

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas  
Brian Gibbons, Circuit Court Judge

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Appellate Case No. 2017-000423  
Case No. 2016-CP-29-1418

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**RECEIVED**  
MAY 16 2017  
S.C. SUPREME COURT

Jackie Harris .....Appellant,

v.

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

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**RESPONDENT LINDA BLACKMON-BRACE’S MOTION TO STRIKE  
RESPONDENT LANCASTER COUNTY ELECTION COMMISSION’S IMPROPER  
FILING AND DISMISS ITS CROSS-APPEAL**

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Pursuant to Rule 240(a), SCACR, Respondent Linda Blackmon-Brace moves to strike the initial brief filed on behalf of Respondent Lancaster County Election Commission (the Commission) on May 12, 2017, and dismiss the Commission’s appeal of the circuit court’s ruling. Although the Commission asserted its neutrality at the hearing before the circuit court, the Commission now—for the first time on appeal—seeks a reversal of the circuit court’s order affirming the decision of the Commission in this election protest. By arguing this Court should reverse the circuit court’s judgment, the Commission is attempting to cross-appeal the circuit court’s ruling. This cross-appeal should be dismissed because the Commission never filed or served a notice of appeal upon receipt of Jackie Harris’s (Appellant) notice of appeal. Further, the

Commission has no right to appeal the circuit court's order because it is not an aggrieved party as contemplated by our appellate court rules.

## **BACKGROUND**

This appeal arises out of a protest of the November 8, 2016, election results for Lancaster City Council District Three. Ex. A at 1. Appellant filed the protest on November 10, 2016, after losing the election by forty-six votes to Linda Blackmon-Brace. Id.

After the parties were given notice, the Commission held a hearing on Appellant's protest on November 11, 2016. Id. At the start of the hearing, Appellant—who was represented by counsel—moved for a continuance, arguing she did not have enough time to prepare her protest. Ex. B at 7–17. After lengthy discussion, the Commission denied her motion. Id. At the conclusion of the hearing, the Commission voted unanimously to deny Appellant's protest, finding that the evidence presented during the hearing, even if truthful in all respects, was insufficient to invalidate the certified results of the election. Ex. A. at 2. The Commission entered a written order detailing its findings on November 24, 2016. Id. at 1–2.

Thereafter, on December 9, 2016, Jackie Harris filed a notice of appeal with the circuit court. Ex. C at 2. On February 2, 2017, the circuit court held a hearing in its appellate capacity and issued an order affirming the decision of the Commission on February 15, 2017. Id. In its order, the circuit court concluded (1) the Commission did not abuse its discretion in denying Appellant's motion for a continuance and (2) the protest hearing before the Commission satisfied the parties' procedural due process rights. Id. at 4–5. Appellant filed a notice of appeal with this Court on February 22, 2017. Appellant filed her initial brief and designation of matter with the Court on April 12, 2017. Linda Blackmon-Brace filed her initial brief and designation of matter on May 12, 2017. On that same day, the Commission—which never gave notice of its intent to

cross-appeal the ruling of the circuit court—filed a brief in which it asked this Court to reverse the Commission’s own decision and remand the case for another hearing. Comm’n Br. at 12. The Commission’s improper filing gave rise to this motion.

### ARGUMENT

The Court should strike the Commission’s improper May 12, 2017, filing and dismiss the Commission’s attempt to cross-appeal the circuit court’s ruling because the Commission (1) never filed and served a notice of appeal and (2) is not an aggrieved party in this matter.

Because the Commission never served a notice of its intent to cross-appeal the circuit court’s decision, the Commission’s brief seeking a reversal of the circuit court’s February 15, 2017, order is not properly before this Court. Rule 203(c), SCACR, provides that “[a] respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties.” The Commission, however, never filed or served anyone with a notice of intent to appeal the ruling of the circuit court. Therefore, the Commission’s cross-appeal should be dismissed. See Rule 260(a), SCACR (“Whenever it appears that an appellant or petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal . . .”).

Moreover, and perhaps more importantly, the Commission’s brief is improper because it is not an aggrieved party in this matter and, therefore, had no right to appeal the circuit court’s ruling. It is axiomatic that “[o]nly a party aggrieved by an order, judgment, . . . or decision may appeal.” Rule 201(b), SCACR. An aggrieved party “is a person who is aggrieved by the judgment or decree when it operates on his rights of property or bears directly upon his interest. Cisson v. McWhorter, 255 S.C. 174, 178, 177 S.E.2d 603, 605 (1970). “The word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” Shaw v. City of Charleston, 351 S.C. 32, 36, 567 S.E.2d 530, 532 (Ct.

App. 2002) (quoting Beaufort Realty Co. v. Beaufort Cty., 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001)). A review of the circuit court’s order compels a finding that the Commission was not aggrieved by its decision. See Ex. C at 1–6. In fact, the Commission received favorable rulings upon the only two issues the circuit court reached in this case. Specifically, the circuit court found (1) the Commission did not abuse its discretion in denying Appellant’s motion for a continuance and (2) the protest hearing before the Commission satisfied the parties’ procedural due process rights. Id. at 4–5. Accordingly, the Commission has no standing to appeal the decision of the circuit court. See Cisson, 255 S.C. at 178, 177 S.E.2d at 605 (noting the Court “is concerned with the substance of the judgment and not with the opinion of the appealing party,” and holding the party “was not aggrieved by the judgment of the [circuit] court, but rather benefited thereby, and is without legal right to appeal therefrom”); Beaufort Realty Co., 346 S.C. at 301, 551 S.E.2d at 589–90 (asserting that “[a] party cannot appeal from a decision which does not affect his or her interest”).

Additionally, the Commission’s change in position from that of neutrality to, in effect, making Appellant’s arguments for her on appeal runs afoul of the sound policy justifications for our rules of preserving issues for appellate review. See I’On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (recognizing the preservation requirement “serves as a keen incentive for a party to prepare a case thoroughly” and “prevents a party from keeping an ace card up his sleeve—intentionally or by chance—in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case”). At the beginning of the protest hearing, the County Attorney stated that “[t]he role is to give everybody the full opportunity to be heard, present their cases completely and as fairly as can be done so that the commission, if they’re inclined today[, can] make a decision as to whether to uphold or to

reverse the decision of the voters.” Ex. B at 6–7. On appeal, the Commission expressed its opinion that the South Carolina State Election Commission’s interpretation of section 5-15-130 of the South Carolina Code (2004) created a result that allegedly was unfair. Ex. D at 29–30. But the Commission never asked the circuit court to reverse the Commission’s own decision. See id. Regardless, the Commission lacks standing to make either of these arguments, and the Commission should not be permitted to use its position as a named party to seek a reversal for the first time on appeal when the Commission failed to file a notice of its intent to do so.

The Commission, a fellow respondent, received a favorable ruling below—that the procedure it followed was lawful and satisfied due process. Ex. C at 4–5. As noted in Linda Blackmon-Brace’s initial brief, it is quite stunning for the Commission to take a position on appeal that asks this Court to reverse the Commission’s own decision. Based upon the undersigned’s review of the case law, this also appears to be unprecedented. In any event, the Commission has no liberty or property interest in this case to create standing to challenge whether section 5-15-130 violated the parties’ due process rights.

Furthermore, the Commission’s attempt to argue that the statute violated the parties’ due process rights is a bit disingenuous. The Commission’s initial brief fails to articulate any specific reasons as to why Linda Blackmon-Brace was not afforded due process. Indeed, a review of the brief reveals the Commission’s due process argument focuses on the manner in which the hearing purportedly was unfair to Appellant. See, e.g., Comm’n Br. at 9 (arguing “Harris nonetheless was deprived of her right to be heard in a meaningful manner”). Likewise, the Commission’s new position on the sufficiency of Appellant’s evidence—that “Harris did make a prima facie showing of grounds for the contest and good reason was given for more time in which to gather and present

evidence”—is the exact opposite of its ruling on this issue at the protest hearing and in the order. See Ex. A at 1–2. These new arguments, of course, do not represent the interests of both parties.

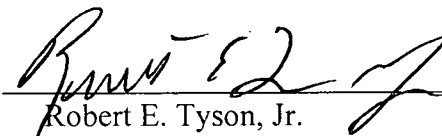
It is both puzzling and concerning that the Commission is injecting its opinions on the merits of an appeal from its own order, seemingly raising arguments in favor of one party to a protest over which it presided, and seeking a reversal of an order upholding its own decision. Even when putting aside these concerns, the Commission failed to comply with the South Carolina Appellate Court Rules and, thus, the Commission’s brief is not properly before the Court. Accordingly, the Commission’s attempt to appeal the circuit court’s decision should be dismissed.

### CONCLUSION

For the foregoing reasons, the Court should strike the Commission’s improper filing and dismiss its attempt to cross-appeal the circuit court’s ruling. The Commission never filed and served a notice of appeal and is not an aggrieved party in this matter.

Respectfully submitted,

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May 16, 2017

# **Exhibit A**

**Order of the Lancaster County Election Commission  
dated November 28, 2016**

STATE OF SOUTH CAROLINA )  
COUNTY OF LANCASTER )

BEFORE THE LANCASTER COUNTY )  
ELECTION COMMISSION )

JACKIE HARRIS, )  
Petitioner )

ORDER

v. )

LANCASTER COUNTY ELECTION )  
COMMISSION, LANCASTER )  
MUNICIPAL ELECTION COMMISSION )  
and LINDA BLACKMON-BRACE, )

Respondents )

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OF COURT  
2016 NOV 28 AM 11:29  
CLERK OF COURT  
LANCASTER, SC

Because Lancaster County for years has assumed administrative responsibility for the voter registration and elections for the City of Lancaster, this matter is before the Lancaster County Election Commission (Commission) based upon the timely filed protest of the Petitioner, Jackie Harris, the protest being served on November 10, 2016. The protest challenges the November 8, 2016 election for the District 3 seat on the City of Lancaster Council. The certified results of that election indicated that there were a total of 518 votes cast for that seat. Of those, the Petitioner received 235 total votes, 14 of which were absentee paper ballots. The Respondent, Linda Blackmon-Brace, received 281 votes, 154 of which were absentee paper ballots. Two votes were cast for others.

Based upon legal advice from the South Carolina Elections Commission (SCEC), the protest hearing was held on Friday, November 11, 2016 at 2:30PM. The Petitioner and the Respondent were given three (3) hours verbal notice of the hearing date, time and location. As noted, advice from the SCEC required that, regardless of extenuating factors enumerated by the Petitioner's counsel, the hearing must be held within forty eight (48) hours of the protest's filing and that neither an extension nor a continuation of the hearing was permissible. Further, a decision by the Commission must be made immediately following the hearing. Thus, motions made by the Petitioner during the hearing were not considered.

The merits of the Petitioner's protest revolve around several allegations, namely:

- 1) that the Respondent's legal residence at the time of the election was not within Lancaster's District 3;
- 2) that the Respondent completed the paper absentee ballots for others;
- 3) that there were violations of South Carolina Code Sections 7-5-610 and 7-5-620 by persons who voted for the Respondent by absentee ballots in District 3.

As evidence of the allegations, the Petitioner introduced nine (9) exhibits containing multiple pages. However, because of time constraints mandated by the SCEC, neither the Petitioner nor the Commission was able to identify with specificity the accuracies of the alleged violations. Additionally, because of the timing issue previously referenced, the Petitioner was unable to subpoena various witnesses to offer testimony.

The Respondent presented to the Commission as her evidence two (2) multi-page exhibits purported to be summary sheets from the Respondent's personal records that indicated the names, addresses, etc. of those persons whom she assisted in registering to vote, changing addresses, delivery of paper absentee ballots to the Respondent's address, etc. In summary, the

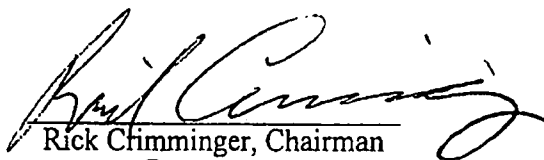
Respondent's position was that she worked hard in campaigning and complied fully with all state laws in her efforts to successfully secure the District 3 seat.

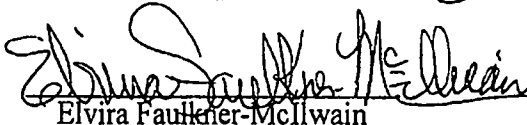
Upon the conclusion of all testimony, the Commission voted unanimously that the evidence presented during the protest hearing of Jackie Harris was insufficient to prove that, even if truthful in all respects, would have changed the certified results of the City of Lancaster District 3 election.

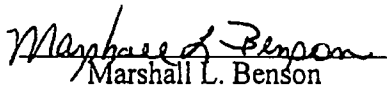
Accordingly, the protest of Jackie Harris is denied.

**AND IT IS SO ORDERED**

Dated this 24 day of November, 2016

  
Rick Chimminger, Chairman

  
Elvira Faulkner-McIlwain

  
Marshall L. Benson

**Exhibit B**

**Transcript of Protest Hearing held November 11, 2016  
pages 6-17**

1 Blackmon Brace.

2 I will tell you that the responsibility for  
3 the elections that are held within the City of  
4 Lancaster have for many years been turned over to  
5 the Lancaster County Election Commission and the  
6 Voter Registration, Mary Ann Hudson heads up  
7 that. So while we are talking about the City of  
8 Lancaster and the protest of an election there,  
9 it is actually Lancaster County who is conducting  
10 the hearing and will be making the decision based  
11 upon the findings of these three out of the four  
12 members, which does represent a quorum.

13 This is being conducted generally in  
14 accordance with the South Carolina Rules of Civil  
15 Procedure that would be used across the street in  
16 the Court of Common Pleas. However the  
17 commission and I and everyone realizes that with  
18 the exception of myself and one other person,  
19 there's only two attorneys in here but -- but so  
20 it will be strictly adhered to but if it gets too  
21 far a field I'll take it upon myself to recommend  
22 to the chairman that we -- that we do something  
23 perhaps a little differently.

24 The role is to give everybody the full  
25 opportunity to be heard, present their cases

1 completely and as fairly as can be done so that  
2 the commission, if they're so inclined today to  
3 make a decision as to whether to uphold or to  
4 reverse the decision of the voters. So with  
5 that, Mr. Chairman, I'm prepared to go.

6 RICK CRIMMINGER: (Inaudible.)

7 ELIZABETH HYATT: Thank you, Mr. Chairman,  
8 Members of the Commission, my name is Elizabeth  
9 Hyatt, I represent Jackie Harris in this protest.

10 The first thing I would like to do before I  
11 even go into an opening statement is to speak to  
12 what Mr. Weaver just stated, that the whole --

13 JOHN WEAVER: Could you please be sworn in  
14 by the Clerk.

15 ELIZABETH HYATT: So sorry.

16 THE CLERK: (Inaudible.)

17 ELIZABETH HYATT: I do. I'm not providing  
18 testimony however I just -- what Mr. Weaver just  
19 said that the purpose of this contest and the  
20 purpose of this hearing is to allow the parties,  
21 both parties present to present their cases  
22 completely so that you can make a decision on the  
23 allegations in the protest that we have made.

24 In researching this from the time that I  
25 became involved which was two days ago, to -- to

1 today I have discovered that this -- this process  
2 is very confusing because of the difference  
3 between the municipality and the county. And  
4 even looking at the -- at the statutes and the  
5 ordinances for the City it -- it still very  
6 confusing to me. But the whole process has to be  
7 done with due process in mind, that both parties  
8 have the opportunity to be heard and an  
9 opportunity to present witnesses, to cross-  
10 examine witnesses and to present documents and  
11 evidence.

12 I submitted a subpoena this morning for some  
13 documents at the voter registration office, I  
14 have not received those yet. I can't conduct an  
15 investigation to provide you information without  
16 those documents. Likewise I've got about six  
17 subpoenas here that are probable going to be  
18 increased for witnesses that I can't -- I found  
19 out about this hearing two hours ago. I can't  
20 get those people here in time to testify and to  
21 give you an idea of what we are talking about in  
22 our -- in our protest.

23 So in looking at that I want to look some of  
24 the statutes and the rules because I am making a  
25 motion to continue this hearing based on -- based

1 on several factors of law and -- and the facts of  
2 this case specially.

3 First of all, the municipal corporation  
4 elections are under the fifth chapter of the --  
5 of the statute. County elections, State  
6 elections, general elections are under section 7.  
7 There are different time lines and different  
8 requirements. I believe just in looking at  
9 legislative intent in some of the cases that I've  
10 read, that the reason that the time lines are  
11 less for municipal elections is because municipal  
12 elections generally are a lot smaller than a  
13 county wide election, especially on a general  
14 election, presidential elections status.

15 Municipal elections that are just run within  
16 a city, run a municipal election commission are  
17 generally going to be a few offices at a time and  
18 a much smaller number of people. So certifying  
19 that vote is not going to take several days as it  
20 does for the county.

21 I was under the -- the municipal statute  
22 required to file this protest by 7:00 p.m. two  
23 days after the election which I did. But that  
24 was even before these results were certified as  
25 you just did a few a minutes ago, so I had to

1 file the protest before the election was even  
2 certified, which is not the case for other  
3 elections, you wait until the next week after the  
4 election has been certified.

5 Then the statute in the municipal -- under  
6 the municipal guidelines, under the municipal  
7 election commission says that within 48 hours  
8 after filing that contest the municipal election  
9 commission which we do not have, it has been  
10 abolished by the -- by the city, after due notice  
11 to the parties concerned, conduct a hearing on  
12 the contest, decide the issues, file its report  
13 with all the supporting testimony and exhibits.

14 I contend that we have not have due notice.  
15 Two hours is not due notice for -- for me, it's  
16 not sufficient for witnesses, it's not sufficient  
17 for an investigation. There's nothing that we  
18 can present to you within that two hours that is  
19 going to be more than the allegations we've been  
20 able to make. I do believe that when I get that  
21 -- those witnesses subpoena and when I get the  
22 documents that I need, that we'll be able to  
23 provide you with the evidence that you need to  
24 make the decision, but we can't do that on the  
25 time line that is provided. So it does say

1 within 48 hours but it says after due notice to  
2 the parties concerned.

3         Additionally, under the section of the  
4 statute that allows for these hearings to be --  
5 to be done which is under Chapter 7, forgive me,  
6 just one second, 7-17-30 I believe is the statute  
7 number. Actually 7-17-50 is the one hearings,  
8 specifically says, as Mr. Weaver eluded at the  
9 beginning that the Chairman of the board shall  
10 provide for and conduct the hearing as nearly as  
11 possible in accordance with the procedures and  
12 rules of evidence observed by the Circuit Courts  
13 of the State.

14         And in fact this is the South Carolina voter  
15 registration election laws, it's just a  
16 compilation of -- of election laws and so it has  
17 all of that as well municipal election  
18 information. But on the -- in the last page of  
19 this before the -- in the very last section  
20 before you get to the index, it talks about South  
21 Carolina Rules of Civil Procedure. And the first  
22 one that they've printed is computation of time.

23         That's one that lawyers use to decide  
24 whether our case is going to go forward, whether  
25 we've had enough time for a hearing, for notice,

1 whether we've had enough time for somebody to be  
2 served, for the Complaint to be brought, all of  
3 that goes back to this rule which is a very  
4 general rule in the -- in the South Carolina  
5 Rules of Civil Procedure and it says  
6 specifically, when you're talking about and  
7 computing any period of time the last day of the  
8 period which would be the 48, so 48 hours after  
9 7:00 p.m. last night would be 7:00 p.m. on  
10 Saturday. The last day of the period so computed  
11 is to be included unless it is a Saturday, Sunday  
12 or a state or federal holiday in which event the  
13 period runs until the end of the next day which  
14 is neither a Saturday, Sunday nor such holiday.

15 So generally speaking that would be Tuesday  
16 in our case because we have a state holiday or a  
17 federal holiday today and then a Saturday that  
18 the 48 hours ends on. So in just looking at the  
19 Rules of Civil Procedure I think that we at least  
20 need to have until that period of time.

21 However under the statutes that govern the  
22 county elections, we wouldn't have this hearing  
23 until Monday, November the 21st. That is -- I'm  
24 asking for that amount of time just because of  
25 the simple volume of papers and information that

1 we've got to go through to be able to present a  
2 full case to you. We've -- we've asked for  
3 documents related to the election and in order to  
4 go through any of those we -- we need the time  
5 and ability to do that.

6 I believe that in addition to Rule 6, I know  
7 that there are some press members here, but I  
8 don't think that we have met the (inaudible)  
9 requirement for notice. I certainly don't think  
10 that we've had due process notice. I have not  
11 received the documents in the -- in the subpoena.  
12 The -- I guess it's just patiently unfair to a  
13 municipal election that is held within a county  
14 so that there are that many more papers and that  
15 many more items that have to be looked at to try  
16 to do this in such a short period of time.

17 I think that that impacts on my client's  
18 ability to have due process for this case. I  
19 also understand that the hearing is supposed to  
20 be conducted with a certified court reporter so  
21 that there can be a transcript. And there hasn't  
22 been time for that to be, I appreciate the  
23 recording of this, but it's also got to be  
24 transcribed. And anybody that's tried to  
25 transcribed from a tape recorder knows how

1 difficult that is.

2 I don't have any exhibits to provide to you  
3 today, I just -- I don't have any of the  
4 documents. There is some case law that I know  
5 the state elections commissions has pointed at,  
6 it says that the timelines for the municipal  
7 elections have to be followed by the county.  
8 That one case is from Bluffton in Buford County  
9 and that is talking about who it has to be  
10 appealed to.

11 That you are sitting in -- you are sitting  
12 instead of a municipal election commission and  
13 they do not want the state as far as the state  
14 election commission to be responsible for those  
15 elections. So they have their appellate process  
16 to go to the Circuit Court. And that's what that  
17 case leaned on. It said that even though you  
18 were sitting instead of the municipal election  
19 commission you -- the -- the appeal should go to  
20 where that appeal should go which is the Circuit  
21 Court and the state elections commission.

22 We're not looking at an appeal, we're  
23 looking at the conduct of this hearing. And I  
24 don't think it's fair to my client, to Blackmon  
25 Brace and to you to try to decide this on any

1 type of information to try to do this on this  
2 type of notice. So I -- I would ask for a motion  
3 for -- or I would ask for the commission to give  
4 us a continuance till allow us to issue the  
5 subpoenas that we're supposed to be able to -- to  
6 produce, to allow us to gather the documents that  
7 we need to investigate and to present a full case  
8 before you. Thank you.

9 MALE VOICE: Thank you, Ms. Hyatt.

10 JOHN WEAVER: Blackmon Brace, do you have  
11 any comments you'd like to make? I'm assuming  
12 you want to proceed to be decided this afternoon?

13 MALE VOICE: (Inaudible.)

14 JOHN WEAVER: No, sir. If this commission  
15 were to entertain a motion to continue for the  
16 reasons that were made by the attorney, you could  
17 make that decision now if a motion was properly  
18 made and second, you could hold that motion in  
19 abeyance to decide later during the presentation  
20 of evidence and bring it up at a later time,  
21 whatever the decision of the commission majority  
22 would be.

23 MARSHALL BENSON: (Inaudible) commission.  
24 Due to the fact that we to adhere to a time  
25 limit, that is not geared by us but geared by a

1 municipality, I don't even know if we have the  
2 permission to extend it beyond the 48 hours.

3 RICK CRIMMINGER: Conversations that the  
4 county attorney and I and Mary Ann and everybody  
5 else has had, we've been told no, that we didn't  
6 have that permission, so the (inaudible) election  
7 commission. Don't let me speak for y'all, nod  
8 your heads if y'all are in agreement with that?

9 MARSHALL BENSON: Based on that fact I -- I  
10 feel that as -- as unfair as it may seem, I would  
11 recommend that we proceed today and take any --  
12 into consideration any affirmation that's  
13 available and do the best we can and make a  
14 decision based off of information that we have  
15 that's going to be presented.

16 ELVIRA FAULKNER MCILWAIN: Okay. I agree.

17 RICK CRIMMINGER: All right. We've got two  
18 commissioners that basically agree that we ought  
19 to proceed with it and without hearing a motion  
20 to delay it then we'll proceed.

21 ELIZABETH HYATT: Then we ask for a recess  
22 for a few minutes to try to get those --  
23 (inaudible) we have no evidence to -- to present  
24 at this time. I asked for the subpoena this  
25 morning and I don't think that voter registration

1 office has had time to get us the -- the new  
2 documents.

3 RICK CRIMMINGER: Yes, ma'am. We're take a  
4 15 minute recess.

5 ELIZABETH HYATT: Thank you, Your Honor.

6 (A recess was taken.)

7 RICK CRIMMINGER: We'll call the meeting  
8 back to order. (Inaudible) this time, if you  
9 want to make a presentation.

10 ELIZABETH HYATT: Thank you, Mr. Chairman.  
11 I do want to put on the record and I know that  
12 you've already ruled on this but I do want to put  
13 on the record again that I believe that this is  
14 -- having this hearing today is in violation of  
15 my client's due process rights. And we are at a  
16 severe disadvantage in trying to -- to get this  
17 due to the fact that the county election has  
18 taken so long to certify and we're -- we're  
19 unable to -- not that they were not helpful in  
20 the voter registration office, but they just had  
21 so much to do.

22 And I think it's been -- I think it puts my  
23 client at a disadvantage. However I would like  
24 to call Mary Anny Hudson to the stand for my  
25 first witness.

# **Exhibit C**

**Circuit Court Order  
filed February 15, 2017**

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

JACKIE HARRIS,

Petitioner/Appellant,

vs.

LANCASTER COUNTY ELECTION  
COMMISSION, LANCASTER MUNICIPAL  
ELECTION COMMISSION,  
and LINDA BLACKMON-BRACE

Respondents.

IN THE COURT OF COMMON PLEAS  
SIXTH JUDICIAL CIRCUIT

Docket No.: 2016-CP-29-1418

ORDER

CLERK OF COURT  
LANCASTER, SC

2017 FEB 15 PM 2:06

FILED  
OFFICE OF CLERK  
OF COURT

**FACTS**

Because Lancaster County for years has assumed administrative responsibility for the voter registration and elections for the City of Lancaster, this matter is before the Lancaster County Election Commission (Commission) based upon the timely filed protest of the Petitioner, Jackie Harris. The protest was served on November 10, 2016. The protest challenges the November 8, 2016, election for the District 3 seat on the City of Lancaster Council. The certified results of that election indicated that there were a total of 518 votes cast for that seat. Of those, the Petitioner received 235 total votes, 14 of which were absentee paper ballots. The Respondent, Linda Blackmon-Brace, received 281 votes, 154 of which were absentee paper ballots. Two votes were cast for others.

Based upon legal advice from the South Carolina Elections Commission (SCEC), and in compliance with §5-15-130 of the S.C. Code of Laws, the protest hearing was held

on Friday, November 11, 2016, at 2:30pm. The Petitioner and the Respondent were each given three (3) hours verbal notice of the hearing date, time, and location.

Upon conclusion of all testimony, the Commission voted unanimously that the evidence presented during the protest hearing of Jackie Harris was insufficient to, even if truthful in all respects, invalidate the certified results of the City of Lancaster District 3 election.

An appeal was filed by Jackie Harris on December 9, 2016. Respondent Linda Blackmon-Brace filed a Motion to Dismiss for Improper Service on January 13, 2017. A hearing was held on January 23, 2017, and the Court took that matter under advisement. Linda Blackmon-Brace later withdrew this Motion prior to the Court issuing a decision. The merits of the Appeal of the Commission's decision was heard by the Court of Common Pleas on February 2, 2017. The Court affirms the decision of the Lancaster County Election Commission.

#### LAW

Municipalities are authorized to allow County Election Commissions to conduct their municipal elections. S.C. Code Ann. § 5-15-145(A) (2004). "As a general matter, municipal election disputes are to be adjudicated by municipal election commissions." *Bluffton v. Fulgham, et. al*, 686 S.E. 2d 683 (2009). However, the Court of Common Pleas hears appeals from County Election Commissions when municipalities have abdicated their local administrative responsibilities for voter registration and elections.

Construing these statutes together [§5-15-145 and §7-17-30], we therefore hold that the only reasonable interpretation of §5-15-145 is that it establishes a framework whereby county boards act to authority bestowed upon them by municipal bodies. Therefore, the proper appellate court for any petitioner seeking review of a county boards's decision made pursuant to a transfer of authority from a municipality is the circuit court. *Id.*



Therefore, this appeal from the Lancaster County Election Commission was properly before the Court of Common Pleas.

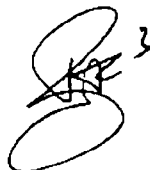
“The Circuit Court sitting in appellate capacity does not conduct a de novo hearing or take testimony. The circuit court must examine the decision for errors of law, but it must accept the factual findings of the commission unless they are wholly unsupported by the evidence.” *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005).

“The right to contest and election exists under common law and the procedure proscribed by statute must be strictly followed.” *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005).

S.C. Code 5-15-130 states,

Within forty-eight hours after the closing of the polls, any candidate may contest the result of the election as reported by the managers by filing a written notice of such contest together with a concise statement of the grounds therefor with the Municipal Election Commission. Within forty-eight hours after the filing of such notice, the Municipal Election Commission shall, after due notice to the parties concerned, conduct a hearing on the contest, decide the issues raised, file its report together with all recorded testimony and exhibits with the clerk of court of the county in which the municipality is situated, notify the parties concerned of the decisions made...

“The notice in an election contest should briefly state facts or a combination of facts sufficient to apprise the contestee of the cause for which his election is contested. It is insufficient to allege generally that fraud was committed, or to allege mere conclusions of the pleader. The purpose of notice requirement is to adequately inform the contestee as to the nature of the contest. *Butler v. Town of Edgefield*, 493 S.E. 2d 838 (1997). “Reason and justice require that grounds relied upon should be stated plainly and clearly that the contestee may prepare to meet them without unnecessary labor or expense. *Id.* After the hearing, “the statute does not require a written order containing findings of facts or

A handwritten signature, possibly "KRE", is written over the number "3".


conclusions of law similar to those of [other tribunals]. *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005).

### ANALYSIS

The Circuit Court has proper jurisdiction of this municipal election appeal. *Bluffton v. Fulgham, et. al*, 686 S.E. 2d 683 (2009). The Circuit Court is sitting in appellate capacity and cannot conduct a de novo hearing. *Taylor vs. Town of Atlantic Beach Election*, 609 S.E. 2d 500 (2005). "The Circuit Court must examine the decision for errors of law, but it must accept the factual findings of the Commission unless they are wholly unsupported by the evidence." *Id.*

S.C. Code 5-15-130 states a hearing of a municipal election protest must be heard within 48 hours of the protest being filed. The Commission conducted the hearing within 48 hours. Ms. Harris motioned the Commission to continue the hearing until "Monday or Tuesday" of the following week. The Commission denied the motion. The Commission has the discretion to grant or deny a Motion for Continuance. Therefore, the Commission's denial of a continuance was not an "error of law."

Ms. Harris also alleges the Commission violated her procedural due process. "The fundamental requirements of due process include an opportunity to be heard in a meaningful way and judicial review." S.C. Const. art. 1, § 22; *Stono River Envtl. Protection Ass'n v. S.C. Dep't of Health and Envtl. Control*, 305 S.C.90, 94, 406 S.E. 2d 340, 342 (1991). Ms. Harris filed the protest pursuant to S.C. Code 5-15-130. This statute states, inter alia, the hearing before the Commission will be held "within" 48 hours. [emphasis added]. The statute provided Ms. Harris notice that the hearing would be held within 48 hours. Ms. Harris was also notified on the date of the hearing approximately three (3) hours before the hearing. This was approximately three (3) days after the November 8<sup>th</sup> election results were announced and approximately twenty-four (24) hours after the protest was filed. Ms. Harris and her counsel were at the hearing.



The Court finds the statute affords procedural due process to all parties to a contested municipal election, specifically in this particular case. Ms. Harris, by and through her counsel, was allowed to present her case to the Election Commission. The hearing lasted approximately three (3) hours. The Commission took a fifteen (15) minute break to allow Ms. Harris and her counsel an opportunity to gather more evidence and information from the Lancaster County Voter Registration office. (Tr. p.17). After the break, Ms. Harris presented the Commission with a bundle of documents, testified, called witnesses and cross-examined witnesses. Ms. Harris concluded her direct testimony by stating, "All that – all that I have to offer right this minute without being able to –to do the research that I need, is—is there" (Tr. p. 80, Lines 20-23). The burden of proof was on Ms. Harris to present her case and prove the allegations of the protest. The Commission was sitting as a tribunal, not as an investigative body. The Commission concluded after a meaningful hearing, "[u]pon the conclusion of all testimony, the Commission voted unanimously that the 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." (Order, p. 2).

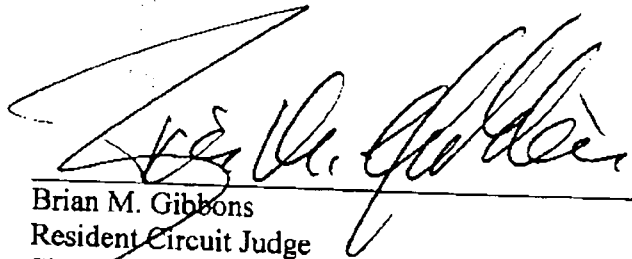
### CONCLUSION

This Court is sitting in its appellate posture and cannot conduct a de novo hearing. There is no evidence in the record of an error of law by the Commission. The main thrust of Appellant's argument is that the election protest statute is unfair due to its time constraints. However, this is an argument best decided by the South Carolina Legislature, not the Courts. This Court upholds the decision of the Lancaster County Election



Commission and orders Ms. Linda Blackmon-Brace be sworn in on Lancaster City Council as the District #3 representative within 30 days.

**AND IT IS SO ORDERED.**



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Brian M. Gibbons  
Resident Circuit Judge  
Sixth Judicial Circuit

February 15, 2017

## **Exhibit D**

**Transcript of Circuit Court Hearing held February 2, 2017  
pages 29-30**

1           THE COURT - I would. I want to hear from you. I  
2 want to hear your position, and I've read the order, as  
3 well, but let me hear from you then as the county attorney,  
4 kind of the ex officio of the election commission.

5           MR. WEAVER - I believe that the commission would  
6 have continued the case and allowed all parties sufficient  
7 time to gather their evidence but for the advice that we  
8 were given from the state elections commission. I asked  
9 the lady lawyer at the state elections commission if it had  
10 to be held that day; she said yes. That was a federal  
11 holiday. I asked her, if we heard it today, could we  
12 consider the evidence at a later time, post-pone the  
13 decision; she said, no, you have to make it immediately. I  
14 asked this question: I said, suppose this was Charleston  
15 County and on Tuesday everything was wonderful, the weather  
16 was great, everybody had on shorts, but on Thursday  
17 Hurricane Hugo hit, would we still have to have the  
18 hearing; she said absolutely. And when I heard her say  
19 that, from my years of practicing law with due process, I  
20 felt she was absolutely wrong, but the commission was there  
21 and heard her say that; they were listening on the  
22 telephone on speakerphone, and so we moved forward with  
23 that directive. We had three commissioners there; one had  
24 to be gone at 4:00 o'clock. The other one that was not  
25 there was a school teacher and he was in the middle of

1 teaching school, and he, like everyone else, had only three  
2 hours notice. So we proceeded ahead, really, against my  
3 better judgment in advising the commission, but their  
4 decision was to move forward based upon what they heard  
5 from the state elections commission's attorney. As for the  
6 evidence that was presented, we had laymen given three  
7 hours, Ms. Hurley (phonetic) was part of that, of course,  
8 as speaking for Ms. Harris. They didn't -- they didn't  
9 have time to gather the evidence; they didn't have time to  
10 gather their subpoenas. Nobody knew what to put in; nobody  
11 -- it wasn't like if we were trying a case here, you'd have  
12 a witness testify as to exhibit A and verify it and you  
13 would introduce it and give it to the court; they just put  
14 stuff in, and that really is all that happened, and I've  
15 never seen it to this day. You have it before you, and as  
16 far as I know, the commission has never seen it. It was  
17 not -- in my opinion, it wasn't fair to Ms. Brace; it  
18 wasn't fair to Ms. Harris, and it wasn't fair to the  
19 elections commission itself, but we abided by what the  
20 state elections commission attorney said and the results  
21 are what they are, and I tried to set that out in the order  
22 as best I could.

23 THE COURT - Yes, sir, thank you.

24 MR. WEAVER - Thank you.

25 THE COURT - Mr. Belton. Yes, sir.

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas  
Brian Gibbons, Circuit Court Judge

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Appellate Case No. 2017-000423  
Case No. 2016-CP-12-1418

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**RECEIVED**  
MAY 16 2017  
S.C. SUPREME COURT

Jackie Harris.....Appellant,

v.

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

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PROOF OF SERVICE

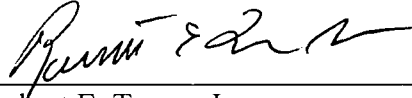
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I, the undersigned of Sowell Gray Stepp & Laffitte, LLC, attorneys for the Respondent, Linda Blackmon-Brace, certify that I have served a copy of Respondent Linda Blackmon-Brace's Motion to Strike Respondent Lancaster County Election Commission's Improper Filing and Dismiss Its Cross-Appeal upon all parties by depositing a copy in the United States Mail, postage prepaid, on May 16, 2017, addressed as follows:

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May 16, 2017