

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

NICOLE ZICCARELLI,

No. GD 20-011654

Petitioner,

v.

MEMORANDUM AND ORDER OF COURT

ALLEGHENY COUNTY BOARD OF
ELECTIONS,

Honorable Joseph M. James

Respondent,

Copies Sent To:

and

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

PENNSYLVANIA DEMOCRATIC PARTY
AND JAMES BREWSTER,

Intervenors.

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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 12, 2020, seeking to invalidate

2,349 mail-in ballots cast by voters in the November 3, 2020 General Election. Petitioner seeks review of the Board's decision to overrule Petitioner's objection to count these ballots. Petitioner alleges that these ballots were cast in violation of the Election Code because they do not contain a date penned by the elector on the outer envelope. 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 the failure to place a date on the outer envelope does not invalidate a ballot.

Section 3150.16(a) of the Election Code states:

- (a) General rule--At any time after receiving an official mail-in ballot, but on or before eight o'clock p.m. the day of the primary or election, the mail-in elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is printed, stamped or endorsed "official election ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person to said county board of election.

The Election Code Section 3146.8(g)(3) vests the Board with the duty of determining the sufficiency of the declaration of a mail-in ballot. If the Board determines that the declaration is sufficient, then the Board "shall provide a list of the names of electors whose absentee ballots or mail-in ballots are to be pre-canvassed or canvassed." Id. Any ballots cast by electors whose applications have been challenged are set aside

unopened, but all other ballots that have been verified under subsection (g)(3) shall be counted. 25 P.S. Section 3146.8(g)(4).

The Court agrees with the Board that the Section 3150.16(a) date provision is directory not mandatory. Specifically, the use of the word “shall” does not make a statutory phrase mandatory. It is well settled Pennsylvania law that election laws should be construed liberally in favor of voters, and that “[t]echnicalities should not be used to make the right of the voter insecure.” Pennsylvania Democratic Party v. Boockvar, 238 A.3d 345, 373 (Pa. 2020) *citing* Appeal of James, 105 A.2d 64, 65-66 (Pa. 1954). “Ballots containing mere minor irregularities should only be stricken for compelling reasons.” Shambach v. Bickhart, 845 A.2d 793, 798 (Pa. 2004).

The ballots at issue here are sufficient even without a voter supplied date. They were processed in the Statewide Uniform Registry of Electors (“SURE”) system and timestamped when they were timely delivered to the Board on or before November 3, 2020. They were signed and have been otherwise properly completed by a qualified elector. In light of the fact that there is no fraud, a technical omission on an envelope should not render a ballot invalid. The lack of a written date on an otherwise qualified ballot is a minor technical defect that does not render it deficient. The Court finds that the Board properly overruled Petitioner’s objections to the 2,349 challenged mail-in ballots. These ballots must be counted. 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