

**IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA
CIVIL DIVISION**

NICOLE ZICCARELLI,

No. GD 20-011793

Petitioner,

v.

ALLEGHENY COUNTY BOARD OF
ELECTIONS,

MEMORANDUM AND ORDER OF COURT

Respondent,

Honorable Joseph M. James

and

PENNSYLVANIA DEMOCRATIC PARTY
AND JAMES BREWSTER,

Copies Sent To:

Intervenors.

Matthew H. Haverstick, Esquire
Andrew F. Szefi, Esquire
Allan J. Opsitnick, Esquire
Michael J. Healey, Esquire

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MEMORANDUM AND ORDER OF COURT

James, J.

November 18, 2020

Petitioner Nicole Zicarelli, candidate for the Senate of Pennsylvania from the 45th Senatorial District, filed a Petition for Review of Decision by the Respondent Allegheny County Board of Elections (“the Board”) on November 16, 2020, seeking to set aside

approximately 300 provisional ballots cast by voters in the November 3, 2020 General Election. Voters were required to sign on two lines and on these ballots they only signed one. Petitioner seeks review of the Board's decision to overrule Petitioner's objection to count these ballots. The Court conducted a hearing on November 17, 2020 via Microsoft Teams. The Pennsylvania Democratic Party and James Brewster moved to intervene in the action. Petitioner and the Board did not object and the motion was granted by the Court. Petitioner stated that she was not claiming any voter fraud regarding the challenged ballots. The Board argues that if an error or defect is caused by the misrepresentation or error of the election administration, the voter should not be penalized. Here, voters presented at their polling location and voted with a provisional ballot. Poll workers handed them all of the materials and gave them instructions how to fill out the outer envelope. Many people are unfamiliar with this process and rely on the information given to them at the polling location. Pennsylvania law holds that there is a breakdown in the administrative process when the facts demonstrate that "an administrative board or body is negligent, acts improperly or unintentionally misleads a party." Union Electric Corp. v. Board of Property Assessment, 746 A.2d 581, 584 (Pa. 2000). In construing election laws, while we must strictly enforce all provisions to prevent fraud, the overriding concern at all times must be to be flexible in order to favor the right to vote. Our goal must be to enfranchise and not to disenfranchise. See, James Appeal, 105 A.2d 64 (Pa. 1954), In re Luzerne Cty. Return Bd., 290 A.2d 108, 109 (Pa. 1972). Similarly, in the In re Nomination Petitions of Howells case, 20 A.3d 617, (Pa. Cmwlth. 2011), an incumbent candidate running for magisterial district judge was given erroneous instructions by the Lehigh County Board of Elections about filing his statement of financial

interest. The Commonwealth Court held that given his reliance upon erroneous information provided by the county elections department that fatal error was curable. Finally, in In re Hall Nomination Petition, 362 A.2d 475, 477 (Pa. 1976), a candidate's petition was presented for filing within the deadline established by the Election Code but was not properly filed due to an error by the Election Bureau and not by the candidate himself. Keeping in mind that the Election Code must be liberally construed so as not to deprive an individual of his right to run for office or the voters their right to elect a candidate of their choice, the Court permitted the candidate to file *nunc pro tunc*.

In light of the fact that there is no fraud alleged in this case, these provisional ballots submitted by registered and eligible voters must be counted. They should not be penalized because they were given and relied on incorrect information by the election administration. The Petition for Review is denied and the Board's decision is affirmed.

Joseph M. James

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And NOW, this 18th day of November 2020, upon consideration of the Petition For Review In the Nature Of A Statutory Appeal filed by Nicole Zicarelli, and any responses thereto, it is hereby ORDERED that the Petitioner's appeal is dismissed and the decision of the Board of Elections is affirmed.

BY THE COURT:

Joseph M. James