to the Presidential partisan primary election (i.e., voter registration, voter eligibility, vote-by-mail balloting, ballot specifications, precinct voting, canvassing returns, etc.). None of these election-related laws have prescribed who is, or is not, eligible to run for partisan office or, "recognized" as such a candidate under the Constitution – until SB 27.

The history of the Constitutional provision at issue is instructive. As first adopted in 1972 by the voters with Proposition 4, the text read:

> The Legislature shall provide for an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit that he is not a candidate.

The text was somewhat amended by the voters later that year with Proposition 7 to read:

> 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 the Secretary of State to be recognized candidates throughout the nation or through- out California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit that he is not a candidate.

The current version of the text was amended with the enactment of Proposition 14 in 2010. Because Proposition 14 eliminated partisan primary elections in all but the Presidential election and political party central committee elections, the text was amended to read (deletions in ~~strikeout~~):

> The Legislature shall provide for ~~primary~~ partisan elections for ~~partisan offices~~ presidential candidates, and political party and party central committees, including an open presidential primary whereby the candidates on the ballot are those found by the Secretary of State to be recognized candidates throughout the nation or throughout California for the office of President of the United States, and those whose names are placed on the ballot by petition, but excluding any candidate who has withdrawn by filing an affidavit of noncandidacy.

Thus, the original intent of Proposition 4, to require the Secretary of State to identify and place on the ballot all the recognized candidates for President of the United States so that the voters of California could choose among the candidates running for that office, is unchanged. (Pet., ¶¶ 7-9, pp. 12-13, and Exhs. "C" and "D".) The Legislature's role is and always was limited with respect to its traditional function of calling and providing for election procedures.

Respondent overreads the prefatory clause of Article II, Section 5(c), requiring the Legislature to pass procedural laws calling the election. Truly, if Respondent's reading is correct, the petitioning process provided for in that same section could be written out of existence – the Legislature could do so under the auspices that they are simply "provid[ing] for partisan elections." In the same vein, as Respondent argues here, the Legislature could write the Secretary of State's role out of existence. That overreading and overreach would clearly violate the Constitution. SB 27's tax return prohibition is not a run-of-the-mill "legal requirement" which must be complied with as a condition precedent to reach the ballot, as Respondent argues.

2. Respondent's Citation to Law Enacted on the Same Day as SB 27 as "Evidence" that the Legislature Has Authority to "Guide" the Secretary of State is Pointless.

Respondent cites Elections Code Section 6000.1 as an example of the Legislature's exercise of its authority under Section 5(c) of article II, to "guide" the Secretary of State in identifying "recognized" candidates for President. What Respondent fails to tell the Court is that Elections Code 6000.1 was enacted on the same day as SB 27, by the enactment of SB 505. SB 505 was also an urgency bill, and though not challenged here, its constitutionality is also dubious in light of the clear directive of the Constitution.

3. The Other Election-Related Constitutional Provisions Do Not Support Respondent's Argument.

Respondent cites certain constitutional provisions that he argues "[authorize] the Legislature to ensure that actions necessary for well-functioning and fair elections are similarly employed." (Opp., at p. 16.) These constitutional provisions are co-equal to Article II, Section 5(c), meaning that they must also be followed in addition to that provision. Besides, these provisions, all of which deal only with the procedural aspects of elections, such as "providing for voter registration" (Article II, § 3), "prohibiting improper practices" (Article II, § 4), and "circulation, filing and certification of petitions to recall candidates and the recall election" (Article II, § 16) only enhance Petitioners' point that our constitutional scheme is that the Legislature provides the mechanics of the election, while the Secretary acknowledges the substance of who is a candidate. In this way, the Secretary's role under Article II, Section 5(c) is similar to his role under Article II, Section 8(c), which states that, upon the receipt of sufficient signatures to qualify an initiative measure for the ballot he "shall then submit

the measure at the next general election held at least 131 days after it qualifies or at any special statewide election held prior to that general election." The Constitution does not empower the Legislature to command the Secretary of State to require an initiative proponent to release his or her tax returns as a condition precedent to the measure being submitted to the voters once signatures have been submitted, and it is not empowered to do the same with candidates for President.

Respondent then argues that the legal requirements under the United States Constitution for taking the office of President are co-equal with SB 27, and asserts that the Secretary of State must follow both. This is not true. In fact, he must follow neither. First, the U.S. Constitution's requirements that the President be at least 35 years old, a natural born citizen, and a U.S. resident for 14 years does not govern who can be placed on a state ballot. This is because *running* for office, which is a product of state ballot qualification requirements, specifically in this case Cal. Const. Article II, Section 5(c), is a different question than *taking* office, which is governed by the qualifications clause of U.S. Const. Article II, Section 1. If a candidate is elected to the highest office in the land and does not meet these requirements, it will be for the federal courts to determine what happens next. (*Keyes v. Bowen*, (2010) 189 Cal.App.4th 647, 660 [Secretary of State has no ministerial duty to investigate Presidential candidate's federal constitutional qualifications], citing *Robinson v. Bowen* (N.D.Cal.2008) 567 F.Supp.2d 1144, 1147 [Presidential qualification issues are best settled in Congress.].)

In the instant matter, California has enacted a constitutional provision requiring that the Secretary place "recognized" candidates on the ballot, which has nothing to do with whether such candidates will ultimately meet the requirements of the qualifications clause of U.S. Const., Article II, Section 1.

C. Petitioners Have Standing, Respondent Misstates the Standing Requirement of Code of Civil Procedure Sections 1085 and 1086, And Does Not Even Attempt to Argue the Standing Requirement of Elections Code Section 13314.

Petitioners have standing under both Code of Civil Procedure Sections 1085 and 1086, and the Elections Code. (*Independence League v. Taylor* (1908) 154 Cal. 179, 184 "[Political parties] are such legal entities, when organized under the general laws of this state recently enacted there can be no doubt…it would be a startling anomaly to hold that they have no capacity to enforce by ordinary legal process the rights which have been conferred upon them by valid laws"; *Independent Progressive Party v. County Clerk of Alpine County* (1948) 31 Cal.2d 549, 550 "[action filed in the name of a political party] is a proper case for proceeding under [predecessor statute to Elections Code Section 13314]".)

Elections Code Sections 1085 and 1086 require only a "beneficial interest." A beneficial interest is defined as "an interest over and above the public at large." (*SJJC Aviation Services, LLC v. City of San Jose* (2017) 12 Cal.App.5th 1043, 1053.) Petitioners have a "beneficial interest" in the issuance of the writ because they seek to have all of the Republican candidates for President on the ballot to guarantee the right of Petitioner Patterson and members of her Party to consider and vote for those candidates and to ensure maximum voter interest and participation among its members. (*Taft v. Haas* (1917) 34 Cal.App. 309, 310 [Taxpayers had standing because "[t]he election in question was held for the purpose of determining whether the city of Sawtelle should be consolidated with the city of Los Angeles. Whether the former city is to become one with the latter bears a direct relation to the question of the amount of taxes in future to be paid by petitioners, and either consolidation or no consolidation with Los Angeles is bound to affect

the value of all property in Sawtelle. The petitioners are therefore beneficially interested in this proceeding"].

Indeed, the proverbial "elephant in the room" is that the Legislature and Governor have, through the Elections Code provisions enacted via SB 27, attempted to keep the sitting President of the United States off of the primary ballot, thereby harming down-ballot Republican candidates by reducing the likelihood that Republican voters will go to the polls. In political science, this is known as the "coattail effect." (Steven G. Calabresi, James Lindgren, *The President: Lightning Rod or King?* (2006) 115 Yale L.J. 2611, 2612 ["The first theory of surge and decline holds that presidential midterm losses are explained mostly by the absence in those years of presidential coattails"].)

Respondent argues that Petitioners lack standing because they allege future harm based on "speculation" because the deadline for releasing tax returns has not occurred. (Opp., at p. 21.) Petitioners' harms are far from "speculative." They are based on the reality that some candidates for President do not intend to release their tax returns, and will be omitted from the ballot as a result, leading to voter suppression and the loss of First Amendment rights of speech, petition, and association. (*Tobe v. City of Santa Ana* (1995) 9 Cal.4th 1069, 1084 [to "enjoin…future…applications of a…statute…the plaintiff must demonstrate that [the] application [of the challenged statute] is occurring"]; *Elrod v. Burns* (1976) 427 U.S. 347, 373 "The harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as timing is of the essence in politics and delay of even a day or two may be intolerable"; *Johnson v. Bergland* (4th Cir. 1978) 586 F.2d 993, 995 [Violations of First Amendment rights, such as the extraordinary violations resulting from the Act, are *per se* irreparable injury]; *Wesberry v. Sanders* (1964) 376 U.S. 1, 17 "No right is more precious in a free country than that of having a voice in the election of those who make the

laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined".) Were Petitioners to wait until that deadline to file the instant petition, substantial harm would occur because such candidates would not be spending time or resources seeking to qualify for the California ballot.

Furthermore, Code of Civil Procedure Sections 1085 and 1086 allow for "public interest" standing where a public right is at stake. (*Save the Plastic Bag Coalition v. City of Manhattan* Beach (2011) 52 Cal.4th 155, 167 ["[the public interest standing] exception to the beneficial interest requirement is meant to give citizens an opportunity to ensure the enforcement of public rights and duties"].) The limit is where the petitioner is interested only in his or her own economic competitive standing. (*Id*. ["purely commercial and competitive" interests do not qualify for public interest standing].) Here, Petitioners are both civically-interested persons seeking to vindicate a public right, the California Republican Party and its Chair seek to allow its voters to select the sitting President on the primary ballot, as well as other candidates who choose not to divulge their tax returns. Thus, they have "public interest" standing even if they do not have a beneficial interest.

Respondent does not even attempt to argue that Petitioner Patterson lacks standing under Elections Code Section 13314. That is because the conclusion is inescapable. Elections Code Section 13314 requires only that the petitioner be an "elector," defined in Elections Code Section 321(a) as "any person who is a United States citizen 18 years of age or older" and "a resident of an election precinct at least 15 days prior to an election." As Petitioner Patterson has sworn in her Verified Petition, she meets both requirements and thus has standing.

V. CONCLUSION

For the reasons stated *supra*, a writ of mandate must issue under either Code of Civil Procedure sections 1085 and 1086, or Elections Code Section 13314, directed to the Secretary of State to disregard recently enacted Elections Code sections 6883 and 6884 (SB 27) and to perform his constitutional duty to place candidates "recognized" throughout the State, and Nation, on the March 2020 Presidential primary ballot. Petitioners respectfully request a stay directed to Respondent to prohibit his enforcement of SB 27 in the upcoming Presidential primary election, and ultimately the grant of their Petition to permanently prohibit enforcement of SB 27.

Respectfully Submitted,

Dated: August 16, 2019 **BELL, McANDREWS & HILTACHK, LLP**

By: 

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CERTIFICATE OF COMPLIANCE

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) and 8.360(b)(1) of the California Rules of the Court, the enclosed brief of JESSICA MILLAN PATTERSON and CALIFORNIA REPUBLICAN PARTY is produced using 13-point Times New Roman type including footnotes and contain approximately 4,487 words, which is less than the total words permitted by the rules of the court. Counsel relies on the word count of the computer program, Microsoft Word 2010, used to prepare this brief.

Dated: August 16, 2019. **BELL, McANDREWS & HILTACHK, LLP**

By: 

CHARLES H. BELL, JR.
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PROOF OF SERVICE

Case S257302 Patterson, et al. v Padilla

I, the undersigned, declare under penalty of perjury that:

I am a citizen of the United States, over the age of 18, and not a party to the within cause of action. My electronic address is kmerina@bmhlaw.com

On August 16, 2019, I served the following:

PETITIONERS' REPLY TO RESPONDENT'S PRELIMINARY OPPOSITION TO PETITION FOR WRIT OF MANDATE AND OTHER EXTRAORDINARY OR IMMEDIATE RELIEF

on the following party(ies) in said action:

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X **BY ELECTRONIC MAIL:** By causing true copy(ies) of PDF versions of said document(s) to be sent to the e-mail address of each party listed.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on August 16, 2019, at Sacramento, California.

K Merina
KIERSTEN MERINA

Exhibit A

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

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

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

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

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

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

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

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.[1/] It is simply one of several criteria to be examined by the Secretary of State in determining

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1/ 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.

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

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

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

For the foregoing reasons:

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

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **PATTERSON v. PADILLA**
Case Number: **S257302**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **kmerina@bmhlaw.com**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
REPLY TO ANSWER TO PETITION FOR REVIEW	S004 Reply to Oppo

Service Recipients:

Person Served	Email Address	Type	Date / Time
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8/16/2019
Date

/s/Charles Bell
Signature

Bell, Charles (060553)
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