

THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED

APR 14 2017

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas

S.C. SUPREME COURT

Brian Gibbons, Circuit Court Judge

Case No. 2016-CP-12-1418

Jackie HarrisAppellant,

v.

Lancaster County Election Commission, Lancaster Municipal Election Commission, and
Linda Blackmon-Brace Respondents.

INITIAL BRIEF OF APPELLANT

HYATT LAW, LLC



By: Elizabeth A. Hyatt
Attorney for Appellant
105 W. Dunlap Street
Post Office Box 2252
Lancaster, SC 29721
(T) 803.286.4646
(F) 866.412.4835

TABLE OF CONTENTS

Table of Authorities ii

Statement of Issues on Appeal 1

Statement of the Case 2

Facts 3

Arguments

I. **The Court erred in affirming the Commission’s use of a Standard of Review that required Ms. Harris to produce evidence of enough irregularities that would have changed the result of the election, where there was clear evidence of fraud and other illegalities on the part of Blackmon-Brace.** 11

II. **The Court erred in affirming the Commission’s finding that Harris did not produce evidence of enough irregularities that would have changed the result of the election, where there was a difference of only 46 votes and Harris presented over 100 requests for paper absentee ballots filed by Linda Blackmon-Brace or her assistants on behalf of voters, the vast majority of which were in District 3, and where 48 of those District 3 paper ballots were sent to Blackmon-Brace’s *own address*.** 17

III. **The Court Erred in Affirming that the Commission’s finding that it did not have Authority to Give Appellant Additional Time to Gather Evidence, Where Appellant had Approximately Two Hours' Notice of the Protest Hearing, which occurred immediately after certification of election results.** 20

CONCLUSION 26

TABLE OF AUTHORITIES

CASES

Bagwell v. Gecy, 372 S.C. 237 (2007) , 12, 13,15, 16, 17, 20

May v. Wilson, 199 S.C. 354, 19 S.E.2d 467 (1942).. 12

.

Butler v. Town of Edgefield, 493 S.E.2d 838 (1997) 15

.

Bluffton v. Fulgham, et al., 686 S.E.2d 683 (2009).. 23

.

STATUTES

S.C. Code Ann. § 7-15-330. 13, 18

S.C. Code Ann. § 7-15-385. 13

S.C. Code Ann. § 7-5-610 18, 19

S.C. Code Ann. § 7-17-40. 22

ATTORNEY GENERAL’S OPINION

Attorney General’s opinion dated September 29, 2014, regarding residency in
municipal elections 16

STATEMENT OF ISSUES ON APPEAL

1. Did the Court err in affirming the Commission's use of a Standard of Review that required Harris to produce evidence of enough irregularities that would have changed the result of the election, where there was clear evidence of fraud and other illegalities on the part of Blackmon-Brace?
2. Did the Court err in affirming the Commission's finding that Harris did not produce evidence of enough irregularities that would have changed the result of the election, where there was a difference of only 46 votes and Harris presented over 100 requests for paper absentee ballots filed by Linda Blackmon-Brace or her assistants on behalf of voters, the vast majority of which were in District 3, and where 48 of those District 3 paper ballots were sent to Blackmon-Brace's *own address*?
3. Did the Court Err in Affirming that the Commission's finding that it did not have Authority to Give Appellant Additional Time to Gather Evidence, Where Appellant had Approximately Two Hours Notice of the Protest Hearing, which occurred immediately after certification of election results?

STATEMENT OF THE CASE

The underlying case concerns a Protest of a Municipal Election for Lancaster City Council. The candidates for the District Three seat on the Council were incumbent, Jackie Harris (“Harris” or “Appellant”), and Linda Blackmon-Brace (“Blackmon-Brace”). The election was held on Tuesday, November 8, 2016, in conjunction with other National, State, and County elections. The Lancaster County Election Commission (“Commission”), by a longstanding agreement with the City of Lancaster (“City), was responsible for administering the municipal election and ran it simultaneously with the other governmental elections. [Tr. p. 20, l. 10-25; Order of Circuit Court].

The Appellant led the election through all electronic results. After the paper absentee ballots were manually counted, however, Appellant had lost the election by 46 votes (281-235). [Order of the Commission, p. 1]. The Appellant filed a timely protest with the Lancaster County Election Commission on Thursday, November 10, 2016. Harris also served the Lancaster County Voter Registration director, Mary Ann Hudson, with a subpoena *duces tecum*, requesting documents relating to the election at the same time. Harris was notified the next day, Friday, November 11, 2016, at approximately 12:00 pm, that a hearing would be held on the protest at 2:30 pm that same day. The hearing commenced at 2:30 pm, with Commission members Rick Crimminger, Elvira Faulkner McIlwain, and Marshall Benson present.

At the hearing, Appellant made several motions for a continuance, citing that the hearing was in contravention of Appellant’s right to due process. Based on advice from the South Carolina Election Commission (SCEC), the County Election Commission *did not even consider* Harris’s motions before denying a continuance. [Order, p. 1; Tr. p. 16]. The subpoena requesting evidence had not been fulfilled, so Harris was then given a fifteen (15) minute recess

to go to the Voter Registration Office to gather as much evidence as possible. [Tr. p. 17].

During the course of the hearing, Harris introduced nine (9) different exhibits, all consisting of multiple pages, of address irregularities, alleged fraudulent requests for address changes, residency concerns, and other documents supporting Harris's assertions that the election process for the District 3 seat was not legitimate. Although the Commission *did not even look at* this evidence [Tr. p. 111], the Order stated that such evidence "was *insufficient* to prove that . . . [it] would have changed the certified results of the City of Lancaster District 3 election" and the protest was denied. [Order, p.2, emphasis added].

Harris received written notice of the Commission's Order on November 30, 2016. She then filed an appeal in the Lancaster County Circuit Court. A hearing was held on the appeal before the Honorable Brian P. Gibbons on February 2, 2017. Judge Gibbons entered a written order denying the appeal on February 15, 2017. This appeal follows.

FACTS

For many years, Linda Blackmon-Brace (aka Linda Blackmon, aka Linda Brace) has engaged in a process of requesting and acquiring hundreds of paper absentee ballots on behalf of voters. And, with the help of several assistants including women named Denise (Neicy) Mills, Laverne Kirk, and Shalonda Blackmon, Blackmon-Brace, and/or her assistants, have "assisted" these voters in casting their ballots. In the November 2016 election, Blackmon-Brace was a candidate on many of these ballots for Lancaster City Council District 3. Her opponent, Jackie Harris, the incumbent, won every precinct in that race by large margins, as well as the in-person electronic absentee ballots. In spite of losing all of these boxes to Harris, Blackmon-Brace ultimately posted the most votes in the election – that is because she won 92% of the *paper* absentee ballots cast. This glaring discrepancy alone warrants a look into Blackmon-Brace's

methods for acquiring paper absentee ballots, as well as the short time period Harris was given to gather her evidence and present her protest after learning the result.

Blackmon-Brace had several methods of acquiring paper absentee ballots as she described in testimony before the County Election Commission, and as shown through exhibits presented by Harris at the protest hearing. One way in which Blackmon-Brace and/or her assistants acquired these paper absentee ballots is that they would go to a voter's home and have the voter sign a request for a paper ballot to be mailed to them or to Blackmon-Brace herself. [See exhibits 6, 7, and 9] This request was on a form prepared by Blackmon-Brace, which she described in testimony to the Commission, stating that the form she had voters sign requested paper absentee ballots in every election to take place that year, "I did all those things with one request so that I didn't have to come back and redo it every time." [Tr. p. 73, l. 23-25]. Blackmon-Brace testified that she had "walked 400 miles every week" during the election as she went door to door to acquire these requests for paper absentee ballots, for a total of "17,000 miles" [Tr. p. 67, l. 22] and that she had acquired "over 600" paper absentee ballots in this way. [Tr. p. 65, l. 23 – p. 66, l. 15].

Blackmon-Brace testified that in past elections, when the paper ballots she requested were mailed to the individual voters' homes, it was inconvenient for her and her assistants to pick them all up. She stated that sometimes she or her assistants were going to voters' homes "up to ten times" to get the paper ballot back from the voter so that it could be submitted to the elections office [Tr. p. 68, l. 24-25]. Blackmon-Brace testified that for the sake of convenience, in this election (*in which she was a candidate*) she decided "wouldn't it be great for Neicy and Salanda [her assistants] and all them going back ten times if it [the paper absentee ballot] came to the foundation." [Tr. p. 68, l. 23-25]. The "foundation" is a house that is owned and

controlled by Blackmon-Brace, located at 701 East Arch Street in Lancaster. So, Blackmon-Brace had voters sign a pre-printed request that she prepared, in which the voter purports to request that his or her paper absentee ballot be mailed to one of Blackmon-Brace's own addresses: 701 East Arch Street. This was done in at least forty-eight (48) cases. [See exhibits 6, 7 and 9; Tr. p. 73, l. 23-25].

In addition, whether the ballot was mailed to the voter's address or to her own, in many cases, Blackmon-Brace included a separate pre-printed statement on the form that reads as follows: "I did not feel as if I understood the applications and ballots. I therefore requested (blank often filled in with the name "Linda Blackmon" or "Linda Blackmon-Brace") assist me. I made my own decision as to whom I wanted to vote for." [See exhibits 6, 7 and 9; Tr. p. 78, l. 15-23]. Please note that this statement was on the pre-printed *request* for an absentee ballot, and was submitted long before the voter would have received a ballot or application or had a chance to determine that he or she "did not understand the applications and ballots." Also, it is obvious to any layperson that all handwriting is identical for almost every application, and that only the voters' signatures differ, and that this handwriting is quite similar to Blackmon-Brace's own handwriting following her own signature on the many forms. Among the pre-printed statements requesting "assistance" in filling out the paper ballot, six (6) contain the name of Linda Blackmon-Brace in what appears to be Linda Blackmon-Brace's handwriting [4 in exhibit 7, and 2 in exhibit 9], and three (3) contain the names of Linda Blackmon-Brace's assistants, Denise Mills or Laverne Kirk. [Exhibit 7]

Furthermore, Harris testified that as she was going door to door to campaign, she met a man named Charles on Caskey Lane, who told her that Blackmon-Brace helped him vote for the president and had taken his ballot. Harris testified that she asked him if he was aware that there were other races on the ballot, and that he seemed confused and said that he would have wanted

to vote in those other races, but that Blackmon-Brace had him vote for the president and sign his ballot and that she took the signed ballot with her. Harris testified that this gentleman appeared concerned about what had happened to his signed ballot after he relinquished it to Blackmon-Brace since there were many elections on that ballot that he was unaware were left blank when he turned it over to her. [Tr. p. 49, l. 15 – p. 52, l. 6]. Blackmon-Brace admitted that her assistants would often hand deliver the paper absentee ballots they had collected in batches to the County Election office, although she testified that she did not hand deliver paper ballots herself, as that would be illegal. [Tr. p. 75, l. 18- p. 77, l. 21]. She testified that there were hundreds of ballots she acquired in this way. [Tr. 66, l. 15].

And as if this were not enough to raise a red flag as to fraud, Blackmon-Brace also admitted to changing the addresses of many voters to a residence *inside* of City Council District 3 on the eve of the election [Tr. p. 77, l. 3 – 6; See also Exhibit 1A – 1F]. A couple of these houses were clearly empty houses that she herself owned. [Ex 1A – 1F; and Ex 8]. One voter whose address Blackmon-Brace changed showed up to vote on election day and was surprised and upset to learn that Blackmon-Brace had submitted a change of address form for her changing her residential address to her brother's address, which was in City Council District 3, and where she did not live. The poll manager and the Chairman of the Election Commission testified to speaking with this voter, Velmar Izzard, who told them that she had not moved and that "Linda" must have changed her voting address. [Tr. p. 44, l. 19 - p. 48, l. 8; and Exhibit 5]. Due to this incorrect change and the impending close of the polls, Izzard did not get to cast a ballot in the election.

In addition to the many changes of address forms that Blackmon-Brace or her assistants submitted that changed the voting address from outside of City Council District 3 to inside of her

district, at least thirteen (13) adult voters claimed to live at properties at 103 and 104 Rose Lane – including Blackmon-Brace herself [See Exhibit 2 (showing 8 adults at 104 Rose Lane plus the requests for paper absentee ballots in Exhibit 9 of Lula Foster and Joseph Hinson, indicating that they too lived at that address); Exhibit 2 (showing 5 adults at 103 Rose Lane plus the change of address of Ricky Nesbit in Exhibit 1F indicating that he lived at that address); Tr. p. 31].

Blackmon-Brace herself claims to live at 104 Rose Lane, along with all of these other unrelated people. This is a very small house in disrepair that is not zoned for multi-family living, and Blackmon-Brace testified that she receives no rent from these unrelated adult roommates.

Furthermore, Harris presented reports of water consumption clearly showing that virtually no water runs through the pipes at either of these houses. In fact, the water to 103 Rose Lane has been completely shut off due to delinquency since 2014 [Exhibit 8]. Blackmon-Brace claimed that she hauled buckets of water from her “foundation” house many blocks away for all of the people residing at Rose Lane “to use, cook, and bathe”. [Tr. p. 95, l. 9 - 16]. In questioning Blackmon-Brace, the Commission Chair, who was familiar with the house on Rose Lane, indicated serious skepticism at Blackmon-Brace’s claims of sharing such a small house with so many unrelated people under these conditions [see Tr. p. 95, l. 22 – 97, l. 25].

And, although Blackmon-Brace lists the address of 104 Rose Lane as her residence for purposes of running for City Council District 3, she also testified that she does not get a 4% homestead property tax exemption for that property (which is given to all owner-occupied residences in South Carolina). [Transcript p. 71, l. 4-8]. Harris testified that when she was going door to door to campaigning, that she knocked on the doors of these addresses, and in spite of Blackmon-Brace’s contention that thirteen people live in these houses, no one came to the door. [Tr. p. 58, l. 7-8]. And when Harris’ process server went to Blackmon-Brace’s alleged residence

at 104 Rose Lane to serve her with the Notice of Appeal in this case, he could not locate her or anyone else at that address, even though she and multiple other voters purport to live there. He filed an affidavit of Due Diligence with the Court, which stated that there was no evidence of any activity at that address [Affidavit of Due Diligence of Lanny Pennington introduced at Appeal Hearing]. From the testimony and from a clear look at the water consumption records, no reasonable person could conclude that Blackmon-Brace or *any* of these other thirteen (13) people actually lives at 103 or 104 Rose Lane, as she claims in her own application for candidacy and in the multiple change of address forms and requests for paper ballots that she filed with the Voter Registration office.

At the protest hearing, Harris presented all of this evidence, much of which was authenticated by Blackmon-Brace's own testimony. Harris, through her attorney, stated that she was prepared to present much more evidence, and had subpoenas prepared for voters whom she is informed and believes were disenfranchised by Blackmon-Brace, as well as some of Blackmon-Brace's former "assistants" who were prepared to testify as to the methods by which they had acquired paper absentee ballots and votes for Blackmon-Brace in the past. However, Harris was given only two hours notice of the protest hearing, which was held immediately after certification of the election results, and Harris, was, therefore, unable to subpoena these witnesses. Harris argued at the protest hearing that, pursuant to the law regarding computation of time in the election statutes, the hearing could have been held on the following Monday, which would have given her time to acquire additional exhibits and testimony. However, the commission stated that, although this was clearly unfair, and a "disservice" to the parties [Tr. p. 107, l. 8], it believed that it had been given strict orders by the State Election Commission and its

attorneys that it did not have the discretion to allow Harris time to produce these additional witnesses. [Tr. p. 108, l. 25 – 109, l. 8].

In spite of the fact that she was refused the time to produce additional witnesses, Harris maintained that she produced sufficient evidence to call into question the results of the election on the basis of fraud. However, the Election Commission ruled without looking at the exhibits, stating that, after talking with their attorneys and the State Election Commission (prior to the hearing) that it was their understanding that they *could not* rule in Harris' favor, although they seemed inclined to do otherwise and admitted that the ruling they were told to render was "unfair." [Tr. pp. 111-112]. When the commission read its pre-prepared ruling without even taking a recess to deliberate, Harris' attorney asked, "May I just ask why none of the exhibits were even looked at? I thought that's what we were – that's why we were –" [Tr. p. 111, l. 14-16]. She was interrupted by the Chair of the Commission, who stated that Harris would have to prove that all of the irregularities presented could change the result of the election. [Tr. P. 111, l. 18-21].

In truth, they could have. Blackmon-Brace posted only 46 more votes than Harris due to overwhelming numbers of paper absentee ballots. But Harris presented at least 102 requests for paper absentee ballots on Blackmon-Brace's forms, the vast majority of which were in City Council District 3. Forty-eight (48) of those ballots were for City Council District 3 and were mailed *directly* to Blackmon-Brace's "foundation" at 701 E Arch Street – an address Blackmon-Brace owns and controls [39 in exhibit 7, 1 in exhibit 6, and 8 in exhibit 9]. An additional thirty-one (31) of those requests for paper absentee ballots were filled out and witnessed by Blackmon-Brace herself. [29 in Exhibit 6, and 2 in Exhibit 9]. Six were witnessed by her assistants. [Exhibit 9]. Six (6) requests for paper absentee ballots within City Council District 3

contained an authorization clearly in Blackmon-Brace's handwriting but signed by the voter, stating that Blackmon-Brace herself was authorized to help the voter complete the ballot [4 in Exhibit 7, and 2 in Exhibit 9]. Three (3) gave her assistants that authority [Exhibit 9]. And Blackmon-Brace maintains that a full thirteen (13) unrelated adult voters lived with her in her residence and the adjacent building at 104 and 103 Rose Lane.

Harris' attorney argued that the Commission was considering the wrong standard and that this was an issue of fraud (not mistake), and that in showing fraud, one does not have to prove that enough votes were fraudulently acquired that the result would have been different, that one only had to show the fraud in itself, which the Commission would see if it would look at the exhibits she offered. The Commission disagreed, stating that, although it did have clear concerns regarding the evidence of fraud that was presented, that the Commission believed it did not have the jurisdiction to make a finding regarding such fraud in acquiring these paper absentee ballots because "fraud is a criminal offense and not a voting offense." [Tr. p. 111, l. 24-25]. The Commission also suggested that the City Council should consider whether Blackmon-Brace actually lived in her district, given the testimony that there was no water consumption at that residence and she does not get a residential homestead exemption [Tr p. 109, l. 23 – p. 110, l. 12], but the Commission, again, erroneously stated it did not have the jurisdiction to make such a finding, in spite of its clear concerns about Blackmon-Brace's truthfulness. [Tr. p. 112, l. 4-7].

ARGUMENTS

- 1. The Circuit Court erred in affirming the Commission's use of a Standard of Review that required Harris to produce evidence of enough irregularities that would have changed the result of the election, where there was clear evidence of fraud and other illegalities on the part of Blackmon-Brace.**

The Commission ruled, and the Circuit Court affirmed, that the evidence and testimony presented was not sufficient to invalidate the election and stated that the only thing that it could consider was whether the number of votes that Harris sought to contest would have affected the final vote tally [Tr. p. 106-107] (“evidence presented during the protest hearing of Jackie Harris was insufficient to prove that, even if truthful in all respects, would have changed the certified results of the City of Lancaster District 3 election.” [Commission Order, p. 2]. The transcript shows that the Commission was focused solely on numbers¹ and that it had received instructions from the State Election Commission and attorneys *prior to* the hearing instructing it that this was the only standard it could consider. [Tr. p. 111 - 112].

The Commission's use of this standard is incorrect because it stands for the erroneous notion that fraud is acceptable in elections, unless so much fraud is committed that it could change the result. That is the standard for mistakes – not the standard for fraud.

The issue in this case is not whether there were mistakes on the part of poll workers or others that could have invalidated a few votes. The issue in this case is whether a candidate engaged in fraud by acquiring paper absentee ballots and presenting fraudulent change of address forms to the election commission in order to gain enough votes for herself to sway the result of

¹ It is interesting to note, however, that even using the Commission's vote tallying analysis, Appellant presented evidence of over 100 voting irregularities, and Blackmon-Brace herself testified that 56 of the recorded absentee ballots that she collected were specifically addresses within City Council District Three.

an election. In the case of fraud, one does not have to show that there was *enough* fraud to change the result, but that practices were revealed that might “circumvent the plain purpose of the law,” or that call into question the “fundamental integrity” of the election. *Bagwell v. Gecy*, 372 S.C. 237 (2007).

To find fraud sufficient to call into question the fundamental integrity of the election, this Court need look no further than the multiple change of address forms that Blackmon-Brace filed on the eve of the election in which she claimed thirteen people lived in the houses at 103 and 104 Rose Lane [Tr. p. 21-23; Exhibits 1A-1F], when it is clear from the testimony and evidence that *no one* lives at those addresses, that virtually no water goes through the pipes, and that one has been shut off entirely [Ex. 8]. Harris should not have to prove that Blackmon-Brace did this for 46 people. To hold otherwise is to say that a certain amount of fraud will be tolerated, so long as it is not *enough* fraud to change the result.

The South Carolina Supreme Court, in *Bagwell v. Gecy*, 372 S.C. 237 (2007), held this in regard to their appellate standard of review in election appeals:

As a general rule, statutory provisions are mandatory in two instances: when the statute expressly declares that a particular act is essential to the validity of an election or when enforcement is sought before an election in a direct proceeding. *George*, 335 S.C. at 186, 516 S.E.2d at 208. However, the Court may deem such provisions to be mandatory after an election, and thus non-compliance may nullify the results, *when the provisions substantially affect the determination of the results, an essential element of the election, or the fundamental integrity of the election.* *Id.* at 187, 516 S.E.2d 206. Where there is a total disregard of the statute, the violation cannot be treated as an irregularity, but it must be held and adjudicated to be *cause for declaring the election void and illegal.* *Id.* *The Court will not sanction practices which circumvent the plain purposes of the law and open the door to fraud.* *May v. Wilson*, 199 S.C. 354, 19 S.E.2d 467 (1942).

Bagwell, p. 242. (emphasis added).

South Carolina Code §7-15-330 states that “To vote by absentee ballot, a qualified elector *or a member of his immediate family* must request an application to vote by absentee ballot. . . . A person requesting an application for a qualified elector . . . must sign an oath that he fits the statutory definition of a representative. . . . *A candidate or a member of a candidate’s paid campaign staff, including volunteers reimbursed for time expended on campaign activity, is not allowed to request applications for absentee voting for any person designated in this section unless that person is a member of the immediate family.*” (emphasis added).

Blackmon-Brace admitted to acquiring paper absentee ballots from hundreds of people. She testified: “You would be surprised of how we started the process in September – I mean January and when go back in August these people have moved and we have no way of knowing where they are. So my thing was that, and Mills [her assistant, Denise Mills] can say it’s sometimes just getting an application is ten trips. It’s ten. Sometimes just getting the ballot. And it’s nothing we can do with it until we get the person. . . . And when she look at that other stack we did over 600.” [Tr. p. 65, l. 23 – p. 66, l. 15]. Blackmon-Brace, by her own testimony admitted to requesting hundreds of absentee ballots for people throughout her district and the County, who were not members of her immediate family. At the hearing, she counted 56 such people on a list of District 3 voters. [Tr. p. 81, l. 25 – p. 82, l. 17]. There is no question, based on Blackmon-Brace’s own testimony, that she violated South Carolina Code §7-15-330.

Regarding the return of marked paper ballots, SC Code Section § 7-15-385 states that: “A candidate or a member of a candidate’s paid campaign staff including volunteers reimbursed for time expended on campaign activity is not permitted to serve as an authorized returnee for any person unless that person is a member of the voter’s immediate family.” Blackmon-Brace

admitted that her assistants would often hand deliver the paper absentee ballots they had collected in batches to the County Election office, although she testified that she did not hand deliver paper ballots herself, as she recognized that that would be illegal. [Tr. p. 75, l. 20 – p. 76, l. 9]. However, as shown in testimony of the Director of Elections, Mary Ann Hudson, and in Exhibit 3, presented at the protest hearing, Blackmon-Brace purports to be the authorized returnee of a ballot for a voter named Mamie Chavis. [Tr p. 38, l. 16 – p. 39, l. 15; Ex. 3].

Clearly, the evidence in this case brings into question the fundamental integrity of this election. Clearly, when Blackmon-Brace assists hundreds of voters who are not in her immediate family in requesting paper absentee ballots, has these ballots mailed to her own house, “assists” voters in marking them, and has them delivered in batches to the County Election Commission, she has broken the law. And any reasonable person would question whether these people were unduly influenced by the candidate herself, who is either directly, or through her “assistants,” acquiring these ballots and submitting them to the elections office. This is especially true in light of the fact that testimony was offered that at least one voter who relinquished his signed ballot to Blackmon-Brace was unaware that there were other elections to be marked on these ballots when he gave his ballot to her.

And clearly, when Blackmon-Brace filed many highly questionable change of address forms on the eve of the election in which she “assisted” people in changing their addresses from outside of City Council District 3 to inside the district, many of which the evidence shows clearly did not actually reside at the addresses listed, this likewise calls into question the integrity of this election – particularly when at least thirteen of those were to an unoccupied house that Blackmon-Brace owns, and the adjacent building. For the Commission to find otherwise, it must either have abdicated its duties or it must misunderstand its jurisdiction and the law. Based on

statements made by the Commissioners, it appears that the Commission misunderstood its role and believed it did not have the authority to consider evidence of fraud. Commissioner Benson stated: “I certainly understand the concerns that we have because our voter process should certainly be above board. . . but that’s just not something that we have within our power to do.” And that the Commission must “let someone who is skilled in that particular area . . . take that under consideration.” [Tr p. 108, l. 15-22]. Shortly afterwards, the Chairman erroneously stated that “fraud is a criminal offense and not a voting offense.” [Transcript p. 111, l. 24-25].

Prior to *Bagwell*, the Court held in *Butler v. Town of Edgefield*, 493 S.E.2d 838 (1997), held that:

“[t]here are two prerequisites to maintaining an election contest in South Carolina: (1) the contest notice must allege irregularities or illegalities; and (2) the alleged irregularities or illegalities must have changed or rendered doubtful the result of the election *in the absence of fraud*, a constitutional violation, and a statute providing that such irregularity or illegality shall invalidate the election.” See *Yonce v. Lybrand*, 254 S.C. 14, 18, 173 S.E.2d 148, 150 (1970); *Harrell v. City of Columbia*, 216 S.C. 346, 355, 58 S.E.2d 91, 96 (1950); *State ex rel. Welsh v. Jennings*, 79 S.C. 246, 248, 60 S.E. 699, 700 (1908); *State ex rel. Birchmore v. State Board of Canvassers*, 78 S.C. 461, 467, 59 S.E. 145, 146-47 (1907). (emphasis added).

In the present case, the Commission focuses on the language of the standard, which says that the “alleged irregularities or illegalities must have changed or rendered doubtful the result.” Although the evidence presented by Harris could certainly change or render doubtful the result, this is *not* the part of the standard that controls in this case. The rest of that clause states “*absent fraud*” (emphasis added), which means that if fraud is shown, then the election must be

invalidated, whether a little bit of fraud occurred or a lot of fraud occurred. The Commission clearly did not understand this when it ruled. In this case, Harris was able to show several instances of fraud, and Blackmon-Brace admitted to some of these in her own testimony, although she denied that her actions were illegal. [Tr. p. 71, pp. 84-85, p. 99]. There was also evidence of at least seven (7) changes of address for votes who lived outside District 3 to an address located inside District 3 within thirty (30) days of the election, many of which Blackmon-Brace admitted to filing. There is ample evidence that these voters do not now, and did not at the time of the election, reside inside City Council District 3.

This city residency requirement was one of the main issues in *Bagwell*, and the Court held that it was enough to *invalidate* the election based on only two (2) improper votes in the election, stating, “the court will not sanction practices which circumvent the plain purposes of the law and open the door to fraud.” *Bagwell, supra*.

Throughout the hearing in the case at bar, and in the final order, the Commission takes the position that Harris must prove that there were at least forty-six (46) votes (the difference between the final total for the two candidates) in question in order to prevail at the hearing. The Commission Chair even erroneously stated that any allegations of fraud would have to be investigated and prosecuted criminally through law enforcement, and that the Commission did not have the jurisdiction to consider evidence of fraud. [Tr. p. 112]. In its ruling, affirmed by the Circuit Court, the Commission stated that “fraud is a criminal offense and not a voting offense.” [Transcript p. 111, l. 24-25]. This shows a fundamental misunderstanding by the Commission of its own duties and proper standard of review.

To solely rely on *criminal* charges of fraud to invalidate this election, as the Commission contended and the Court agreed that it lacked jurisdiction to consider, would require a higher

burden of proof. Although a criminal investigation may certainly be warranted, criminal charges are irrelevant to this protest procedure, and the Court erred in affirming the Commission's refusal to consider the evidence of fraud presented.

Clearly, Blackmon-Brace's practices are calculated to circumvent the voter registration process and they clearly call into question the fundamental integrity of this election. A new election is the only thing that can remedy this tainted process. See *Bagwell, supra*.

2. The Circuit Court erred in affirming the Commission's finding that Harris did not produce evidence of enough irregularities that would have changed the result of the election, where there was a difference of only 46 votes and Harris presented over 100 requests for paper absentee ballots filed by Linda Blackmon-Brace or her assistants on behalf of voters, the vast majority of which were in District 3, and where 48 of those District 3 paper ballots were sent to Blackmon-Brace's own address.

As stated above, the Court erroneously affirmed the Commission's incorrect standard of review in holding that Harris would have to show forty-six (46) instances of irregularities in order to invalidate the election, where it is clear that Blackmon-Brace broke the law in multiple instances in requesting and acquiring paper absentee ballots, and where there is ample evidence of fraud.

But even in spite of its erroneous insistence that Harris had to show 46 instances of irregularities [Tr. p: 111, l. 18-21], had the Commission looked at the exhibits entered into evidence by Harris, it would have seen that she met even this high and erroneous standard it had set. There were clearly far more than forty-six (46) examples of improper conduct by Blackmon-

Brace, affecting far more ballots than necessary to have invalidated the election. But the Commission refused to review the exhibits before ruling [Tr. p. 111, l. 14-16].

Blackmon-Brace posted only forty-six (46) more votes than Harris due to overwhelming numbers of paper absentee ballots. But Harris presented at least 102 requests for paper absentee ballots on Blackmon-Brace's forms, the vast majority of which were in City Council District 3. Forty-eight (48) of those ballots were for City Council District 3 and were mailed *directly* to Blackmon-Brace's "foundation" at 701 E Arch Street – an address Blackmon-Brace owns and controls [39 in Exhibit 7, 1 in Exhibit 6, and 8 in Exhibit 9]. These ballots alone, which were mailed to Blackmon-Brace's address, were enough to change the result of the election. But Harris also presented an additional thirty-one (31) requests for paper absentee ballots that were filled out and witnessed by Blackmon-Brace herself. [29 in Exhibit 6, and 2 in Exhibit 9]. Six (6) more were witnessed by her assistants. [Exhibit 9]. These requests were made in clear violation of SC Code §7-15-330, which prevents a candidate or a candidate's assistants from requesting paper absentee ballots for any person other than a person in their immediate family.

So, even by the Commission's own erroneous standard of tolerating fraud so long as it is not *too much* fraud, which could change the result of an election, it is clear that Harris met this higher – albeit erroneous – standard by presenting many more instances of illegal conduct on the part of Blackmon-Brace than would have been necessary to change the result.

There were other instances of irregularities that would have been sufficient to invalidate the election. One is the residency requirement, which the Court addressed in *Bagwell*. Harris presented multiple instances of Blackmon-Brace changing voter addresses from outside of District 3 to inside the district within (30) days of the election, for the purpose of voting in City Council District 3, which is not allowed under state law [SC Code §7-5-610]. Furthermore, in a

South Carolina Attorney General's opinion dated September 29, 2014, the Attorney General answered the question of whether it was "a violation for people who do not live inside a town's limits to cast ballots in an election for a town official." Of course, the Attorney General determined that this certainly was a violation and that anyone doing so, or assisting others in doing so, was guilty of criminal misdemeanor and perjury. In fact, the South Carolina Constitution, in Article II, Section 10, requires that anyone voting in a municipal election "must have resided in the municipality in which he offers to vote for thirty (30) days preceding the election."

Commissioners and the Director of Elections, however, clearly thought that this was permissible based on statements at the protest hearing [Tr. p. 28 l. 11-21], and they allowed such newly registered people to vote in the City Council District 3 election. The Elections Director testified that a person who came in off the street on the day of the election and changed his address to an address inside of the District would be allowed to vote in that election [Tr. p. 29, l. 21 – p. 30, l. 4; *See also* Tr. p. 28 l. 11-25 in which Commissioner McIlwain erroneously states that "a change of address can be done the day of voting . . . I can have my address changed at that very moment and vote at that time."]

When Harris presented evidence otherwise, Blackmon-Brace challenged Harris' assertion that a person voting in a municipal election must have resided in the district for thirty (30) days prior to the election. Blackmon-Brace testified, "the only thing you have to do is be a registered voter. You don't have to live in the city for 30 days. She don't know the law. I can assure you of that." [Tr. p. 67, l. 5-8]. This policy of the election commission and this belief of Blackmon-Brace are not in accordance with SC Code §7-5-610, which clearly and unequivocally requires

proof of residency within the district for 30 days prior to the election in order to vote in a municipal election.

This city residency requirement was one of the main issues in *Bagwell*, and the Court held that it was enough to *invalidate* the election based on only two (2) improper votes in the election, stating, “the court will not sanction practices which circumvent the plain purposes of the law and open the door to fraud.” *Bagwell, supra*.

3. The Court Erred in Affirming the Commission’s finding that it did not have Authority to Give Appellant Additional Time to Gather Evidence, Where Appellant had only Two Hours Notice of the Protest Hearing, which occurred immediately after certification of election results.

With only two hours’ notice of the protest hearing, Harris was able to gather and present 102 requests for paper absentee ballots on Blackmon-Brace’s forms that had been filed with the elections office, the vast majority of which were in City Council District 3. Forty-eight (48) of those ballots were for City Council District 3 and were mailed *directly* to Blackmon-Brace’s “foundation” at 701 E Arch Street – an address Blackmon-Brace owns and controls [39 in exhibit 7, 1 in exhibit 6, and 8 in exhibit 9]. And additional thirty-one (31) of those requests for paper absentee ballots were filled out and witnessed by Blackmon-Brace herself. [29 in exhibit 6, and 2 in exhibit 9]. Six were witnessed by her assistants. [Exhibit 9]. Six (6) requests for paper absentee ballots within City Council District 3 contained an authorization clearly in Blackmon-Brace’s handwriting but signed by the voter, stating that Blackmon-Brace herself was authorized to help the voter complete the ballot [4 in exhibit 7, and 2 in exhibit 9]. Three (3) gave her assistants that authority [Exhibit 9]. And Blackmon-Brace maintains that a full thirteen

(13) unrelated adult voters lived with her in her alleged residence and the adjacent building at 104 and 103 Rose Lane.

This was a substantial amount of evidence put into the record at the Protest Hearing, and is certainly sufficient to show that Blackmon-Brace engaged in activities that violate the law, as well as in activities designed to circumvent the election laws – and that her activities call into question the results of this election. However, had Harris had more than just two hours notice of the hearing, she contends that she would have been able to present much more. Harris’ attorney asked for a continuance on the grounds that she had multiple subpoenas prepared for documents and witnesses, but that with only two hours notice, she was unable to get the subpoenas served in time for compliance. [Tr. pp. 8-11; Order of Commission]

At the beginning of the hearing, Harris argued that having the hearing at that time (immediately after certifying the results of the election and with only two hours verbal notice to the parties) effectively denied her of due process, and she requested a continuance on several grounds. [Tr. p. 8, l. 23-p. 15, l. 8]. Initially, Appellant argued that pursuant to Rule 6, SCRPC, that the time allowed by the statute would end on a weekend, which would at least give the parties until Monday, November 14, 2016, for the hearing. Second, the Lancaster City Ordinance that provides for election contests, § 8-43, states that “the commission shall, *after due notice to the parties*,” conduct a hearing. Appellant contended that a few hours was not “due notice” to the parties, nor was it sufficient to provide adequate notice to the public.

Third, Appellant argued that although the law allowed for discovery and the issuance of subpoenas, the time given was not enough for any meaningful discovery to exist. Even if Harris had not filed a subpoena, state law requires that in all protests filed, the “poll list of each polling place in a general, special or primary election shall accompany the ballots, printouts or other

form of voter tabulation in each proceeding in which the votes cast at such polling place are involved in a protest.” SC Code §7-17-40. No such items were provided at the hearing, and giving Harris only 15 minutes to try to locate and evaluate all the speculative ballots and information was objectively unreasonable.

The Commission denied all these motions summarily, noting that upon advice of the State Election Commission and attorneys, they did not have the authority to continue the case. Commissioner Benson and Chairman Crimminger called the situation unfair and frustrating [Tr. pp. 16 and 108], and the Order specifically stated that Appellant’s motions *were not even considered*. [Order of Commission.]

The County Elections Commissions protest procedure is provided to the counties by the SCEC in a memo that includes dates and procedures. This document allows for protests to be filed for *countywide* or *less than countywide* elections on Wednesday, November 16, 2016, followed by hearings on Monday, November 21 (a full two weeks after the election). It also provides that 24 hours’ notice must be given to the public to comply with Freedom of Information Act requirements. However, a footnote to these requirements indicates that “*The timelines above do not apply to municipal protests. The deadline to file a protest in a municipal election held on November 8 is 7:00pm on November 10. For more information on Municipal protests, refer to the Municipal Election Handbook.*”

The *Municipal Election Handbook* then notes that the hearing on such protest must be held within 48 hours after filing. However, this was not a municipal protest, as it was heard by the County Election Commission, which had accepted jurisdiction to conduct the City’s elections many years prior. [Tr. p. 20, l. 10-25]. Presumably, the shortened timelines for a municipal election are based on the fact that a municipal election is much smaller in scale. However, when

a county takes over the elections process for a municipality, they do not have *only* those municipal elections to work with. In this election, the county commission had to certify the election for the President of the United States, District 5 Congressional seat, SC House seats, County Council seats in numerous districts, School Board seats in numerous districts, Sheriff, and several county-wide referendums. The only items on the city ballots were council seats in each district. In this particular election, the municipal election totaled 516 votes. These votes could have been counted and certified in a matter of hours, not days. The County, sitting in the City's stead, had to tally and certify exponentially more information than the City would have had to if they were running the election. If we were dealing with a staff and commission certifying *only* municipal elections, then 48 hours' notice would likely have been plenty of time, as anticipated by the law. But that is not the case here. In the case at bar, more time was necessary – and more time was allowed under the law because the standards for County Election Commissions should have been applied, since it was the County Election Commission that was certifying the results.

This Court has considered cases involving County Election Commissions sitting in the stead of a Municipal Election Commission, and has ruled that in a case where the County Election Commission is hearing a Municipal protest, that the proper appellate body would be the Circuit Court, as it would be if the Municipal Election Commission were actually hearing the case. *Bluffton v. Fulgham, et al.*, 686 S.E.2d 683 (2009). However, in this case, the Lancaster City Council completely abolished its Election Commission in 1996, and handed over all duties to the County Election Commission. [See Order of Judge Gibbons]. This Court's ruling in *Bluffton* in 2009, that in construing the two statutes together (§ 5-15-145 and § 7-17-30) allows county boards to only act with authority bestowed on them by municipal bodies does not take into account the extreme hardship that notion places on the County Election Commissions. As

stated above, the municipality has a much smaller electorate, and generally a very few elections at any given time. During a General Election, especially one in which a Presidential Election is going on, the job of the County Election Commission is extremely demanding. The additional duties bestowed on the County Commissions by a municipality cannot take precedence over all the other duties that the commission has during such an election. In fact, as noted here by Mary Ann Hudson, director of Voter Registration, during the Protest hearing, running the city elections was like adding another entire election system to the general election process. She went on to suggest that her office did not have time or staff to verify city addresses for a municipal election. When asked if someone “came in from out in the county to change their address into the city,” she would “change their address and let them vote.” [Tr. p. 29, l. 21 – p. 30, l. 4]. Although Appellant had filed subpoenas with the Election Commission at the same time the protest was filed, the Commission did not comply with the information requested [Tr. pp. 8-11], and stated that they did not have *time* to gather the requested documents. [Tr. p 18, l. 14 – p. 19, l. 6]. The Commission gave Appellant a fifteen (15) minute recess [Tr. pp 16-17] in which to gather documents that were not provided by the subpoena or pursuant to statute as mentioned above. In that limited amount of time, Harris was still able to provide the Commission with nine (9) exhibits, each consisting of numerous pages, showing over 100 irregularities in the election process [See Exhibits 1 – 9].

Even given the short amount of time that Appellant was given to provide exhibits to the Commission, she provided well over 100 voting irregularities. If given a reasonable amount of time, it is very likely that she could have produced more evidence and more witnesses to substantiate her case. However, the Commission summarily ignored her exhibits and ruled against her, while indicating it was inclined to rule otherwise, but was told by its advisors that it

did not have authority to do so [Tr. p. 15-16; p. 108-109]. The juxtaposition this creates is absurd.

Commission Chair Crimminger indicated that the Commission did not wish to rule the way that it was told it had to rule, and stated: “I think you feel my frustration that I’ve had in the last couple of days. Because we have argued the point and argued the point and gotten attorney’s opinions from all over the place and everything else on what we could do and what we couldn’t do and who had to do what and we tried to interpret it every way we could to get this extended because I don’t believe it’s fair to either one of you.” [Tr 108, l. 25 - 109, l. 8; Tr. p. 15-16]. In fact, it was not fair, and the Commission *did* have the authority to grant the additional time it indicated it wished to provide, but was told that it could not. In ruling in accordance with this guidance of the State Election Commission, the Commission effectively abrogated its own duty to give a fair and impartial hearing to the protestor, which includes listening to the testimony and reviewing the evidence and applying the laws and regulations to the case at hand. The Commission’s own Order is evidence of the fact that the protest hearing was perfunctory and illusory in nature.²

² It is also important to note that in the appeal hearing in the Circuit Court, Judge Gibbons stated specifically for the record, in the event that it was appealed to this Court, his own understanding of the Court’s precedents in a case in which he was one of the attorneys of record, which had occurred over 20 years ago, but that he recalled to be factually similar to the case at bar – although he stated that he could not find the case and had not read it at any time in the recent past. In that case, Judge Gibbons noted that the circuit court, sitting as the appellate court, reversed the Commission’s ruling upholding the election, and had a new evidentiary trial *de novo*, which resulted in a ruling for a new election. The Supreme Court then overturned that decision and reinstated the original election results.

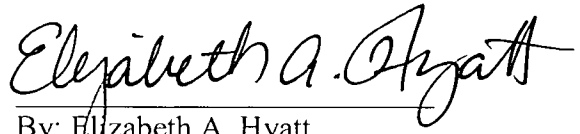
This courtroom dicta is noted because Judge Gibbons stated that it would be the basis for his ruling. In fact, he noted that he mentioned it so that if it was appealed, the Court could discern his reasoning. At the hearing, neither Judge Gibbons nor any of the attorneys of record had been able to find this opinion, even given the parties’ names and approximate dates of the decision. Appellant has since learned that this is an unpublished opinion with no precedential value. Furthermore, this opinion rests squarely on the principle that none of the information the

CONCLUSION

For the reasons stated above, this Court should reverse the ruling of the Circuit Court, invalidate the election, and order a new election for the Lancaster City Council District 3 seat.

RESPECTFULLY SUBMITTED,

HYATT LAW, LLC



By: Elizabeth A. Hyatt
Attorney for Appellant
105 W. Dunlap Street
Post Office Box 2252
Lancaster, SC 29721
(T) 803.286.4646
(F) 866.412.4835

Circuit Judge relied on in overturning the Commission's decision was ever introduced in the Protest Hearing. Conversely, in the case at bar, ample evidence was presented at the Protest Hearing. Furthermore, in the unpublished case cited by Judge Gibbons, the Municipal Election Commission had not turned over its authority to the County Election Commission to conduct elections, unlike the case at bar. Therefore, not only was the judge's reliance on this opinion unsubstantiated due to the non-precedential nature of the case; but the instant case is also clearly distinguishable. [Order of Circuit Court; Transcript of Circuit Ct Proceedings pp. 44 l. 5 – p. 46 l. 25].

RECEIVED

APR 14 2017

PROOF OF SERVICE

S.C. SUPREME COURT

Jackie Harris, Appellant,
vs.

Lancaster County Election Commission, Lancaster Municipal Election
Commission, and Linda Blackmon-Brace, Respondents

Case No. 2016-CP-29-1418

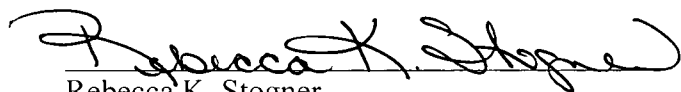
The undersigned hereby certifies that an copy of the **Brief of Appellant, and the Designation of Matter to be Included in the Record on Appeal** in the above case were served upon Montrio M. Belton, Esq. John L. Weaver, Esq. and Mitchell A. Norell, Esq. the Respondents in the referenced case, by depositing a copy in the United States Postal Mail, with sufficient postage annexed thereto, addressed as follows:

Montrio M. Belton
Post Office Box 566
Rock Hill, South Carolina 29731

John L. Weaver
Lancaster County Attorney
Post Office Box 1809
Lancaster, South Carolina 29721

Mitchell A. Norrell
Post Office Box 994
Lancaster, South Carolina 29721

Mailed on this 12th day of April, 2017.



Rebecca K. Stogner
Paralegal for Elizabeth A. Hyatt