

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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

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

RECEIVED

JUL 13 2017

S.C. SUPREME COURT

Jackie HarrisAppellant,

v.

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

**RESPONDENT LINDA BLACKMON-BRACE'S REPLY TO
RESPONDENT LANCASTER COUNTY ELECTION COMMISSION'S
RETURN TO THE MOTION TO STRIKE**

Pursuant to Rule 240(f), SCACR, Respondent Linda Blackmon-Brace (Respondent) submits the following reply to Respondent Lancaster County Election Commission's (the Commission) July 10, 2017, return to her motion to strike its improper brief. For the reasons set forth below, as well as those raised in her motion and prior filings, the Court should grant Respondent's motion to strike the Commission's brief and prevent the Commission from submitting any future filings in this matter.

A review of the Commission's return reveals it has failed to respond adequately to the legal arguments raised in Respondent's motion to strike.¹ The Commission again ignored the rules

¹ As a preliminary matter, Respondent would note that the Commission filed its Final Brief after the motion was already pending with the Court on July 3, 2017. To the extent the Commission takes a position to the contrary, Respondent's motion to strike, of course, encompasses the Final Brief because (1) she asked the

governing returns and cited no authority in support of its position. See Rule 240(e), SCACR (providing that “[t]he provisions of Rule 240(c) shall apply to a return”); Rule 240(c)(2), SCACR (requiring that “[e]ach motion shall include . . . citation of authorities in support of the motion”). As noted in previous filings, the Commission repeatedly has failed to address Respondent’s contention that what the Commission is seeking to accomplish in this case finds no support in the South Carolina Appellate Court Rules or our case law. Instead of explaining its legal basis in the return to Respondent’s motion to strike, the Commission merely (1) stated Respondent’s argument “is without merit”²; and (2) presented a circular argument as to how its brief is similar to, but also different from, Appellant’s brief. This response is insufficient as a matter of law. By contrast, Respondent has cited numerous authorities in each filing, all of which demonstrate that the Commission has no basis in law or fact for bringing its arguments before the Court in the manner it seeks to do so.

At the risk of beating a dead horse, the Commission also continues to misunderstand Respondent’s argument and this Court’s ruling. It is undisputed that the Commission did not take any steps to file an appeal or a cross-appeal in this matter. But the analysis does not stop there. What is important, for purposes of this motion, is that the only way the Commission can bring the arguments it seeks to raise on appeal is via those two procedural mechanisms. Although the Commission seeks to elevate form over substance, even a cursory review of its brief demonstrates the Commission is, at bottom, trying to appeal the circuit court’s rulings. The Commission, for instance, argues in support of Appellant’s position and asks this Court to reverse the circuit court’s

Court to prevent the Commission from submitting any future filings and the Final Brief post-dated that request, and (2) the Final Brief is identical to the Amended Initial Brief and suffers from the same defects.

² If the Commission thinks Respondent’s argument is without merit, then it must also think this Court’s prior Order granting the first motion to strike, at least in part, on that ground was also without merit. The Court has ruled and the Commission refuses to accept this ruling.

order. That is an appeal. Because the Commission admittedly failed to follow the appropriate procedures for perfecting an appeal or cross-appeal, the Commission cannot assert these arguments and, thus, its brief attempting to raise them is improper. Further, as the Court has ruled already, the Commission failed to preserve its arguments and cannot raise them for the first time on appeal. In sum, the Commission has no possible legal basis for switching teams on appeal to argue any alleged errors in the circuit court's decision. To the extent the Commission contends the Final Brief should stand—notwithstanding its defects—because the Court is free to give it “such weight as the court deems appropriate,” this argument ignores the fact that the Court already did weigh in on a nearly identical brief and concluded it was inappropriate.

Additionally, the Commission's proposed alternatives fail to address the problems associated with the Commission assuming the position of Appellant. As to the “concurring conclusion” alternative, the Commission is acknowledging it has no standing to independently ask the Court to reverse the circuit court's decision. Indeed, in its prior Order, this Court found the Commission “may not raise the issue independently because it did not file a cross-appeal and concedes it could not file a cross-appeal because it was not an aggrieved party.” Order at 1. The Commission also has admitted it failed to follow the requirements of Rule 203, SCACR. Because the Commission has conceded every possible ground on which it could raise the arguments contained in its Final Brief, the Court's inquiry as to the propriety of its brief should end here. In any event, the Commission has cited no case in which this Court recognized a party's ability to file a “concurring conclusion,” whatever that means, to allow that party to get around its failure to comply with the South Carolina Appellate Court Rules. To the contrary, our precedent requires that parties act within the confines of the rules to facilitate appellate review.

With respect to the second alternative, although the Commission believes that striking the conclusion section asking for a reversal will solve all its problems, this proposed measure would fail to cure any of the remaining defects in the Commission's improper brief. To be clear, Respondent's argument is not limited to the fact that the Commission is inappropriately asking for a reversal. Respondent's beef also stems from the fact that the Commission, a government tribunal, is arguing in favor of a party to a contest over which it presided and taking the exact opposite position in an appeal from its own ruling. This is improper on a number of levels—all of which have been outlined in Respondent's prior filings—and it is inconsistent with this Court's prior rulings. Moreover, it would make little sense to allow a party to raise improper arguments throughout its brief so long as that party does not bring it all home by asking for a reversal at the end. The Commission's proposed alternative is nothing more than a distinction without a difference. In other words, it offers no remedy at all.

By filing the same defective brief, and continuing to mount a meritless defense of its ability to do so, the Commission has wasted the time and resources of both this Court and Respondent. The Commission's position finds no legal support and is contrary to this Court's prior Order addressing the same issue. Our appellate court rules do not allow the Commission to manipulate the appellate process in this manner. For the foregoing reasons, Respondent respectfully requests that the Court grant her motion to strike the Commission's improper filing and prevent the Commission from filing any future briefs in this matter.³ If the Commission cannot follow the rules, then it does not deserve a seat at the table.

³ Respondent further renews her request that the Court award the costs she incurred as a result of responding to the Commission's frivolous filings. See Rule 269, SCACR. Should the Court require a fee affidavit from her attorneys, the undersigned will be happy to furnish one for the Court's consideration.

Respectfully submitted,

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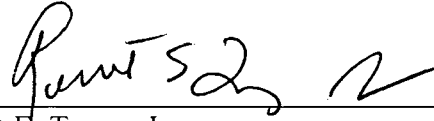
PROOF OF SERVICE

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 Reply to Respondent Lancaster County Election Commission's Return to the Motion to Strike upon all parties by depositing a copy in the United States Mail, postage prepaid, on July 13, 2017, addressed as follows:

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