

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:)	
)	Administrative Order
Rodney Grant, Candidate)	No. 2024-003
)	Appeal of Adverse Preliminary Determination
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (“the Board”) at a special meeting on March 18, 2024, and involved an appeal from a preliminary determination that Rodney Grant, a candidate for nominee for the office of At-large Member of the Council of the District of Columbia in the Democratic Primary Election (“Candidate Grant”), could not use his nickname, “Red,” on the ballot in that contest. Board Chair Gary Thompson and Members Karyn Greenfield and J.C. Boggs presided over the hearing on this matter. The candidate and his counsel, Antoine Williams, appeared at that hearing. The Board’s General Counsel was also present.

BACKGROUND

On January 18, 2024, Candidate Grant submitted a Declaration of Candidacy form in support of his candidacy for nominee for the office of At-large Member of the Council of the District of Columbia in the Democratic Primary Election.¹ That form contained the following admonition with respect to the ballot name designated by the candidate: “[*W*]hen listing your name, the Board will not permit a candidate to specify a modified form of their given name that

¹ The Declaration of Candidacy form must be filed by candidates seeking to have their names printed on the ballot. 3 DCMR § 601.1 *et seq.*

*confuses or misleads voters and is otherwise not legally acceptable. For example, James Smith could be Jim Smith but not Jim ‘The Best’ Smith.”*²

On that form, Candidate Grant indicated that his name on the ballot should be expressed as “Rodney Red Grant.” Candidate Grant’s voter file, however, shows that his full given name is Rodney Neal Grant.

On March 11, 2024, the Board’s Executive Director issued a preliminary determination finding that Candidate Grant was eligible to run for the Democratic At-Large Council nomination.³ Her determination also notified Candidate Grant that his name would appear on the ballot as “Rodney Grant,” thereby alerting him to the fact that the nickname “Red” would not appear on the ballot.

On March 14, 2024, Candidate Grant emailed correspondence to the Board’s Office of General Counsel that indicated that he was appealing the Executive Director’s preliminary determination with respect to the decision to disallow the use of the nickname “Red” as part of his name on the ballot.⁴ In the correspondence, Candidate Grant argued that the Board’s regulations do not state that the given name of a candidate is the only acceptable form of the name that can be included on the ballot and that the regulation at issue allows a modified form of a candidate’s given name if the Board finds that that modification does not confuse or mislead the voters and is legally acceptable. He argued that “adding ‘Red’ to the ballot is an action that would work to add detail

² Emphasis in original.

³ 3 DCMR § 601.6 (providing that the Board’s Executive Director or her designee will, three days after the filing of a Declaration of Candidacy, issue a preliminary determination as to a candidate’s eligibility). The preliminary determination of eligibility set forth in the Board’s regulations goes to the candidate’s qualifications for office. *See* D.C. Code 1-1001.05(a)(14) (providing that the Board issue regulations necessary to determine that candidates meet the statutory qualifications for office). It does not concern the adequacy of the candidate’s nominating petition.

⁴ 3 DCMR § 601.11 (providing that the candidate must appeal a preliminary determination within three days after receipt of notice of an adverse determination).

to his given name to aid the pursuit of identifying Mr. Grant and producing clarity for voters.” Candidate Grant pointed out that his name has appeared on the D.C. ballot in a prior election cycle with the nickname “Red” and that that nickname appears on the 2024 Primary Election list of candidates that is posted on the Board’s website. He indicated that, pursuant to the D.C. Administrative Procedure Act,⁵ the enforcement of the Board’s regulation with respect to the 2024 Primary Election ballot was arbitrary, capricious, or an abuse of discretion.

Candidate Grant was duly notified that, on March 18, 2024, a hearing would be held on his appeal of the Executive Director’s preliminary determination.⁶ Just prior to that hearing, Candidate Grant’s counsel emailed documentation showing that Candidate Grant used the name “Rodney Red Grant” in his campaign and in his professional nonpolitical career and showing that a third party engaged in the same professional nonpolitical career as Candidate Grant went by the name “Rodney Grant”. Counsel’s message in the email included the claim that requiring Candidate Grant to use the name “Rodney Grant” could actually confuse voters.

On March 18, 2024, Candidate Grant appeared at the hearing and reiterated his challenge to the Executive Director’s preliminary determination with respect to the representation of his name on the 2024 Democratic Primary Election ballot. The Board members questioned Candidate Grant about the facts surrounding his initial use of the moniker “Red”. Candidate Grant explained that he had been known by the nickname “Red” as early as age seven and that he began using it in his professional, nonpolitical career at age nineteen.

⁵ D.C. Official Code § 2-501 et seq.

⁶ 3 DCMR § 601.12 (providing that the Board shall hold a hearing on preliminary determination appeals within three days).

After hearing from Candidate Grant, the Board went into executive session to discuss its disposition. When the Board reconvened on the public record, it voted unanimously to grant the appeal.

ANALYSIS

The pertinent Board regulation provides that:

The name of a candidate for election shall appear on the ballot in the form designated on the Declaration of Candidacy executed and filed by the candidate . . . provided, that the name conforms to . . . the given name or names, or the initial letter of a given name, if any, and surname.

... The Board may permit a candidate to specify a modified form of his or her given name or names on the ballot if the Board finds that the change shall not confuse or mislead the voters and is legally acceptable.⁷

In interpreting that regulation, we note that the term “name” should be given its plain and ordinary meaning.⁸ The D.C. Court of Appeals has opined on the meaning of the term “name”:

A person’s “name” consists of one or more Christian or given names and one surname or family name. It is the distinctive characterization in words by which one is known and distinguished from others, and description, or abbreviation, is not the equivalent of a “name.”⁹

In other words, the regulation, when given its plain and ordinary meaning, requires that candidates be identified on the ballot with only their actual name or a name that conforms to their actual name, and that they not be identified with descriptive words that are not or do not conform to their given name.

⁷ 3 DCMR §§ 1203.1-1203.2. The regulations also provide that the use of titles, degrees, and prefixes on the ballot is prohibited.

⁸ *Oversight v. U.S. Dept. of Justice*, 292 F.Supp.3d 501, 508 (D.C.D.C. 2018) (decision supported by the plain meaning of the rule and existing precedent in analyzing it was both reasonable and legally sound).

⁹ *Gore v. Newsome*, 614 A.2d 40, 43 (D.C. 1992) (citing BLACK’S LAW DICTIONARY 1023 (6th ed. 1990)). While the definition of the term “name” excludes abbreviations, the Board’s regulation expressly allows the use of an initial that conforms to a given name.

The regulation at issue serves the valid election administration interests of the Board. “Ballots are designed primarily to elect candidates,” and not to serve as billboards for political advertising. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 363-65 (1997) (citation omitted).¹⁰ “The purpose served by the candidate information allowed on the ballot is to enable the voter to identify the candidate, rather than to serve the candidate’s purposes.” *Weiler v. Ritchie*, 788 N.W.2d 879,888 (Sup. Ct MN 2010). Courts reviewing similar candidate attempts to include on the ballot names other than their actual given ones have repeatedly rejected such efforts even where the names, while not approximating a campaign slogan, convey subtler messages. *Shannon-DiCiani v. Du Page County Officers Electoral Board*, 167 N.E.3d 1142 (Il. App. April 2020) (where the candidate’s given name was “DiCiani”, the court strictly construed the law’s ballot name restrictions and prohibited the candidate’s use on the ballot of the name “Shannon-DiCiani” regardless of whether the candidate’s intent was to appeal to voters of multiple heritages); *Weiler v. Ritchie*, 788 N.W.2d 879 (Sup. Ct MN 2010) (given the law’s ballot name restrictions, the court rejected a candidate’s effort to insert “Doc” between his first and last name); *Lewis v. New York State Board Of Elections*, 254 A.D.2d 568 (1998) (rejecting candidate’s claim that the use of the nickname “Grandpa” before his actual name was necessary in order to prevent confusion and permit the voters to make an intelligent choice, and finding that the candidate’s name by itself is sufficient for voters to identify him); *Brown v. Jones, et al.*, 929 So.2d 169 (La. 2006) (affirming trial court ruling finding that the term “I.Q.” could not be used as part of a candidate’s name on the ballot). Importantly, our regulation mandating that candidate’s use their given names facilitates

¹⁰ In *Timmons* (at 365), the U.S. Supreme Court indicated that the state had a compelling interest in preventing candidates from appearing more than once on a ballot through newly formed splinter parties with names like “No New Taxes,” “Conserve Our Environment,” and “Stop Crime Now” so as to “undermine the ballot’s purpose by transforming it from a means of choosing candidates to a billboard for political advertising.”

election administration by providing the Executive Director with a bright line test for determining how a candidate's name should appear on the ballot.

It is beyond dispute that Candidate Grant's actual name is "Rodney Neal Grant," and that the nickname "Red" is not a modified version of any part of his given name. We are mindful of the risk that accommodating the instant request could open the door to attempts by candidates to campaign through the ballot or, worse, intentionally cause voter confusion. Election laws in other jurisdictions that allow nicknames by which candidates are known to be placed on the ballot have been the source of litigation over the extent to which the candidate is actually known by the nickname used - litigation in which the parties call several witnesses and/or produce documents showing the candidate's historical use of the alleged nickname.

That said, we believe that this is a rare case in which the equities warrant allowing this candidate to include a nickname that is neither his actual name nor a modified version of that name. Notably, the evidence is that the moniker "Red" has been used to identify Candidate Grant as far back as his early childhood, and is not an attempt to use the ballot to convey a prohibited political message. Therefore, in this particular case, we cannot say that the inclusion of the nickname "Red" would turn the ballot into a campaign billboard. In addition, voters know Candidate Grant as "Rodney Red Grant" not only because that is the name he has used in his campaign and through their awareness of him as a member of the community but also because Candidate Grant was allowed in a prior campaign to include the name "Red" as his nickname on the ballot. Accordingly, the inclusion of the nickname "Red" is not likely to confuse voters and may actually help them identify Candidate Grant. Along these same lines, because the inclusion of the nickname "Red" should not confuse voters and does not amount to a misuse of the ballot, there is no prejudice that would result from accommodating Candidate Grant's request.

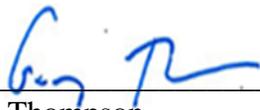
CONCLUSION

For these reasons, it is hereby

ORDERED that the Executive Director’s preliminary determination that Candidate Grant cannot use his nickname, “Red,” on the ballot in the 2024 Democratic Primary Election is reversed and that the name approved for the ballot for Candidate Grant is “Rodney Red Grant.”

The Board issues this written order today, which is consistent with its oral ruling rendered on March 18, 2024.

Dated: March 19, 2024



Gary Thompson
Chair, Board of Elections