2019 IL App (1st) 190240-U
Nos. 1-19-0240 & 1-19-0241 (Cons.)
March 4, 2019

FIRST DIVISION

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PATRICIA HORTON, Petitioner-Appellant, v. THE CHICAGO BOARD OF ELECTION COMMISSIONERS, as a duly constituted Electoral Board, and its members, Chair MARISEL A. HERNANDEZ, Commissioner WILLIAM J. KRESSE, and Commissioner JONATHAN T. SWAIN; THE CHICAGO BOARD OF ELECTION COMMISSIONERS in its capacity as election authority for the City of Chicago; and DANIEL DAVID GERHARDT ROGERS, Respondents-Appellees. _____ ELIZABETH "BETTY" ARIAS-IBARRA, Petitioner-Appellant, v. THE CHICAGO BOARD OF ELECTION COMMISSIONERS, as a duly constituted Electoral Board, and its members, Chair MARISEL A. HERNANDEZ,	Appeal from the Circuit Court Of Cook County. No. 19 COEL 000011 19 COEL 000012 The Honorable Maureen Ward Kirby, Judge Presiding.

Commissioner WILLIAM J. KRESSE, and)
Commissioner JONATHAN T. SWAIN;)
THE CHICAGO BOARD OF ELECTION)
COMMISSIONERS in its capacity as election)
authority for the City of Chicago; and)
DANIEL DAVID GERHARDT ROGERS,)
)
Respondents-Appellees.)

JUSTICE WALKER delivered the judgment of the court.
Presiding Justice Mikva and Justice Griffin concurred in the judgment.

ORDER

¶ 1 *Held*: Where a discrepancy between an objector's residence address and his voter registration resulted from a miscommunication with an election judge, and the objector corrected the registration once he learned of the error, the discrepancy does not warrant dismissal of the objector's petition objecting to a candidate's nomination papers. The objector may rely on the work of others in identifying signatures to which to object. The candidates here did not meet their burden of proving that the signature requirement for appearance on the ballot violated the constitution.

¶ 2 Daniel Rogers filed petitions objecting to the nomination papers filed by Patricia Horton and Elizabeth "Betty" Arias-Ibarra for the office of Chicago City Clerk. Both Horton and Arias-Ibarra moved to strike the petitions because Rogers used a residence address that differed from his voter's registration address, and because Rogers did not personally review all the signature pages in the nomination papers. The Chicago Board of Election Commissioners denied the motions to strike and found that both Horton and Arias-Ibarra failed to meet the statutory signature requirement. On review, the circuit court upheld the

Board's decision and also held that the signature requirement did not impose an unconstitutional burden on the candidates.

¶ 3 We affirm the circuit court's decision, holding that (1) Rogers's testimony adequately explained the discrepancy between his registration address and his residence address; (2) Rogers could rely on others to identify the signatures to which to object; and (3) the candidates did not present sufficient evidence to show that the statutory signature requirement violates the constitution.

¶ 4 I. BACKGROUND

¶ 5 Rogers filed both objector's petitions on December 3, 2018. In both petitions, Rogers said, "The Objector resides at 1229 E. 53rd Street, Chicago, Illinois, Zip Code 60615, in the City of Chicago, State of Illinois, and is a duly qualified, legal and registered voter at that address."

¶ 6 On December 12, 2018, both Horton and Arias-Ibarra filed motions to strike the objector's petitions. They alleged that as of December 3, 2018, the Board showed Rogers's address as 6448 South Ingleside, not 1229 East 53rd Street. Horton and Arias-Ibarra also asked the hearing officers to strike the objector's petitions on grounds that Rogers did not personally review all the signature sheets to decide which signatures to challenge. Both candidates also claimed that the requirement of 12,500 valid signatures imposed an unconstitutionally harsh burden on candidates for City Clerk.

¶ 7 The Board assigned the petitions to two different hearing officers. Both hearing officers heard testimony concerning the motions to strike the objector's petitions. In the two proceedings, Rogers gave essentially the same testimony.

¶ 8 Rogers testified that his mother owned a condominium at 1229 East 53rd Street, and that condominium has remained his permanent address since 2014. The 53rd Street address appears on his driver's license, and he uses that address for banking and most other correspondence. He spends most nights and eats most meals at his girlfriend's home, at 6448 South Ingleside.

¶ 9 Rogers testified that he and his girlfriend went to a place near her home for early voting for the November 2018 election. He asked an election judge whether his voter's registration at the 53rd Street address would prevent him from voting at the polling place. The election judge told him he could vote there, and handed him a form labeled "Application for Grace Period Ballot." Rogers filled out the form, writing 6448 South Ingleside on the line for his residence, and 1229 East 53rd Street on the line for his former registration address. The election judge said that the use of the form would not change Rogers's voter's registration address unless Rogers presented additional information to confirm the Ingleside address. The election judge handed Rogers a ballot and Rogers voted.

¶ 10 Rogers testified that a friend who worked for the City Clerk asked him to sign the objector's petitions. An attorney showed Rogers a summary of the objections and a box full of signed nomination papers. Rogers testified that he "looked at, like, everything in brief," but he did not challenge any specific signatures. He admitted that he did not prepare the "appendix recapitulation," and he did not recognize the term.

¶ 11 Two days after he signed the petitions, he received in the mail a voter's registration card showing his registration address as 6448 South Ingleside. Because he had not intended to change his registration, Rogers immediately went online and changed his registration back to

1229 East 53rd Street. He showed the hearing officers a screen shot with his request to change his voter's registration address back to the 53rd Street address as of December 5, 2018, a week before Horton and Arias-Ibarra filed their motions to strike his objector's petitions.

¶ 12 Both hearing officers found Rogers credible, and both denied the motions to strike the objector's petitions. Rogers specifically objected to thousands of the signatures in Horton's nomination papers and to hundreds of signature sheets in Arias-Ibarra's nomination papers. An examination of the records supported most of Rogers's specific objections. Without the signatures and sheets to which the hearing officers sustained objections, neither Horton nor Arias-Ibarra met the requirement of 12,500 valid signatures. Both hearing officers issued decisions recommending that the names of Horton and Arias-Ibarra not appear on the ballot as candidates for City Clerk. The Board agreed with the hearing officers and ordered that Horton's and Arias-Ibarra's names would not appear on the ballot.

¶ 13 Both Horton and Arias-Ibarra appealed to the circuit court. The circuit court consolidated the cases and affirmed the Board's decision. The court also addressed the constitutional argument, which the Board lacked authority to address (see *Goodman v. Ward*, 241 Ill. 2d 398, 411 (2011)), and held that the signature requirement did not violate the constitution. Horton and Arias-Ibarra now appeal to this court.

¶ 14 II. ANALYSIS

¶ 15 Both Horton and Arias-Ibarra raise three arguments: (1) the Board should have stricken the petitions because Rogers lacked standing; (2) the Board should have stricken the petition because Rogers did not personally inspect the nomination papers to determine which

signatures to challenge; and (3) the circuit court should have reversed the Board's ruling because the signature requirement violates the constitution. We review the Board's decision, and not the judgment of the circuit court, on the motions to strike. See *Guerrero v. Municipal Officers Electoral Board*, 2017 IL App (1st) 170486, ¶ 11. We will not disturb the Board's findings of fact unless they are against the manifest weight of the evidence, but we review findings of law *de novo*. *Williams v. Cook County Officers Electoral Board*, 2015 IL App (1st) 150568 ¶ 6. We review *de novo* the legal issue of whether the statutory signature requirement violates the constitution. *Arvia v. Madigan*, 209 Ill. 2d 520, 536 (2004).

¶ 16 A. Residence

¶ 17 Section 10-8 of the Election Code provides:

> "The objector's petition shall give the objector's name and residence address, and shall state fully the nature of the objections to the certificate of nomination or nomination papers or petitions in question, and shall state the interest of the objector and shall state what relief is requested of the electoral board." 10 ILCS 5/10-8 (West 2018).

¶ 18 The objector's petition must include the objector's residence address. *Pochie v. Cook County Officers Electoral Board*, 289 Ill. App. 3d 585, 588 (1997). In *Pochie*, the objector gave the number of her address but omitted the street name. The electoral board struck the petition and the appellate court affirmed, holding:

> "[T]he objector's address in the instant case cannot be readily determined from the number of the address on a street in the district without the name of the street. *** [W]hen the name of the street where an objector resides in an Illinois

> General Assembly legislative district is not given in the objector's petition, a candidate whose nominating petitions are being challenged cannot readily determine that the objector resides in the district.
>
> *** [W]hether or not an objector has standing is determined according to the face of the petition and not according to what can be found in the records of the election commission." *Pochie*, 289 Ill. App. 3d at 587-88.

¶ 19 The face of the petition shows Rogers's address as 1229 East 53rd Street, which lies in the appropriate district, the City of Chicago. Rogers testified that he uses 1229 East 53rd Street, the address of his mother's home, as his permanent address. Both hearing officers accepted Rogers's testimony that on December 3, 2018, the date he signed the petitions, he believed that the Election Commission still listed him as registered to vote from 1229 East 53rd Street, and a miscommunication with an election judge caused the unexpected change in his registration address. Notably, by the time Horton and Arias-Ibarra filed their motion to strike the petition, Rogers changed his registration back to correctly reflect his permanent address as 1229 East 53rd Street. Rogers presented evidence that the discrepancy between his residence address, correctly shown on the face of the petition, and the address for his voter registration on December 3, 2018, "resulted from inadvertent error or misunderstanding." *Neely v. Board of Election Comm'rs*, 371 Ill. App. 3d 694, 700 (2007). We affirm the Board's ruling that the discrepancy does not give the Board adequate grounds for ignoring Rogers's objections to the nomination papers.

¶ 20 B. Personal Review

¶ 21 An electoral board may "requir[e] an objector to appear and make a credible showing that there is a good-faith basis for the filed objection." *Daniel v. Daly*, 2015 IL App (1st) 150544 ¶ 29. In *Daniel*, the objector challenged 240 of the 262 signatures on the nomination papers. Neither the objector nor anyone working with the objector reviewed the registration records to determine the validity of the signatures. The objector argued that his responsibility ended with objecting, and "it was *** the Board's duty to order the county clerk to determine whether his stated objections were correct and, if so, determine whether sufficient signatures remained." *Daniel v. Daly*, 2015 IL App (1st) 150544 ¶ 30. The electoral board disagreed and dismissed the petition, finding that the objector had no good faith basis for his petition. The appellate court affirmed the board's decision.

¶ 22 Nothing in *Daniel* precludes an objector from relying in good faith on inspections done by others. Especially here, where nomination papers must include 12,500 valid signatures, we must expect a team to work together to determine whether to file an objection and which signatures to challenge.

¶ 23 The appellant in *Bacon v. Holzman*, 264 F. Supp. 120 (N.D. Ill. 1967), *rev'd sub nom*. *Briscoe v. Kusper*, 435 F.2d 1046 (7th Cir. 1970), raised an argument similar to the argument raised by Horton and Arias-Ibarra. The *Bacon* court said:

> "[P]laintiffs object that the Board's decision making process[] violated plaintiffs' rights because the Board members did not personally check every signature but relied upon authorized clerks to compare the petitions with the official 'binder.'

> ***
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> *** [I]n cases like the instant one, where the time and volume strictures imposed upon the Board are weighty, the practicalities of the situation must dominate. In considering such situations, the courts have devised the rule that the administrative officer involved must make his decision after a consideration of the evidence, but that in reaching a decision, he may rely in whole, or in part, upon reports prepared by his subordinates. Thus he need not personally read all of the evidence, but must 'consider and appraise' the evidence. *Morgan v. United States*, 298 U.S. 468, 56 S. Ct. 906, 80 L. Ed. 1288 (1936)." *Bacon*, 264 F. Supp. at 131, *rev'd on other grounds, Briscoe*, 435 F.2d 1046.

¶ 24 If the Board members may rely on the work of others to determine whether nomination papers include a sufficient number of valid signatures, an objector too may in good faith rely on others when he files his objections. Rogers's admission that he did not personally review the signatures does not warrant dismissal of his objections.

¶ 25 C. Constitutionality

¶ 26 The Revised Cities and Villages Act provides that for the City of Chicago, "All nominations for mayor, city clerk, and city treasurer in the city shall be by petition. Each petition for nomination of a candidate must be signed by at least 12,500 legal voters of the city." 65 ILCS 20/21-28(b) (West 2018). Horton and Arias-Ibarra argue that the statute imposes a burden so great that it violates the constitutional right to freedom of speech and freedom of association. "[A] statute challenged as unconstitutional enjoys a presumption of constitutionality. [Citation.] Parties who wish to challenge the constitutionality of a statute

bear the burden of rebutting the presumption and establishing a constitutional violation." *East St. Louis Federation of Teachers, Local 1220, American Federation of Teachers, AFL-CIO v. East St. Louis School District No. 189 Financial Oversight Panel*, 178 Ill. 2d 399, 412 (1997).

¶ 27 In *Stone v. Board of Election Comm'rs*, 750 F.3d 678 (7th Cir. 2014), the Seventh Circuit Court of Appeals addressed an argument that the requirement of 12,500 signatures for mayoral candidates violated the constitution. The *Stone* court said:

> "It is well-settled that '[t]he impact of candidate eligibility requirements on voters implicates basic constitutional rights' to associate politically with like-minded voters and to cast a meaningful vote. *Anderson v. Celebrezze*, 460 U.S. 780, 786, 103 S. Ct. 1564, 75 L. Ed. 2d 547 (1983). But 'not all restrictions ... on candidates' eligibility for the ballot impose constitutionally-suspect burdens.' *Id.* at 788, 103 S. Ct. 1564. 'States may, and inevitably must, enact reasonable regulations of parties, elections, and ballots to reduce election- and campaign-related disorder.' *Timmons v. Twin Cities Area New Party*, 520 U.S. 351, 357, 117 S. Ct. 1364, 137 L. Ed. 2d 589 (1997).
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> The Supreme Court has often stated that in this area there is no 'litmus-paper test' to 'separate valid from invalid restrictions.' *Anderson*, 460 U.S. at 789, 103 S.Ct. 1564 (quoting *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 39 L.Ed.2d 714 (1974)). Rather, a court must make a practical assessment of the challenged scheme's justifications and effects ***.
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> ***

With these principles in mind, we turn to Chicago's ballot access scheme. The plaintiffs argue that requiring candidates to collect 12,500 signatures in ninety days severely burdens 'Average Joes' and 'Janes', outsider candidates who cannot draw on an existing political infrastructure or afford to hire persons (called 'circulators') to collect signatures on their behalf. ***

Illinois enacted its 12,500–signature requirement *** in August 2005. This change appears to have been the legislature's attempt to make the electoral process more open, not less—before 2005, interested candidates had to amass twice as many signatures (25,000) to get on the ballot.

*** What is ultimately important is not the absolute or relative number of signatures required but whether a 'reasonably diligent candidate could be expected to be able to meet the requirements and gain a place on the ballot.' *Bowe v. Board of Election Comm'rs*, 614 F.2d 1147, 1152 (7th Cir.1980) ***. Like the district court, we find that the answer to that question is yes.

• * *

*** As compared to a traditional party-primary system, Chicago's ballot access scheme could even be seen as equalizing the burden between entrenched candidates and outsiders, who now stand on the same footing for ballot qualification purposes.

*** Chicago's signature requirement is not a severe burden under a traditional framework. Recall that 12,500 signatures is about 1% of the total number of registered voters in Chicago or (depending on turnout) about 2.5% of the votes

> cast in the last mayoral election. The Supreme Court has approved of signature requirements as high as 5% of the eligible voting base. [Citation.] Indeed, the Court later approved of an Illinois requirement that minor-party candidates in the Cook County suburbs obtain 25,000 signatures to qualify for the ballot. 25,000 corresponded to 'only slightly more than 2%" of suburban voters,' which the Court observed was 'a considerably more lenient restriction than the [5% requirement] we upheld in *Jenness* [*v. Fortson*, 403 U.S. 431, 442, 91 S. Ct. 1970, 29 L. Ed. 2d 554 (1971)].' *Norman* [*v. Reed*, 502 U.S. 279, 295, 112 S. Ct. 698, 116 L. Ed. 2d 711 (1992)]." *Stone*, 750 F.3d at 681-83.

¶ 28 We note one significant difference between this case and *Stone*. In *Stone*, nine candidates met the signature requirement and had a right to have their names on the ballot. Here, we take notice that no one other than the incumbent City Clerk met the statutory signature requirement. But Horton and Arias-Ibarra presented no evidence that any other candidates encountered exceptional difficulty in this election or in past elections meeting the signature requirement. *Stone* provides guidance for a challenge to the constitutionality of section 21-28(b) of the Revised Cities and Villages Act. To show that the signature requirement violates constitutional constraints, the candidate should present evidence that candidates for City Clerk or City Treasurer have very rarely met the signature requirement despite substantial efforts. The candidates could also show that a requirement of signatures from a number of voters equal to 2.5% of the votes cast in the previous comparable election imposed a nearly impossible burden on candidates for comparable offices in municipalities similar to Chicago in size.

¶ 29 Horton and Arias-Ibarra have not presented such evidence, and therefore they have not met their burden of showing that section 21-28(b) imposes an unconstitutional burden on candidates for City Clerk. We affirm the Board's decision declaring that the names of Horton and Arias-Ibarra shall not appear on the ballot for the office of City Clerk.

¶ 30 III. CONCLUSION

¶ 31 Rogers's testimony supported the Board's finding that he correctly identified his residence address on the objector's petitions, and by the time the candidates filed motions to strike the petitions, Rogers's residence address matched his voter registration address. The Board's factual findings justify the decision to deny the motions to strike the objector's petitions. Rogers's reliance on the work of others to identify the signatures to which to object did not warrant dismissal of his petitions. Horton and Arias-Ibarra did not meet their burden of showing that the signature requirement violates the constitution. Accordingly, we affirm the circuit court's judgment affirming the Board's decision.

¶ 32 Affirmed.