

Court overrules FEC on LaRouche's right to matching funds

The Federal Election Commission had no authority to deny matching funds to Lyndon LaRouche's 1992 presidential primary campaign, the U.S. Circuit Court of Appeals for the District of Columbia ruled on July 2. The decision is a sharp rebuke to the FEC, which has a long history of corruption, bias, and abuse of power in its dealings with LaRouche.

In 1992, the FEC, acting on the advice of its legal counsel, Lawrence Noble, denied LaRouche federal matching funds for his Democratic presidential primary campaign. The FEC claimed, falsely, that LaRouche's 1988 criminal conviction (a railroad for which he was unjustly imprisoned in 1989) and his past disputes with the FEC made him ineligible for the matching funds.

Making up the rules as it went along, the FEC admitted that LaRouche had fulfilled all the legal requirements to receive matching funds, but denied him the money anyway. The FEC's decision was based solely on wild allegations against LaRouche manufactured by his enemies, particularly the Anti-Defamation League of B'nai B'rith (ADL).

As a result of that FEC decision, LaRouche was not only denied the use of campaign matching funds to which he was entitled—approximately half a million dollars according to campaign spokesmen—but was also denied ballot access in many state presidential primaries which give ballot status only to candidates who qualify for matching funds. LaRouche was able to achieve ballot access in some of those states only after going to court or conducting expensive petition campaigns.

The FEC's conduct toward LaRouche was in stark contrast to its past treatment of LaRouche's enemies, for example, in the ADL. In 1990, the FEC found that the ADL's distribution of hate literature against LaRouche was in violation of federal election laws, yet condoned ADL law-breaking by officially deciding to take no action against the League.

A matter for the voters

In the July 2 ruling, the majority opinion of the Appeals Court, written by Judge Stephen Williams and joined in by Judge James Buckley, stated that "the object of the statute," the Federal Election Campaign Act which set up the FEC, "is to enhance the ability of candidates to present their posi-

tions and themselves to voters in presidential primaries. One of the characteristics with which voters will surely be concerned is the character and integrity of a candidate and the strength of her [sic] commitments to what she says. It would seem to contradict the purpose of enhancing voters' ability to assess candidates to shift any part of that process away from voters and to the Federal Election Commission.

"Moreover, it was Congress's explicit intention that the funds be issued on a non-discriminatory basis. . . . As we said in *Committee to Elect Lyndon LaRouche v. Federal Election Commission*, 'We regard it as particularly important to ensure that the Commission is applying the eligibility criteria for primary matching funds in an even-handed manner.' Any inquiry into the bona fides of candidates' promises would take the Commission into highly subjective territory that would imperil the assurance of even-handed treatment."

The opinion castigated the FEC for misconstruing previous court rulings, and underlined that the court's finding in a previous case involving LaRouche "hardly implies authority to impose comparatively subjective criteria for assessing candidates' promises. The conceded authority is to engage in a counting exercise; the authority now claimed is to evaluate a candidate's character. . . . The key here is that the Commission is not authorized to appraise candidates' good faith, honesty, probity or general reliability."

The court also knocked down the FEC's argument that the First Amendment is irrelevant to the equitable funding of presidential candidates. The commission had attempted to show that a 1983 Supreme Court case had overruled the well-established principle that free speech is inseparable from the ability to finance it, a principle emphasized in the landmark *Buckley v. Valeo* decision that affirmed the constitutionality of the Federal Election Campaign Act, and reaffirmed in many subsequent cases.

A history of FEC discrimination

This is not the first time the FEC has been reprimanded by a federal court for unfair dealings with LaRouche. As far back as 1981, New York Federal District Court Judge Charles Brieant said of FEC actions against LaRouche that "it would be hard to imagine a more abusive visitation of bureaucratic power."

In the current ruling, even dissenting Judge Patricia Wald—normally a booster of government agency powers—could not swallow the FEC's contorted attempt to "concoct a theory" linking LaRouche's 1988 conviction to campaign law violations. While not acceding to the more definitive court majority, she would have sent the matter back to the FEC for a re-determination, without consideration of the conviction.

The final ruling flatly orders the FEC to certify LaRouche and dispense any money his campaign is due. The FEC has not announced whether it will seek a rehearing or appeal to the Supreme Court.