

THE STATE OF SOUTH CAROLINA

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In the Supreme Court

MAY 26 2017

S.C. SUPREME COURT

APPEAL FROM LANCASTER COUNTY  
Court of Common Pleas

Brian Gibbons, Circuit Court Judge

Case No. 2016-CP-12-1418

Jackie Harris .....Appellant,

v.

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

REPLY BRIEF OF APPELLANT

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## ARGUMENTS

1. **Respondent is incorrect in its claim that Appellant was required to file a Rule 59(e), SCRCF, Motion to Alter or Amend the Judgment of the Circuit Court as a prerequisite to arguing issues of fraud in this case because the record at every level from the Election Commission presentation to the Circuit Court appeal is replete with allegations, arguments, and evidence of fraud on the part of Linda Blackmon-Brace and her campaign staff.**

In order to prevent this Court from considering the voluminous evidence of fraud committed by Respondent Linda Blackmon-Brace, Respondent argues that this Court cannot consider such fraud because Appellant did not file a Rule 59(e) Motion “to afford the circuit court an opportunity to reconsider the issues” (Respondent’s Brief Page 6). However, there is nothing in statute requiring that Appellant return to the Circuit Court to ask, basically, “are you sure?” before proceeding with her appeal.

A Rule 52/59 motion is required to preserve an issue only when (1) an issue was not raised below; (2) the trial court failed to rule on a issue that was raised; or (3) the trial judge’s order addresses a matter that no party has raised. A Rule 52/59 motion is permitted in any case, but is only required when one of those three circumstances applies. Clearly, Appellant raised the issue of fraud throughout her brief at the Circuit Court level appeal (Appellant’s Circuit Court Brief), throughout the exhibits presented at each level, and throughout her oral arguments at both the original protest hearing and the Circuit Court. Clear also is the fact that the Circuit Court Judge denied all of Appellant’s grounds, as they were clearly presented and ruled upon.

It would certainly be in the best interest of the Respondent for this Court to ignore the mountain of evidence showing Blackmon-Brace’s fraud, including 102 requests for paper absentee ballots on Ms. Blackmon-Brace’s forms that had been filed with the elections office, the vast majority of which were in City Council District 3, including the forty-eight (48) of those

ballots that were for City Council District 3 and were mailed *directly* to Ms. Blackmon-Brace's "foundation" at 701 E Arch Street – an address Ms. Blackmon-Brace owns and controls [39 in exhibit 7, 1 in exhibit 6, and 8 in exhibit 9]. Certainly, Respondent would like for this court to ignore the fact that an additional thirty-one (31) of those requests for paper absentee ballots were filled out and witnessed by Ms. Blackmon-Brace herself. [29 in exhibit 6, and 2 in exhibit 9], that six were witnessed by her assistants, [Exhibit 9], and that six (6) more requests for paper absentee ballots within City Council District 3 contained an authorization clearly in Ms. Blackmon-Brace's handwriting but signed by the voter, stating that Ms. Blackmon-Brace herself was authorized to help the voter complete the ballot [4 in exhibit 7, and 2 in exhibit 9], while three (3) gave her assistants that authority [Exhibit 9]. And certainly Ms. Blackmon-Brace hopes that this Court will not consider the fact that she 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. The only way to keep out such evidence of fraud on her part is to claim that the issue of fraud was never raised or ruled upon. However, the record is clear that fraud has been the primary issue in this case since its beginning, and that every ruling at every level addresses the Appellant's arguments.

It appears that the Circuit Court, like the County Election Commission (and like the Respondent, as discussed in section 2 below), did not *understand* the distinction between (1) fraud and (2) election irregularities, and that confusion on the part of lower tribunals is the primary basis of this appeal. However, Appellant was under no obligation to ask the Circuit Court if it was absolutely sure of its ruling before filing her Appeal.

2. **Respondent conflates and confuses the two very distinct standards of (1) fraud; and (2) voting irregularities, and ignores the fact that where there is fraud, the analysis stops.**

Throughout Respondent's Brief, she conflates the two distinct tests of (1) fraud and (2) irregularities, and she ignores the fact that where fraud exists, the court need not go further to count the number of irregularities.

Ironically, Appellant and Respondent agree on the standard, but Respondent conveniently ignores the wording that states "in the absence of fraud," before stating that the contestant must show enough "irregularities" to make a difference in the election. Clearly, based even on the standard that the Respondent cites, where fraud is present, the analysis stops. Respondent continuously states that the Court "will not set aside an election for a mere *irregularity*," (Respondent's Brief p. 4); and at times even completely omitting the "absent fraud" language in quoting case law stating that "the court will not set aside an election due to mere irregularities or illegality unless the result is changed or rendered doubtful." (Respondent's Brief page 28). In all iterations of the standard, the Court recognizes that it must only count the number of irregularities when there is an *absence of fraud*.

This illogical argument would be in essence to say that Linda Blackmon-Brace's act of having hundreds of paper absentee ballot applications sent to her home in clear violation of statute and in a clear effort to circumvent the campaign and elections laws of this state would have been okay so long as it did not change the result. It would be equally illogical to claim that Ms. Blackmon-Brace's act of changing the voting addresses of people who live outside of District 3 to addresses inside of District 3 (48 of which were to a house that she owns – see exhibits 7, 6, and 9) within 30 days of the election would have been okay and that they could vote in the District 3 election even if they didn't actually live in District 3, so long as Ms.

Blackmon-Brace didn't do that to more than 46 voters. Likewise, to argue that Ms. Blackmon-Brace's act of registering at least thirteen (13) unrelated people to vote at 104 and 103 Rose Lane, the house Ms. Blackmon-Brace claims to be her own residence, where clear evidence was presented that virtually no water runs through the pipes at these very small single family residences – is okay because that number is smaller than her 46 vote margin of “victory.”

In making this argument, Respondent continues the misinterpretation of election law by confusing the ideas of fraud and irregularities. Fraud must only be shown to have occurred to invalidate an election. Irregularities may invalidate an election only when there are a sufficient number of them to change the result. To require a threshold number for fraud would be ludicrous. It would be to say that the State will tolerate a certain level of fraud in its elections, so long as there is not *too much* fraud<sup>1</sup>. That is clearly not the standard, and in showing fraud, Ms. Harris was not required to prove a threshold number of fraudulent votes to invalidate the election.

Respondent further argues that Appellant's reference to the exhibits presented to the Election Commission was an attempt to “pull a new number of alleged irregularities out of her hat.” Nothing could be farther from the truth. These exhibits have been in the record of this case since the beginning. They were provided by the Commission during a fifteen minute recess in the hearing, and Appellant was expected to go through these voluminous exhibits in the moment and offer them as evidence in her case. She did so. And citing the exhibits presented to the Commission is not an attempt to redefine “irregularities” in this case, as Respondent alleges.

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<sup>1</sup> However, it is clear that Ms. Harris met this higher – albeit erroneous – standard by presenting many more instances of illegal conduct on the part of Ms. Blackmon-Brace than would have been necessary to change the result.

The Commission, at its own admission in their written order denying the protest, never looked at the exhibits to determine their worth in this case. At the risk of repeating the main argument of this case, the Appellant is not concerned with “irregularities” and neither should this Court. The issue in this case is fraud – and fraud should not and does not require a threshold number.

- 3. Respondent continually states that the election commission used its discretion to deny a continuance; however, the election commission states throughout the record and its own brief that it was operating under the belief that it had NO discretion in the matter.**

In arguing that the Lancaster County Election Commission acted within its discretion in giving the Appellant less than three (3) hours notice of the hearing and in denying the Appellant the opportunity to subpoena documents and witnesses, the Respondent argues that the Election Commission acted “within its discretion.” This argument flies in the face of the facts as shown in the hearing transcript as well as in the Commission’s Order and the Commission’s own brief. The Commission clearly maintains throughout this process that it believed that it *had no discretion* in considering whether to afford the Appellant a reasonable amount of time to obtain these additional documents and witnesses. If the Commission is clear that it did not believe it had discretion, it could not, therefore, act within its discretion.

- 4. Respondent incorrectly argues, in spite of clear statutory language to the contrary, that Linda Blackmon-Brace’s actions were legal. Respondent couches her argument by asserting Linda Blackmon-Brace’s claim that she contacted MaryAnn Hudson, who contacted the State Election Commission, who told Mary Ann Hudson, who told Linda Blackmon-Brace that her “practices” were legal. However, Respondent never identifies the “practices”, the questions, asked, or the actual response received.**

In her Brief, Respondent asserts that “Ms. Hudson (Director of the Lancaster County Voter Registration Department) confirmed that Respondent called her to ensure that *her practices* were within the confines of the law, and Ms. Hudson told Respondent that they were

lawful.” (Respondent’s Brief Page 25). However, Respondent does not identify what “practices” she is referring to – be it the “practice” of ordering hundreds of absentee ballots for others, having those paper ballots sent to a residence that she owns, changing addresses for voters who lived outside of the District to an address inside of the District within 30 days of the election, registering 13 unrelated voters claiming they lived in a small single family dwelling and adjacent dwelling, one of which she also claimed to live in, when virtually no water flows through the pipes at either residence, or having voters sign a pre-printed paper asking for her help in filling out their ballots.

Had Respondent printed the dialogue she references in her brief, it would have been clear that Mary Ann Hudson did not “confirm” that Linda Blackmon-Brace’s “practices” were legal. Rather, Mary Ann Hudson sat on the stand while Linda Blackmon-Brace *told her* that was the reality, and, it appears, Mary Ann Hudson was not able to say much as testimony – and she certainly did not address Linda Blackmon-Brace’s “practices” regarding obtaining paper absentee ballots.

The actual exchange the Respondent alleges as proof of the legality of Linda Blackmon-Brace’s “practices” is as follows:

BY LINDA BLACKMON BRACE:

Q. Thank you, Mary Ann. I would like to ask you that when -- in the last two years you have seen me at voter registration probably every day, correct?

A. That's correct.

Q. And every day probably for the last two years I have brought in at least five new voter registration, right or wrong? Twenty-five –

JOHN WEAVER: You have to answer, not nod your head.

THE WITNESS: Okay. Yes. Yes.

BY LINDA BLACKMON BRACE:

Q. Okay. So when we had the -- and then in 2016 of January I started -- I wrote a -- a -- a request and the request said that I am requesting the democratic election, the democratic primary election, the democratic runoff, the mayor's special election and the general election. I did all those things with one request so that I didn't have to come back and redo it every time, did I do that correctly?

A. (Crosstalk.)

Q. I did that. So I did not have to come when God forbid we lost -- we had to have a mayor special election. I requested that, did I -- did I not do that, Mary Ann? Nobody else came in the office but me, at that time I wasn't even thinking about running. I was thinking about electing Hillary Clinton and trying to break that glass seal, that's what I was doing.

JOHN WEAVER: Ms. Brace, if you've got a question.

LINDA BLACKMON BRACE: All right. Okay. I'm sorry.

JOHN WEAVER: This is -- this is cross-examination not --

LINDA BLACKMON BRACE: All right. I'm sorry (inaudible) --

JOHN WEAVER: -- (crosstalk) --

LINDA BLACKMON BRACE: Yeah.

BY LINDA BLACKMON BRACE:

Q. Okay. So when I came in your office at all times I always tried to treat you with respect. Now, a lot of times you -- you -- you said Linda, you can't do that. And I respected your position, you know, I

think it was only one time you said no. Huh-huh.  
(Negative response.) Let me get back in contact with  
you. Have I in anyway do you think that I in any way  
did anything wrong because before I did the -- I knew  
I didn't -- I know I did not do anything wrong as far  
as taking the voter registration up there. I asked  
you was there a conflict of interest after I signed up  
for the seat, for me to turn in the application. You  
said no. You said where the problem will be --

JOHN WEAVER: That needs to be in the form  
of a question.

BY LINDA BLACKMON BRACE:

Q: Okay. Well, when I asked you was -- was  
there a conflict of interest with me turning in the  
voter registration application you said (crosstalk) --

A: I promise that's exactly right. I called  
the state election commission and they said that that  
was acceptable.

Q: Okay. Therefore all I brought in was  
application and a lot of applications were mailed in  
also. Okay. Now, did you see me bring in any ballot  
-- I did -- I did not even bring in not one and I  
don't know how maybe somebody put Linda Blackmon and  
they --

JOHN WEAVER: Let her -- let her answer the  
question.

BY LINDA BLACKMON BRACE:

Q: Okay. Did you see me bring in one ballot?

A: Well, I don't remember you bringing the  
ballots. But now in all fairness I did not take most  
of the ballots --

Q: Okay.

A: --- but I -- I don't -- I think that you're  
right, that you did not bring in the actual ballots.

Q: I did not bring in not one ballot. Okay.  
So during this time when I asked you -- I asked you a  
question about I think I did everything right, I think

you treated me with respect and I treated you with respect, I respected your position and anytime that there was a question you would say hold up, Linda, let me call Columbia. And most of the time I can say that you were fair, you -- you -- you did your part but I -- I -- I don't think that I did anything wrong. I think what -- what has happened I mean, I was trying --

RICK CRIMMINGER: Ms. Brace.

LINDA BLACKMON BRACE: Wait a minute, I would like -- I'm going to ask you the question.

BY LINDA BLACKMON BRACE:

Q: Did you not see me, let's be honest, for two years coming to voter registration every day turning in all the voter register -- turning in new voter registration and that is what I did?

A: If you want me to say that yes, Linda does take in -- to bring in a bunch of voter registration forms and change of addresses, that's -- yes, you do.

Q: Right. And what that is with the change of address and why it is so many new -- look like new voters, it's not new voters. What we decided to do at the end it's just go on and do a brand new voter registration because if something happened you're going to have their date of birth on there and you're going to have their social security number on there so there was no problem.

A: And I think that what we discussed was that if they were not registered to vote that would -- that would -- if they were not registered that would suffice for the voter registration form or the change of address that they could be used (crosstalk).

Q: So all of that being said I thank you very much and for answer that and I have no other questions.

In this disjointed exchange, we see only one aspect of Linda Blackmon Brace's "practices" – and that is the practice of registering voters. Mary Ann Hudson confirmed that, even as a candidate, Linda Blackmon-Brace could legally register new voters. No other "practice" of Linda Blackmon-Brace was cloaked as righteous by the testimony of Mary Ann Hudson – not the "practice" of requesting hundreds of paper absentee ballots. Not the "practice" of having those ballots mailed to her own address. Not the "practice" of changing addresses of people who lived outside of District 3 to inside of District 3 on the eve of the election. And not the "practice" of registering those 13 people to the houses at Rose Lane, many of whom would have been her roommates had they actually lived there, but where there was ample evidence that no one lived at those addresses.

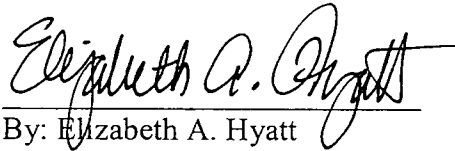
To assert that Mary Ann Hudson confirmed in her testimony that Linda Blackmon-Brace's "practices" were "within the confines of the law" is to misstate her testimony. In fact, she never addressed Linda Blackmon-Brace's "practice" or methods of requesting, obtaining, and marking paper absentee ballots. Furthermore, the above testimony, rather than showing that Linda Blackmon-Brace's "practices" were legal, instead bolsters the arguments of the Appellant by showing the tremendous scope of Linda Blackmon-Brace's practice of acquiring and managing paper absentee ballots.

**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,**

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Lancaster, South Carolina

May 24, 2017

**PROOF OF SERVICE**

Jackie Harris, Appellant,  
vs.  
Lancaster County Election Commission, Lancaster Municipal Election  
Commission, and Linda Blackmon-Brace, Respondents

Case No. 2016-CP-29-1418

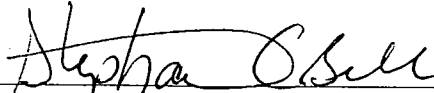
The undersigned hereby certifies that an copy of the **Reply Brief of Appellant** in the above case were served upon Robert E. Tyson, Jr., Esq., and Vordman Carlisle Traywick, III, Esq., John L. Weaver, Esq. and Mitchell A. Norell, Esq., the Respondents in the above referenced case, by depositing a copy in the United States Postal Mail, with sufficient postage annexed thereto, addressed as follows:

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Mailed on this 24th day of May, 2017.

  
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