

**DISTRICT OF COLUMBIA
BOARD OF ELECTIONS**

In Re:)	
)	Administrative Order
James Otis Thach, Candidate)	No. 24-015
)	Appeal of Preliminary Determination
)	

MEMORANDUM OPINION AND ORDER

This matter came before the District of Columbia Board of Elections (“the Board”) at a special meeting on August 15, 2024. It is an appeal from the Board’s Executive Director’s preliminary determination that James Otis Thach, candidate for the office of Advisory Neighborhood Commissioner (“ANC”) for Single Member District (“SMD”) 8A06, could not have his name appear on the ballot as “Scott Thach.” Board Member Karyn Greenfield presided over the hearing on this matter. The candidate appeared at that hearing. The Board’s General Counsel was also present.

BACKGROUND

On July 29, 2024, Candidate Thach submitted a Declaration of Candidacy form (“the Declaration”) in support of his candidacy for ANC for SMD 8A06 in the General Election.¹ That form contained a field near the top for a candidate to enter their name and another field toward the middle for the candidate to enter how their name should be printed on the ballot. With respect to the latter field, the following admonition appears: “[W]hen listing your name, the Board will not permit a candidate to specify a modified form of their given name that confuses or misleads voters

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.*

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

On the Declaration, Candidate Thach entered “James Otis Thach” as his name and “Scott Thach” as the name that should be printed on the ballot. Candidate Thach’s voter file shows that his name is James Otis Thach.

On August 12, 2024, the Board’s Executive Director issued a preliminary determination finding that Candidate Thach was eligible to run for the ANC SMD 8A06 seat.³ Her determination also notified Candidate Thach that his name would appear on the ballot as “James Otis Thach,” thereby alerting him to the fact that the name “Scott” would not appear on the ballot.

On August 13, 2024, Candidate Thach emailed the Board’s Office of General Counsel and requested a hearing before the Board with respect to the Executive Director’s preliminary determination disallowing the use of the first name “Scott” on the ballot.⁴ In his email, Candidate Thach stated that he has used “Scott” in lieu of his birth since age twelve (12) or for over forty-two (42) years. He explained that “Scott” is the name by which he is known to his neighbors, friends and family and is the name that he is known by professionally. Candidate Thach advised that he uses his birth name only on legal documents. He expressed concern about his ability to

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).

campaign using a name that his neighbors had not heard before. Accordingly, Candidate Thach requested that his name appear on the ballot as “Scott Thach.”

Candidate Thach was duly notified that a hearing would be held on August 15, 2024, on his appeal of the Executive Director’s preliminary determination.⁵ In response to the notice’s informing Candidate Thach that he could offer evidence for consideration at the hearing, Candidate Thach provided a link to his LinkedIn profile showing his use of the first name “Scott.”

On August 15, 2024, Candidate Thach 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 General Election ballot. Board Member Greenfield then requested that General Counsel make a recommendation regarding Candidate Thach’s appeal. The General Counsel recommended that the Board waive the regulation at 3 DCMR §1203.2 that requires that the name of candidates that appears on the ballot be the candidate’s actual name or a modified version of the candidate’s given name and allow the name that would appear on the ballot for Candidate Thach to be “Scott Thach” instead of “James Otis Thach.”

After hearing the evidence and the General Counsel’s recommendation, Board Member Greenfield moved to waive the respective regulation and held that Candidate Thach’s name should appear on the ballot as “Scott Thach.”

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.

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

... 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.⁶

In interpreting that regulation, we note that the term “name” should be given its plain and ordinary meaning.⁷ 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.”⁸

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 modified version of their actual name, and that they not be identified with descriptive words that are not or do not conform to their given name.

The Board has previously explained that the regulation at issue serves the valid election administration interests of the Board, including that the ballot not be improperly used as a billboard for political advertising and the objective of avoiding voter confusion as to the identity of the candidate. *See Rodney Grant*, BOE Case No. 24-003 (March 19, 2024) at p. 5 and cases cited therein. In the *Rodney Grant* case, the Board expressed concern that entertaining exceptions to the regulation requirement that candidates use their real names on the ballot would open the door to litigation. The Board, however, waived its regulations as the matter presented a “rare case in which

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

⁷ *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).

⁸ *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 equities warrant allowing this candidate to include a nickname that is neither his actual name nor a modified version of that name”. *Id.* at 6. Factors that we relied on in that case were that the candidate had used his nickname since early childhood which tended to show that the use of the name “Red” was not intended to convey a prohibited political message. The Board also noted that we had allowed the candidate to use the name “Red” as his nickname on a prior ballot and that knowledge in the community of the candidate as “Red” Grant suggested that that nickname “Red” was not likely to confuse voters and may actually help them identify him.

Here, while the candidate has not previously campaigned using the nickname “Scott,” the record establishes that he has long been known by that name. Accordingly, voters will not be confused by the appearance of the name “Scott Thach” on the ballot. In addition, there is no political message associated with the name “Scott,” and therefore the first name “Scott” does not implicate any concerns about improper use of the ballot.

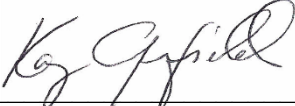
CONCLUSION

For these reasons, it is hereby

ORDERED that the Executive Director’s preliminary determination that Candidate Thach cannot use his nickname “Scott” in lieu of his first name on the 2024 General Election ballot is **REVERSED**. Subject to any successful petition challenge that might be filed, the name to be printed on the ballot for Candidate Thach shall be “Scott Thach.”

I issue this written order today, which is consistent with my oral ruling rendered on August 15, 2024.

Dated: August 19, 2024



Karyn Greenfield
Member, D.C. Board of Elections