

Originally published in

New York Law Journal

Election and Political Law Column

September 7, 2023

2024: Like No Other Presidential Election in Our History

In his Election and Political Law column, Jerry H. Goldfeder addresses the ways in which the 2024 presidential election is already shaping up to be unlike any other in history.

By [Jerry H. Goldfeder](#)



Jerry H. Goldfeder is director of Fordham Law School’s Voting Rights and Democracy Project and practices election law at Stroock. He is the author of “Goldfeder’s Modern Election Law” (6th Edition, NY Legal Publishing Corp. 2022).

The 60th presidential election is upon us. Candidates are [debating](#), [pressing the flesh](#), airing [TV ads](#), raising and spending [boatloads of money](#) and already [re-booting strategy and staff](#). All of this is happening a full year before delegates from the states and territories gather at the Democratic and Republican national conventions to nominate their standard bearers for the Nov. 2024 election.

Although the outcome of the primary season seems inevitable (Biden v. Trump, *Redux*), just think of Democrats Jimmy Carter, Bill Clinton, Barack Obama and Joe Biden, as well as Republicans Ronald Reagan, John McCain and Donald Trump. Each faced long odds whose campaigns were dismissed—until they emerged victorious. After all, history teaches us that “the best laid plans...” (you know the rest).

In any event, this race is unlike any of the preceding 59 presidential elections. Two of ex-president Trump’s trials are scheduled [smack in the middle of the primary season](#).

Although the Republican convention that actually nominates its candidate won't be held until mid-July, Super Tuesday (March 5), when 15 states hold primaries with a whopping 865 convention delegates at stake (70% of those needed for the nomination), is a day after his federal trial starts in Washington, D.C. And by the time his New York hush money trial starts (it is currently scheduled for March 25), eight more states will have held primaries, worth another 335 delegates.

This timeline, plus Trump's [goal of ridding himself of these trials if elected](#), has prompted Trump's attorneys to try to push the proceedings beyond Election Day.

[The courts, so far, are not acquiescing](#). As United States District Court Judge Tanya Chutkan recently said: "[Setting a trial date does not depend and should not depend on a defendant's personal obligations](#)," whether one is a professional athlete or a candidate for president.

So, whatever happens in the other state and federal cases, we do know this: starting on March 4, and for the following several months, except when the court is not in session, candidate Trump will be in the federal courthouse in Washington [sitting at the defendant's table](#).

The impact of these trials—and Trump's forced absence from the campaign trail—on the nomination process is unknown.

Until the early 20th century, [it was common practice for candidates to campaign indirectly](#), authoring broadsheets and having surrogates speak on their behalf. In modern elections, of course, candidates are expected to be available 24/7. It remains to be seen how Trump uses his "off-hours" to promote his candidacy, and what he might be able to say about the criminal charges he faces without running afoul of the judges' admonitions.

In light of the multiples charges in (thus far) four jurisdictions, a central narrative of those reporting on the campaign centers not on economic or foreign policy issues as much as [questions relating to criminal law and procedure](#).

For instance, the media has focused on whether Trump's statements at rallies or press conferences may be used by the prosecution in court, whether Trump can criticize witnesses or potential witnesses without being constrained by the court for obstructing the judicial process, or if Trump's right to effective counsel is infringed upon by "early" trial dates. These are just some of the issues raised by reporters.

And, of course, there is the hot election law issue that is sure to be litigated—whether Trump is even qualified to be president, or if [Section 3 of the 14th Amendment to the U.S. Constitution](#) bar him from serving. That section provides that no one may serve in federal office if, as a public official, they have sworn to uphold the United States Constitution but "have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof."

Until Jan. 6, 2021, the eligibility issue focused upon the [constitution's three requirements to serve as president](#)—they must be at least 35 years old, a natural born citizen and have resided in the United States for 14 years. But after the former president and his supporters attempted

[to undermine the results of the 2020 election](#), [scholars](#) of [various stripes](#) have argued that the Fourteenth Amendment bars him from the White House.

In fact, several [lawsuits](#) have already been filed on the issue but are not yet ripe. The merits will probably be reached in the context of Trump's attempt to be placed on a state's primary ballot.

Two of the legal issues will be whether a state has jurisdiction to apply the Fourteenth Amendment in a ballot access case, and whether the provision is self-executing; and the factual inquiry will be whether the ex-president actually engaged in the prohibited conduct. The claim will probably be raised in multiple jurisdictions, which may lead to conflicting rulings. The United States Supreme Court will have the last word.

In sum, the 2024 election is already a wellspring of constitutional, criminal and election law related issues like no other election in our history.

This was slightly edited from the original version to reflect filed lawsuits.

The opinions expressed in this publication are those of the author. They do not purport to reflect the opinions or views of Stroock & Stroock & Lavan LLP or its attorneys at large.