SIXTH DIVISION
Order filed: April 4, 2017

No. 1-17-0477

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

IZELLA E. ROGERS, Petitioner-Appellant, v. TYRONE HUTSON, THE MUNICIPAL OFFICERS ELECTORAL BOARD OF THE CITY OF COUNTRY CLUB HILLS, JAMES FORD, DEBORAH McILVAIN, and VINCENT E. LOCKETT, Respondents-Appellees (ANTHONY DAVIS, Respondent).	)	Appeal from the Circuit Court of Cook County No. 17 COEL 23 Honorable LaGuina Clay-Herron, Judge, Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm the circuit court's order confirming the decision of the Municipal Officers Electoral Board of the City of Country Club Hills, which had overruled objections to the nomination papers of Tyrone Hutson as a candidate for the office of Alderman of the 3rd Ward of the City for the April 4, 2017, consolidated election.

¶ 2 The petitioner, Izella E. Rogers, appeals from an order of the circuit court which confirmed a decision of the Municipal Officers Electoral Board of the City of Country Club Hills

(Board), which had overruled her objections to the nomination papers of respondent Tyrone Hutson, a candidate in the upcoming April 4, 2017, consolidated election. In light of the impending election date, we issued a brief order on March 30, 2017 affirming the circuit court and indicating that an additional order would follow. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 Hutson filed nomination papers with the Country Club Hills city clerk, seeking to be placed on the ballot for the April 4, 2017 consolidated election as a candidate for the office of Alderman of the City's third ward. His nominating papers included petition sheets containing 103 signatures of individuals purporting to be registered voters residing in the third ward. Rogers filed objections to those nomination papers. She objected to them as a whole on the basis that they contained more than 80 signatures, which she asserted was the maximum number permitted by law. See 10 ILCS 5/10-3 (West 2016) (setting the applicable signature requirement as "not less than 5%, nor more than 8% (or 50 more than the minimum, whichever is greater)" of the number of voters in the ward at the next preceding regular election for officers to serve the ward). She also asserted line-by-line objections against 68 signatures, all of which were among the first 80 signatures on the signed petition sheets when read forward from sheet 1, line 1. She did not assert line-by-line objections against any of the 33 signatures which appeared later on the petition sheets, that is, from sheet 6, line 12, to the end.

¶ 4 At its initial meeting, the Board, consisting of respondents James Ford, Deborah McIlvain, and Vincent Lockett, adopted rules of procedure (Board Rules). See 10 ILCS 5/10-10 (West 2016) ("The electoral board on the first day of its meeting shall adopt rules of procedure for the introduction of evidence."). Two of those rules are pertinent to this appeal. Board Rule 7 deals with verification of line-by-line signature challenges. It provides that, if the number of

valid signatures on a candidate's petition exceeds the minimum, even if all remaining objections are sustained, the checking of the remaining signatures may be suspended. Board Rule 10 states: "The Board does not impose any limitations on a candidacy based on petition filings with excess of any statutory maximums and no sanctions will be imposed based on such objections to signatures in excess of any signatures in excess of any signature threshold (*e. g.* objection to more than 8% or 50 signatures more than the minimum of the number of persons who voted at the next preceding regular election for the subdivision or district electing such officers)." Rogers objected to the adoption of the Board Rules, but the Board overruled her objection.

¶ 5 Relying on Board Rule 7, Hutson then moved to dismiss the objections, arguing that even if every one of Rogers's line-by-line objections was sustained, he would still have 35 valid signatures, more than the minimum of 30. He further argued that because of Board Rule 10, Rogers's objection that he exceeded the maximum signature requirement could not result in any penalty which removed him from the ballot.

¶ 6 On January 25, 2017, the Board issued a written order granting Hutson's motion and overruling Rogers's objections. The Board stated that, until it adopted Rule 7 in 2017, it had not previously adopted any rule giving fair advance notice to candidates regarding how it would enforce the maximum signature limitation. The Board cited *Richards v. Lavelle*, 620 F.2d 144, 148 (7th Cir. 1980), as the primary basis for its reluctance to enforce section 10-3's maximum signature limitation in the manner requested by Rogers. In *Richards*, the court held that removal of a candidate from the ballot merely for exceeding the maximum signature limit violated due process because the draconian sanction of removal from the ballot had no rational relationship to the state interests furthered by the maximum signature limitation. The Board also noted that *Anthony v. Butler*, 166 Ill.App.3d 575 (1988), allows an electoral board leeway to adopt a

method of its choice regarding the counting of signatures on a petition which exceeds the maximum.

¶ 7 On or about January 26, 2017, Rogers filed three petitions for judicial review of various decisions of the Municipal Officers Electoral Board of the City of Country Club Hills in the circuit court. See 10 ILCS 5/10-10.1 (West 2016). The petition at issue in this appeal sought reversal of the decision rendered in the dispute between Rogers and Hutson. The other two petitions are not in the record before us, but appear to have involved a similar or identical issue. The circuit court entered an order consolidating the three petitions for judicial review. On February 24, 2017, after briefing and argument, the circuit court entered a single order in the three consolidated cases confirming the Board's decisions.

¶ 8 On February 28, 2017, Rogers filed a notice of appeal, listing only the single circuit court case (No. 17 COEL 23), which sought review of the Board's decision overruling her objections to Hutson. Her brief in this court presents only arguments related to that case and its corresponding Board order. On March 1, 2017, this court granted Rogers's motion for an accelerated docket brought pursuant to Illinois Supreme Court Rule 311(b) (Ill. S. Ct. R. 311(b) (eff. Feb. 26, 2010)).

¶ 9 Rogers has limited her argument on appeal to whether the Board properly administered section 10-3's maximum signature limitation. Specifically, she contends that the Board was required to adopt a different policy to more aggressively enforce the maximum signature requirement, such as one which would eliminate certain signatures from consideration, and then review only the remaining pool of signatures against the line-by-line objections. Rogers made additional arguments before the Board and in the circuit court regarding her line-by-line objections and the composition of the electoral board. Since she presents no arguments here

regarding those issues, we consider them forfeited. See. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016).

¶ 10 On appeal from an order of the circuit court confirming a decision of the Board, we review the Board's decision, not the decision of the circuit court. *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581, ¶ 11. Our standards of review of the Board's decision mirror those applicable to review of an administrative agency decision. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 209-10 (2008). Where, as here, the issue presented is one of law, our review is *de novo. Id.* at 210-11.

¶ 11 Section 10-10 of the Election Code provides: "The electoral board shall take up the question as to whether or not the certificate of nomination or nomination papers or petitions are in proper form, and whether or not they were filed within the time and under the conditions required by law, *** and in general shall decide whether or not the certificate of nomination or nominating papers or petitions on file are valid or whether the objections thereto should be sustained ***." 10 ILCS 5/10-10 (West 2016). This provision establishes the basic principle that an electoral board's authority is strictly limited to determining whether a candidate's nomination papers are valid or invalid. *Kozel v. State Board of Elections*, 126 Ill. 2d 58, 68 (1988); see also *Wiseman v. Elward*, 5 Ill. App. 3d 249, 257 (1972). Because an electoral board can only declare nomination papers valid or invalid, it cannot impose any sanction for an Election Code violation other than removal from the ballot. As the Seventh Circuit put it in another ballot access case, "Yet no other sanction is available; election officials do not fine applicants, and it would be silly to put [a candidate's] name on the ballot upside down as a compromise." *Moy v. Cowen*, 958 F.2d 168, 170 (7th Cir. 1992).

¶ 12 The district court in *Richards* had recognized that although a candidate could not be removed from the ballot for exceeding the maximum signature limitation, "[a]ssuming that limitations [upon the number of signatures contained in the petition sheets] have an administrative justification, the same purpose can be served in a rational electoral system by returning the excess petitions, by refusing to consider any signatures beyond the statutory maximum or by concluding the objection hearing as soon as the minimum required signatures have been validated." *Richards v. Lavelle*, 620 F.2d 144, 148 (7th Cir. 1980) (quoting *Richards v. Lavelle*, 483 F. Supp. 732, 736 (N.D. Ill. 1980)).

¶ 13 In *Anthony v. Butler*, 166 Ill. App. 3d 575, 581 (1988), the court noted the options suggested by the *Richards* district court, but cautioned that the Seventh Circuit's *Richards* opinion "did not specifically require that any or all of those methods be adopted." In fact, the *Anthony* court noted that since *Richards*, the Chicago electoral board's practice was to "count all signatures, even those in excess of maximum." This practice appears to parallel the practice established by Board Rule 7. The *Anthony* court did not express any opinion on whether the Chicago board's practice was valid. Instead, the court stated it "need not and [did] not reach the question of which of *Richards*' suggested alternatives the Board should or must adopt in this case or in all cases. Rather than infringing on the Board's authority to choose an appropriate sanction by ordering the application of one sanction in this case, we urge that the Board, on remand, determine which of the sanctions suggested in *Richards v. Lavelle*, or another similar sanction, would be most appropriately applied to the facts of this case." *Id.*

¶ 14 In *Wilson v. Mun. Officers Electoral Bd. for City of Calumet City*, 2013 IL App (1st) 130957, the court considered a constitutional challenge to an electoral board's rule which enforced the maximum signature limitation by counting the signatures from the beginning of the

petition and stopping when the maximum was reached, and eliminating all remaining signatures from the pool of eligible signatures. *Id*., ¶ 14. The *Wilson* court framed the issue presented as whether the board's decision to enact such a rule was "rational." *Id.* Accordingly, when considering whether an electoral board's chosen approach to administering the maximum signature limitation is proper, this court will consider whether the approach is rationally related to the state's interest in an orderly election process.

¶ 15 Despite the general principle that an electoral board's role is to enforce the Election Code, a principle which Rogers presses strongly here, an electoral board is also bound by the constitution. *Richards* did indeed recognize that the maximum signature requirement serves some state interest in promoting "orderly election procedures," that is, preventing electoral boards from being burdened with review of large numbers of signatures. *Richards*, 620 F.2d at 147. However, *Richards* considered the scope of that interest in an environment markedly different from that presented here. The maximum signature requirement for the ward committeeman candidate in *Richards* was 1,716 signatures. At the time, the electoral board was statutorily required to rule on objections to ward committeeman candidates within five days. The court noted: "Evidence was presented to the effect that Ward Committeeman races give rise to an extremely high rate of objections, further compounding the administrative burden faced by the defendants. Because of this fact, a maximum limit of signatures which the Board must consider permits the Board to proceed in an orderly and timely manner to determine whether or not the petitions contain sufficient valid signatures." *Richards*, 620 F.2d at 147. The district court in *Richards* also couched its suggestions for handling signatures over the maximum with the caveat "[a]ssuming that limitations *** have an administrative justification." This court has

characterized the maximum signature limitation as merely promoting a "bureaucratic interest in not having to cope with bulky petitions." *Havens v. Miller*, 102 Ill. App. 3d 558, 571 (1981).

¶ 16 Although *Richards* is not binding on this court (*People v. Kokoraleis*, 132 Ill. 2d 235, 294 (1989)), it is binding on all Illinois federal district courts, so an electoral board which decides to enforce the maximum signature requirement runs a substantial risk that it will run afoul of *Richards*, perhaps resulting in costly federal judicial remedies. When it adopted Rule 10, the Board was undoubtedly aware of the small size of the third ward of the City of Country Club Hills and the corresponding small signature requirements for candidates running in that ward. Recognizing the uncertainty and constitutional problems inherent in enforcement of the maximum signature requirement in that environment, the Board chose an approach which is particularly favorable to candidates. Had the Board enforced the maximum signature limitation in the manner Rogers suggests, it would have done so with respect to a petition which was hardly "bulky" by any description. In fact, the petition was about as concise as possible. The state interests furthered by enforcing a maximum signature limitation of only 80 signatures – a mere pittance in the world of Illinois ballot access – are vanishingly small, if not actually non-existent.

¶ 17 In light of the particular facts of this case, the Board's decision to adopt and enforce Board Rule 10 was rationally related to the state's interest in an orderly election process. The Board did not err in overruling Rogers's objections to Hutson's nomination papers and to place him on the ballot as a candidate for Alderman of the 3rd Ward of the City of Country Club Hills in the April 4, 2017, consolidated election. And we, therefore, affirm the decision of the circuit court, which confirmed the Board's decision.

¶ 18 Affirmed.