

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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JUL 10 2017

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

S.C. SUPREME COURT

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

Jackie HarrisAppellant,

v.

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

**RESPONDENT LINDA BLACKMON-BRACE'S RETURN IN OPPOSITION TO
APPELLANT'S MOTION TO SEAL THE RECORD ON APPEAL**

Pursuant to Rule 240(e), SCACR, Respondent Linda Blackmon-Brace (Respondent) hereby submits the following Return in Opposition to Appellant Jackie Harris's (Appellant) Motion to Seal the Record on Appeal.

At the outset, Respondent agrees with Appellant's contention that "voters are not themselves part of this litigation," App. Mot. to Seal at 3, because no actual votes were challenged in the hearing before the Lancaster County Election Commission (the Commission) or the circuit court. Although Appellant challenged absentee ballot applications and change of address forms, she failed to put forth any evidence that the individuals who completed these forms ever voted in the election for Lancaster City Council District Three. Thus, as the Commission held, Appellant failed to provide evidence of a sufficient number of irregularities that would have changed the

result of the election. That is why Appellant's election protest before the Commission failed. As Respondent has noted in previous filings, however, Appellant is attempting to litigate issues on appeal that were never ruled upon by the circuit court. While the record may contain personal "identifiers that are essential to the Appellant's case," App. Mot. to Seal at 3, her entire case on appeal is predicated upon issues that are not preserved for this Court's review. The only issues before the Court are (1) whether the Commission properly exercised its discretion in denying Appellant's motion for a continuance and (2) whether Appellant was afforded procedural due process at the hearing before the Commission. Therefore, contrary to Appellant's assertions, the personal identifying information she seeks to seal is not "the crux of the case." Id. None of the exhibits with personal identifying information will change the fact that (1) Appellant failed to prove her case before the Commission, (2) the circuit court never ruled upon the merits of her protest, and (3) this Court cannot conduct a de novo review.

Without waiving any arguments as to relevance and preservation, Respondent does agree that the sensitive and personal identifying information of Lancaster residents should not be made readily available for the public eye. Where Respondent parts ways with Appellant, however, is in her request to seal the entire record on appeal. Almost forty years ago, the U.S. Supreme Court observed that "the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents." Nixon v. Warner Cmnc'ns, Inc., 435 U.S. 589, 597 (1978) (footnotes omitted). Acknowledging the foregoing proposition, this Court confirmed that "[j]udicial proceedings and court records [in South Carolina] are presumptively open to the public under the common law, the First Amendment of the federal constitution, and the state constitution." Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006). Indeed, public access to our courts "promotes free discussion of

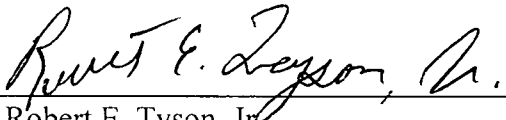
governmental affairs by imparting a more complete understanding to the public of the judicial system and issues resolved by that system.” Id. at 11, 630 S.E.2d at 469.

To give effect to these well-established principles, Respondent respectfully requests that the Court deny Appellant’s motion to seal the entire record on appeal. Although Respondent agrees the information contained in the exhibits should be sealed, sealing the entire record is not the appropriate remedy here. The present record on appeal contains the following pertinent information: the circuit court’s order, the transcript of the hearing before the circuit court, the Commission’s order, the transcript of the hearing before the Commission, and Appellant’s written notice of protest. Counsel must be permitted to freely reference these public documents in arguing the appropriate issues before the Court in this election protest. Further, sealing these documents—all of which have been made publicly available—would be inconsistent with the factors set forth in Rule 41.1, SCRPC, and this Court’s decision in Ex parte Capital U-Drive-It. Instead of resorting to the drastic remedy of sealing the whole record in this case, particularly given that election matters are of the utmost public importance, Respondent would propose that the Court adopt one of two less restrictive options that both promote public access to the courts on the one hand and protect the privacy interests of innocent third parties on the other hand. Specifically, Respondent would ask that the Court either (1) keep the record public and require Appellant to redact all personal identifying information contained therein, or (2) allow Appellant to file under seal only those pages in the record that contain personal identifying information.

Accordingly, without waiving any arguments as to the relevance of certain documents in light of Appellant’s failure to preserve various issues for appellate review, Respondent respectfully requests that the Court deny Appellant’s Motion to Seal the Record on Appeal and, instead, adopt one of the proposed measures outlined above.

Respectfully submitted,

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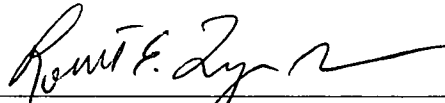
PROOF OF SERVICE

I, the undersigned of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Respondent Linda Blackmon-Brace, certify that I have served a copy of the Return in Opposition to Appellant's Motion to Seal the Record on Appeal upon all parties by depositing a copy in the United States Mail, postage prepaid, on July 10, 2017, addressed as follows:

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