

**OFFICE OF POLICY AND LEGAL ANALYSIS**

**Date:** February 17, 2020  
**To:** Veterans and Legal Affairs Committee  
**From:** Janet Stocco, Legislative Analyst

**LD 109**      **An Act To Facilitate Fair Ballot Representation for All Candidates By Allowing a Candidate's Nickname To Appear on the Ballot** (*Rep. Faulkingham*)

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**SUMMARY**

This bill allows a candidate to request that the candidate's nickname appear on the ballot by making a written "declaration that the nickname is the name by which the candidate is known to others" on:

- the consent form that accompanies a party candidate's primary petition or an unenrolled candidate's nomination petition; these consent forms must be signed by candidates under oath; or
- the written acceptance form provided by a candidate selected by a political party to replace a party candidate when there has been a candidate vacancy.

The bill also directs that a candidate's name may appear on the ballot only in one of the following ways:

*If the candidate did not request use of a nickname:*

- Legal last name, legal first name, legal middle initial.
- Legal last name, legal first name or initial, legal middle name.
- Legal last name, legal first name.

*If the candidate requests use of a nickname:* (Quotation marks are mandatory around the nickname)

- Legal last name, legal first initial & middle initial (if any), "nickname"

**ADDITIONAL INFORMATION:**

- **Current law: candidate's name.** 21-A M.R.S. §601(2)(B-1), enacted in 2007, specifies which name must appear on the ballot for each candidate:

B-1. The candidate's name listed on the ballot must be the one approved by the Probate Court, pursuant to Title 18-C, section 1-701, or, in the absence of an applicable court order, the name consistently used by the candidate during the past 2 years in filings with governmental agencies and in the transaction of public business, including without limitation transactions relating to voter registration; motor vehicle registrations; driver licenses; a passport; professional licenses; local, state or federal permits of any kind; public benefit programs; and veterans' benefits and social security. If requested by the Secretary of State when there is a question concerning which name should be listed on the ballot, it is the obligation of the candidate to provide documentation to demonstrate consistent use of a particular name.

- **Current law: format of names on the ballot.** 21-A M.R.S. §601(2)(B) & (H) direct that candidate names appear on the ballot in the following format:
  - B. The ballot must contain the legal name of each candidate, without any title, and municipality or township of residence of each candidate, arranged alphabetically with the last name first, under the proper office designation. Municipality of residence is not required to be printed for candidates for President and Vice President of the United States. The initial letters of the last names of the candidates must be printed directly beneath each other in a vertical line. The names of candidates for any one office may not be split into more than one column regardless of number. The name of each candidate may be printed on the ballot in only one space. For the general election ballot, the party or political designation of each candidate must be printed with each candidate's name. The party or political designation may be abbreviated.
  - ...
  - H. The name of each nominee or each candidate for nomination must appear on the ballot as follows: last name first followed by the first name and middle name or initial; last name first followed by the first name or the first initial and the middle name; or last name first followed by the first name.
- **Past Legislation:** In the 129th Legislature, [LD 517, \*An Act To Facilitate Fair Ballot Representation for All Candidates\*](#), similarly proposed to allow candidates to request that their nicknames appear on the ballot. The text of the bill, as amended by a majority of the VLA Committee (8-6), was identical to the text of current LD 109. The amended bill was passed to be enacted in both chambers during the First Regular Session, but ultimately [vetoed by the Governor](#). The veto was sustained.
- **Candidate nicknames in other states:** The attached research memorandum from Kristin Brawn, Legislative Researcher (OPLA) provides information regarding 22 states that permit candidates' nicknames to appear on the ballot by virtue of state statute, attorney general opinion or regulation. Those states approach ballot names in several ways, including by addressing the following:
  - *Proof of nickname use:* Three states (NC, SC, TX) require an affidavit or other evidence to support use of the nickname. Kentucky, by contrast, requires an affidavit only if the nickname is a "title, rank, degree, job description, or spurious phrase," in which case the candidate must provide sworn affidavits from 5 county residents acknowledging the nickname as "a bona fide nickname generally used by acquaintances . . . to refer to the candidate."
  - *Time period of nickname use:* In 2 states the candidate must have been commonly known by the nickname for at least 3 years (TX) or 5 years (NC) prior to the election.
  - *Length of nickname:* Nicknames are sometimes restricted to 10 letters (TX, NV); 15 letters (SC) or 20 characters (IN), and in one case they may contain only one, non-hyphenated word (TX).
  - *Specific types of nicknames prohibited:* In certain states a candidate's nickname:
    - May not include any part of a political party name (CO), political slogan (IL) or campaign slogan (ND) or indicate a political or religious view or affiliation (NV, TX).
    - May not constitute a title or suggest or imply that the candidate possesses a title or professional status: AR, CO, IL, IN, KY, LA, WA. By contrast, CA allows candidates to

print up to a 3-word designation describing “the principal professions, vocations, or occupations” currently or in the past calendar year held by the candidate.<sup>1</sup>

- May not be a “deceptive name” (LA) or “be designed to intentionally mislead voters” (WA).
- May not “be the name of any person, living or dead, whose reputation is known on a statewide, nationwide or worldwide basis, or in any other manner deceive a voter regarding the person or principles for which he or she is voting” (NV).

The Louisiana Attorney General has also denied a candidate’s request to use an “inflammatory and deceptive” nickname, in part because the AG concluded that the nickname would “serve no useful purpose in identifying the candidate.” *La. Att’y Gen. Op. No. 99-326* (Sept. 17, 1999).

- *Alternative forms of legal/given name:* In addition to nicknames, Alaska will print a “familiar form of a proper name of the candidate” and Hawaii will print the “Hawaiian or English equivalent” along with the candidate’s name on the ballot. Michigan, which does not authorize the printing of nicknames on the ballot, does authorize a candidate to specify “a recognized diminutive for the candidate’s given or middle name, or both” to appear on the ballot.

## ISSUES RAISED / AMENDMENTS PROPOSED AT PUBLIC HEARING

- **Proposed amendment - League of Women Voters of Maine.** The League suggested replacing the word “nickname” with the phrase “familiar name” in the title and text of LD 109.
- **Proposed amendment - Maine Town & City Clerks’ Association.** The Association requested amending LD 109 to “prohibit the use of any nicknames that might be deemed obscene, offensive or vulgar based upon the application of standard societal norms”; this decision would likely be made by the Secretary of State’s Office when designing and printing ballots. The Maine Municipal Association agreed with the Association’s concerns about potentially offensive nicknames. The Deputy Secretary of State also raised concerns about the “judgment calls” that would have to be made if a candidate requests that an offensive nickname be listed on the ballot.
  - Analogy to vanity license plates. Several committee members inquired whether and how the Department of Motor Vehicles screens vanity license plate requests for offensive language. Under [29-A M.R.S. § 453\(3-A\)\(E\)](#), the Secretary of State “may refuse to issue or may recall” a vanity plate that “[c]onsists of language that encourages violence or may result in an act of violence or other unlawful activity because of the content of the language requested ...” This language was added to the motor vehicle laws in 2015 and replaced language that formerly authorized the Secretary of State to refuse to issue or to recall a vanity plate that “[c]onsists of or comprises language that is obscene, contemptuous, profane or prejudicial” or that “[p]romotes abusive or unlawful activity.” See [P.L. 2015, ch. 206](#). Secretary of State Bellows testified that she supports LD 130, *An Act To Create Appropriate Standards for the Secretary of State To Following When Approving the Assignments of Vanity Registration Plates*, which would permit her office to deny a vanity plate request or to recall an existing vanity plates that is, *inter alia*, “vulgar or obscene or constitutes racial or ethnic epithets.”
  - Change of legal name in Probate Court. Several Legislators noted at the public hearing that, if a candidate obtains a name-change order from the Probate Court, current law directs the Secretary

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<sup>1</sup> [Cal. Elections Code §13107](#).

of State to print that name on the ballot. [21-A M.R.S. §601\(2\)\(B-1\)](#). Committee members inquired whether a candidate might be able to adopt an offensive name through the Probate Court, thus eliminating the effectiveness of any proposed amendment to the bill prohibiting a candidate from requesting that an offensive nickname appear on the ballot.

The provision of the Maine Uniform Probate Code governing name-change petitions, [18-C M.R.S. §1-701](#), provides that a probate judge “may not change the name of a person if the judge has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest.” The Law Court, interpreting the similarly worded predecessor statute, explained that: “the main purpose of the statute . . . is to provide petitioners with the certainty of a judicially-sanctioned name change, as long as the petition is not submitted with fraudulent intent and the change of name does not interfere with the rights of others.” *In re Boardman*, 2017 ME 131, ¶8 (reversing Probate Court’s denial of woman’s petition to change her surname to match the surname of her male friend, to whom she was not married).

Although there are no reported cases in Maine involving putatively offensive names, courts in other states have held that “no person has a statutory *right* to officially change his or her name to a name universally recognized as being offensive.” *Lee v. Superior Court*, 9 Cal. App. 4th 510, 514 (1992) (affirming denial of petition to change petitioner’s name to one that “is a racial epithet which provokes violence”); *see also Petition of Variable v. Nash*, 144 N.M. 633 (rejecting petitioner’s First Amendment challenge to trial court’s denial of his petition to change his name in a way that “would be obscene, offense and would not comport with common decency”). It is not clear whether the Maine Supreme Judicial Court would follow those decisions and, if so, how “offensive” a name must be before the Law Court would approve a Probate Court’s denial of a name change petition.

## TECHNICAL ISSUES

- **False swearing.** In the bill, a candidate may declare that a particular nickname is “the name by which the candidate is known to others” on the consent form accompanying the candidate’s primary petition (p.1, lines 15-18) or nominating petition (p.1, lines 33-38). By statute, these petitions must be signed before a notary under oath. If the candidate signs the consent form but “does not believe the statement to be true,” the candidate is guilty of the class D crime of false swearing and may be punished by no more than 1 year of imprisonment and a fine of up to \$2,000. [17-A M.R.S. §452](#).

The written acceptance form on which a replacement candidate may declare that a particular nickname is “the name by which the candidate is known to others” is not explicitly required by statute to be signed under oath (p. 2, lines 1-15), however. Instead, the statute merely directs the candidate to use the form provided by the Secretary of State. Although the current form provided by the Secretary of State must be signed under oath, the committee may want to consider whether to impose equivalent statutory oath requirements for all candidate nickname declarations.

## FISCAL IMPACT

The [Preliminary Fiscal Impact Statement](#) provides that an additional General Fund appropriation of \$172,000 would be required for printing and postage costs if candidates choose to have their nicknames included on the ballot and if, as a result of increased ballot length, a second ballot must be printed.