

**[J-76-2004]**  
**IN THE SUPREME COURT OF PENNSYLVANIA**  
**MIDDLE DISTRICT**

GREGORY L. SHAMBACH,	:	No. 951 MAL 2003
	:	
Appellant	:	Petition for Allowance of Appeal from the
	:	order of the Commonwealth Court, dated
v.	:	December 24, 2003, reversing the order of
	:	the Court of Common Pleas of Snyder
RICHARD W. BICKHART,	:	County, dated November 26, 2003
	:	
Appellee.	:	SUBMITTED: February 17, 2004
	:	
In re: Pennsylvania General Election for	:	
Snyder County Commissioner, November	:	
4, 2003	:	
	:	
Appeal of Gregory L. Shambach of	:	
Recount and Certification of Election	:	
Returns	:	

**OPINION OF THE COURT**

**MR. JUSTICE NIGRO**

**Decided: March 26, 2004**

Appellant Gregory L. Shambach appeals from the Commonwealth Court's order declaring Appellee Richard W. Bickhart the winner of the third County Commissioner seat on the Snyder County Board of Commissioners based on its inclusion of ten write-in votes cast on Bickhart's behalf in the final tally. For the reasons that follow, we affirm.

Shambach and Bickhart along with two other persons, Rick Bailey and Steven Bilger, were formally listed on the ballot as candidates for three Snyder County Commissioner positions in the November 4, 2003 general election.<sup>1</sup> After the election

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<sup>1</sup> Shambach and Bickhart were the Democratic nominees and Bailey and Bilger were the Republican nominees.

returns were counted and tallied, the Snyder County Return Board (“Board”) determined that Bailey and Bilger had won two of the County Commissioner positions, but that the winner of the third position remained undecided as Shambach and Bickhart had both come in third in the election, receiving 2,484 votes each. As a result of the tie, the Board ordered a recount. Following the recount, on November 18, 2003, the Board determined that Shambach had received 2,493 votes, and Bickhart had received 2,500 votes, and accordingly, certified Bickhart as the winner of the third position.<sup>2</sup>

The next day, Shambach appealed from the Board’s decision to the trial court pursuant to Section 1407 of the Election Code, 25 P.S. §§ 2600 - 3591.<sup>3</sup> Among other complaints, Shambach objected to the Board’s inclusion of ten ballots containing write-in votes for Bickhart in the final tally. Shambach argued that these ten votes were invalid because a voter may not write in the name of a person who is already listed as a candidate on a ballot pursuant to Section 1112-A(b)(3) of the Election Code, which provides as follows:

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<sup>2</sup> Representatives of both Shambach and Bickhart observed the recount.

<sup>3</sup> Act of June 3, 1937, P.L. 1333. Section 1407 of the Election Code states:

Any person aggrieved by any order or decision of any county board regarding the computation or canvassing of the returns of any primary or election, or regarding any recount or recanvass thereof under sections 1701, 1702 and 1703 of this act, [footnote omitted] may appeal therefrom within two days after such order or decision shall have been made, whether then reduced to writing or not, to the court of common pleas of the proper county, setting forth why he feels that an injustice has been done, and praying for such order as will give him relief.

25 P.S. § 3157, Act of June 3, 1937, P.L. 1333, art. XIV, § 1407, affected by Act of April 28, 1978 P.L. 202, No. 53, § 2(a)[1193], effective June 27, 1978.

At all other elections, the voter shall vote for the candidates of his choice for each office to be filled, according to the number of persons to be voted for by him for each office, by making a cross (x) or check (/) mark or by making a punch or [other] mark in the square opposite the name of the candidate, or he may so mark the write-in position provided on the ballot for the particular office and, in the space provided therefor on the ballot and/or ballot envelope, write the identification of the office in question and the name of any person not already printed on the ballot for that office, and such mark and written insertion shall count as a vote for that person for such office.

25 P.S. § 3031.12(b)(3) (emphasis added).<sup>4</sup> Shambach also argued that write-in ballots for listed candidates were invalid under Optical Scan Standard 14, which was part of a general “Notice” published by the Pennsylvania Department of State in the August 2, 2003 Pennsylvania Bulletin (the “Notice”).<sup>5</sup>

Following a hearing, the trial court entered an order on November 24, 2003, striking

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<sup>4</sup> Act of June 3, 1937, P.L. 1333, art. XI-A, § 1112-A, amended by Act of July 11, 1980, P.L. 600, No. 128, § 4.

<sup>5</sup> Optical Scan Standard 14 states that: “A properly cast write-in vote shall contain a mark in the target area and, in the space provided, the written name of a candidate whose name does not appear on the ballot for that office.” 33 Pa. Bull., No. 31 at 3970-73. It also includes examples of ballots that are invalid according to this standard. See id. One such example shows a ballot on which someone has written the name of a candidate already listed on the ballot on the line provided for a write-in vote and filled in the oval next to that name. See id. at 3973.

The Department of State adopted the Notice, in which Optical Scan Standard 14 is included, to comply with the Help America Vote Act of 2002, 42 U.S.C. § 15481(a)(6), which requires that each state adopt uniform and nondiscriminatory standards to define what constitutes a vote for voting systems used by the state in elections involving a federal office. According to the Notice, the Department of State based all of the standards in the Notice on the provisions of the Election Code. 33 Pa. Bull., No. 31, at 3935.

the ten write-in votes for Bickhart.<sup>6</sup> After deciding additional objections raised by Bickhart, the trial court determined that the final tally was 2,491 votes for Shambach and 2,490 votes for Bickhart, and thus declared Shambach the winner of the third County Commissioner position. On December 15, 2003, the trial court issued an opinion, explaining initially that it found that the ten write-in votes had been clearly cast for Bickhart.<sup>7</sup> Nevertheless, the trial court determined that the ten votes were invalid based on Optical Scan Standard 14, which was a binding administrative rule.<sup>8</sup> The trial court found that it was obliged to abide by

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<sup>6</sup> The trial court also struck one write-in vote cast for Shambach. Shambach did not challenge the trial court's action in this respect before the Commonwealth Court and he also does not challenge that action in his petition to this Court.

Moreover, although Shambach had initially raised several objections to the Board's decision in his appeal to the trial court, after the trial court decided to strike the ten write-in votes for Bickhart, Shambach moved to withdraw his other objections, and the trial court granted that motion.

<sup>7</sup> The trial court elaborated that because four of the write-in votes were for "Richard Bickhart," they were undeniably cast for Bickhart. The trial court further stated that although two of the write-in votes were for "Bud Bickhart" and one was for "R. Bud Bickhart," these votes were also clearly cast for Bickhart because "Bud" is indisputably Bickhart's nickname. Lastly, the trial court found that three write-in votes that were simply for "Bickhart" were also clearly for Bickhart because there was no other candidate in the election with the surname of Bickhart. See id. at 4 (quoting Appeal of McCracken, 88 A.2d 787, 789 (Pa. 1952) ("A ballot may be counted which contains a candidate's surname only although there are other persons in the borough having the same surname, it being shown that there was no other person of such name who was a candidate for the same or any other office . . . .)). Shambach does not dispute the trial court's findings in these respects.

<sup>8</sup> Citing to this Court's decision in Lloyd v. Pennsylvania Medical Professional Liability Catastrophe Loss Fund, 821 A.2d 1230, 1234 (Pa. 2003), the trial court stated that administrative rules adopted by an agency "are binding upon a reviewing court as part of the statute" if they are: (1) within the agency's power; (2) issued pursuant to proper procedure; and (3) reasonable. Slip op., at 5. Applying that test, the trial court determined that Optical Scan Standard 14 must be binding because: (1) it was within the Department of State's authority; (2) there was no claim that the Department followed an improper (continued...)

Optical Scan Standard 14 even though, in its view, “the Standard is contrary to the case law of this Commonwealth by having the possible effect of not counting a ballot from which the voter’s intent could clearly be discerned.” Slip op. at 5; see also N.T., 11/24/03, at 17-18.

Bickhart appealed from the trial court’s order to the Commonwealth Court, which issued a *per curiam* order on December 18, 2003, reversing the trial court’s decision to the extent that it struck the ten write-in votes for Bickhart and stating that “the final count for the vote for commissioner as it relates to Greg L. Shambach and Richard W. Bickhart is 2,491 for Mr. Shambach and 2,500 for Mr. Bickhart.” On December 24, 2003, the Commonwealth Court filed an opinion explaining its order. The Commonwealth Court initially held that the trial court improperly found that Optical Scan Standard 14 was binding upon it when the standard was merely published as a statement of policy, rather than as a regulation with the force and effect of law.<sup>9</sup> See In re: Pennsylvania Election for Snyder County Commissioner, \_\_ A.2d \_\_, 2003 WL 23190191, at \*2 (Pa. Commw. 2003). Nevertheless, the Commonwealth Court found that Section 1112-A(b)(3) of the Election Code, which

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procedure; and (3) the standard was undeniably reasonable as it tracked Section 1112-A(b)(3). See id. at 5-6.

<sup>9</sup> The court pointed out that the Department of State had directed that Optical Scan Standard 14 be published simply as a notice in the Pennsylvania Bulletin, rather than as a regulatory law. See In re: Pennsylvania Election for Snyder County Commissioner, \_\_ A.2d \_\_, 2003 WL 23190191, at \*2 (Pa. Commw. 2003) (citing 25 P.S. § 2624(h)). Moreover, the court found that the standard was not a binding regulation as it was not promulgated according to the notice and comment procedures set forth in the Commonwealth Documents Law, which it stated are necessary for an agency regulation to be binding. See id. (citing R.M. v. Pennsylvania Housing Finance Agency of Commonwealth, 740 A.2d 302, 305-06 (Pa. Commw. 1999), appeal denied, 759 A.2d 390 (Pa. 2000)).

tracked the language of Optical Scan Standard 14, was binding law and thus, the write-in votes could be invalid if Section 1112-A(b)(3) required that result. See id.

In deciding this question, the Commonwealth Court looked to this Court's decision in Appeal of James, 105 A.2d 64 (Pa. 1954), where we found that a section of the Election Code containing language very similar to that at issue in Section 1112-A(b)(3) must be liberally construed in favor of a voter's right to vote. See In re: Pennsylvania Election for Snyder County Commissioner, \_\_\_ A.2d \_\_\_, 2003 WL 23190191, at \*2. The Commonwealth Court noted that this liberal construction led the Court in James to conclude that the section at issue permitted write-in votes to be cast for candidates already listed on the ballot if: (1) the voter had not attempted to fraudulently cast the vote; and (2) the voter's intent was clear. See id. Citing to the principle of statutory construction that where this Court has interpreted a statute in one way, the General Assembly is presumed to intend the same construction to be placed upon such language in other statutory provisions, see 1 Pa. C.S. § 1922(4), the Commonwealth Court then found that Section 1112-A(b)(3), like the statute at issue in Appeal of James, must be construed to mean that "a voter may not cast a write-in vote for persons whose names are printed on the ballot, except where there is no indication of fraud, *i.e.*, double voting, and the intent of the voter is clear." In re: Pennsylvania Election for Snyder County Commissioner, \_\_\_ A.2d \_\_\_, 2003 WL 23190191, at \*3. The Commonwealth Court therefore applied this test in the instant case and found both that the voters who wrote in Bickhart's name on the ballot clearly intended to vote for him and that there was no sign of fraud involved with those ballots. See id.<sup>10</sup> Thus, the

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<sup>10</sup> In finding that there was no sign of fraud, the Commonwealth Court noted:

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court ultimately held that the ten write-in votes cast for Bickhart must be counted in his favor. See id.

Judge Leavitt dissented from the Commonwealth Court majority's decision, reasoning that a court must find that a ballot was validly cast before attempting to ascertain a voter's intent. See id. Thus, finding that the ten write-in votes were not validly cast pursuant to Section 1112-A(b)(3), Judge Leavitt held that the majority erred in counting the ballots merely because the voters' intentions were clear. See id. at \*4.

Thereafter, Shambach filed a petition for allowance of appeal as well as a request for a stay of the Commonwealth Court's order with this Court.<sup>11</sup> We granted Shambach's request for a stay on December 31, 2003, and subsequently entered an order granting allocatur on February 17, 2004.

Echoing Judge Leavitt's dissent, Shambach initially argues that our case law requires that a court first ascertain whether a ballot was validly cast before attempting to discern the voter's intent. Shambach therefore contends that because the ten write-in ballots were improperly cast pursuant to Section 1112-A(b)(3) of the Election Code, they

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During the recount, the members of [the] County Board actually held the ballot cards in their hands and examined the entire ballot. If any of the ten voters had cast a regular vote for Bickhart in addition to the write-in vote, the members of the County Board conducting the recount would have seen it upon examination of the ballot cards.

In re: Pennsylvania Election for Snyder County Commissioner, \_\_ A.2d \_\_, 2003 WL 23190191, at \*3.

<sup>11</sup> Shambach initially filed a request for a stay from the Commonwealth Court, however, that court denied his request.

were invalid regardless of whether the voters' intentions were clear and the ballots were free from fraud. Shambach further argues that the Commonwealth Court erred in finding that Section 1112-A(b)(3) was similar to the statute at issue in Appeal of James because that statute involved paper ballots and Section 1112-A(b)(3) concerns voting systems that use automatic tabulating equipment, such as the optical scanning system used here. According to Shambach, Section 1112-A(b)(3) is more akin to Section 1216(e), which bars the inclusion of write-in votes for candidates already listed on a voting machine and which this Court upheld as a reasonable restriction in Appeal of Yerger, 333 A.2d 902 (Pa. 1975). In fact, Shambach contends that Section 1112-A(b)(3) must be interpreted as barring write-in votes based on our decision in Appeal of Yerger because the reasons we found for upholding the restriction there, namely, preserving the efficiency of the voting machines and protecting against double voting, are also present with regard to the optical scanning system used here.<sup>12</sup> We disagree.

There is a “longstanding and overriding policy in this Commonwealth to protect the elective franchise.” Petition of Cioppa, 626 A.2d 146, 148 (Pa. 1993); see also In re: Weiskerger Appeal, 290 A.2d 108, 109 (Pa. 1972) (“Our goal must be to enfranchise and not to disenfranchise.”). Thus, although election laws must be strictly construed to prevent fraud, they “ordinarily will be construed liberally in favor of the right to vote.” Appeal of James, 105 A.2d at 65 (quoting 29 C.J.S., Elections, § 7, p. 27); see also In re: Nomination Petition of Johnson, 502 A.2d 142, 146 (Pa. 1985); In re: Melody Appeals, 296 A.2d 782, 784 (Pa. 1972); In re: Cole’s Election, 72 A. 510, 511 (Pa. 1909). To that end, we have

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<sup>12</sup> Shambach does not challenge the Commonwealth Court’s finding that Optical Scan Standard 14 was not a binding regulation. Thus, that issue is not before this Court.

held that ballots containing mere minor irregularities should only be stricken for compelling reasons. See In re: Mellody Appeals, 296 A.2d at 784; In re: Petitions to Open Ballot Boxes, 188 A.2d 254, 256 (Pa. 1963); Appeal of Gallagher, 41 A.2d 630, 632 (Pa. 1945). As we recognized in Appeal of Gallagher, “[m]arking a ballot in voting is not a matter of precision engineering but of an unmistakable registration of the voter’s will in substantial conformity to the statutory requirements.” 41 A.2d at 632.

In Appeal of James, the board of elections determined that the appellant, Samuel A. James, was the winner of an election for a council seat. James’ opponent, Theodore Rushe, however, challenged the election results, arguing that because James was formally listed on the election ballot, 151 write-in votes were improperly calculated in his favor based on Section 1003(e) of the Election Code, which provides, as follows:

There shall also be left at the end of each group of candidates for [offices other than President and Vice-President of the United States], as many blank spaces as there are persons to be voted for for such office, in which space the elector may insert the name of any person or persons whose name is not printed on the ballot as a candidate for such office.

25 P.S. § 2963(e) (emphasis added).<sup>13</sup> The county board of elections agreed with Rushe that the 151 write-in votes were void pursuant to Section 1003(e) and, as a result, declared Rushe the winner. On appeal, this Court reversed. In doing so, we reviewed a representative ballot that had been introduced as an exhibit before the trial court, and noted that although James’ name was stated twice on the ballot, only one vote had been cast for him, and thus there was no claim of fraud. See id. at 65. Moreover, we found that the

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<sup>13</sup> Act of June 3, 1937, P.L. 1333, art. X, § 1003, amended by Act of April 24, 1947, P.L. 68, § 1; Act of Jan. 8, 1960, P.L. (1959) 2142, § 2; Act of Aug. 13, 1963, P.L. 707, § (continued...)

ballot “unmistakably, unerringly and precisely demonstrated [the voters’] intention[s] to vote for James.” Id. at 65-66. Therefore, because there was no fraud involved and the will of the voters who cast the write-in votes was clear, we held that “it would be a stultification of the very principle of democracy behind the Election Code” to deprive James of the 151 write-in votes simply on the basis that the Code did not expressly permit voters to cast write-in votes for listed candidates. Id. at 66-67. Accordingly, we liberally construed the Election Code so as to allow the 151 write-in votes to be counted for James. See id.

Twenty years after Appeal of James, we issued a decision in Appeal of Yerger, 333 A.2d 902, another election contest involving the issue of whether write-in ballots for candidates already listed on a ballot could be counted. In that case, the appellant, William Yerger, was declared the winner of an election for Jackson Township’s tax collector after it was determined that he obtained two more votes than his opponent, Norman Frederick. Supporters of Frederick appealed to the trial court, challenging the election board’s failure to count eight write-in votes that had been cast for Frederick. Yerger argued, however, that because voting machines had been used in the election, the write-in votes were properly voided pursuant to Section 1216(e) of the Election Code, which states:

A voter may, at any primary or election, vote for any person for any office, for which office his name does not appear upon the voting machine as a candidate, by an irregular ballot containing the name of such person deposited, written or affixed in or upon the appropriate receptacle or device provided in or on the machine for that purpose, and in no other manner. . . . With [exceptions not relevant here], no irregular ballot shall be cast on a voting machine for any person for any office, whose name appears on the machine as a candidate for that office, and any ballot so cast shall be void and not counted.

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17, effective Jan. 1, 1964; Act of July 16, 1968, P.L. 354, No. 175, § 1; Act of Dec. 10, 1974, P.L. 835, No. 280, § 2; Act of Dec. 2, 1976, P.L. 1221.

25 P.S. § 3056(e) (emphasis added).<sup>14</sup> The trial court concluded that Section 1216(e)'s proscription against write-in votes for candidates whose names already appeared on the voting machine violated the requirement in article seven, section six of the Pennsylvania Constitution that election laws be uniform because, as this Court made clear in Appeal of James, write-in votes for candidates whose name already appeared on a paper ballot could be counted pursuant to the Election Code.<sup>15</sup> Thus, the trial court ordered that the eight write-in votes must be counted, and declared Frederick the winner.

On appeal to this Court, we reversed. We initially noted that the language in Section 1216(e) unambiguously required that write-in votes cast for candidates already named on the machine “be void[ed] and not counted,” and that the statute was “to be given full effect in accordance with its words unless that result is prohibited by the Constitution.” Appeal of Yerger, 333 A.2d at 904-05. Turning then to the trial court’s finding that Section 1216(e) violated the uniformity clause in the Pennsylvania Constitution, we noted that the clause only requires like treatment where the “same circumstances” are present and “the Legislature is not forbidden to draw distinctions where difference in treatment rests on some substantial basis.” Id. at 906 (quoting Kerns v. Kerns, 69 A.2d 388, 393 (Pa. 1949)). We then found that there were indeed two substantial bases for affording different treatment to write-in votes cast on voting machines. First, we found that the ban against

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<sup>14</sup> June 3, 1937, P.L. 1333, art. XII, § 1216, amended by Act of Nov. 21, 1969, P.L. 309, § 1.

<sup>15</sup> Article VII, section 6 of the Pennsylvania Constitution provides, with exceptions not relevant here, that “[a]ll laws regulating elections by the citizens . . . shall be uniform throughout the State. . . .”

write-in votes for listed candidates on voting machines was necessary to maintain the speedy and efficient operation of the machines. As we explained:

Allowing write-in votes for those appearing on the machine would increase the time and effort required to count the votes. By ignoring the speedy and efficient means of voting for such candidates provided by the regular operation of the machine, the voter casting an irregular vote would, to that extent, defeat the very purpose of using voting machines. When dealing with a comprehensive and carefully drawn legislative scheme for the conduct of elections, we must take care not to consider the particular elements of the scheme without regard to their place in the entire structure. Otherwise, the legislative plan may be frustrated by deviations, each seemingly reasonable in itself but destructive of the carefully designed structure.

333 A.2d at 906.

Second, we found that Section 1216(e)'s bar was a safeguard against voters casting more votes than allowed or votes for the same candidate twice, i.e., "double voting." See id. While not explicitly explained in our opinion, it seems that the procedure set forth in Section 1216(e) for casting write-in votes makes it particularly difficult to ascertain if double voting has occurred because it provides for write-in votes to be cast on separate, irregular ballots rather than on the voting machine. See 25 P.S. § 3056(e) (explaining that although voter pulls lever on voting machine to vote for listed candidate, when voter wishes to cast write-in vote, he must do so on an irregular ballot that must be deposited in a receptacle provided in or on voting machine). Thus, an election official counting votes in an election in which Section 1216(e) applies must look both at any votes cast on the machine and at any write-in votes cast on an irregular ballot, in order to determine if a voter has double voted. Although we noted that the voting machines used in the election had a locking mechanism whereby once a voter raised a slide to cast a write-in vote, the machine locked so that the voter could not cast a vote for a candidate whose name was on the machine, we found that

Section 1216(e)'s bar against write-in votes for listed candidates "erected a considerable safeguard against the failure of the locking mechanism." 333 A.2d at 906. In contrast, we noted that this safeguard was "unnecessary when dealing with paper ballots, because it is easily determined if any ballot contains more votes for a given office than there are persons to be elected." Id. Accordingly, we found that there were substantial reasons for the different treatment between write-in votes cast for listed candidates on voting machines and write-in votes cast for listed candidates on paper ballots, and therefore held that Section 1216(e) did not violate the uniformity clause and reversed the trial court's order declaring Frederick the winner of the election. See id. at 906-07.

In considering the statute at issue in the instant case, Section 1112-A(b)(3), we initially point out that although it does not specifically authorize a voter to cast a write-in vote for a candidate whose name is already printed on the ballot, it also does not declare that such a write-in vote must be voided and may not be counted. Thus, contrary to Shambach's claims otherwise, we do not find that Section 1112-A(b)(3) plainly requires that write-in votes cast for listed candidates cannot be counted. We further note that Section 1112-A(b)(3) was enacted after both Section 1003(e) and Section 1216(e) as well as our decisions in Appeal of James and Appeal of Yerger interpreting those respective statutes, and yet the General Assembly modeled the language in Section 1112-A(b)(3) on that in Section 1003(e), rather than that in Section 1216(e). Compare 25 P.S. § 3031.12(b)(3), *i.e.*, Section 1112-A(b)(3) (when casting a write-in vote, a voter may add "*the name of any person not already printed on the ballot for that office*") (emphasis added), and 25 P.S. § 2963(e), *i.e.*, Section 1003(e) (in the write-in space, an "elector may insert *the name of any person or persons whose name is not printed on the ballot as a candidate for such office*")

(emphasis added), with 25 P.S. § 3056(e), *i.e.*, Section 1216(e) (“no irregular ballot shall be cast on a voting machine for any person for any office, whose name appears on the machine as a candidate for that office, *and any ballot so cast shall be void and not counted*”) (emphasis added). Like the Commonwealth Court below, we find that the General Assembly’s decision in this respect to be significant. In fact, we agree with the Commonwealth Court that we can presume from the General Assembly’s decision to model Section 1112-A(b)(3) after Section 1003(e) that it intended Section 1112-A(b)(3) to be interpreted the same way that we interpreted Section 1003(e) in Appeal of James.<sup>16</sup> See 1 Pa. C.S. § 1922(4); Appeal of Borough of Alquippa, 175 A.2d 856, 862 (Pa. 1961). Accordingly, we hold that Section 1112-A(b)(3), like Section 1003(e), must be liberally construed to protect voters’ right to vote, and therefore, write-in votes cast for listed candidates may be counted so long as the voter’s intent is clear and there is no sign of fraud.

While Shambach argues that Section 1112-A(b)(3) must be construed like Section 1216(e) because the reasons we found to substantiate Section 1216(e)’s bar in Appeal of Yerger also substantiate a bar pursuant to Section 1112-A(b)(3), we refuse to read an all-out prohibition into Section 1112-A(b)(3) where one is not explicitly required, particularly

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<sup>16</sup> Significantly, Section 1112-A(a)(3), which concerns write-in votes made on purely electronic voting systems, *i.e.*, systems where paper ballots and ballot cards are not used, contains language mirroring that in Section 1216(e). See 25 P.S. § 3031.12(a)(3) (“No write-in vote shall be cast on a voting device for any person for any office, whose name appears on the ballot label as a candidate for that office, *and any ballot so cast shall be void and not counted.*”) (emphasis added). As such, it is apparent that the General Assembly, at the time it enacted Section 1112-A(b)(3), knew how to expressly prohibit write-in votes for candidates already listed on the ballot and simply chose not to do so in Section 1112-A(b)(3).

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given this Commonwealth's longstanding policy to protect the elective franchise. Furthermore, we simply do not agree that the reasons for Section 1216(e)'s bar are present with respect to Section 1112-A(b)(3).

Unlike Section 1216(e), Section 1112-A(b)(3) governs voting systems where voters cast their votes on paper ballots or ballot cards, but automatic tabulating equipment is used to count the votes. Pursuant to an optical scanning system, which is the type of Section 1112-A(b)(3) system that was used in the instant case, voters either place a mark or punch a hole on the ballot cards in an oval next to the name of the candidate of their choice, and "an optical ballot scanner read[s] the cards." In re: Pennsylvania Election for Snyder County Commissioner, \_\_\_ A.2d \_\_\_, 2003 WL 23190191, at \*4 n.5. The ballot cards also have a line on them for voters to cast write-in votes. See 25 P.S. § 3031.12(b)(3). However, as the Commonwealth Court pointed out, "although a ballot scanner can read marks properly placed on, or holes properly punched in, a ballot card, ballot scanners cannot read write-in votes." In re: Pennsylvania Election for Snyder County Commissioner, \_\_\_ A.2d \_\_\_, 2003 WL 23190191, at \*4 n.5. Thus, an election official must always review the ballot card where a write-in vote has been cast in order to tabulate that vote. Moreover, because the write-in votes are cast on ballot cards that also contain the votes cast for listed candidates, the election official may easily examine the entire ballot card to determine whether a voter has impermissibly double voted.<sup>17</sup> Under these circumstances, it is

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<sup>17</sup> Shambach argues that the election official tabulating the write-in votes cannot examine the entire ballot because there is no provision in the Election Code requiring him to do so. However, we cannot agree that the official must limit his review of the ballot to the space provided for write-in votes simply because there is no statute directing him to look (continued...)

apparent that the tabulation of the write-in votes at issue in the instant case, unlike the tabulation of the write-in votes cast in Appeal of Yerger, will not undermine the efficiency of the voting system or make it possible for voters to cast more than one vote for a single candidate. Thus, the concerns that drove our decision to prohibit write-in votes for listed candidates in Appeal of Yerger are simply not present with respect to the optical scanning system used here.

In sum, we agree with the Commonwealth Court below that Section 1112-A(b)(3) must be liberally construed to allow for the calculation of write-in votes made on behalf of a candidate already listed on a ballot where there is no evidence of fraud and the voter's intent is clear. Moreover, because in the instant case, Shambach does not claim, and the evidence does not show, that the ten ballots containing write-in votes for Bickhart were fraudulent or improperly cast in any way, and because the trial court found that the voters who cast the ten write-in votes clearly intended to vote for Bickhart, we hold that the Commonwealth Court properly determined that these ten votes must be counted for Bickhart.

The Commonwealth Court's order is affirmed.

Mr. Chief Justice Cappy files a dissenting opinion.

Mr. Justice Castille files a dissenting opinion.

Madame Justice Newman files a concurring opinion.

Mr. Justice Saylor files a concurring opinion.

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elsewhere on the ballot. Rather, we find that the official must always review the entire ballot because if he failed to do so, there would be no clear way to discern if the voter who cast the write-in vote double voted.

Mr. Justice Eakin files a dissenting opinion.