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Peter Nemerovski*

You Can Call Me Al: Regulating How Candidates' Names Appear on Ballots

ABSTRACT

In electoral politics, names matter. Studies and anecdotal evidence show that candidates whose names suggest a certain ethnic heritage—for example, an Irish-sounding surname in Chicago, or a Hispanic name in South Florida—outperform candidates without such names, and that “American-sounding” names and names with positive connotations can give candidates a leg up. Therefore, candidates for public office often seek to run under the name they regard as most electorally advantageous. Election boards, secretaries of state, and ultimately courts are often called upon to decide whether a particular candidate can run for office under a particular name.

This Article looks at various courts' efforts to resolve legal challenges concerning a candidate's eligibility to run for office under a particular name. Part II explains how different courts across the United States have resolved controversies over candidate names. Part III evaluates the various approaches reflected in the opinions discussed in Part II. Part IV discusses what a workable and fair system of regulating candidate names would look like, proposing that candidates should be allowed to appear on the ballot under whatever name they want unless doing so would result in unnecessary confusion between two candidates or some kind of deception, fraud, or bad faith. Part V explores the roles of various government actors in regulating candidate names, arguing that with clear legislative guidance, most controversies can be resolved by election boards and secretaries of state, with court intervention available as a last resort.

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I. INTRODUCTION

On May 25, 2010, a man named Daniel Mark Severson filed an affidavit of candidacy for the office of Minnesota secretary of state.¹ In the affidavit, Severson listed his name as Dan “Doc” Severson.² On June 29, 2010, a woman named Carol Weiler petitioned the Supreme Court of Minnesota to order the current secretary of state to omit the nickname “Doc” from the ballot on the grounds that Severson was not known in the community as “Doc.”³

At issue in *Weiler* was the following statutory language: “An affidavit of candidacy must include a statement that the candidate’s name as written on the affidavit for ballot designation is the candidate’s true name or the name by which the candidate is commonly and generally known in the community.”⁴ Based on the statute, the Minnesota Supreme Court concluded that if a candidate wants to use a name that is different from his “true name,” “the alternate name must be one that the candidate has routinely used, before he files his affidavit of candidacy, to identify himself to the public.”⁵ The court continued: “The alternate name also must, at a minimum, be the name by which the candidate is broadly and widely known to members of the public before the candidate submits the affidavit of candidacy at issue.”⁶

1. *Weiler v. Ritchie*, 788 N.W.2d 879, 881 (Minn. 2010).

2. *Id.*

3. *Id.* The opinion does not say who Carol Weiler was or why she was opposed to Severson appearing on the ballot as “Doc.” The question of who has standing to challenge how candidates appear on ballots is beyond the scope of this Article.

4. MINN. STAT. § 204B.06(3) (2008).

5. *Weiler*, 788 N.W.2d at 883, 885.

6. *Id.* at 885.

Turning to the evidence, the court found that Severson had become known as “Doc” while serving as a Navy pilot twenty-seven years earlier.⁷ Severson, who was a state representative at the time of the litigation, also filed affidavits from a legislative chaplain and two legislative colleagues stating that they knew him and referred to him as “Doc.”⁸ On the other hand, Severson had run for the state legislature as “Dan,” not “Doc,” in four previous elections.⁹ He used the names “Dan” and “Daniel” on his voter registration and filings with the Campaign Finance and Public Disclosure Board.¹⁰ He submitted editorials to local newspapers using the name “Dan.”¹¹ And before Severson filed his affidavit of candidacy for secretary of state, his campaign website identified him as “Dan.”¹²

The court concluded: “Rather than being commonly and generally known as ‘Doc,’ the weight of the evidence establishes that Severson is commonly and generally known in the community as ‘Dan’ or ‘Daniel.’”¹³ Accordingly, the court ruled that Severson could not use the name “Doc” on the general election ballot.¹⁴

The *Weiler* case raises a number of interesting questions: Under what circumstances, if any, should nicknames of candidates for public office be allowed on the ballot? How much deference should we give to candidates’ choices about how their names will appear? How should courts determine whether a candidate is “commonly and generally known in the community” by a particular name or nickname? Is this something we really want courts analyzing in the first place? Is there any harm in allowing someone like Daniel Severson to run for Minnesota secretary of state as “Doc”? If we allow Daniel “Doc” Severson to appear on a ballot, must we also allow “Shelvie Prolife Rettmann,” who, like Severson, was a candidate for office in Minnesota?¹⁵

It turns out that the *Weiler* case is hardly unique. Candidates for public office often seek to run under names they consider electorally advantageous. Nicknames like the one in *Weiler* are but one of many types of additions, subtractions, and modifications that candidates have made to their names.

In addition to nicknames, candidates frequently request that their listed names include a surname or given name suggestive of a particu-

7. *Id.* at 887.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.* at 888.

14. *Id.*

15. *Clifford v. Hoppe*, 357 N.W.2d 98 (Minn. 1984).

lar ethnic heritage.¹⁶ In Illinois, for example, “[t]he advantage of an Irish-sounding name in Cook County has long been accepted as gospel truth, so much so that several past judicial candidates with non-Irish names have legally changed their names to suggest Irish ancestry.”¹⁷ In his study of Cook County judicial elections, Albert Klumpp found that having an Irish-sounding name gave candidates a 10.5% advantage over candidates without such names.¹⁸

Similarly, Justice Rebecca Wiseman of the California Court of Appeal observed that in judicial elections, “voters are taking cues in part from what they believe they know about a judicial candidate based on his or her name, including such characteristics as gender, ethnicity, religious affiliation, and whether their name sounds ‘judicial.’”¹⁹ In Justice Wiseman’s study of judicial retention elections in California in the 1980s and 1990s, judges with Hispanic names received 1.58 percentage points less of the vote than judges without Hispanic names.²⁰ Wiseman also found that judges whose names had a “positive connotation,” such as “Best, Lillie, or Armstrong,” performed 5.7 percentage points better than judges whose names had a “negative connotation,” such as “Gaut, Rylaarsdam, or Harry Hull.”²¹

As Professor Derek T. Muller observed, “The ballot is capable of displaying to voters many elements of a candidate’s identity, even with the relatively simple listing of a candidate’s name.”²² Few voters “are willing to invest significant time and energy to find and understand information about candidates for public office.”²³ Instead of educating themselves about the candidates and issues, “voters use informational shortcuts—heuristic cues—to aid them in their decisionmaking.”²⁴ These cues include party affiliations and endorsements by interest groups, newspapers, celebrities, politicians, and

16. See *Jordan v. Robinson*, 39 So. 3d 416 (Fla. Dist. Ct. App. 2010) (“For better or worse, for over 150 years, American candidates have used their names to appeal to ethnic voting blocks in elections.”).

17. Albert J. Klumpp, *Judicial Primary Elections in Cook County, Illinois: Fear the Irish Women!*, 60 DEPAUL L. REV. 821, 825 (2011).

18. *Id.* at 837.

19. Rebecca Wiseman, *So You Want to Stay A Judge: Name and Politics of the Moment May Decide Your Future*, 18 J.L. & POL. 643, 644 (2002).

20. *Id.* at 659. Writing in 2002, Wiseman noted that based on changing demographics, “it is likely that in future retention elections having a Hispanic-sounding name . . . will *not* hurt a justice, but will instead be beneficial,” especially in parts of the state with high Hispanic populations. *Id.* at 661.

21. *Id.* at 665.

22. Derek T. Muller, *Ballot Speech*, 58 ARIZ. L. REV. 693, 698 (2016).

23. Elizabeth Garrett, *The Law and Economics of “Informed Voter” Ballot Notations*, 85 VA. L. REV. 1533, 1534 (1999).

24. Monica Youn, *Proposition 8 and the Mormon Church: A Case Study in Donor Disclosure*, 81 GEO. WASH. L. REV. 2108, 2139 (2013).

other opinion leaders.²⁵ “Other heuristic cues focus on a candidate’s personal characteristics such as likeability and personality.”²⁶ The candidates’ names and party affiliations provide “the strongest cues for voters seeking shortcuts.”²⁷ In primaries where all the candidates are members of the same party and in nonpartisan elections, the candidates’ names provide the strongest cues.

This Article attempts to bring clarity to what has been a very chaotic and inconsistent body of law. Part II looks at how courts and other government actors, including election boards and secretaries of state, have resolved controversies over how candidates will appear on the ballot. Part III evaluates the various approaches reflected in the opinions discussed in Part II. Part IV discusses what a workable and fair system of regulating candidate names would look like, proposing that candidates should be allowed to appear on the ballot under whatever name they want unless doing so would result in unnecessary confusion between two candidates or some kind of deception, fraud, or bad faith. Part V explores the roles of various government actors in regulating candidate names, arguing that with clear legislative guidance, most controversies can be resolved by election boards and secretaries of state, with court intervention available as a last resort.

II. ADVENTURES IN CANDIDATE NAMES

This Part summarizes various state efforts to regulate the names under which candidates run for office. It is important to remember that these cases represent just a small fraction of the controversies over candidate names. Many name controversies “escape litigation, as decisions are rendered in unpublished administrative or local court decisions and, unless sufficiently salacious, often escape meaningful media attention.”²⁸

A. Married Names, Maiden Names, and Other Former Names

In December 2003, an Ohio attorney named Lynn McLaughlin Murray filed a Declaration of Candidacy for the office of Judge of the Eighth District Court of Appeals.²⁹ In her filing, McLaughlin Murray

25. *Id.* at 2139–40 (citing Lloyd Hitoshi Mayer, *Disclosures About Disclosure*, 44 IND. L. REV. 255, 263 (2010)).

26. Michael S. Kang, *Democratizing Direct Democracy: Restoring Voter Competence Through Heuristic Cues and “Disclosure Plus,”* 50 UCLA L. REV. 1141, 1150–51 (2003).

27. Garrett, *supra* note 23, at 1534.

28. Muller, *supra* note 22, at 699.

29. *McLaughlin v. Cuyahoga Cty. Bd. of Elections*, 804 N.E.2d 1004, 1005 (Ohio Ct. App. 2004).

listed her name as “Lynn Ann McLaughlin.”³⁰ In January 2004, a registered voter filed a protest challenging McLaughlin Murray’s exclusive use of her maiden name on her Declaration of Candidacy.³¹ “Lynn Ann McLaughlin” was the candidate’s maiden name, and the evidence showed she had abandoned the sole use of her maiden name when she married Glenn J. Murray in 1999.³² McLaughlin Murray admitted she was generally known in the community as Lynn McLaughlin Murray, and she could not think of any circles in which she used McLaughlin exclusively.³³

At a hearing before the Cuyahoga County Board of Elections, McLaughlin Murray testified that she felt that for the judgeship she was seeking, the name “Lynn Ann McLaughlin” was “a better choice” than “Lynn McLaughlin Murray.”³⁴ When asked why her maiden name was “a better choice,” McLaughlin Murray responded candidly: “I hate to be political, but in this jurisdiction it makes a difference if you have a ‘Mc’ name.”³⁵ The Board of Elections ruled that McLaughlin Murray’s Declaration of Candidacy was invalid and ordered her name removed from the Democratic primary ballot.³⁶

McLaughlin Murray appealed. Citing a 1950 Ohio Supreme Court case, the Eighth District Court of Appeals noted that under Ohio law, candidates for public office may not change their names “to avoid an unfavorable result in the use of the abandoned name or to secure advantage.”³⁷ The court further noted that since her marriage to Mr. Murray, the candidate had in various contexts used the names Lynn Ann Murray, Lynn A. Murray, and Lynn McLaughlin Murray, but had not used “McLaughlin” without “Murray.”³⁸ Based on this history and on McLaughlin Murray’s testimony at the hearing, the court stated: “[W]e can only conclude that McLaughlin has decided to run as a candidate under her maiden name in order to ‘avoid an unfavorable result or to secure an advantage’ by the use of her maiden name.”³⁹

Similarly, in *Oberholtzer v. Cook County Officers Electoral Board*, an Illinois judicial candidate known primarily by the name Caroline Golden filed nomination papers to run for Judge of the Circuit Court, Cook County Judicial Circuit, under the name “Caroline Patricia Jam-

30. *Id.*

31. *Id.*

32. *Id.* at 1006.

33. *Id.* at 1005.

34. *Id.* at 1007.

35. *Id.*

36. *Id.* at 1005.

37. *Id.* at 1006 (citing *Pierce v. Brushart*, 92 N.E.2d 4, 9 (Ohio 1950)).

38. *Id.*

39. *Id.* at 1007.

ieson.”⁴⁰ The objector presented evidence that, after her marriage, the candidate had ceased using her maiden name of Jamieson in favor of her married name, Golden.⁴¹

At issue in *Oberholtzer* was the following provision of the Illinois Election Code: “In the designation of the name of a candidate on a petition for nomination or certificate of nomination the candidate’s given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate’s surname.”⁴² The court quite reasonably interpreted this statute to require the inclusion of the candidate’s surname.⁴³ Because “surname” is not defined in the Illinois Election Code, the court consulted *Black’s Law Dictionary*, which defines “family name” as “[t]he family name automatically bestowed at birth, acquired by marriage, or adopted by choice.”⁴⁴

The court then found that when she got married, “the Candidate voluntarily acquired a different surname, Golden.”⁴⁵ The court noted that the candidate had practiced law under the name Golden for over a decade and had consistently used that name in conducting her personal and professional affairs.⁴⁶ The court concluded that the candidate’s proper surname was Golden and held the nomination papers which listed her as Jamieson to be invalid, thereby upholding her removal from the ballot for the “general primary election.”⁴⁷

The Supreme Court of Louisiana reached a similar result in *Wilty v. Jefferson Parish Democratic Executive Committee*.⁴⁸ In 1963, a woman named Laura Verret Wilty decided to run against her husband, Vernon J. Wilty, Jr., for the office of Assessor of the Parish of Jefferson.⁴⁹ Mrs. Wilty chose to run under the name Mrs. Vernon J. Wilty, Jr.⁵⁰ (The Wiltys were married on January 6, 1951, and were “judicially separated” on May 7, 1963, but their divorce was not yet final at the time of the election.)⁵¹ Mrs. Wilty testified that she was known in her community by the name Mrs. Vernon J. Wilty, had used that name when registering her children for school, and had generally lived by that name for over twelve years.⁵²

40. *Oberholtzer v. Cook Cty. Officers Electoral Bd.*, No. 1-20-0218, 2020 Ill. App. Unpub. LEXIS 231, at *2 (Ill. App. Ct. Feb. 13, 2020).

41. *Id.* at *4.

42. *Id.* at *13–14 (quoting 10 ILL. COMP. STAT. ANN. 5/7-10.2 (West 2018)).

43. *Id.* at *16.

44. *Id.* at *17 (quoting *Family name*, BLACK’S LAW DICTIONARY (11th ed. 2019)).

45. *Id.*

46. *Id.* at *19.

47. *Id.* at *2.

48. 157 So. 2d 718 (La. 1963).

49. *Id.* at 719.

50. *Id.*

51. *Id.* at 720–21.

52. *Id.* at 724.

Wilty presented a conundrum for the Supreme Court of Louisiana because there was no law, statutory or otherwise, directly on point.⁵³ Nevertheless, the court was determined to prohibit Mrs. Wilty from running under her preferred name. The court ultimately relied on a provision in the Louisiana constitution requiring fairness in the enactment of legislation relating to party primaries, even though the case before the court involved no “legislation” whatsoever.⁵⁴ From there, the court stated, without citing any legal authority, that “[t]he public is entitled to have a fair election held,” and “[i]t follows that an election is not a fair one where there is a circumstance which confuses (or seriously tends to confuse) the voter as to the identity of the candidates.”⁵⁵

One justice dissented.⁵⁶ The dissenting justice pointed out that no law vested the Louisiana Supreme Court with the authority to intervene in an election simply because the court thinks voters might be confused.⁵⁷ The dissenting justice also was not persuaded as to the likelihood of confusion:

I cannot agree that the voters will not be able to identify the two candidates and will become confused. One of the candidates is designated by the prefix ‘Mrs.’, and is thus clearly shown to be a woman; the other is obviously a man. In effect, the majority says the voters (all of whom are over 21 years of age) cannot tell the difference between a man and a woman when they enter the voting booth. As to whether they can at other times the court is not called upon to express any view.⁵⁸

Unlike the courts in *McLaughlin*, *Oberholtzer*, and *Wilty*, Florida courts do not prohibit women from running for office under their maiden names, even when the evidence shows that the candidate has since her marriage primarily used her married name.⁵⁹ In *Levey v. Dijols*, an attorney filed to run for Circuit Court Judge in Broward County using her maiden name, Mardi Anne Levey, instead of her married name, Mardi Levey Cohen.⁶⁰ After finishing behind Levey in the primary election, Pedro Dijols filed a complaint contesting the results.⁶¹ Dijols’s complaint alleged that Levey engaged in misconduct by running as Mardi Anne Levey instead of Mardi Levey Cohen.⁶²

53. *Id.* at 725 (“[W]e find no positive law or jurisprudence in Louisiana ordering a married woman to use a particular appellation; we find no law stating that she has to qualify as a candidate for office under the name she gave on her application for registration . . .”).

54. *Id.*

55. *Id.*

56. *Id.* at 727 (Hawthorne, J., dissenting).

57. *Id.* at 728.

58. *Id.*

59. *Levey v. Dijols*, 990 So. 2d 688 (Fla. Dist. Ct. App. 2008).

60. *Id.* at 690.

61. *Id.*

62. *Id.*

Dijols produced substantial evidence that Levey had consistently used the name Mardi Cohen since her marriage twenty-two years earlier.⁶³ She had even run for a Circuit Court judgeship two years earlier under the name Mardi Levey Cohen.⁶⁴

The trial court entered an order striking Levey's name from the general election ballot and replacing it with Dijols's name.⁶⁵ The appellate court reversed, holding that Levey was an eligible candidate and had committed no fraud or misconduct.⁶⁶ The court observed that the statute governing judicial elections, Fla. Stat. section 105.031, merely requires a candidate to print his or her name "as you wish it to appear on the ballot."⁶⁷ Because the statute did not contain a definition of "name," the court consulted a dictionary and concluded that "name" means "any legal form of name the person is entitled to use and have printed on the ballot."⁶⁸ Florida courts had previously held that a woman does not lose her birth-given name upon marriage.⁶⁹ Accordingly, Levey was entitled to run for the judgeship under her maiden name.⁷⁰

In *Dedolph v. McDermott*, the plaintiff challenged the nomination of Lois Jean McDermott, a Democratic candidate for the Arizona House of Representatives.⁷¹ McDermott's nomination paper stated that she wished to appear on the ballot as "Cheuvront-McDermott, Jean" even though her legal surname was McDermott.⁷² McDermott had been married to Jerry Cheuvront from 1957 until their divorce in the 1980s.⁷³ During that marriage, McDermott's legal name was Lois Jean Cheuvront, and she was known in her community by that name.⁷⁴ "In 1989, McDermott remarried and changed her legal surname from Cheuvront to McDermott."⁷⁵ After Mr. McDermott died in 2002, Mrs. McDermott ran for precinct committeewoman three times under the name Jean McDermott.⁷⁶

Arizona's statute on nominations and elections restricts a candidate's choices regarding how her name will appear on the ballot to her surname and given name or names, an abbreviated version of such

63. *Id.*

64. *Id.* at 691.

65. *Id.* at 690.

66. *Id.* at 693.

67. *Id.* at 692 (quoting FLA. STAT. § 105.031(4)(b) (2007)).

68. *Id.* at 693.

69. *Id.* (citing *Davis v. Roos*, 326 So. 2d 226 (Fla. Dist. Ct. App. 1976)).

70. *Id.* at 694–95.

71. *Dedolph v. McDermott*, 281 P.3d 484, 485 (Ariz. 2012).

72. *Id.*

73. *Id.*

74. *Id.*

75. *Id.* at 486.

76. *Id.*

names, or appropriate initials.⁷⁷ The statute also states that “[n]icknames are permissible.”⁷⁸ McDermott argued that “Cheuvront-McDermott” was a nickname.⁷⁹

Applying the statute, the Arizona Supreme Court found that while nicknames are permissible “in addition to or in place of a candidate’s given name,” the statute “does not allow for the substitution of a nickname for the required surname.”⁸⁰ The candidate’s surname is required and must appear before any given names or nicknames.⁸¹ The court stated that “[i]f McDermott wanted the ballot to reflect that she is also known as Cheuvront, she should have listed her name in the nomination paper as ‘McDermott, Jean Cheuvront’ rather than ‘Cheuvront-McDermott, Jean.’”⁸² The court ordered that McDermott’s name be printed on the ballot as “McDermott, Jean Cheuvront.”⁸³

While controversies over the use of former surnames usually involve women who adopted their husbands’ surnames upon marriage, it is important to remember that people can and do change their names for other reasons. In Broward County, Florida, in 2010, a candidate for County Court Judge sought to run under the name “Jordan Howard Breslaw.”⁸⁴ The candidate had been given that name at birth, but in 1991, he legally changed his name to “Jordan Howard Jordan.”⁸⁵ As noted above, the relevant Florida statute simply instructs candidates to “please print [your] name as you wish it to appear on the ballot.”⁸⁶ Jordan a/k/a Breslaw had certainly complied with the statute. The court assumed that Jordan a/k/a Breslaw wanted to use the name Breslaw “to appeal to an ethnic segment of the voters.”⁸⁷ The court nevertheless allowed the candidate to appear as Jordan Howard Breslaw, finding that his use of Breslaw for that purpose “is not the

77. ARIZ. REV. STAT. ANN. § 16-311(G) (2020) (“The nomination paper shall include the exact manner in which the candidate desires to have the person’s name printed on the official ballot and shall be limited to the candidate’s surname and given name or names, an abbreviated version of such names or appropriate initials such as ‘Bob’ for ‘Robert’, ‘Jim’ for ‘James’, ‘Wm.’ for ‘William’ or ‘S.’ for ‘Samuel’. Nicknames are permissible, but in no event shall nicknames, abbreviated versions or initials of given names suggest reference to professional, fraternal, religious or military titles. No other descriptive name or names shall be printed on the official ballot, except as provided in this section. Candidates’ abbreviated names or nicknames may be printed within quotation marks. The candidate’s surname shall be printed first, followed by the given name or names.”).

78. *Id.*

79. *Dedolph*, 281 P.3d at 487.

80. *Id.*

81. *Id.*

82. *Id.*

83. *Id.* at 488.

84. *Jordan v. Robinson*, 39 So. 3d 416, 417 (Fla. Dist. Ct. App. 2010).

85. *Id.*

86. *Id.* at 418 (citing FLA. STAT. § 105.031(4)(b) (2007)).

87. *Id.*

type of fraudulent, criminal, or wrongful purpose that would invalidate his choice.”⁸⁸

B. Nicknames

As noted in the discussion of *Weiler v. Ritchie* in Part I, candidates often request to appear on the ballot under a nickname, either instead of or in addition to their surnames and given names. Several states have statutes that explicitly permit nicknames.⁸⁹

Nevertheless, in several cases, courts have rejected candidates' requested nicknames. In *Persing v. Northumberland County Board of Elections*, Russel Persing, a city council candidate in Pennsylvania, filed a petition with the Board of Elections to have his name printed on the primary ballot as “Russel (Rudy) Persing.”⁹⁰ The Board refused to include “Rudy” on the ballot, and Persing sued.⁹¹ The evidence showed that even though Persing's given name was Russel, his friends and associates had known him as Rudy Persing since his childhood.⁹² However, Persing never used the name Rudy in business transactions and had run for public office several times before as “Russel

88. *Id.* Interestingly, the word “Jewish” does not appear anywhere in the *Jordan v. Robinson* opinion, despite the importance of Jewish heritage to the situation in the case. Breslaw is a common Jewish surname. See *BRESLAW Origin of Surname*, ANU MUSEUM JEWISH PEOPLE, <https://dbs.bh.org.il/familynome/breslaw> [<https://perma.unl.edu/VQR2-DZTN>] (last visited May 22, 2020) (“The Jewish surname [] Breslaw . . . [is] associated with Breslau/Wroclaw, Silesia, where Jews lived since the 13th century.”). As of 2016, Broward County was home to the largest Jewish community in Florida and the eighth largest in the United States. See Marvin Glassman, *Broward Jewish Population Has Declined, But Still Largest in Florida*, S. FLA. SUN-SENTINEL (Nov. 21, 2016, 10:52 AM), <https://www.sun-sentinel.com/florida-jewish-journal/news/broward/fl-jjbs-demography-1123-20161121-story.html>.

89. See, e.g., ARIZ. REV. STAT. ANN. § 16-311(G) (2020) (“Nicknames are permissible, but in no event shall nicknames, abbreviated versions or initials of given names suggest reference to professional, fraternal, religious or military titles.”); COLO. REV. STAT. ANN. § 31-10-302(6) (West 2020) (“The candidate's name may be a nickname or include a nickname but shall not contain any title or degree designating the business or profession of the candidate.”); LA. STAT. ANN. § 18:463(A)(1)(b) (2020) (“The candidate may designate his given, first, and middle name, the initials of his given, first, and middle name, a nickname, or any combination thereof as the form in which his name shall be printed on the ballot”); TEX. ELEC. CODE ANN. § 52.031(c) (West 2020) (“A nickname of one unhyphenated word of not more than 10 letters by which the candidate has been commonly known for at least three years preceding the election may be used in combination with a candidate's name.”).

90. 70 Pa. D. & C. 325, 325–26 (Ct. Com. Pl. 1949).

91. *Id.*

92. *Id.* at 326.

Persing.”⁹³ Both parties in *Persing* agreed that “Rudy” was a nickname and was not part of the candidate’s legal name.⁹⁴

Citing *American Jurisprudence*, the court adopted the rule that “[a] person is legally permitted to have printed upon a ballot the name which he has adopted and under which he transacts private and official business.”⁹⁵ The court continued:

However, mere names of endearment, affection, jest or any so-called nickname is not usually a part of one’s legal name and to permit the printing of nicknames upon ballots may lead to a great deal of embarrassment as far as the electorate is concerned. While the appellation, Rudy, in itself may be rather innocuous, nevertheless, if nicknames are permitted to be printed upon ballots to be used by the electorate, it is conceivable that there may be many nicknames which may have connotations bordering upon vulgarity, levity or even immorality.⁹⁶

Accordingly, the court upheld the board’s decision not to include “Rudy” in Persing’s name as it appeared on the ballot.⁹⁷

In New York, “it is impermissible to place on an official ballot a characterization or designation before or after a candidate’s name.”⁹⁸ Although this rule does not mention nicknames, the Appellate Division of the New York Supreme Court used it to prohibit a gubernatorial candidate named Al Lewis from appearing on the ballot as “Grandpa Al Lewis.”⁹⁹ Lewis was a former actor who played a character known as “Grandpa” on a 1960s television show.¹⁰⁰ The court found that “Grandpa” was not part of Lewis’s name but rather a descriptive term intended to inform the voting public of the candidate’s “claim to fame.”¹⁰¹

The trial court in *Lewis* was particularly hostile to the practice of allowing nicknames on ballots: “The use of a nickname on the ballot would lead to unrelenting attempts by candidates to highlight the given name by a nickname, street name, stage name, title, degrees or any other name created by the fertile imagination.”¹⁰²

93. *Id.*

94. *Id.* at 327.

95. *Id.* at 328 (citing 18 AM. JUR. *Printing of Candidate’s Name on Ballot* § 174 (1938)).

96. *Id.*

97. *Id.*

98. *Toigo v. Columbia Cty. Bd. of Elections*, 273 N.Y.S.2d 781, 783 (N.Y. Sup. Ct. 1966).

99. *Lewis v. N.Y. State Bd. of Elections*, 678 N.Y.S.2d 809, 810 (N.Y. App. Div. 1998).

100. *Id.*

101. *Id.*

102. *Lewis v. N.Y. State Bd. of Elections*, 678 N.Y.S.2d 887, 888 (N.Y. Sup. Ct. 1998), *aff’d*, 678 N.Y.S.2d 809 (N.Y. App. Div. 1998). A Texas gubernatorial candidate fared no better in her quest to appear on the ballot as “Grandma.” In 2006, Texas’s secretary of state rejected Carole Keeton Strayhorn’s request to include the word “Grandma” before her name. See *Texas: ‘Kinky’ Is OK; ‘Grandma’ Isn’t*, CBS NEWS (July 10, 2006, 1:41 PM), <https://www.cbsnews.com/news/texas-kinky->

In *Persing* and *Lewis*, the courts were not necessarily troubled by the particular nicknames at issue—“Rudy” and “Grandpa,” respectively—but were concerned with the implications of freely permitting nicknames. Sure enough, jurisdictions that allow nicknames have seen their share of unusual ones. For example, an Illinois statute provides that “the candidate’s given name or names, initial or initials, a nickname by which the candidate is commonly known, or a combination thereof, may be used in addition to the candidate’s surname.”¹⁰³ This statute has opened a Pandora’s Box of creative nicknames, with Lar “America First” Daly, Elias “Non-Incumbent” Zenkich, and Robert “Save a Baby” Ellis all appearing on Illinois ballots at various times.¹⁰⁴

A district court was asked to interpret Illinois’s statute allowing nicknames in 1996, when a voter objected to a Republican congressional candidate’s request to appear on the ballot as “Les (Cut the Taxes) Golden.”¹⁰⁵ The Cook County Officers Electoral Board reviewed the evidence and concluded that Golden was known as “Cut the Taxes,” but “only in a narrow context and not ‘commonly’ as required by the statute.”¹⁰⁶ The Illinois Circuit Court affirmed the Board’s decision.¹⁰⁷ Golden then filed a federal suit alleging that his equal protection rights had been violated because other “politically-charged” nicknames like “America First,” “Non-Incumbent,” and “Save a Baby” were allowed to appear on Illinois ballots.¹⁰⁸ However, there was a good reason for the apparent unequal treatment: nobody ever challenged “America First,” “Non-Incumbent,” or “Save a Baby,” whereas a voter had filed a timely challenge to “Cut the Taxes.”¹⁰⁹ The court in *Golden* thus found no equal protection violation.¹¹⁰

The court in *Golden* indicated that the Illinois statute was enacted to prohibit the use of nicknames “to convey a political message to voters.”¹¹¹ The statute may in fact *do* that, but it doesn’t *say* that. Had Golden been able to show that he was “commonly known” by the nickname “Cut the Taxes,” there would have been no statutory basis for

is-ok-grandma-isnt/ [https://perma.unl.edu/83RE-9KP9]. The secretary of state ruled that “Grandma” was a slogan because Strayhorn called herself “one tough grandma” in speeches and campaign literature. *Id.* Texas’s Election Code prohibits a candidate from using “[a] nickname that constitutes a slogan.” TEX. ELEC. CODE ANN. § 52.031(c) (West 2020).

103. 10 ILL. COMP. STAT. ANN. 5/7-10.2 (West 2020).

104. *See Golden v. Cook Cty. Officers Electoral Bd.*, No. 96 C 1283, 1996 WL 684096, at *1 (N.D. Ill. Mar. 18, 1996).

105. *Id.*

106. *Id.* at *2.

107. *Id.*

108. *Id.* at *7–8.

109. *Id.* at *8.

110. *Id.* at *8–9.

111. *Id.* at *7.

prohibiting him from appearing on the ballot under that name. It appears that Golden came fairly close to establishing this: the evidence indicated that the phrase “Cut the Taxes” had been used in association with Golden’s tax reduction efforts, and that at least a few people knew Golden as “Cut the Taxes.”¹¹²

If Illinois wanted to close this apparent loophole, it could ban nicknames designed “to convey a political message to voters.” However, this would increase the burden on courts and election boards. In addition to determining whether a candidate is “commonly known” by a nickname, courts and election boards would also have to determine what constitutes a “political message.” The impact of such a provision would likely be minimal, as the people primarily affected would be “stunt” candidates with little chance of winning elections anyway.¹¹³

In *State ex rel. Morrison v. Franklin County Board of Elections*, Fred L. Morrison sought to run for a state senate seat in Ohio under the name Fred “Curly” Morrison.¹¹⁴ The secretary of state rejected Morrison’s request and determined that his name should appear on the ballot as Fred L. Morrison.¹¹⁵ In a 4–3 decision, the Ohio Supreme Court upheld the secretary of state’s decision, finding no fraud, corruption, or abuse of discretion on the secretary of state’s part.¹¹⁶

Writing on behalf of himself and one other dissenter, Justice Robert Holmes argued that the decision upheld by the court “hinders, rather than promotes, the voters’ right to make an informed choice between candidates.”¹¹⁷ Holmes noted that the candidate had “used the name of Fred Curly Morrison continuously for the past 40 years, and that there is no misrepresentation, fraud or bad faith in the use of that name” by Morrison.¹¹⁸ In Holmes’s view, the name “Curly” had, over the years, “risen to the status of the publicly-accepted designation for his person.”¹¹⁹ Holmes argued that Morrison’s use of “Curly” in addition to his given name Fred “would aid the voters in identifying the candidates, and would not mislead them.”¹²⁰

In *Clifford v. Hoppe*, a candidate for the U.S. House of Representatives requested that her name appear on the ballot as “Shelvie Prolife

112. *Id.* at *2.

113. See Matt O’Brien, *Unorthodox Ballot Names: A Winning Strategy?*, WASH. TIMES (Aug. 14, 2016), <http://www.washingtontimes.com/news/2016/aug/14/unorthodox-ballot-names-a-winning-strategy/> (discussing the unsuccessful campaigns of “Chief Wana Dubie,” “Pro-Life,” and “Byron (Low Tax) Looper”).

114. 410 N.E.2d 764, 765 (Ohio 1980).

115. *Id.*

116. *Id.* at 766.

117. *Id.*

118. *Id.*

119. *Id.*

120. *Id.*

Rettmann.”¹²¹ A voter in the congressional district Rettmann sought to represent filed suit, and the case went all the way to the Minnesota Supreme Court.¹²² The court noted that Minnesota’s statute governing the preparation of election ballots states that “[t]he name of a candidate shall not appear on a ballot in any way that gives the candidate an advantage over his opponent except as otherwise provided by law.”¹²³ Citing opinions from the state’s attorney general, the court stated that “if a candidate is commonly or generally known by a particular nickname, that nickname may be printed on the ballot for the purpose of identifying the candidate to voters.”¹²⁴

Applying this law to Rettmann’s case, the court found that “Prolife” was not a name by which Rettmann was commonly known.¹²⁵ In fact, she freely admitted that she had never been called “Shelvie Prolife Rettmann” prior to filing her affidavit of candidacy.¹²⁶ Accordingly, the court ordered that Rettmann could not appear on the ballot with the name “Prolife.”¹²⁷

In *Persing, Lewis, Golden, Morrison, and Clifford*, the candidates were prohibited from appearing on the ballot under their chosen nicknames. In other cases, however, courts have allowed candidate nicknames. In *Angst v. Walker*, the court ordered the Carbon County Board of Elections to print the plaintiff’s name on the primary ballot as John W. “Bud” Angst.¹²⁸ After reviewing “some 56 exhibits, which include more than 100 individual documents,” the court found that “continuously and routinely, Mr. Angst transacted his business and social affairs . . . in the name of ‘Bud’ Angst as well as John W. Angst.”¹²⁹ The court thus found that “Bud” was part of Angst’s legal name and that Angst had a “right to have his full legal name printed on the ballot.”¹³⁰

Similarly in *Innamorato v. Friscia*, the petitioner, a candidate for city council in New York City, sought to change the way his name

121. *Clifford v. Hoppe*, 357 N.W.2d 98, 99–100 (Minn. 1984).

122. *Id.* at 100.

123. *Id.* at 101 (quoting MINN. STAT. § 204B.35(2) (1982)).

124. *Id.*

125. *Id.*

126. *Id.* at 101–02.

127. *Id.* at 102.

128. *Angst v. Walker*, 42 Pa. D. & C.2d 492, 497 (Ct. Com. Pl. 1967).

129. *Id.* at 496.

130. *Id.* at 497. Somewhat confusingly, the court found that “Bud” was *not* actually Angst’s nickname; instead, “Bud” had become part of Angst’s full legal name. *Id.* *Angst* is nevertheless included in this section of the Article because under the circumstances described in the case, “Bud” comports with common understandings of nicknames. See *Nickname*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/nickname> [<https://perma.unl.edu/3NCX-G97N>] (last visited Oct. 28, 2020) (defining “nickname” as “a usually descriptive name given instead of or in addition to the one belonging to a person, place, or thing”).

would appear on the ballot from “Emanuele Innamorato” to “Manny Innamorato.”¹³¹ Innamorato established that on certain legal documents he was known as Emanuele, but within his community he was predominantly known as Manny.¹³² The Supreme Court of New York, Richmond County, granted Innamorato’s request and ordered the Board of Elections to change the name.¹³³ The court identified its “paramount concern” as “access to the voting public in the 51st Council District who are entitled to vote for the candidate of their choice.”¹³⁴ The court found no intent on Innamorato’s part to defraud the electorate, nor would granting his request “inure to him a considerable advantage in the upcoming special election.”¹³⁵

If a state chooses to allow nicknames, candidates will inevitably test the limits of that category. The Illinois statute on nomination petitions explicitly allows candidates to use “a nickname by which the candidate is commonly known.”¹³⁶ However, the statute also states: “No other designation such as a political slogan, title, or degree, or nickname suggesting or implying possession of a title, degree or professional status, or similar information may be used”¹³⁷ In *Rita v. Mayden*, a candidate for the Illinois House of Representatives listed his name on his nominating petitions and Statement of Candidacy as “MICHAEL E. MAYDEN (THE COACH).”¹³⁸ Mayden had volunteered as a baseball coach for nearly twenty years, and some community members referred to him as “the Coach.”¹³⁹

Applying the statute, the court found that “Mayden’s use of the designation ‘THE COACH’ did more than merely identify him in the way that a name or common nickname does. ‘THE COACH’ is a title meant to communicate information about Mayden’s volunteer work and his special status in the community.”¹⁴⁰ The appellate court thus affirmed the lower court’s judgment “striking Mayden’s name from the primary election ballot.”¹⁴¹

C. Diminutives

Closely related to the nickname issue is the question of whether a candidate may use a diminutive form of his or her given name instead of or in addition to the candidate’s legal name. Michigan’s statute cov-

131. No. 80042/07, 2007 N.Y. Misc. LEXIS 457, at *1–2 (N.Y. Sup. Ct. Feb. 5, 2007).

132. *Id.* at *2.

133. *Id.* at *5.

134. *Id.* at *3–4.

135. *Id.* at *4.

136. 10 ILL. COMP. STAT. ANN. 5/8-8.1 (West 2020).

137. *Id.*

138. 847 N.E.2d 578, 580 (Ill. App. Ct. 2006).

139. *Id.* at 584.

140. *Id.* at 585.

141. *Id.* at 586.

ering how candidate names may appear on ballots explicitly allows “recognized” diminutives: “A candidate may specify that either an initial or a recognized diminutive for the candidate’s given or middle name, or for both, shall appear on the ballot.”¹⁴² Arizona’s statute states that a candidate may use “an abbreviated version” of his or her name and specifically mentions the permissible use of “Bob” for “Robert,” “Jim” for “James,” and “Wm.” for “William.”¹⁴³

While the question of whether a candidate may appear on the ballot under a diminutive form of his or her given name apparently has not been litigated, courts have approved the use of diminutives in other election-related contexts. In evaluating votes for write-in candidates, courts have accepted “Fran” for Frances,¹⁴⁴ “Matt” for Matthew,¹⁴⁵ “France” and “Frank” for Francis,¹⁴⁶ “Wm.” and “Bill” for William,¹⁴⁷ and “Gus” for Gustavo.¹⁴⁸ Similarly, the Supreme Court of Pennsylvania has accepted the use of diminutives in the context of nomination petitions.¹⁴⁹ In *In re Gales*, a lower court struck ten signatures from a candidate’s nomination petition because the electors “signed the common diminutive versions of their first name, instead of signing the full first name that appeared on their voter registration card.”¹⁵⁰ The supreme court noted the statute’s purpose was to prevent forgery and that its plain language did not require that the signature include the elector’s formal first name.¹⁵¹ Therefore, the court held that the lower court had erred in striking those signatures because “the use of an obvious diminutive first name does not compromise the integrity of the election process.”¹⁵²

Based on these authorities, it is likely that a court would allow a candidate to use a diminutive name that is very common in American society, such as “Matt” for Matthew or “Patty” for Patricia, or a diminutive name that, while perhaps not common, contains several of the same letters as the full name, such as “France” for Francis. However, as with the other issues discussed in Part II, there is potential for litigation within the gray areas. For instance, Michigan’s statute is limited to “recognized” diminutives, while the Supreme Court of Penn-

142. MICH. COMP. LAWS ANN. § 168.560b(3) (West 2020).

143. ARIZ. REV. STAT. ANN. § 16-311(G) (2020).

144. See *In re Klayman*, 235 A.2d 45, 49–50 (N.J. Super. Ct. Law Div. 1967).

145. *Miller v. Lakeland Fire Dist.*, 818 N.Y.S.2d 278, 280–81 (N.Y. App. Div. 2006).

146. *Devine v. Wonderlich*, 268 N.W.2d 620, 628 (Iowa 1978).

147. *In re Lamb*, 73 Pa. D. & C.2d 142, 147 (Ct. Com. Pl. 1975); *In re Tibby*, 30 Pa. D. & C. 245, 255 (Ct. Com. Pl. 1937).

148. *Guerra v. Garza*, 865 S.W.2d 573, 577 (Tex. App. 1993).

149. *In re Gales*, 54 A.3d 855, 859–60 (Pa. 2012), *overruled on other grounds by In re Vodvarka*, 140 A.3d 639 (Pa. 2016).

150. *Id.* at 856.

151. *Id.* at 859.

152. *Id.*

sylvania's opinion in *Gales* mentions "obvious diminutive forms."¹⁵³ It is probably only a matter of time before someone challenges a candidate's chosen diminutive as not sufficiently recognized or obvious.

D. Middle Names

In 1979, Milwaukee attorney Ralph Adam Fine ran for Judge of the Circuit Court.¹⁵⁴ Before the election, Fine petitioned the Elections Board of the State of Wisconsin, asking that his first, middle, and last name appear on the ballot.¹⁵⁵ Though Fine had consistently used his full legal name as an attorney, a published author, and a local talk show host, as well as in his private affairs, the elections board denied Fine's request.¹⁵⁶

The statute at issue in *Fine* required that the ballot contain "each candidate's name in any combination of initials for the first and middle names, plus the last name."¹⁵⁷ The elections board interpreted this statutory language to mean that a candidate cannot "appear on the official ballot with both a full first name and a full middle name."¹⁵⁸

Fine petitioned for judicial review of the election board's opinion.¹⁵⁹ The trial court found that the board's interpretation violated the Equal Protection Clause of the Fourteenth Amendment because the board's interpretation of the statute would permit "a candidate with a former legal surname to be identified on the ballot with three full names, but limit[] a person without a former legal surname to only two full names plus an initial."¹⁶⁰ "Pursuant to the trial court's order, Fine appeared on the ballot . . . under the name 'Ralph Adam Fine,' and was elected circuit court judge for Milwaukee county."¹⁶¹

The case went all the way to the Supreme Court of Wisconsin, which also ruled in Fine's favor, but on different grounds than the trial court. The supreme court interpreted the statute at issue to *permit*, but not *require*, the use of initials in place of the candidate's first name, middle name, or both.¹⁶² If a candidate chose not to use initials, the supreme court found nothing in the statute that prevented a candidate from using both given names in full.¹⁶³ Interpreted that way, the statute raised no constitutional issues.

153. See MICH. COMP. LAWS ANN. § 168.560b(3) (West 2020); *Gales*, 54 A.3d at 857.

154. *Fine v. Elections Bd.*, 289 N.W.2d 823, 823 (Wis. 1980).

155. *Id.*

156. *Id.* at 823–24.

157. *Id.* at 825 (quoting WIS. STAT. § 7.08(2)(a) (1980) (amended 2018)).

158. *Id.* at 824.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.* at 825.

163. *Id.*

The court recognized that “[t]he paramount interest of the state in regulating elections is to insure that they are conducted as fairly as possible and in such a way as to insure that the will of the electorate is accurately ascertained.”¹⁶⁴ The court observed that the board’s construction of the statute “would seem in conflict with this interest in that it in effect permits most candidates to appear on the ballot under that version of their legal name by which they are commonly known, but denies that right to others.”¹⁶⁵ As many people, especially those with very common surnames, use multiple given names to distinguish themselves from others with the same surname,¹⁶⁶ the court decided that, “[f]or the board to deny such persons the use of their full legal name would not only be unfair, but may also lead to greater voter confusion than would otherwise exist.”¹⁶⁷

E. Professional Titles and Information

Many states have enacted statutes that prohibit professional titles on ballots.¹⁶⁸ California, however, explicitly allows professional information. Immediately below their names, Californian candidates may include “[n]o more than three words designating either the current principal professions, vocations, or occupations of the candidate, or the

164. *Id.* at 827.

165. *Id.* at 827–28.

166. *Id.* at 828.

167. *Id.*

168. *See* ALASKA STAT. § 15.15.030(4) (2020) (“The director may not include on the ballot, as a part of a candidate’s name, any honorary or assumed title or prefix”); CAL. ELEC. CODE § 13106 (West 2019) (“No title or degree shall appear on the same line on a ballot as a candidate’s name, either before or after the candidate’s name, in the case of any election to any office.”); IOWA CODE § 49.31(6) (2020) (“The name of a candidate printed on the ballot shall not include parentheses, quotation marks, or any personal or professional title.”); KAN. STAT. ANN. § 25-619 (West 2020) (“No title, degree or other symbol of accomplishment, occupation or qualification either by way of prefix or suffix shall accompany or be added to the name of any candidate for nomination or election to any office on ballots in any primary or general election.”); MINN. STAT. ANN. § 204B.35(2) (West 2020) (“The name of a candidate shall not appear on a ballot in any way that gives the candidate an advantage over an opponent, including words descriptive of the candidate’s occupation, qualifications, principles, or opinions, except as otherwise provided by law.”); NEV. REV. STAT. § 293.256 (2016) (“[T]he names of candidates as printed on the ballot shall not include any title, designation or other reference which will indicate the profession or occupation of such candidates.”); N.C. GEN. STAT. ANN. § 163-165.5(a)(3) (West 2020) (“No title, appellation, or appellation indicating rank, status, or position shall be printed on the official ballot in connection with the candidate’s name.”); OKLA. STAT. tit. 26, § 6-101 (West 2020) (“[N]o candidate shall have any prefix, suffix or title placed before or after the candidate’s name.”); TEX. ELEC. CODE ANN. § 52.033 (West 2019) (“[A] title or designation of office, status, or position may not be used in conjunction with a candidate’s name on the ballot.”); WYO. STAT. ANN. § 22-6-111 (2020) (“Professional titles and degrees shall not appear on the ballot.”).

principal professions, vocations, or occupations of the candidate during the calendar year immediately preceding the filing of nomination documents.”¹⁶⁹ Not surprisingly, this provision has led to some controversy: “Every two years, campaigns do battle with the California secretary of state—and one another—over whether or not the professional descriptions they pick are within the bounds of state law.”¹⁷⁰

Courts in other states generally take a restrictive approach toward professional titles. In *State ex rel. Rainey v. Crowe*, Dr. Robert Rainey, a physician and candidate for city coroner, sought to compel the Board of Election Commissioners for the City of St. Louis to print his name on the ballot with his professional title.¹⁷¹ Rainey testified that he was known by the name “Robert Rainey M.D.,” and that his legal documents and written communications almost always listed his name that way.¹⁷²

Nevertheless, the Court of Appeals of Missouri denied Rainey’s request. First, the court rejected Rainey’s argument that the initials “M.D.” were part of his name: “It would seem abundantly clear that the conferring of a degree on the relator and his use of the initials after his name indicating the degree would not have the effect of changing his name.”¹⁷³ Second, the court noted that there was no other candidate with a similar or identical name on the ballot, which might justify descriptive information to help voters identify their preferred candidate.¹⁷⁴ Finally, the court stated that if it were to require the board to place “M.D.” after Rainey’s name, then the board would also have to print “initials and descriptions such as ‘Atty.,’ ‘Rev.,’ . . . ‘LL.B.,’ ‘A.B.,’ ‘B.S.,’ ‘Ph.D.,’ ‘M.S.,’ ‘M.A.,’ ‘D.O.,’ ‘DD.S.,’ and many other descriptions too numerous to mention.”¹⁷⁵

In a nearly identical case, the Supreme Court of New York rejected a request by a candidate for coroner that he appear on the ballot as “Dr. Romolo Toigo, Ph.D.”¹⁷⁶ The court first noted that the relevant section of New York’s Election Law states that “[b]allots for general officers shall contain the names of all candidates except presidential electors.”¹⁷⁷ The court found that a person’s name “does not include a

169. CAL. ELEC. CODE § 13107(3) (West 2019).

170. Emily Cadei, *Why an Election Tradition in California Is Banned in Other States*, SACRAMENTO BEE (Apr. 4, 2018, 12:01 AM), <https://www.sacbee.com/news/politics-government/capitol-alert/article207850079.html>.

171. 382 S.W.2d 38, 40 (Mo. Ct. App. 1964).

172. *Id.*

173. *Id.* at 42.

174. *Id.* at 43.

175. *Id.* at 46.

176. *Toigo v. Columbia Cty. Bd. of Elections*, 273 N.Y.S.2d 781 (N.Y. Sup. Ct. 1966).

177. *Id.* at 783.

professional title or an academic degree.”¹⁷⁸ The court reasoned that, “[i]t would be neither fair nor practical to permit the insertion of such titles or degrees with candidates’ names, much less the myriad appellations and items of descriptive matter that might logically follow and which election fever and ingenuity would undoubtedly generate.”¹⁷⁹

Similarly, in *Sooy v. Gill*, the Superior Court of New Jersey considered whether candidates could appear on the ballot with professional titles such as “Dr.” in front of their names.¹⁸⁰ The court held that professional titles would be permitted only when “required to protect the electorate from confusion, deceit, or deception.”¹⁸¹

While the opinions discussed above represent the majority view, courts have allowed information about a candidate’s occupation to appear on the ballot in situations where two candidates for the same office have similar names.¹⁸²

F. “Americanization”¹⁸³

In American society generally, “there is a long history of Anglicization of surnames to facilitate what we will euphemistically call the assimilation process.”¹⁸⁴ When it comes to elections, it is generally accepted that, other things being equal, candidates with “American-sounding” names do better than those with “foreign-sounding” names.¹⁸⁵ Thus, it is not surprising that candidates sometimes wish

178. *Id.*

179. *Id.* at 783–84.

180. 774 A.2d 635, 637 (N.J. Super. Ct. App. Div. 2001).

181. *Id.* at 641. It is clear from the context of the rule that the “confusion” the court is talking about is confusion between two candidates on the ballot with identical or very similar names. *Id.*

182. *See, e.g., Sullivan v. Hare*, 130 N.W.2d 392 (Mich. 1964) (requiring the Wayne County Election Commission to include the words “Former Assistant Attorney General” next to the name of Joe B. Sullivan, a candidate for Wayne County Prosecutor, in order to avoid voter confusion with another candidate for the same office, John L. Sullivan).

183. This section, and its use of the term “Americanization,” should not be read as endorsing the idea that some names are more American than others. Nevertheless, as the *New York Times* noted in 2010, many nineteenth- and twentieth-century immigrants to the United States believed that “adopting names that sounded more American might help immigrants speed assimilation, avoid detection, deter discrimination or just be better for the businesses they hoped to start in their new homeland.” Sam Roberts, *New Life in U.S. No Longer Means New Name*, N.Y. TIMES (Aug. 25, 2010), <https://www.nytimes.com/2010/08/26/nyregion/26names.html> [<https://perma.unl.edu/E2TY-TABG>]. There is some evidence that this practice has become less common in recent years as immigration has become a widely accepted part of American life. *See id.*

184. John Tehranian, *Changing Race: Fluidity, Immutability, and the Evolution of Equal-Protection Jurisprudence*, 22 U. PA. J. CONST. L. 1, 26 (2019).

185. *See* Jessica A. Levinson, Opinion, *Why Voters Shouldn’t Be Electing Judges*, L.A. TIMES (May 8, 2014, 5:31 PM), <http://www.latimes.com/opinion/op-ed/la-oe-levinson-end-judicial-elections-20140509-story.html> (“[T]here have been instances of

to run for office under “Americanized” versions of their names. This happened in 2003, when Russian immigrant Anatoly Eyzenberg sought to run for New York City Council under the name Tony Eisenberg.¹⁸⁶ Eyzenberg explained to the New York City Board of Elections that over the years he had come to be known as “Tony,” which is an American nickname for Anatoly.¹⁸⁷ However, he had apparently never spelled his surname “Eisenberg,” and he testified that he wished to run as Tony Eisenberg “in order to appear more American and to reduce the likelihood that he would be discriminated against by voters because of his Russian name.”¹⁸⁸

The board of elections declared Eyzenberg’s petition void.¹⁸⁹ “Absent a court order evidencing a name change from ‘Anatoly Eyzenberg’ to ‘Tony Eisenberg,’” the board found that Tony Eisenberg was “neither a registered nor an enrolled Democrat” and therefore could not run in the Democratic primary.¹⁹⁰ On Eyzenberg’s challenge to the board’s determination, the Supreme Court of New York, Kings County, noted that, in addition to the statutory procedure, individuals may change their names under the common law through consistent usage in the community. Nevertheless, the court agreed with the board: “[P]etitioner has failed to demonstrate that he has, in fact, effectuated a common-law name change. Consequently, the designating petition designating ‘Tony Eisenberg’ as a candidate for City Council in the 47th Council District is void.”¹⁹¹

Eyzenberg appealed. The Supreme Court of New York, Appellate Division affirmed the trial court’s order disqualifying Eyzenberg, but did so on the grounds that Eyzenberg did not satisfy residency and enrollment requirements.¹⁹² On the name change issue, the appellate court found that “under the circumstances of this case, there is no reason to disqualify the candidate for using the name ‘Tony Eisenberg’ in place of ‘Anatoly Eyzenberg.’”¹⁹³

qualified sitting judges with foreign-sounding last names being defeated by less-qualified or unqualified challengers with Anglo-Saxon-sounding names.”); Dara Lind, *Trump Delegates in Illinois with “Muslim-Sounding” Names Didn’t Do as Well as White Ones*, Vox (Mar. 16, 2016, 10:50 AM), <https://www.vox.com/2016/3/16/11244884/trump-delegates-muslim-fakroddin> (observing that Raja Sadiq and Nabi Fakroddin got many fewer votes than other Donald Trump delegates with European-sounding names).

186. *Eisenberg v. Strasser*, 768 N.Y.S.2d 773, 774 (N.Y. Sup. Ct. 2003), *aff’d*, 763 N.Y.S.2d 782 (N.Y. App. Div. 2003).

187. *Id.* at 775.

188. *Id.*

189. *Id.*

190. *Id.*

191. *Id.* at 777–78.

192. *Eisenberg v. Strasser*, 763 N.Y.S.2d 782 (N.Y. App. Div. 2003).

193. *Id.*

In *Palakunnathu v. Ferrara*, the petitioner, a candidate for city council in North Hempstead, New York, asked the board of elections to list him on the ballot under the name Mathew George.¹⁹⁴ The petitioner, a native of Nigeria, had used the name Mathew George from birth until some unspecified time when, as an adult, he made plans to take a teaching job in Kuwait.¹⁹⁵ Kuwait's laws required three names on a passport, and so the petitioner added "Palakunnathu" to his name.¹⁹⁶ The petitioner never went to Kuwait and instead moved to the United States.¹⁹⁷

There was conflicting evidence as to what name the petitioner had used since arriving in the U.S. He was known as "Mr. George" at the high school where he taught science.¹⁹⁸ A member of the petitioner's community testified that he knew the petitioner from church and from the political campaign as Mathew George.¹⁹⁹

On the other hand, the petitioner's signed letter to the election board stated that his full and correct name was Mathew George Palakunnathu.²⁰⁰ His pay was deposited into bank accounts bearing that name; his tax returns were filed in that name; his passport and driver's license were issued in that name; and when he became a U.S. citizen, he used that name as well.²⁰¹ Adding to the confusion, the petitioner had occasionally used the name George Mathew in addition to Mathew George.²⁰²

Relying on a 1940 state attorney general opinion, the court adopted the following rule: "A person may run for office using an assumed name if such name has been adopted in good faith and by continuous, general and exclusive use and has achieved recognition so that it identified the candidate to the electorate."²⁰³ The court found that the evidence failed to support a finding that the petitioner had effectively changed his name through continuous, general and exclusive use.²⁰⁴

G. Confusion with Another Person

Some candidates have tried to capitalize on similarities between their names and those of well-known candidates or politicians. In *State ex rel. Johnson v. Marsh*, Arthur Fred Johnson filed an application to run in the Republican primary for the office of auditor of public

194. No. 09/020250, slip op. at *1 (N.Y. Sup. Ct. Oct. 15, 2009).

195. *Id.* at *1-2.

196. *Id.*

197. *Id.* at *2.

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.* at *2, *4.

203. *Id.* at *2.

204. *Id.* at *3-4.

accounts under the name Fred Johnson.²⁰⁵ The Supreme Court of Nebraska found that Johnson “was not intending to be a good faith candidate for said office but to confuse his name with that of Fred H. Johnson, a good faith candidate who had already filed for the same office and who is affiliated with the same party.”²⁰⁶ The court refused to allow Arthur Fred Johnson to run as Fred Johnson: “[T]o permit this to be done would be to sanction a patent fraud upon the [Nebraska secretary of state], upon a good faith candidate, and particularly upon the electors who are entitled under the law to have their identification of candidates unobscured by trickery and fraud.”²⁰⁷ The *Johnson* court was vague as to the source of its authority, stating simply: “[W]e have the power to exclude from the list of candidates one who has so falsely misrepresented his name in the circumstances here found.”²⁰⁸

In *Planas v. Planas*,²⁰⁹ the District Court of Appeal of Florida affirmed the disqualification of one Juan E. Planas as a candidate for state representative. Planas sought to unseat an incumbent representative named Juan Carlos Planas, “long and widely known as ‘J.C.’ Planas.”²¹⁰ The challenger sought to run under the name “J.P. Planas,” a newly-adopted name he had never used to transact business.²¹¹ The court concluded that the challenger’s choice of name was “clearly intended to deceive and confuse voters with the incumbent.”²¹²

In 1979, Luther Devine Knox ran for Governor of Louisiana.²¹³ Shortly after qualifying to run, Knox legally changed his name to None-Of-The-Above and asked the secretary of state to place him on the ballot under his new name.²¹⁴ Louisiana’s attorney general, relying on a statute that prohibits candidates from using a “deceptive name,” issued an advisory opinion that changing Knox’s name on the ballot would violate Louisiana law.²¹⁵

Knox filed suit, asking the trial court to order the secretary of state to put his new name on the ballot.²¹⁶ The case was complicated somewhat by Knox’s admission that he was not a serious candidate for governor but rather a political activist seeking to arouse interest in the

205. 120 Neb. 297, 297–98, 232 N.W. 104, 104 (1930).

206. *Id.* at 299, 232 N.W. at 104.

207. *Id.*

208. *Id.*

209. 937 So. 2d 745 (Fla. Dist. Ct. App. 2006).

210. *Id.* at 746.

211. *Id.* at 745.

212. *Id.*

213. *None Of The Above v. Hardy*, 377 So. 2d 385, 386 (La. Ct. App. 1979).

214. *Id.*

215. *Id.* (citing LA. REV. STAT. ANN. § 18:463 (2020)).

216. *Id.*

Louisiana legislature's adoption of a "None Of The Above" ballot option.²¹⁷ The trial court denied Knox's request, and the Court of Appeal affirmed: "It is our considered opinion that None-Of-The-Above appearing on the ballot would be misleading and deceptive and therefore a violation of the statute."²¹⁸

In 2015, a thirty-three-year-old Texas law student filed paperwork to run for U.S. Representative in Texas's 15th Congressional District under the name Ruben Ramirez Hinojosa.²¹⁹ At the time, the district had been represented by a different Ruben Hinojosa since 1997; Representative Hinojosa was not seeking reelection.²²⁰ Party officials were understandably concerned that voters would mistake Ramirez Hinojosa for the retiring congressman.²²¹ Ramirez Hinojosa had run for the seat before, in 2012, under the name Ruben Ramon Ramirez.²²² Hinojosa was his mother's surname, and Ramirez his father's.²²³ Ramirez Hinojosa claimed he was not trying to confuse voters and that he was proud of his mother's surname, which he used interchangeably with Ramirez.²²⁴

After much back-and-forth with state party officials, the party decided that Ramirez Hinojosa would appear on the ballot as Ruben Ramirez.²²⁵ Ruben Ramirez finished fifth out of six candidates, drawing just six percent of the vote.²²⁶

III. EVALUATING JUDICIAL RESOLUTIONS OF CANDIDATE NAME CONTROVERSIES

The cases in Part II reflect a range of approaches to resolving candidate name controversies. This Part will consider the merits of those approaches using the following criteria:

- (i) whether the court applied the right legal standards in light of the relevant statutes and case law;
- (ii) whether the court reached the correct result under the legal standards it applied;

217. *Id.*

218. *Id.* at 387.

219. Jim Malewitz, *Democrats Force Congressional Candidate to Change Name on Ballot*, TEX. TR. (Dec. 24, 2015, 1:00 PM), <https://www.texastribune.org/2015/12/24/democrats-drop-hinojosa-house-candidates-ballot-li/> [<https://perma.unl.edu/W4FK-CDU2>].

220. *Id.*

221. *Id.*

222. *Id.*

223. *Id.*

224. *Id.*

225. *Id.*

226. *Texas Primary Results*, N.Y. TIMES (Sept. 29, 2016, 10:38 AM), <https://www.nytimes.com/elections/2016/results/primaries/texas> [<https://perma.unl.edu/VYC2-ZE2V>].

- (iii) whether the court's resolution of the particular controversy before it was just;
- (iv) whether the court's holding and reasoning could lead to unjust results in other situations; and
- (v) whether the case represents a prudent use of judicial resources.

With respect to female candidates' usage of maiden names and married names, courts have been remarkably restrictive. In the *McLaughlin* case from Ohio, the court prohibited a candidate for public office from using the name she was given at birth and had been known by for most of her life.²²⁷ The court did so even though what the candidate was trying to communicate to voters by running as Lynn Ann McLaughlin—that she has Irish heritage—was almost certainly true. The case involved no fraud or deception, and the candidate was not trying to pass herself off as something or someone she was not. Furthermore, it is extremely unlikely that a general rule allowing a candidate to run for office under the name she was given at birth, even if she later adopted a married name, would result in harm or injustice in other situations.

The *Oberholtzer* opinion from Illinois is also problematic, albeit for different reasons. First, the court's own reasoning does not support its conclusion. After determining that 10 Ill. Comp. Stat. 5/7-10.2 requires a candidate's surname to appear on the ballot, the court adopted *Black's Law Dictionary's* definition of surname: "The family name automatically bestowed at birth, acquired by marriage, or adopted by choice."²²⁸ In *Oberholtzer*, the candidate simply sought to run for office under the surname Jamieson, which was the family name automatically bestowed on her at birth.²²⁹ Because that is one of the three options in the dictionary definition the court adopted,²³⁰ the court should not have prevented her from doing so.

Second, the court's line of reasoning—at least in the court's own view—required it to delve into a detailed analysis of what surname the candidate had used at various times and in various contexts. Thus we learn that the candidate was admitted to the Illinois State Bar in November 1992 as Caroline Patricia Jamieson;²³¹ that she registered to vote as Caroline Golden;²³² that she currently serves as a school

227. *McLaughlin v. Cuyahoga Cty. Bd. of Elections*, 804 N.E.2d 1004, 1006 (Ohio Ct. App. 2004). When she filed her Declaration of Candidacy in December 2003, McLaughlin Murray had been married to Glenn Murray for just four years. *Id.*

228. *Oberholtzer v. Cook Cty. Officers Electoral Bd.*, No. 1-20-0218, 2020 Ill. App. Unpub. LEXIS 231, at *18 (quoting *Family names*, BLACK'S LAW DICTIONARY (11th ed. 2019)) (emphasis added).

229. *Id.* at *2.

230. *Id.* One could also argue that the name Jamieson was "adopted by choice" by the candidate for the purpose of the election. *Id.* at *25.

231. *Id.* at *2.

232. *Id.* at *3.

board trustee under the name Caroline Golden;²³³ and that at various times in 2019, the Illinois Attorney Registration and Disciplinary Commission website listed her “‘Full Licensed Name’ as ‘Caroline P. Golden’ and her ‘Full Former Name’ as ‘Caroline Patricia Jamieson.’”²³⁴ Such exhaustive inquiries into what name a person used when, and for what purpose, are not a good use of judicial resources, especially considering that the harm to be avoided, if any, by allowing someone like Golden to run for office as Jamieson is very minor.

A different problem plagues the Supreme Court of Louisiana’s opinion in *Wilty*: the lack of any statutory or case law supporting the outcome. As noted in Part II, the *Wilty* court relied on a provision in the Louisiana constitution requiring fairness in the enactment of legislation relating to party primaries, even though the case before the court did not involve any legislation.²³⁵ The court further reasoned that it was required to intervene when “there is a circumstance which confuses (or seriously tends to confuse) the voter as to the identity of the candidates.”²³⁶ This may well be true, and Part IV of this Article argues that preventing confusion between two candidates with similar names can sometimes justify court intervention. However, as the dissenting justice pointed out, *Wilty* simply was not a case where voters were likely to be confused.²³⁷ The court’s other justifications for its holding—that last names appear on the ballot in larger print than other names, and that the ballot is “extremely long . . . with numerous names thereon”²³⁸—reflect a majority grasping at straws to justify a result-oriented decision.

On the positive side, the *Deldoph* case from Arizona represents a reasonable result under the circumstances. In *Deldoph*, the candidate wished to appear on the ballot under the name “Cheuvront-McDermott, Jean.”²³⁹ Based on the language of the governing statute, the court felt compelled to adopt a bright-line rule that a candidate’s name must begin with her current legal surname and only that name.²⁴⁰ That surname can then be followed by some combination of given names, middle names, nicknames, and other surnames—in McDermott’s case, one given name and one former married name.²⁴¹ Thus,

233. *Id.*

234. *Id.*

235. *Wilty v. Jefferson Par. Democratic Exec. Comm.*, 157 So. 2d 718, 725 (La. 1963).

236. *Id.*

237. *Id.* at 728.

238. *Id.* at 725–26. These things were undoubtedly true. The ballot is “extremely long . . . with numerous names thereon” in many elections. *Id.* However, that is not a compelling reason to prohibit a candidate from appearing on the ballot under a certain name.

239. *Dedolph v. McDermott*, 281 P.3d 484, 485 (Ariz. 2012).

240. *Id.* at 487.

241. *Id.*

the candidate could appear as “McDermott, Jean Chevront” but not “Chevront-McDermott, Jean.”²⁴²

By holding that the name “Chevront” may appear after the candidate’s given name but absolutely cannot appear as her surname or any part of her surname, the court arguably elevated form above substance. But the approach adopted by the court is easy enough to apply and does not prevent candidates like McDermott from communicating to voters that she was previously known by another surname. As discussed in Part IV, the Arizona statute that the court applied in *Deldoph* is more restrictive than it should be, but the court’s application of that statute in *Deldoph* was just and sensible.

With respect to nicknames, there is a certain appeal to the “no nicknames” rule endorsed by the courts in *Persing* and *Lewis*. It relieves courts of the task of determining whether the candidate is “commonly known” by the nickname or whether the nickname conveys a political message to voters. However, such a blanket prohibition results in the denial of sincere requests by candidates like Russel Persing, Al Lewis, John Angst, and Manny Innamorato to appear on the ballot under names by which many potential voters knew them (or at least knew of them).

Of the two extremes—freely permitting nicknames or banning them—the former is less problematic. The system can tolerate the occasional wacky moniker so that well-intentioned candidates can use their nicknames on the ballot.

Moreover, nicknames are sometimes helpful in identifying candidates to voters. The New York court that decided *Lewis v. N.Y. State Board of Elections* refused to allow the plaintiff to appear on the ballot as “Grandpa Al Lewis” even though doing so would have made it easier for some voters—those familiar with the actor—to distinguish the candidate from the (presumably) many other Al Lewises living in New York.

As the Illinois case involving “Coach” Michael Mayden illustrates, determining where nicknames end and professional titles begin can be difficult.²⁴³ One obvious way around this problem is to simply allow both.

Regarding middle names, both the result reached and the rule adopted in *Fine v. Elections Board*²⁴⁴ are sensible. There is simply no harm in permitting a candidate named Ralph Adam Fine to appear under that name on the ballot. Fine’s case was straightforward because Adam had been his middle name since birth, and he had consistently used his full legal name in his public and private affairs.²⁴⁵ But

242. *Id.*

243. *Rita v. Mayden*, 847 N.E.2d 578 (Ill. App. Ct. 2006).

244. 289 N.W.2d 823 (Wis. 1980).

245. *Id.* at 823–24.

there is no basis for limiting the general rule adopted in *Fine*—that candidates may use their full legal names when running for public office—to candidates like *Fine*. Even candidates with no history of using their middle names, personally or professionally, should be allowed to use them as candidates for office. Middle names will occasionally be helpful in distinguishing between candidates with similar or identical surnames and given names, but their use should not be limited to those situations.

Furthermore, the rule allowing middle names can safely be extended beyond three names to candidates with four or more names. If one or more of those names is a maiden name, a married name, or a hyphenated name, the candidate should be allowed to use it or them. One could probably conceive of a scenario in which the use of a middle name would be unjust or create unnecessary confusion among voters, but such situations can be handled through a “catch all” exception for fraud and the like.²⁴⁶ Blanket prohibitions on the use of middle names, while appealing in their clarity, are unfair as applied to many types of candidates.

As for professional titles, the refusal by courts and legislatures to allow them on ballots is difficult to justify. As Christopher M. Childree has noted, “because titles often signify expertise or level of education, their use or the use of any other qualification-related identifier on the ballot logically provides a voter with more pertinent information about a candidate.”²⁴⁷ The fact that a candidate for coroner is a medical doctor—which is what Robert Rainey was trying to communicate to voters by adding the initials “M.D.” after his name in *State ex rel. Rainey v. Crowe*²⁴⁸—is a good example of the kind of “pertinent information” that professional titles can convey.

The *Rainey* court was undoubtedly correct that if candidates for coroner are permitted to include “M.D.” after their names, then many other candidates will seek to include professional titles, even in cases where those titles are not relevant to the offices the candidates are seeking. Line-drawing problems will inevitably arise: What counts as a professional title? Can a candidate include a degree conferred by an unaccredited institution? These problems can be dealt with and, in any event, are not serious enough to justify a blanket ban on professional titles. As Childree notes, a statute “can provide clearly defined stipulations to address what candidate information may or may not be included on the ballot.”²⁴⁹ As discussed in Part IV, courts can intervene as needed in cases of confusion, deception, or fraud.

246. See *infra* Part IV.

247. Christopher M. Childree, Comment, *Cueing Democracy: Replacing the Texas Election Code's Title Prohibition*, 46 ST. MARY'S L.J. 377, 383 (2015).

248. 382 S.W.2d 38 (Mo. Ct. App. 1964).

249. Childree, *supra* note 247, at 399.

With respect to Americanization, in *Palakunnathu*, the New York court clearly reached the right result based on the rule it adopted. The rule allowed “assumed names,” but only if the candidate could show “continuous, general and exclusive use” of the assumed name.²⁵⁰ The petitioner’s use of the name Mathew George was not “exclusive”; he had used the name Mathew George Palakunnathu as well.²⁵¹

At the same time, the *Palakunnathu* opinion shows the shortcomings of the rule the court adopted. First, the petitioner was prevented from running for office under the name he was given at birth and by which he was known at the school where he taught and in his community.²⁵² This result is at odds with the goal of allowing voters to identify the candidates on their ballots. Second, we once again see an example of a court being forced—or forcing itself—to conduct an exhaustive factual inquiry into what names a person used at various times in various contexts. This is not a good use of judicial resources, especially when there is little conceivable harm in simply allowing candidates like George to run for office under the name of their choosing.

Unlike nicknames, middle names, and Americanized names, names chosen to intentionally confuse or deceive voters are a serious, although rare, problem. In *State ex rel. Johnson v. Marsh*,²⁵³ Arthur Fred Johnson was quite clearly trying to deceive voters into thinking they were voting for Fred H. Johnson. Luther Knox’s case is somewhat different because he was not hoping voters would confuse him with someone else. However, his use of the “name” None-Of-The-Above was nevertheless deceptive because of the likelihood that most, and perhaps all, of the people voting for None-Of-The-Above would think that they were registering their displeasure with the other candidates on the ballot as opposed to what they were actually doing, which was voting for a specific person “named” None-Of-The-Above.²⁵⁴

The case of Juan E. Planas seeking to run as “J.P. Planas” is trickier.²⁵⁵ On the one hand, there is a high probability that some voters

250. *In re Palakunnathu v. Ferrara*, No. 09/020250, slip op. at *3–4 (N.Y. Sup. Ct. Oct. 15, 2009).

251. *Id.* at *3.

252. *Id.* at *2.

253. 120 Neb. 297, 232 N.W. 104 (1930).

254. *None Of The Above v. Hardy*, 377 So. 2d 385 (La. Ct. App. 1979). Had Knox been permitted to appear on the ballot as None Of The Above, he might have drawn some support. Nevada gives voters the option of choosing “None of These Candidates,” which usually garners 2% to 4% of the vote in elections for governor. None of These Candidates got 4.7% of the vote in Nevada’s 2002 gubernatorial election. See Nate Silver, *In Nevada, No One Is Someone to Watch*, N.Y. TIMES (Aug. 27, 2010, 4:22 PM), <https://fivethirtyeight.blogs.nytimes.com/2010/08/27/in-nevada-no-one-is-someone-to-watch/?searchResultPosition=1> [https://perma.unl.edu/45WU-MCSB].

255. *Planas v. Planas*, 937 So. 2d 745 (Fla. Dist. Ct. App. 2006).

would be confused between the challenger, J.P. Planas, and the incumbent, J.C. Planas. On the other hand, much of that confusion is the inevitable result of both candidates being named Juan Planas.

These confusion cases are also unique in that they may occasionally justify some judicial inquiry into what name a candidate is commonly known by. If Arthur Fred Johnson could show that he was commonly known by his middle name, then perhaps he should have been allowed to run as Fred Johnson, or at least A. Fred Johnson. Similarly, the *Planas* case may have come out differently had Juan E. Planas been able to show consistent use of the name J.P.

The case of Ruben Ramirez Hinojosa presents the best argument for court intervention, although it appears that Ramirez Hinojosa decided not to sue.²⁵⁶ Ramirez Hinojosa was almost certainly not the favored candidate of the Texas Democratic establishment: he was a thirty-three-year-old law student running against a former county party chairwoman, a former mayor and county commissioner, and two local attorneys.²⁵⁷ Party officials made Ramirez Hinojosa “jump through several hoops on short notice to verify the authenticity of his name.”²⁵⁸ A court, presumably with no dog in the fight to replace retiring Representative Ruben Hinojosa, may well have allowed Ramirez Hinojosa to use the surname Hinojosa, especially if he could show prior consistent use of that name.

IV. BEST PRACTICES FOR REGULATING CANDIDATE NAMES

As the cases discussed in Parts II and III make clear, “[i]dentifying a candidate’s name is not a simple mechanical exercise.”²⁵⁹ Statutes, court opinions, and other governmental pronouncements in this realm should thus acknowledge that “a person’s name is not as simple as a formal or legally recognized name.”²⁶⁰

Generally speaking, election boards, courts, and other government actors should respect candidates’ preferences for how their names appear on the ballot. As Professor Muller points out, “displaying a candidate’s preferred name on the ballot—perhaps the name she has campaigned under—enables voters to associate more effectively with a candidate by helping voters identify their desired choice more easily.”²⁶¹

256. Malewitz, *supra* note 219 (“Ramirez said he believes he has legal grounds to challenge the party’s decision, but he doesn’t plan to do so.”).

257. *Id.*

258. *Id.*

259. Muller, *supra* note 22, at 702.

260. *Id.*

261. *Id.* at 740.

Most states recognize the common-law right of any person to change his or her name.²⁶² The states also recognize that “the right to be a candidate for public office is a valuable one” and should not be denied in a particular case unless the candidate is ineligible under an applicable, valid law.²⁶³ But this does not mean that a candidate has an absolute right to run for office under any name he or she chooses. The Supreme Court has acknowledged that “[s]tates may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.”²⁶⁴ With respect to candidate names, the question is one of line-drawing: what name choices are so deceptive, confusing, or otherwise problematic that some government entity must step in and prevent the name from appearing on the ballot?

As discussed in Parts II and III, courts have generally been restrictive in their approaches to candidate names. State legislatures have as well. Consider, for example, Minnesota’s statute on Preparation of Ballots: “The name of a candidate shall not appear on a ballot in any way that gives the candidate an advantage over an opponent, including words descriptive of the candidate’s occupation, qualifications, principles, or opinions, except as otherwise provided by law.”²⁶⁵ This statute would make sense in a world where voters choose candidates based solely on their qualifications and platforms, and where names appear on ballots only to identify the candidates. But we know this is not true. Names give candidates “an advantage over an opponent” all the time. As discussed throughout this Article, in many jurisdictions it is advantageous to have a name suggestive of a certain ethnic background. It is likely advantageous to have a name that is similar or identical to that of a popular politician who is well-known in the jurisdiction.²⁶⁶ Names with positive connotations—Best, Strong, Gold, and so on—are probably advantageous as well.

Moreover, the “advantage over an opponent” standard is hopelessly vague and nearly impossible for courts and election boards to apply. It could lead to absurd results, such as one candidate being allowed to use both her married and maiden names while another identically situated candidate is prohibited from using her maiden name because the court considered it “advantageous.”

262. See, e.g., *Burke v. Hammonds*, 586 S.W.2d 307, 308 (Ky. Ct. App. 1979); *Huff v. State Election Bd.*, 32 P.2d 920, 920 (Okla. 1934).

263. *Treiman v. Malmquist*, 342 So. 2d 972, 975 (Fla. 1977).

264. *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 358 (1997).

265. MINN. STAT. ANN. § 204B.35(2) (West 2020).

266. Merely having a name that is similar or identical to that of any beloved public figure, politician or not, is likely an advantage, as illustrated by the cases of Gene Kelly and Cesar Chavez (a.k.a. Scott Fistler). See *infra* notes 272–75 and 310–13, and accompanying text.

While this Article advocates a permissive approach to candidate names, there are still situations in which some government actor—election officials or courts—must step in and prohibit a candidate from appearing on the ballot under a certain name. In December 1998, a twenty-one-year-old Chicago woman filed to run for city alderman under the name Carol Moseley-Braun.²⁶⁷ Not coincidentally, Carol Moseley-Braun was also the name of a well-known Chicago politician who at the time was a United States Senator.²⁶⁸ The young alderman candidate was born Lauryn Kaye Valentine.²⁶⁹ She changed her name to Carol Moseley-Braun just three months before declaring her candidacy for alderman, stating at the time that Senator Moseley-Braun was one of her heroes.²⁷⁰ In January 1999, the Chicago Board of Elections Commission removed the name Carol Moseley-Braun from the ballot.²⁷¹

In 2013, an Arizona man named Scott Fistler changed his name to Cesar Chavez.²⁷² The next year, he announced a run for Congress in Arizona's heavily Hispanic Seventh Congressional District.²⁷³ "Chavez" had unsuccessfully run for office twice as Fistler.²⁷⁴ Alas, Chavez/Fistler was eventually thrown off the Democratic primary ballot due to invalid petition signatures.²⁷⁵

While Valentine and Fistler deserve some credit for creativity, their name changes and subsequent candidacies represented transparent attempts to deceive voters,²⁷⁶ and in Valentine's case, the

267. B. Drummond Ayres, Jr., *Political Briefing: What's in a Name? Ask Moseley-Braun*, N.Y. TIMES (Jan. 12, 1999), <https://www.nytimes.com/1999/01/12/us/political-briefing-what-s-in-a-name-ask-moseley-braun.html> [<https://perma.unl.edu/S7TF-QW8G>].

268. *Oral History Project: Women of the Senate, Carol Moseley Braun*, U.S. SENATE, https://www.senate.gov/artandhistory/history/oral_history/MoseleyBraun-Carol.htm [<https://perma.unl.edu/8XGA-F5YJ>] (last visited Feb. 20, 2020).

269. Ayres, *supra* note 267.

270. *Id.*

271. *Moseley-Braun Is Defeated Again*, L.A. TIMES (Jan. 20, 1999, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1999-jan-20-mn-65470-story.html> [<https://perma.unl.edu/M77V-QHRF>].

272. Maya Rhodan, *The Cesar Chavez Running for Congress in Arizona Isn't the One You've Heard Of*, TIME (June 2, 2014, 7:55 PM), <https://time.com/2815739/the-cesar-chavez-running-for-congress-in-arizona-isnt-the-one-youve-heard-of/> [<https://perma.unl.edu/ZGV2-HD8B>].

273. *Id.*

274. *Id.*

275. *'Cesar Chavez' Thrown Off Arizona Congressional Ballot*, NBC NEWS (June 17, 2014, 10:57 PM), <https://www.nbcnews.com/news/us-news/cesar-chavez-thrown-arizona-congressional-ballot-n134276> [<https://perma.unl.edu/E4EP-2HJX>].

276. Valentine's case is straightforward, but the deception is harder to pinpoint in Fistler's case. The famed union organizer Cesar Chavez died in 1993, so it is unlikely that voters in Arizona actually thought he was running for Congress in 2014. Nevertheless, adopting the name of a beloved public figure in an effort to

Board of Elections Commission was right to remove her from the ballot.²⁷⁷

What is needed, then, is a rule that strikes a reasonable balance between respecting candidates' choices of how their names appear on the ballot and protecting voters from deception. The District Court of Appeal of Florida was on the right track in *Jordan v. Robinson*, discussed in section II.A. In *Jordan*, the court found that a candidate's use of his birth name instead of his current legal surname was "not the type of fraudulent, criminal, or wrongful purpose that would invalidate his choice."²⁷⁸ The court's word choices in *Jordan* are questionable: it is difficult to imagine how a candidate's choice of name could be "criminal," and "wrongful" is a bit vague. But assuming that "wrongful" simply refers to some kind of deception or bad faith, then the rule adopted in *Jordan* is sensible and would result in deference to the candidate's name choice in most cases. Similarly in *State ex rel. Morrison v. Franklin County Board of Elections*, discussed in section II.B, dissenting Justice Holmes argued that Fred Morrison should have been allowed to run for state senator under the name Fred "Curly" Morrison because there was no misrepresentation, fraud, or bad faith in Morrison's use of the nickname "Curly."²⁷⁹

From *Jordan* and *Morrison* we can derive at least the beginnings of a just and workable rule: candidates should be allowed to appear on the ballot under whatever name they want absent evidence of deception, fraud, or bad faith.

In addition to preventing deception, fraud, and bad faith, there may be instances where government actors should step in to prevent voter confusion. The Supreme Court has recognized that states have a compelling interest in "avoid[ing] undue voter confusion."²⁸⁰ Anticipating voter confusion between candidates with similar names, Michigan enacted a statute that states:

If . . . 2 or more candidates nominated . . . for the same office . . . have the same or similar surnames, a candidate may file a written request with the board of county election commissioners for a clarifying designation. . . .

benefit electorally from voters' warm feelings toward that person is the kind of bad faith that courts and election boards should intervene to prevent.

277. See Muller, *supra* note 22, at 747 ("[P]reventing deception . . . remains a reasonable goal.").

278. *Jordan v. Robinson*, 39 So. 3d 416, 418 (Fla. Dist. Ct. App. 2010).

279. *State ex rel. Morrison v. Franklin Cty. Bd. of Elections*, 410 N.E.2d 764, 766 (Ohio 1980); see also *Innamorato v. Friscia*, No. 80042/07, 2007 N.Y. Misc. LEXIS 457, at *4 (N.Y. Sup. Ct. Feb. 5, 2007) (granting Emanuele Innamorato's request to use the name "Manny" instead of Emanuele because, "[u]nlike cases where a clear intent to defraud the electorate is discerned, such factors are clearly not present in the instant case").

280. *Am. Party of Tex. v. White*, 415 U.S. 767, 782 (1974).

... [I]n the case of the same surname or of a final determination by the board or by the court . . . of the existence of similarity, the board shall print the occupation, date of birth, or residence of each of the candidates²⁸¹

This statute is curious in some respects: it seems unlikely that knowing two candidates' "residences"²⁸² and dates of birth would really help the average voter distinguish between them.²⁸³ But the overall idea—that in elections where competing candidates have similar or identical names, candidates should be allowed to include "clarifying" information—is sound.

Applying this statute, the Court of Appeals of Michigan allowed two judicial candidates named Arthur J. Koscinski and John R. Murphy to appear on the ballot with the designation "former judge of the recorder's court" to distinguish them from candidates named Raymond A. Kosinski and J.J. Murphy, respectively.²⁸⁴ Similarly, the Michigan Supreme Court has interpreted the statute as authorizing the inclusion of a candidate's *former* occupation in cases of two candidates with similar names, allowing Joe B. Sullivan to appear on the ballot with the designation "Former Assistant Attorney General" in his campaign for Wayne County Prosecutor against John L. Sullivan.²⁸⁵

In the 1996 U.S. Senate election in Virginia, the two candidates were John W. Warner, the Republican incumbent, and Mark R. Warner, the Democratic challenger.²⁸⁶ It is certainly possible that some voters were confused as to which Warner was which, especially since Virginia ballots do not include the candidates' political par-

281. MICH. COMP. LAWS ANN. § 168.696(2)–(3) (West 2020). Other states have similar statutes. *See, e.g.*, GA. CODE ANN. § 21-2-325.1 (West 2020) ("If two or more candidates for the same nomination or office shall have the same or similar names, the Secretary of State . . . shall print or cause to be printed the residence address of all candidates for such nomination or office on the ballot labels under their names."); MINN. STAT. ANN. § 204B.38 (West 2020) ("When the similarity of both the first and last names of two or more candidates for the same office at the same election may cause confusion to voters, up to three additional words may be printed on the ballot after each surname to indicate the candidate's occupation, office, residence or any combination of them").

282. Presumably this means the address, or perhaps the city of residence for a statewide or county-wide election.

283. *Sullivan v. Hare*, 130 N.W.2d 392, 394 (Mich. 1964) ("[D]esignating the 2 candidates named Sullivan only by their respective residence addresses in a large metropolitan area like Wayne county was next to meaningless for the purpose of identifying them to an electorate, to the vast majority of whom they personally were unknown.").

284. *Evans v. City of Detroit Election Comm'n*, 166 N.W.2d 467 (Mich. Ct. App. 1968).

285. *Sullivan*, 130 N.W.2d at 399.

286. Mike Allen, *POLITICS: THE SENATE; It's One Seat, One Name, Two Candidates in Race*, N.Y. TIMES (June 23, 1996), <http://www.nytimes.com/1996/06/23/us/politics-the-senate-it-s-one-seat-one-name-two-candidates-in-race.html> [<https://perma.unl.edu/M7MP-L54V>].

ties.²⁸⁷ However, by 1996, John Warner had already served in the Senate for eighteen years and presumably was well-known to Virginia voters.²⁸⁸ Virginia could have chosen to include the word “incumbent” next to John Warner’s name and something like “businessman” for Mark Warner, but that probably was not necessary under the circumstances.

Overall, while courts or other government actors should not hesitate to intervene in cases of deception, fraud, or bad faith, they should tread lightly when it comes to potential voter confusion and intervene only when such confusion is easily avoidable.

We arrive, then, at the following rule: candidates should be allowed to appear on the ballot under whatever name they want unless the candidate is engaged in deception, fraud, or bad faith, or the chosen name would result in unnecessary voter confusion. This rule has several advantages. First, it yields clear results in most cases. Applying this rule to some of the cases discussed in Part II, most of those candidates would have been allowed to run for office under the names they wished to use:

- Married women like Lynn McLaughlin Murray, Caroline Golden, Laura Verret Wilty, Mardi Levey Cohen, and Lois Jean McDermott should have been permitted to appear on the ballot under their maiden names, their married names, or any combination of the two. In addition, candidates who have changed their names for other reasons, like Jordan Howard Jordan, should be free to use their former names when running for office. This is true regardless of which name, or names, they are commonly known by and which names they have used personally or professionally in the past. Such candidates should even be free to choose which surname, or combination thereof, is most advantageous electorally. In doing so, they generally do not risk any confusion with another candidate nor are they engaging in deception, fraud, or bad faith.
- Similarly, there is nothing wrong with candidates using their middle name, either instead of or in addition to their first name, regardless of whether they have used that name in their personal or professional affairs prior to the election.
- Nicknames, even those that convey a political message to voters, should generally be allowed. There is admittedly something distasteful about allowing names like “Les (Cut the Taxes) Golden” and Shelvie “Prolife” Rettmann on the ballot. Some candidates will undoubtedly take advantage of a system that freely allows nicknames by including messages about their

287. *Id.*

288. *Id.*

platforms as part of their names. But the reality is that, as discussed throughout this Article, candidates' names convey political messages to voters all the time. Moreover, nearly everyone accepts that party affiliations may appear on ballots next to candidates' names, despite conveying a political message to voters. Until there is evidence of a widespread problem of candidates like Golden and Rettmann—or candidates with more colorful nicknames like Chief Wana Dubie,²⁸⁹ Vermin Supreme,²⁹⁰ and Deez Nuts²⁹¹—winning elections on the basis of their chosen nicknames, the best approach is to freely permit nicknames and trust voters not to reward unserious candidates or ones who game the system.

- Diminutive name forms should be freely permitted as well.
- Professional titles and degrees should be permitted. This is fairly obvious in cases like *Rainey v. Crowe*, where the candidate's degree, an M.D., was potentially relevant to the office he was seeking, city coroner. But titles and degrees should also be allowed when the connection between the title or degree and the office being sought is less clear. Such was the case in *Sooy v. Gill*, which involved a podiatrist running for board of education and a man with a Ph.D. running for the office of freeholder.²⁹² This is one area in which courts, election boards, and secretaries of state may occasionally need to intervene to prevent fraud or deception in a candidate's presentation of his or her titles or degrees.
- Americanization of names should be freely permitted, and candidates should not have to show that they have used that particular version of their name in the past.

Second, the rule that candidates should be allowed to appear on the ballot under whatever name they want unless doing so would result in unnecessary confusion between two candidates or some kind of deception, fraud, or bad faith will require less judicial intervention than we have seen under more restrictive rules. People will no longer seek judicial relief whenever they think someone is benefitting from running for office under a certain name. The rule recognizes that candidates benefit from the choices they make in this area—just as candidates commonly benefit from the names they were given at birth—and

289. See O'Brien, *supra* note 113.

290. Lucy Diavolo, *Vermin Supreme, the "Elder Statesman of Wingnuts," Says His 2020 Presidential Campaign Is For Real*, TEEN VOGUE (Feb. 5, 2020), <https://www.teenvogue.com/story/vermin-supreme-2020-presidential-campaign-libertarian-party-for-real> [https://perma.unl.edu/LCP3-AHCT].

291. Rebecca Kaplan, *Meet Presidential Candidate Deez Nuts*, CBS NEWS (Aug. 20, 2015, 4:25 PM), <https://www.cbsnews.com/news/meet-presidential-candidate-deez-nuts/> [https://perma.unl.edu/R7GU-SXY6].

292. 774 A.2d 635, 637 (N.J. Super. Ct. App. Div. 2001).

that is generally fine. Furthermore, when courts do intervene, their inquiry will be straightforward and limited. Courts will not have to figure out whether a person is “commonly known” by the name under which he or she wishes to run for office, whether the candidate is using a particular name to obtain an advantage or avoid an unfavorable result, or whether a nickname that a candidate wishes to use conveys a political message. These kinds of inquiries are not a good use of judicial resources. Recall that in *Angst v. Walker*, the court had to review “some 56 exhibits, which include[d] more than 100 individual documents” to determine whether John W. Angst had “continuously and routinely” used the name “Bud” in his business and social affairs.²⁹³

Third, compared with the much more restrictive rules used by courts in the past, the rule proposed here makes it easier for candidates from certain historically marginalized groups to successfully run for office. It removes a barrier to women running for office.²⁹⁴ It also enables people with names that are uncommon or not “American-sounding” to compete on a more level playing field with candidates who have more common names. This is particularly important because many candidates or potential candidates with uncommon names are members of minority groups from which very few people have been elected to public office.²⁹⁵

293. 42 Pa. D. & C.2d 492, 496 (Ct. Com. Pl. 1967).

294. The specific barrier is the possibility that a court or election board will reject a female candidate’s name choice—married name, maiden name, or both. With same-sex marriage now legal, this may become an issue for male candidates as well. Another interesting question—one that is beyond the scope of this Article—is whether simply having a female-sounding name is an advantage or disadvantage. There is some evidence that female candidates outperform their male counterparts in judicial elections. See Klumpp, *supra* note 17, at 837 (finding that candidates with female names had a 14.7% advantage over other candidates).

295. See Zoltan Hajnal & Jessica Trounstein, *Transforming Votes into Victories: Turnout, Institutional Context, and Minority Representation in Local Politics*, in VOTING RIGHTS ACT REAUTHORIZATION OF 2006: PERSPECTIVES ON DEMOCRACY, PARTICIPATION, AND POWER 83, 84 (Ana Henderson ed., 2007) (“The underlying truth is that four decades after the Voting Rights Act became law, racial and ethnic minorities remain greatly underrepresented in American democracy.”); Elisabeth R. Gerber et al., *Minority Representation in Multimember Districts*, 92 AM. POL. SCI. REV. 127, 127 (1998) (“[T]he number of minorities elected to federal, state, and local legislatures remains far lower than the minority portion of the population might warrant.”); Summer Ballentine, *Analysis: 10 States Still Haven’t Elected Minority Statewide*, AP News (Sept. 3, 2016), <https://apnews.com/6d70082a5f854109aee7874e915c6631/analysis-10-states-still-havent-elected-minority-statewide> [<https://perma.unl.edu/PFD4-U7NF>] (noting that, as of 2016, ten states had not elected minorities to non-judicial statewide positions or as a presidential candidate since Reconstruction, and before Barack Obama ran for President, there were six other states on that list); David A. Lieb, *Divided America: Minorities Missing in Many Legislatures*, AP News (June 15, 2016), <https://apnews.com/4c6c0cf4d1aa4c8eba374876b8a24533/divided-america-minorities-missing-many-legislatures> [<https://perma.unl.edu/UN2G-JWGR>] (“While minorities have made some political gains in recent decades, they remain signifi-

There will always be some gray-area cases. For example, suppose Laura Verret Wilty wished to run for office under the name Mrs. Vernon J. Wilty, Jr. *after* her divorce from her husband was finalized and after she had legally changed her name back to Laura Verret. Or what if, instead of running for office under the name Tony Eisenberg, Anatoly Eyzenberg sought to run as Tony Cuomo? (Cuomo is the surname of two of the last five governors of New York.)²⁹⁶ The latter case probably crosses the line into deception and should not be allowed. Ms. Wilty's situation is more challenging. She would be running for office as someone that she is not: the wife of Vernon Wilty. On the other hand, it is likely that that name "Mrs. Vernon J. Wilty, Jr.," while no longer the candidate's legal name, provides voters with enough information to know who the candidate is, thereby eliminating the risk of any fraud or deception.

The permissive approach advocated here may lead to uncomfortable results in some cases. In 2019, a New York attorney named Caroline Helen Julia Piela changed her last name to Caroline Cohen just weeks before announcing her candidacy for Civil Court Judge.²⁹⁷ Cohen was the candidate's husband's surname.²⁹⁸ According to the *New York Post*, "Cohen aggressively advertised in Brooklyn's Jewish press, with one ad featuring the name 'Cohen' in jumbo-sized capital letters, just above the Old Testament expression 'Tzedek Tzedek Tirdof—Hebrew for 'justice, justice, shalt thou follow.'"²⁹⁹ After Piela/Cohen defeated Tehilah Berman in the Democratic primary, Berman accused

cantly underrepresented in Congress and nearly every state legislature . . ."); Margaret Morales, *How to Improve Underrepresentation of Elected Officials of Color in the U.S.*, SIGHTLINE INST. (June 6, 2018, 6:30 AM), <https://www.sightline.org/2018/06/06/how-to-improve-underrepresentation-of-elected-officials-of-color-in-the-us/> [<https://perma.unl.edu/PZY3-VU79>] (stating that there is an "all-too-common fixture of the United States: the underrepresentation of people of color in elected bodies"); Dominique Mosbergen, *The Diversity Gap in American Politics Will Shock You (INFOGRAPHIC)*, HUFF POST (Oct. 24, 2013, 6:16 PM), https://www.huffpost.com/entry/diversity-gap-politics_n_4159068?guc-counter=1 [<https://perma.unl.edu/H8R8-ZVEX>] (showing that as of 2013, the U.S. House of Representatives was 79% white and the Senate 93% white); Grace Sparks, *There Has Been Very, Very Little Diversity Among U.S. Governors*, CNN (May 23, 2018, 3:18 PM), <https://www.cnn.com/2018/05/23/politics/racial-diversity-governors/index.html> [<https://perma.unl.edu/EKR9-ZYKB>] (noting that there have been very few elected governors of color in the entire history of the United States).

296. *Public Papers of New York State Governors*, N.Y. ST. LIBR., <http://www.nysl.nysed.gov/scandocs/nysgovernors.htm> [<https://perma.unl.edu/8LLF-T4LQ>] (last visited May 22, 2020).

297. Jon Levine, *'It Is Deception': Brooklyn Court Candidate Slams Victor Who Switched to Jewish Surname*, N.Y. POST (June 29, 2019, 8:04 PM), <https://nypost.com/2019/06/29/it-is-deception-brooklyn-court-candidate-slams-victor-who-switched-to-jewish-surname> [<https://perma.unl.edu/8CLT-RXED>].

298. *Id.*

299. *Id.*

Piela/Cohen of “deception.”³⁰⁰ While Piela/Cohen characterized the name change as an “administrative concern,” the facts suggest a more strategic motivation. Nevertheless, this is not the type of deception that courts should intervene to prevent, especially since Piela/Cohen was simply adopting her husband’s surname, however belatedly.

Under the permissive approach proposed here, a candidate would also be allowed to run for office under a name like “Shelvie ProLife Rettmann.” Doing so involves no fraud whatsoever. There is arguably some deception involved, to the extent that some voters may believe “ProLife” is actually part of the candidate’s legal name. But that is not the type of deception courts and legislatures should be concerned about, since Rettmann was not trying to deceive voters into thinking they were voting for someone else. Allowing the occasional candidate like Shelvie “ProLife” Rettmann to appear on the ballot is preferable to messy judicial inquiries into whether the candidate is commonly known by the nickname, whether the nickname conveys a political message, or whether the nickname gives the candidate an advantage over opponent(s).

In the end, we must recognize that elections will never be perfectly fair. States should acknowledge that there is no way to prevent candidates from winning elections based on their names, as opposed to their platforms or qualifications.

Moreover, sometimes people are just lucky. Duncan Hunter (R-CA) served in the U.S. House of Representatives from 1981 to 2009.³⁰¹ After he announced that he would not seek reelection in 2008, his son, also named Duncan Hunter, announced his candidacy for the seat.³⁰² While the younger Mr. Hunter has a different middle name than his father, he does not use his middle name or initial, nor has he ever used “Jr.” in his name.³⁰³ Appearing on the ballot as “Duncan Hunter,” he won the Republican primary with 72% of the vote,³⁰⁴ and went on to win the general election, 56% to 39%.³⁰⁵ He changed districts in 2012 and ultimately served six terms in Congress. The

300. *Id.*

301. HUNTER, *Duncan Lee*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=H000981> [<https://perma.unl.edu/UKA8-Z6NA>] (last visited Oct. 28, 2020).

302. Rachel Kapochunas, *No Lonely Hunters in Race for Veteran California Congressman’s Open Seat*, N.Y. TIMES (Mar. 21, 2007), https://archive.nytimes.com/www.nytimes.com/cq/2007/03/21/cq_2446.html?module=inline [<https://perma.unl.edu/5MXE-SJVM>].

303. *Id.*

304. CAL. SEC’Y OF STATE, STATEMENT OF VOTE 14 (2013), <https://web.archive.org/web/20131226103613/http://www.sos.ca.gov/elections/sov/2008-statewide-direct-primary/complete-sov.pdf> [<https://perma.unl.edu/8EJ5-5BDY>] (last visited May 22, 2020).

305. LORRAINE C. MILLER, CLERK OF H.R., 111TH CONG., STATISTICS OF THE PRESIDENTIAL AND CONGRESSIONAL ELECTION OF NOVEMBER 4, 2008, at 7 (July 10, 2009),

younger Representative Hunter resigned from the House of Representatives in January 2020 after pleading guilty to one count of conspiracy to misuse campaign funds.³⁰⁶ While it is unlikely that the younger Representative Hunter was elected to Congress entirely on his own merits, nobody would seriously argue that he should have been prevented from running under his own name.

When a candidate chooses a name for its perceived electoral advantages or seeks to capitalize on his or her legal name, there are better solutions than striking the candidate's name from the ballot. For one thing, the candidate's opponent can fight back. In 2018, Robert Francis O'Rourke ran for U.S. Senate under the nickname "Beto."³⁰⁷ His opponent, incumbent Senator Ted Cruz (R-TX), had no legal recourse because Texas law specifically permits nicknames on ballots.³⁰⁸ Instead, Cruz's campaign used O'Rourke's nickname to portray him as inauthentic. Cruz ran a radio advertisement that included the lines, "I remember reading stories, liberal Robert wanted to fit in. So he changed his name to Beto and hid it with a grin."³⁰⁹

In 2006, Barbara Ann Radnofsky sought the Democratic nomination for the U.S. Senate seat occupied by Kay Bailey Hutchison (R-TX).³¹⁰ Before she could square off against Hutchison, Radnofsky had to defeat a candidate named Gene Kelly in the Democratic primary.³¹¹ Kelly was a perennial candidate who had frustrated Democrats by winning several primaries over the years.³¹² Radnofsky adopted the slogan "The Dancer's Dead" and defeated Kelly in a runoff before eventually losing to Hutchison.³¹³ Gene Kelly was the candidate's real name, so there was no basis for challenging his ability to appear on the ballot under that name. Nevertheless, the Radnofsky and Kelly primary shows how a candidate can make it more difficult for opponents to capitalize on an appealing name.

https://clerk.house.gov/member_info/electionInfo/2008election.pdf [<https://perma.unl.edu/5Q7N-8B7X>].

306. Sarah D. Wire & Seema Mehta, *Prosecutors Expect to Seek At Least a Year in Prison for Rep. Duncan Hunter After Guilty Plea*, L.A. TIMES (Dec. 3, 2019, 5:03 PM), <https://www.latimes.com/politics/story/2019-12-03/la-na-pol-duncan-hunter-to-resign>.

307. Tara Golshan, *The Raging Controversy over Beto O'Rourke's Full Name, Explained*, VOX (Mar. 8, 2018, 12:24 PM), <https://www.vox.com/policy-and-politics/2018/3/7/17091094/beto-orourke-full-name-ted-cruz-controversy>.

308. TEX. ELEC. CODE ANN. § 52.031 (West 2019).

309. Golshan, *supra* note 307.

310. Ryan J. Rusak, *Beto Back on the Ballot? How Candidates Are Playing Nickname Game in Texas Primaries*, FORT WORTH STAR-TELEGRAM (Jan. 17, 2020, 12:45 PM), <https://www.star-telegram.com/opinion/ryanjrusak/article239382353.html>.

311. *Id.*

312. *Id.*

313. *Id.*

Of course, the strategy of using a political opponent's name against him or her only works if voters are paying attention. Ted Cruz and Barbara Ann Radnofsky were running in statewide elections for a very high office, United States Senator. But candidates in down-ballot races are not powerless against opponents with advantageous names. In 2017, a California lawyer named Mike Cummins changed his name to Judge Mike Cummins.³¹⁴ In 2020, Cummins ran for Superior Court Judge in Los Angeles, California.³¹⁵ Cummins had been a judge from 1994 to 2006 but was not a judge at the time of the 2020 election.³¹⁶ He claimed he changed his name so voters would know he had judicial experience.³¹⁷ Cummins's opponent, Deputy District Attorney Emily Cole, said the name gave Cummins "the appearance of incumbency."³¹⁸

Cole ran a vigorous campaign, attending "all the clubs, bar associations, [and] voter events."³¹⁹ She received a boost when Cummins was rated "not qualified" by the Los Angeles County Bar Association's Judicial Elections Evaluation Committee.³²⁰ In the end, Cole won the election, and Cummins received just 16.76% of the vote.³²¹

Candidates facing name-related challenges sometimes have to get creative. In 1983, two candidates for Northumberland County Supervisor in Virginia were both named William Hudnall, one with the middle initial A and the other with the middle initial B.³²² William A. Hudnall used the campaign slogan, "Have a good day—vote for William A.," while his opponent used "Vote for William B.—because B is better."³²³

Furthermore, while this Article has focused on the candidates thus far, it is important to remember the important roles and obligations of the news media that cover political campaigns and the voters themselves. The challenger in *Planas v. Planas* was clearly trying to capitalize on the similarity of his name to the incumbent's name, and that is a problem. However, the solution is not for a court to determine whether the challenger is "commonly known" as J.P. Planas and, if not, order that the ballot be changed. Instead, the news media cover-

314. Alaina Lancaster, *Superior Court Candidate Who Changed Name to 'Judge' Not Likely to Win Seat*, LAW.COM (Mar. 4, 2020, 8:26 PM), <https://www.law.com/therecorder/2020/03/04/superior-court-candidate-who-changed-name-to-judge-not-likely-to-win-seat/> [https://perma.unl.edu/9H66-TZE3].

315. *Id.*

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. Allen, *supra* note 286.

323. *Id.*

ing the race should gather the relevant facts and present them to the voters, who can then make up their own minds.

As for the voters, the unfortunate reality is that they are not very well informed.³²⁴ As noted in Part I, instead of educating themselves about the candidates and issues, “voters use informational shortcuts— heuristic cues—to aid them in their decision making.”³²⁵

While voters generally pay little attention to issues and candidates, especially in down-ballot races, there is evidence that voters do pay attention to scandals, and that “politicians involved in scandals are punished at the polls.”³²⁶ Furthermore, there is some precedent for treating candidate name choices as scandals. When Bill de Blasio ran for Mayor of New York in 2013, the *New York Daily News* reported that Bill de Blasio was actually the then-candidate’s third legal name.³²⁷ He was born Warren Wilhelm Jr. in 1961.³²⁸ In 1983, he changed his name to Warren de Blasio-Wilhelm.³²⁹ Shortly before election day in 2001, as de Blasio was running for city council, he petitioned a court in Brooklyn to change his name to Bill de Blasio.³³⁰ Similarly, during Gary Hart’s 1984 presidential campaign, the *Washington Post* reported that Hart had been born Gary Hartpence and that family members said he changed his surname to Hart for political reasons.³³¹

These were relatively minor scandals, and they occurred in high-profile races that received a lot of media attention. But even in down-ballot races, the media can expose a candidate’s manipulation of his or her name for political gain. In 2006, Frederick S. Rhine changed his name to Patrick Michael O’Brien “to improve his chances of being

324. Todd E. Pettys, *Partisanship, Social Identity, and American Government: Reality and Reflections*, 22 LEWIS & CLARK L. REV. 301, 311 (2018) (“Scholars and other observers have long recognized that citizens commonly lack the information necessary to evaluate complex public-policy proposals, assess candidates’ campaign pledges, and make electoral decisions that serve their own policy preferences.”).

325. Youn, *supra* note 24, at 2139.

326. Miguel M. Pereira, *Do Voters Discount Political Scandals Over Time?*, 72 POL. RES. Q. 1 (2018).

327. Greg B. Smith, *Mayoral Hopeful Bill de Blasio Has Had Three Different Legal Names, Court Records Show*, N.Y. DAILY NEWS (Sept. 22, 2013), <https://www.nydailynews.com/news/election/de-blasio-names-de-blasio-article-1.1463591>.

328. *Id.*

329. *Id.*

330. *Id.* (explaining that de Blasio’s name changes were arguably not a scandal at all but were easily explained by his closeness to his mother and her family, and his complicated feelings about his mostly absent father).

331. George Lardner Jr., *Meet Gary Hartpence, c. 1936*, WASH. POST (March 3, 1984), <https://www.washingtonpost.com/archive/politics/1984/03/03/meet-gary-hartpence-c-1936/87e9b02f-35a3-4340-b13a-dcb89226858c/> [<https://perma.unl.edu/ZER3-FAZ2>].

elected Cook County judge.”³³² It didn’t work: Rhine/O’Brien “dropped out . . . after he was outed by the press.”³³³

V. IMPLEMENTING BEST PRACTICES: WHO DECIDES?

States have “significant authority to regulate . . . the identification of candidates on the ballot.”³³⁴ State legislatures should use that authority to enact statutes that clearly state what kinds of names are and are not allowed on ballots. As noted in section II.A., Arizona’s statute on nomination papers, statements of interest, and filing states:

The nomination paper shall include the exact manner in which the candidate desires to have the person’s name printed on the official ballot and shall be limited to the candidate’s surname and given name or names, an abbreviated version of such names or appropriate initials such as “Bob” for “Robert”, “Jim” for “James”, “Wm.” for “William” or “S.” for “Samuel”. Nicknames are permissible, but in no event shall nicknames, abbreviated versions or initials of given names suggest reference to professional, fraternal, religious or military titles. No other descriptive name or names shall be printed on the official ballot, except as provided in this section. Candidates’ abbreviated names or nicknames may be printed within quotation marks. The candidate’s surname shall be printed first, followed by the given name or names.³³⁵

This statute reflects a much more restrictive approach than the one advocated in this Article. Nevertheless, Arizona’s legislature deserves credit for acknowledging the issue and attempting to provide guidance to courts and election boards. The statute specifically addresses the issues of nicknames and professional titles, which, as discussed above, arise quite often. In 2007, Illinois added the following language to its statute on candidate names:

If a candidate has changed his or her name, whether by a statutory or common law procedure in Illinois or any other jurisdiction, within 3 years before the last day for filing the petition or certificate for that office, whichever is applicable, then (i) the candidate’s name on the petition or certificate must be followed by “formerly known as (list all prior names during the 3-year period) until name changed on (list date of each such name change)” and (ii) the petition or certificate must be accompanied by the candidate’s affidavit stating the

332. *Exposing the Faux O’Briens*, CHI. TRIB. (Feb. 5, 2007), <https://www.chicagotribune.com/news/ct-xpm-2007-02-05-0702050146-story.html> [<https://perma.unl.edu/PLX2-XHK8>].

333. *Id.*; see also Ramon Antonio Vargas, *Jefferson Parish Presidency Candidate Mike Yenni’s 1998 Name Change Again Becomes Point of Contention in Election*, NOLA.COM (Oct. 4, 2015, 5:07 AM), https://www.nola.com/news/communities/east_jefferson/article_2daff2f0-495a-5f8f-86c4-8105d2035176.html (discussing a Jefferson Parish presidential candidate’s adoption of his mother’s surname; the candidate’s uncle and grandfather on his mother’s side had been prominent political figures in the parish).

334. *Schrader v. Blackwell*, 241 F.3d 783, 790 (6th Cir. 2001).

335. ARIZ. REV. STAT. ANN. § 16-311(G) (2019).

candidate's previous names during the period specified in (i) and the date or dates each of those names was changed³³⁶

This statutory language was the legislature's response to the common practice of candidates in Illinois changing their names to suggest Irish heritage.³³⁷

In the absence of clear legislative guidance, courts are understandably reluctant to allow candidates to use names other than, or in addition to, their legal surnames and given names. In *Maye v. Pundt*, the Supreme Court of Georgia refused to allow a city council candidate to appear on the ballot with the nickname "Tubby."³³⁸ The court noted that unlike several other states, Georgia does not have a statute permitting the use of nicknames by candidates for office.³³⁹ The court continued:

[T]he issue whether to grant a candidate the right to use a nickname on a ballot is a matter best-suited to the General Assembly. For instance, if it is appropriate to use a nickname at all, is it inappropriate when the nickname implies some military or professional title or rank, or when the nickname is not one by which the candidate is commonly known in the community and may reflect some political slogan or message? We conclude that these matters are best left to the discretion of the General Assembly.³⁴⁰

The Nebraska case of *State ex rel. Johnson v. Marsh*, discussed in section II.G, underscores the importance of clear legislative guidance—or at least some guidance—for the courts. In that case, the court excluded a candidate found to have engaged in "trickery and fraud" from the ballot.³⁴¹ Striking Johnson from the ballot was undoubtedly a just result in light of the court's findings, but the court struggled to support its ruling with legal authority.³⁴²

Similarly in *Jordan v. Robinson*, the court adopted the sensible rule that candidates' name choices should not be invalidated absent some fraudulent, criminal, or wrongful purpose.³⁴³ But the court seemingly pulled that rule out of thin air. Arguably, under the current state of Florida law, Florida courts should allow even fraudulent or "wrongful" name choices because the applicable statute merely requires candidates to print their names as they wish them to appear on the ballot.³⁴⁴ Cases like *Jordan* underscore the need for more detailed legislative guidance.

336. 10 ILL. COMP. STAT. ANN. 5/7-10.2 (West 2020).

337. *Exposing the Faux O'Briens*, *supra* note 332.

338. 477 S.E.2d 119, 120 (Ga. 1996).

339. *Id.* at 121.

340. *Id.*

341. 120 Neb. 297, 299, 232 N.W. 104, 104 (1930).

342. *See id.* at 299, 232 N.W. at 104 (delegating to itself "the power to exclude from the list of candidates one who has so falsely misrepresented his name").

343. 39 So. 3d 416, 418 (Fla. Dist. Ct. App. 2010).

344. *Id.* (citing FLA. STAT. § 105.031(4)(b) (2007)).

Once the legislature establishes rules governing candidate names, it is generally up to state and local election boards and commissions to interpret and apply those rules. The Ohio Supreme Court has stated that “boards of elections are the local authorities best equipped to gauge compliance with election laws.”³⁴⁵

However, decisions by election boards in this realm must be subject to at least some judicial review, even if that review is deferential. In Ohio, when a candidate brings an action challenging the decision of a board of elections, the standard is “whether the board engaged in fraud, corruption, or abuse of discretion, or acted in clear disregard of applicable legal provisions.”³⁴⁶ Similarly in Mississippi, county election commissions have the “discretion to determine whether or not the names of a candidate shall be placed upon the ballot.”³⁴⁷ Judicial review is available “to correct errors of law.”³⁴⁸ Generally speaking, courts should defer to election boards’ decisions about how candidates appear on the ballot.³⁴⁹

Courts obviously have a role to play in ensuring that elections are fair. At the same time, as discussed above, it is not a good use of judicial resources when courts have to analyze whether a person is “commonly known” by the name under which he or she wishes to run for office, whether the candidate is using a particular name to obtain an advantage or avoid an unfavorable result, or whether a nickname that a candidate wishes to use conveys a political message.

In many jurisdictions, the secretary of state also plays an important role in ensuring that the state’s elections are conducted in accordance with the law. In Michigan, for example, “it is the duty of the Secretary of State to prepare rules, regulations and instructions for the conduct of elections, and to advise local election officials as to the proper method of conducting elections.”³⁵⁰ County elections boards must “prepare the ballots for an election . . . in accordance with such rules and instructions from the Secretary of State.”³⁵¹ In Ohio, “[t]he

345. *State ex rel. N. Olmsted v. Cuyahoga Cty. Bd. of Elections*, 757 N.E.2d 314, 317 (Ohio 2001).

346. *State ex rel. Scott v. Franklin Cty. Bd. of Elections*, 10 N.E.3d 697, 699 (Ohio 2014); *see also State ex rel. Wolfe v. Delaware Cty. Bd. of Elections*, 724 N.E.2d 771, 774 (Ohio 2000) (“We will not substitute our judgment for that of a board of elections if there is conflicting evidence on an issue.”).

347. *Powe v. Forrest Cty. Election Comm’n*, 163 So. 2d 656, 658 (Miss. 1964).

348. *Gecy v. Bagwell*, 642 S.E.2d 569, 571 (S.C. 2007).

349. *See Brown v. DeGrace*, 751 N.Y.S.2d 150, 152–54 (N.Y. Sup. Ct. 2002) (“The Board of Elections is charged with the responsibility of creation of the ballot and, in so doing, establishing the order in which candidates appear thereon. . . . This court should be extremely cautious and circumspect before entering into the domain of the Elections Commissioners . . .”).

350. *Elliott v. Sec’y of State*, 294 N.W. 171, 173 (Mich. 1940).

351. *Id.*

secretary of state is the chief election officer of the state”³⁵² The secretary of state’s duties include appointing all members of boards of elections, determining and prescribing the forms of ballots, and certifying to election boards the names of candidates for state offices.³⁵³

VI. CONCLUSION

For many Americans, the name they were given at birth suits them just fine, and they use that name their entire life without giving it much thought. But many other people—even U.S. Presidents—reach a point in their lives where, for various reasons, they wish to change, add to, or subtract from the name by which they are known to the world. Gerald Ford was born Leslie Lynch King, Jr.;³⁵⁴ as a child, William Jefferson “Bill” Clinton was known as Billy Blythe.³⁵⁵ Of course, people who change their name have just as much of a right to run for public office as those who do not. We should generally respect candidates’ choices about how their names appear on ballots.

Unless there is some evidence of deception, fraud, or bad faith on the part of the candidate, he or she should not be forced to jump through hoops just to appear on the ballot under their chosen name. Candidates should not have to show that they are “commonly known” by the name under which they are running, that they have not chosen that name to obtain an advantage or avoid an unfavorable result, or that their chosen name does not convey a political message.

While this Article advocates a much less restrictive approach than those generally adopted by legislatures and courts, it also recognizes that occasionally candidates will cross the line. The most egregious examples discussed in this Article are the former Lauryn Kaye Valentine running for the Chicago Board of Alderman as Carol Moseley-Braun and Scott Fistler running for Congress in Arizona under the name Cesar Chavez. When candidates create such intentional confusion, bordering on deception, some government actor must step in.

The permissive approach advocated in this Article represents a significant break with tradition. As discussed in Part II, courts have been far too eager to get involved in disputes over candidate names and to resolve those disputes by preventing a candidate from running for office under his or her chosen name. If there ever was a time for courts to vigilantly police candidates’ name choices, surely that time has

352. OHIO REV. CODE ANN. § 3501.04 (West 2019).

353. *Id.* § 3501.05.

354. *Gerald Ford Historical Photographs, 1913–1914*, GERALD R. FORD PRESIDENTIAL LIBR. & MUSEUM, <https://www.fordlibrarymuseum.gov/avproj/hseries/1913.asp> [<https://perma.unl.edu/N7TM-HD65>] (last visited Oct. 26, 2020).

355. Lukas I. Alpert, *Bill Clinton Will Be the Subject of a New Opera, ‘Billy Blythe,’ Opening in Fall*, N.Y. DAILY NEWS (July 13, 2010), <https://www.nydailynews.com/news/bill-clinton-subject-new-opera-billy-blythe-opening-fall-article-1.468396>.

passed. More women³⁵⁶ and immigrants³⁵⁷ are seeking public office than ever before. As discussed herein, women and immigrants often have more complicated name histories and more difficult choices to make about how they will appear on the ballot. Government actors should generally respect those choices, and the name choices of all candidates, and limit their intervention to cases of deception, fraud, or bad faith.

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356. See Press Release, Ctr. for Am. Women & Politics, Rutgers Univ., New Record for Women Candidates for U.S. House (May 12, 2020), <https://cawp.rutgers.edu/sites/default/files/resources/press-release-house-candidates-record-for-women.pdf> [<https://perma.unl.edu/XE9P-4QQK>] (discussing the record 490 women who have filed to run for the U.S. House of Representatives in 2020, beating the previous record of 476 in 2018); Amanda Becker, *Record Number of Women Candidates Is Changing Dynamics of 2020 U.S. Presidential Race*, REUTERS (June 16, 2019, 12:06 PM), <https://www.reuters.com/article/us-usa-election-women/record-number-of-women-candidates-is-changing-dynamics-of-2020-u-s-presidential-race-id-USKCN1TR2OF> [<https://perma.unl.edu/SN7W-YKP9>] (discussing the record six women in the running for Democratic presidential nominee in mid-2019); *Women in State Legislative Elections by State, Over Time*, CTR. AM. WOMEN & POLITICS, <https://cawp.rutgers.edu/women-candidates-state-leg-historical-summary> [<https://perma.unl.edu/4FNM-UWWT>] (last visited June 8, 2020) (showing increasing numbers of major party female candidates for state legislature, broken down by state from 2000 to 2020).
357. Lavina Melwani, *2020 US Elections: Meet the Boss Ladies Who Are Changing the Narrative of Political Leadership*, CNBC TV18, <https://www.cnbc.tv/18.com/views/2020-us-elections-meet-the-boss-ladies-changing-the-narrative-of-political-leadership-4863931.htm> [<https://perma.unl.edu/E277-Y2DJ>] (last updated Dec. 13, 2019, 12:27 PM) (“New Americans ran for and won local and state office in unprecedented numbers”); Ramon Taylor, *Immigrant Candidates ‘Running Everywhere’ in Upcoming US Elections*, VOA NEWS (June 14, 2018, 2:04 PM), <https://www.voanews.com/usa/immigrant-candidates-running-everywhere-upcoming-us-elections> [<https://perma.unl.edu/4QZP-S5ZA>] (discussing the steady increase of first- and second-generation immigrants running for U.S., state, and local office); *New American Majority Wins Pave the Way for 2020 Victories*, NEW AM. LEADERS, <https://www.newamericanleaders.org/blog/new-american-majority-wins-pave-way-2020-victories/?emci=4ede536e-3602-ea11-828b-2818784d6d68&emdi=EA000000-0000-0000-0000-000000000001&ceid=> [<https://perma.unl.edu/WG3L-S6UD>] (last visited Oct. 28, 2020) (discussing the increasing number of first- and second-generation immigrants who are running for and winning political offices).