

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

STATE BALLOT LAW COMMISSION
Docket Nos. 24-01, 24-02

BRUCE CHAFEE, KIM JANEY, MARK)
 BRODIN, ELIZABETH BARTHOLET,)
 and AUGUSTA MCKUSICK,)
)
 Objectors)
 v.)
)
 DONALD JOHN TRUMP,)
)
 Respondent)
)

MICHAEL S. ROBERTSON, JR., KEVIN)
 BATT, THERESA MASON, and)
 STEPHANIE SANCHEZ,)
)
 Objectors)
 v.)
)
 DONALD JOHN TRUMP,)
)
 Respondent)
)

DECISION

For the reasons stated in the attached statement of reasons, the Objections are
DISMISSED for lack of jurisdiction.

The Office of the Commission is:

State Ballot Law Commission
 c/o Elections Division
 Office of the State Secretary
 One Ashburton Place, Room 1705
 Boston, Massachusetts 02108

617-727-2828

STATE BALLOT LAW COMMISSION



Hon. Francis T. Crimmins, Jr. (Ret.), Chair



Joseph Eisenstadt, Esq.



Joseph Boncore, Esq.

Dated: January 22, 2024

IMPORTANT:

Judicial review of this decision may be sought by civil action under G. L. c. 30A, § 14, within 5 days after receipt of this notice.

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STATEMENT OF REASONS

 MICHAEL S. ROBERTSON, JR., KEVIN)
 BATT, THERESA MASON, and)
 STEPHANIE SANCHEZ,)
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 Objectors)
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 DONALD JOHN TRUMP,)
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I. INTRODUCTION

The above captioned matters, both entitled “Objection and Complaint” (hereinafter referred to as the “Objections”), both consisting of ninety (90) pages and three (3) large binders of other accompanying materials, were submitted for filing with the State Ballot Law Commission (hereinafter “the Commission”) on January 4, 2024 and January 8, 2024,

¹ The Voter Registration Certificate submitted for Mark Brodin was insufficient in that it did not state that he is a registered voter in Massachusetts as required by section 5 of chapter 55B of the General Laws. The document provided as part of the Objection was not an original Voter Registration Certificate but rather an undated print out screen from the Voter Registration Information System, which does not meet the statutory requirement.

respectively. The Commission is consolidating the matters insofar as they contain the same arguments and exhibits.

Each Objection states, in part, that it is an “[O]bjection under M.G.L. ch. 55B, §5....objecting to Donald Trump (“Trump”) appearing as a presidential candidate on the republican presidential primary ballot. Trump may not appear on the presidential primary or general election ballots because, after taking the oath of office to support the Constitution, he engaged in rebellion and insurrection against the Constitution in the United States and gave aid and comfort to enemies of the same and is therefore disqualified from the presidency (and any other public office) under Section 3 of the Fourteenth Amendment.”

The Objections assert that the Commission’s statutory authority to hear this matter and render a decision is found in “M.G.L. ch. 55B, §§4, 5.”²

The Commission, having reviewed the materials submitted, has determined that the State Ballot Law Commission does not have jurisdiction over the matters presented.³

II. PRE-HEARING CONFERENCE

On Thursday, January 18, 2024, at 10:00 a.m. a duly noticed Pre-Hearing Conference was held in the 21st Floor Conference Room at One Ashburton Place, Boston Massachusetts.

² On January 17, 2024, the Objectors filed a Motion for Summary Decision in connection with this matter. On that same date, the Respondent filed a Motion Pro Hac Vice for Attorney Gary Lawkowski, a Motion to Dismiss and a Memorandum in Support. Additionally, a Notice of Appearance and a Motion to Dismiss were filed by the Massachusetts Republican Party.

³ Even if the Commission accepted the filings as Objections under G. L. c. 55B and determined it had jurisdiction, the Objections failed to comply with the Commission’s mandatory statutory and procedural notice requirements thereby subjecting them to dismissal. The Commission’s statutory and regulatory provisions require notice of the Objection be served upon the Respondent and to every other party in the case, including all candidates for the office and any affected party state committee. G. L. c. 55B, § 5 (2022 ed.); 950 C.M.R. § 59.02(4)(a); 950 C.M.R. § 59.02(10). In this instance, the certificate of service shows the Objections were sent only to the Respondent and not to other Republican presidential candidates on the ballot or the Massachusetts Republican Party. Indeed, the Massachusetts Republican Party, having submitted the name of Donald Trump to appear on the ballot, certainly should have received notice.

Counsel for both the Objectors and Respondent appeared. Counsel for Respondent Trump also appeared on behalf of the Massachusetts State Republican Party.

The Conference was held for the purpose of informing the Parties that the Commission would reserve taking action on the Objections and Motions until it had determined whether or not the Commission had jurisdiction over the matters raised in the Objections. While the Commission indicated that it had enough information in the papers that had already been filed to make a determination on the issue of jurisdiction, it allowed the Parties to make brief arguments on that issue only.

Prior to adjournment of the Pre-Hearing Conference, the Objector requested leave to file an Opposition to the Respondent's Motion to Dismiss. The Commission allowed the Parties to file by 5:00 p.m. on Friday, January 19, 2024, any other responses to the prior filings.

At 4:48 p.m. on Thursday, January 18, 2024, Objectors filed Objectors' Administrative Motion Requesting State Ballot Law Commission to Rule on Jurisdiction and Determine Promptly Whether This Matter Will Be Set for Hearing or Disposed of through Objectors' Motion for Summary Decision, requesting the Commission issue its ruling on jurisdiction no later than 12:00 p.m. on Monday, January 22, 2024.

Pursuant to the allowance of the Commission for additional filings, on Friday, January 19, 2024 the following papers were timely filed:

- Respondent's Supplemental Memorandum in Support of Motion to Dismiss
- Objectors' Opposition to Motion for Admission *Pro Hac Vice* of Attorney Gary Lawkowski
- Objectors' Opposition to Respondent's and Massachusetts Republican Party's Motions to Dismiss
- Objectors' Memorandum of Law in Support of the State Ballot Law Commission's Jurisdiction

In light of the Commission's decision in this matter, no action was taken on any of the motions that were filed.

III. DISCUSSION

A. Jurisdiction of the Commission

The State Ballot Law Commission has the authority and jurisdiction to consider challenges to candidates seeking ballot access to state, national or county offices. The Commission's authority and jurisdiction is set out in chapter 55B of the General Laws. While some provisions of chapter 55B, when read independently, may appear to give the Commission plenary power to hear all election matters relating to candidates seeking ballot access, a complete reading shows otherwise. The pertinent sections of chapter 55B, most particularly sections 4 and 5, do not stand alone, but instead must be read together in order to determine their meaning and applicability. McCarthy v. Secretary of the Commonwealth, 371 Mass. 667 (1977).⁴

The Objections before the Commission relate to the upcoming presidential primary election and seek to remove the name of Donald Trump from the presidential primary ballot. As a general matter, challenges filed with the Commission to the presidential candidates are limited in scope. Sections 4 and 5 of chapter 55B, read together, makes a distinction as to the extent of the Commission's jurisdictional review of candidates seeking nomination at the presidential primary.

It is unclear from the papers submitted what provision(s) of chapter 55B form(s) the basis of their challenge. It appears, however, the self-stated statutory timeline relied upon in the Objections submitted relate to filing deadlines and the date for rendering of decisions concerning

⁴ Although the McCarthy case was decided under versions of the statutes governing the Commission's authority and jurisdiction that have since been amended, the principles of the case remain applicable to the present matter before the Commission.

objections to nomination papers of candidates at a presidential primary.⁵ Donald Trump’s name will not be appearing on the presidential primary ballot as a result the submission of nomination papers or a certificate of nomination over which the Commission does have jurisdiction. Rather, Donald Trump’s name will appear on the presidential primary ballot as a result of the Republican State Committee’s submission of his name to the Secretary of the Commonwealth on September 29, 2023 pursuant section 70E of chapter 53 of the General Laws.⁶ This submission from the state party should not be confused with a “certificate of nomination” referenced in sections 4 and 5 of chapter 55B.⁷

Nonetheless, a brief analysis of the Commission’s jurisdiction over objections made to nomination papers of candidates seeking a place on the presidential primary ballot is helpful in understanding the Commission’s limited jurisdiction relating to the presidential primary. The Commission possesses more expansive jurisdiction with regard to all other candidacies for state, federal and county offices in primary and general elections.

1. Challenges to Nomination Papers

Section 5 of chapter 55B sets out the process of challenging nomination papers of candidates seeking federal state and county offices. Section 5 states, in part:

⁵ The timelines contained in the Objections are erroneous and misapplied as they relate to challenges to nomination papers submitted in relation to a presidential primary. As noted, Trump’s name will appear on the ballot as a result of the Republican State Committee’s submission and not by nomination papers. Irrespective of the inapplicable timelines referenced in the Objection, it is the well-established practice of the Commission, consistent with the general laws, that its decisions are to be rendered expeditiously. 950 C.M.R § 59.01(2) and G. L. c. 231, § 59D.

⁶ The Commission takes Administrative Notice of the submission as it is a public document submitted to a Constitutional Officer of the Commonwealth of Massachusetts consistent with the general laws. 950 C.M.R § 59.05(i).

⁷ A “certificate of nomination” is a document that certifies the person(s) chosen as a result of “a primary, caucus or convention held...” G. L. c. 53, § 1 (2022 ed.). Certificates of nomination are also filed when a candidate nominated for office withdraws or dies and the vacancy is filled by the political party in accordance with the provisions of section 14 of chapter 53 of the General Laws. G. L. c. 53, §§ 14, 15 (2022 ed.). Moreover, a “certificate of nomination” is only valid upon written acceptance of the candidates. G. L. c. 53, § 5 (2022 ed.). The plain language in section 70E simply allows the state party submit a list and does not require a meeting be held or for any potential candidate to sign a written acceptance.

Objections to certificates of nomination and nomination papers for candidates at a *presidential primary*, state primary, or state election shall be filed with the state secretary within seventy-two hours succeeding five o'clock post meridian of the last day fixed for filing nomination papers.

G. L. c. 55B, § 5 (2022 ed.) (emphasis supplied).

It should be noted that the statute clearly distinguishes *presidential primary* from state primary.

To further bolster the point, Section 5 goes on to state, in part, that:

Objections to nomination papers of candidates to be voted for at *primaries* or general elections may be made by any registered voter of the district in which a candidate seeks nomination....

G. L. c. 55B, § 5 (2022 ed.) (emphasis supplied).

By referencing nomination papers of candidates voted for at the “primaries” demonstrates the legislative intent to include challenges to nomination papers for both the presidential primary and state primary, i.e. “primaries.”

As such, objections based upon nomination papers filed in both the presidential primary or state primary are subject to the jurisdiction of the Commission. However, no such challenge was made in these Objections nor could it be.

2. Challenges to Nominations Made at Primary Elections

As noted above, the Objections submitted reference a timeframe for filing and the rendering of a decision consistent with an objection to nomination papers filed in a presidential primary. Again, as no nomination papers were filed, no such challenge to nomination papers was made or could be made in these Objections.

However, the sections of the Objections labeled “AUTHORITY AND DUTY OF STATE BALLOT LAW COMMISSION TO HEAR OBJECTION” appear to rely upon the provisions of section 4 of chapter 55B as the basis for the Commission’s jurisdiction. Paragraph 48 of the

Objection filed in SBLC 24-01 and paragraph 47 of the Objection filed in SBLC 24-02 states, in part, (restating portions of section 4):

“The 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.

The 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*, state election, or special state primary or election,

M.G.L. ch. 55B, §4 (emphasis added).”

The reliance on the emphasized portions of the provision of the statute as the basis of jurisdiction of the Commission over matters contained in the Objections is misplaced. A careful reading of this provision indicates that the jurisdiction of the Commission extends to determine, upon objection, the statutory and constitutional qualifications of any *nominee* for state, national or county office. The Objections incorrectly morphs two sentences separated by a semicolon into one sentence thereby distorting the correct statutory meaning.

At this point, there are no nominees and instead only candidates seeking a nomination. The reference to “presidential primary” is limited to certificates of nomination or nomination papers filed for such presidential primaries. This is further evidenced by the filing deadline for challenging nominations.

Section 5 of chapter 55B further limits scope of review to only objections to nominations made at state primaries. Section 5 states in part:

Objections to nominations at *state primaries* shall be filed with the state secretary within six days succeeding five o'clock in the afternoon of the day of holding such primaries.

G. L. c. 55B, § 5 (2022 ed.) (emphasis supplied).

Clearly omitted are objections to nominations made at a *presidential primary election*. Had the Legislature intended to include nominations made at a presidential primary, it would have included it in the language as it did in the other provisions mentioned above. Sections 4 and 5 carefully distinguish between “presidential primary,” “state primary” and “primaries” as applicable.

Moreover, the presidential primary in Massachusetts does not result in the election of an actual named presidential “nominee.” Unlike state primaries, where the winner at the state primary appears as the party nominee at the general election, presidential primary winners do not. See G. L. c. 54, § 41 (2022 ed.) (general election ballots contain the names of candidates duly nominated at state primaries). Instead, under the provisions of section 8 of chapter 53 of the General Laws, the state committees of the respective political parties nominate the presidential electors, who must be listed on a certificate of nomination on which each elector must accept their nomination and pledge to vote for the president and vice president candidates named in the filing. While the Commission’s jurisdiction, as discussed above, includes objections to certificates of nomination, the Commission has previously determined that the electors are the only candidates subject to challenge. Grennon v. Anderson, SBLC 80-17 (June 26, 1980); Reade v. Harris, SBLC 20-08 (September 21, 2020).

In Massachusetts, although the names of presidential candidates appear on the ballot in accordance with the provisions of section 43 of chapter 54 of the General Laws, they are simply placeholders for those actually being elected, the presidential electors who have pledged to a particular candidate. Libertarian Association of Massachusetts, et al. vs. Secretary of the Commonwealth, 462 Mass. 538, 544 (fn.7) 2012.

IV. CONCLUSION

For the reasons stated herein, the Objections are DISMISSED for lack of jurisdiction.