

Zicarelli v. Allegheny County Board of Elections, No. 1162 C.D. 2020 (Pa. Commw. Ct. Nov. 19, 2020) Judge Wojcik authored dissenting opinion.

Holding: The Court **reversed** the trial court order and **remanded** with instructions to exclude the approximately 270 provisional ballots from the certified election results. The Court found that the Pennsylvania Election Code contained clear, mandatory requirements that both the affidavit and the outer provisional ballot envelope be signed by the voter, and that provisional ballots could not be counted if the voter had already submitted a timely absentee or mail-in ballot—even if that ballot was defective. Because the statutory requirements were unambiguous, the Court ordered the ballots not be counted.

Analysis: The Court explained that Section 1210 of the Election Code expressly required **two separate signatures**: one on the affidavit and one on the provisional ballot envelope. Section 1210(a.4)(5)(ii)(A) stated that a provisional ballot “shall not be counted” if either signature was missing, and Section 1210(a.4)(5)(ii)(F) barred counting when a timely mail-in ballot had already been received. The Court rejected arguments that the missing signatures were “minor technicalities” or that equitable considerations (such as voters possibly being misinformed by poll workers) should excuse the defects. The Court emphasized that when the legislature uses mandatory language and attaches consequences, courts cannot disregard those commands.

Background: The case arose from the **2020 general election** in Allegheny County. Nicole Zicarelli, the Republican candidate for the 45th State Senate District, contested the county Board of Elections’ decision to count roughly 270 provisional ballots. These ballots fell into three groups: (1) missing the affidavit signature, (2) missing the envelope signature, or (3) cast by voters who had already submitted a mail-in ballot that was timely received but defective. The Board, by 2–1 vote, decided to count all three groups, and the trial court affirmed, reasoning that voters should not be penalized for technical errors. Zicarelli appealed, arguing that the Election Code’s plain language required disqualification

Judge Wojcik’s Dissent: Judge Wojcik disagreed with the majority’s decision to exclude the 270 provisional ballots. He concluded that the trial court properly counted the ballots and would have **affirmed** its decision instead of reversing. He emphasized that the voters in question were all **qualified, registered electors** and that there was no allegation of fraud or double voting. He argued, the only issues were technical defects—either missing one of the two required signatures or attempting to cast a provisional ballot after a defective mail-in ballot had been submitted. He relied on *Appeal of James* (1954), which warned that ballots should not be thrown out for “minor irregularities” unless there were compelling reasons, because the purpose of elections is to capture the true will of the voters. In his view, the absence of one of the signatures was comparable to other technicalities, such as using the wrong ink color on a ballot, which courts had previously treated leniently to avoid disenfranchisement.

Wojcik argued that the Election Code should be interpreted **liberally in favor of the right to vote**, and that throwing out these ballots over signature technicalities unfairly penalized voters for inconsequential errors.

