

Memorandum of Decision & Judgment: "Nine Massachusetts voters filed objections with the State Ballot Law Commission asserting that Donald John Trump is constitutionally ineligible to appear on the Massachusetts primary election ballot for President on the basis that he engaged in an insurrection in violation of section 3 of the Fourteenth Amendment to the United States Constitution.[1] On January 22, 2024, the commission dismissed the objections on the basis that it does not have jurisdiction over the matter. The following day, January 23, 2024, the objectors -- the petitioners here -- filed an emergency petition in this court pursuant to G. L. c. 214, § 1; G. L. c. 231A, § 1; G. L. c. 249, § 5; and G. L. c. 56, § 59. Petitioners request that the court declare either that (1) Trump is ineligible to appear on the Massachusetts primary ballot or (2) that the commission has jurisdiction to adjudicate their objections and order the commission to conduct the necessary proceedings to issue a decision on the issue "post-haste" by January 29, 2024. The respondents filed their answers two days later, on January 25, 2024, pursuant to my order that they do so, and the petitioners filed a reply on January 26, 2024. For the reasons set forth below, I deny the emergency petition.[2] The petitioners argue that the commission has jurisdiction to adjudicate their objections primarily pursuant to § 4 of G. L. c. 55B, which sets forth the powers and duties of the commission. Section 4 provides, in relevant part, in the first paragraph, that "[t]he commission may investigate upon objection made in accordance with the provisions of this chapter the legality, validity, completeness and accuracy of all nomination papers and actions required by law to give candidates access to a state ballot or to place an initiative or referendum on a state ballot. Section 4 further provides, in the second paragraph, that "[t]he commission shall have jurisdiction over and render a decision on any matter referred to it, pertaining to the statutory and constitutional qualifications of any nominee for state, national or county office; the certificates of nomination or nomination papers filed in any presidential or state primary." Trump's name is slated to appear on the primary ballot pursuant to G. L. c. 53, § 70E, which provides in relevant part that "[t]he state secretary shall cause to be placed on the official ballot for use at presidential primaries . . . the names of those candidates or potential candidates for nomination for president whose names appear on written lists signed by the chairman of the state committees of the political parties." [3] Significantly, for purposes of the commission's jurisdiction pursuant to G. L. c. 55B, § 4, Trump's place on the ballot was not secured through the submission of nomination papers, nor, at this stage, is he the subject of any certificate of nomination or a nominee. Pursuant to the first paragraph of G. L. c. 55B, § 4, the commission has the authority to investigate the "legality, validity, completeness and accuracy of all nomination papers," because Trump's appearance on the primary ballot is not pursuant to "nomination papers," this provision does not apply. The same paragraph also gives the commission the authority to investigate the "legality, validity, completeness and accuracy of . . . actions required by law to give candidates access to a state ballot." The petitioners argue that this provision alone provides the commission with the necessary authority to consider their objections. That interpretation of the statute, however, ignores the second paragraph of § 4, and essentially seeks to read the first paragraph in a vacuum. In interpreting a statute, I must read the statute "as a whole to produce an internal consistency." Felix E. v. Commonwealth, 471 Mass. 513, 516 (2015), quoting Telesitsky v. Wight, 395 Mass. 868, 873 (1985). I cannot interpret the statute in a way that renders any part of the statute unnecessary, but that is essentially what the petitioners suggest. The second paragraph of § 4 gives the commission "jurisdiction over" matters referred to it that pertain to "the statutory and constitutional qualifications of any nominee" for national office and "the certificates of nomination or nomination papers filed in any . . . presidential primary." This language makes clear that § 4 does not, in the current context, provide the commission with the authority or jurisdiction suggested by the petitioners. Trump is, again, not appearing on the primary ballot pursuant to nomination papers; nor is he appearing on the ballot pursuant to a certificate of nomination.[4] [5] Moreover, he is not appearing on the primary ballot as a "nominee." As to that point, as the respondents suggest, Trump is a candidate for nomination; he is not a nominee.[6] This distinction has legal significance. Pursuant to G. L. c. 53, § 70E, he appears on the primary ballot pursuant to the requirement that the secretary there places "the names of those candidates or potential candidates for nomination for president." Furthermore, a party's ultimate presidential nominee is not decided by the primary election but rather at the party's national convention. See, e.g., Cousins v. Wigoda, 419 U.S. 477, 489-490 (1975) (nomination of a party's candidates for President and Vice-President takes place at national party convention; "[t]he States themselves have no constitutionally mandated role in the great task of the selection of Presidential and Vice-Presidential candidates."); See also Sears v. Secretary of the Commonwealth, 369 Mass. 392, 394 (1975) (considering manner in which presidential primaries are conducted in Massachusetts and noting that presidential candidates are nominated at national party conventions). The petitioners' objections have, in essence, come too soon. If there is any question whether the commission has the authority or jurisdiction to consider the petitioners' objections regarding Trump's eligibility to appear on the general election ballot, that question will not become ripe until, and if, he is selected as his party's nominee for President. That question is not currently before me. In any event, and regardless of the commission's jurisdiction or lack thereof, I need not address the underlying merits of the petitioners' arguments, i.e., whether Trump is disqualified from serving as President under Section 3 of the Fourteenth Amendment (and, in connection with that, whether he is ineligible to appear on the general election ballot).[7] After the first group of objectors filed their complaint with the commission, the United States Supreme Court granted a petition for a writ of certiorari in Trump vs. Anderson, 23-719, to review a decision of the Colorado Supreme Court declaring Trump ineligible to appear on the Colorado ballot. See Anderson vs. Griswold, Colo. Sup. Ct. No. 23SA300 (Dec. 19, 2023). The Supreme Court's decision in Trump vs. Anderson, scheduled for oral argument on February 8, 2024, may resolve the underlying issue that the petitioners present here regarding whether Trump is disqualified from public office pursuant to section 3 of the Fourteenth Amendment of the United States Constitution. Similar action has been taken in at least one other state. See State Ex Rel Mary Lee Nelson vs. Griffin-Valade, Oregon Sup. Ct. NO. S070658 (Jan. 12, 2024) [denying without prejudice relators' petition for a writ of mandamus directing Oregon Secretary of State to exercise authority to consider Trump's eligibility to appear on the ballot on the basis that the United States Supreme Court's decision in Trump vs. Anderson may resolve at least some of the relators' contentions]. For all of these reasons, I hereby deny the emergency petition." (Gaziano, J.)

[1] Kim Janey, Mark Brodin, Elizabeth Bartholet, Augusta McKusick, Michael S. Robertson, Jr., Keven Batt, Theresa Mason, and Stephanie Sanchez.

[2] Donald John Trump; Secretary of States William Francis Galvin; and the Massachusetts Republican Party.

[3] Two separate objections were filed with the State Ballot Law Commission. The first, filed on January 4, 2024, included five voters; the second, filed on January 8, 2024 included four voters. The objections were consolidated and considered together by the commission.

[4] The petitioners urge the court to "move as rapidly as possible to decide this matter" and argue that, pursuant to G. L. c. 55B, § 10, the deadline for a decision on the issue whether Trump is eligible to appear on the primary ballot must be decided by 5:00 p.m. on January 29, 2024. Although I do not necessarily agree that the timeline set forth in that provision applies here, I have nonetheless issued this decision as expeditiously as possible.

[5] Section 70E of G. L. c. 53 also provides that the state secretary "shall cause to be placed" on the presidential primary ballot "the names of those candidates or potential candidates for the office of president of the United States whom he shall have determined to be generally advocated or recognized in national news media throughout the United States [and] the names of any other candidates or potential candidates for nomination for president whose names are proposed therefor by nomination papers prepared and furnished by the state secretary." Those provisions are not relevant here.

[6] To the extent that the petitioners suggest that Trump is appearing on the primary ballot pursuant to a certificate of nomination, this is clearly incorrect. See, e.g., G. L. c. 53, §§ 5, 8. Those provisions set forth the required contents of a certificate of nomination. Trump's inclusion on the primary ballot pursuant to G. L. c. 53, § 70E, on the basis that his name "appear[s] on written lists signed by the chairman of the state committees of the political parties" does not equate to a certificate of nomination.

[7] The petitioners also argue that the commission's jurisdiction to consider their objections stems from G. L. c. 55B, § 5. Section 5 sets forth, among other things, a time frame for the filing of "[o]bjections to certificates of nomination and nomination papers for candidates at a presidential primary, state primary, or state election." Because Trump does not appear on the primary ballot pursuant to a certification of nomination or nomination papers, § 5 is no more helpful to the petitioners than § 4.

[8] Indeed, none of the candidates appearing on the primary ballot have yet attained the status of nominee.

[9] The petitioners assert that this court has jurisdiction over the matter pursuant to G. L. c. 214, § 1; G. L. c. 231A, § 1; G. L. c. 249, § 5; and G. L. c. 56, § 59. The commission and the Secretary of State contend that neither G. L. c. 231A (declaratory judgment statute) nor G. L. c. 56, § 59 (Supreme Judicial Court's authority to enforce provisions of chapters fifty to fifty-six), provide a basis to remove Trump from the ballot where he satisfied one of the means of achieving ballot access under G. L. c. 53, § 70E. I need not decide this jurisdictional dispute at this time.