

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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NOV 01 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 Harris ..... Appellant,

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 MOTION FOR COSTS**

Pursuant to Rule 240(f), SCACR, Respondent Linda Blackmon-Brace (Respondent) submits the following reply to the Lancaster County Election Commission’s (the Commission) untimely return in opposition to her motion for the reasonable costs and attorney’s fees she incurred in responding to the Commission’s frivolous filings. For the reasons set forth below, Respondent respectfully requests that the Court grant her motion.

Although the Commission pays lip service to “accept[ing] the decision of this Court that the Commission’s filing should be stricken,” the Commission continues to criticize Respondent’s argument and this Court’s ruling. This Court has granted two motions to strike the Commission’s brief and affirmed the circuit court’s finding that the hearing before the Commission was held in

accordance with the law. But the Commission refuses to back down from its argument and still maintains that Respondent and the Court are both wrong. Frankly, at this stage, Respondent cannot say anything else to make the Commission understand why it could not raise the arguments it sought to bring before the Court in the manner in which it chose to do so. If the rulings of the Supreme Court of South Carolina did not clarify that for the Commission, then Respondent is not sure anything can or will.

The Commission repeatedly has failed to cite any authority in support of its ability to ask for a reversal and argue a violation of due process on behalf another party for the first time in this Court. Indeed, none exists. The Court agreed with that argument and the Commission's brief was stricken from the record. The Commission then filed a nearly identical brief that was defective for the exact same reasons set forth in this Court's Order. The Commission's disregard for appellate procedure at every step of the way has wasted the time and resources of this Court. In addition to ignoring the Court's Order, the Commission has either disregarded or failed to comply with at least twelve rules of this Court during this appeal. See Rule 201(b), SCACR; Rule 202(a), SCACR; Rule 203(c), SCACR; Rule 208(a)(2), SCACR; Rule 208(b)(2), SCACR; Rule 211(a), SCACR; Rule 240(c), SCACR; Rule 240(e), SCACR; Rule 263, SCACR; Rule 267(c), SCACR; Rule 268, SCACR; Rule 269, SCACR.

The Commission also continues to belittle the rules governing issue preservation in South Carolina. Its fundamental misunderstanding of those rules is demonstrated by its assertion that I'On, LLC v. Town of Mount Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000), and South Carolina Department of Transportation v. M&T Enterprises of Mount Pleasant, LLC, 379 S.C. 645, 667 S.E.2d 7 (Ct. App. 2008), are "in no way relevant" to the Commission's due process argument. The I'On case, which is one of the most frequently cited cases on preservation, was cited for the

assertion that “[a]n appellate court may not . . . reverse for any reason appearing in the record.” 338 S.C. at 421–22, 526 S.E.2d at 724. As the Court concluded here, the Commission never asked the circuit court to reverse its own decision, and this Court was not the appropriate forum in which to do so for the first time. Likewise, the M&T Enterprises case was cited for the proposition that “[i]t is well settled that an issue must have been raised to and ruled upon by the trial court to be preserved for appellate review.” 379 S.C. at 658, 667 S.E.2d at 14. The Court in this case determined the issue the Commission sought to raise for the first time on appeal was neither raised to nor ruled upon by the circuit court. The Commission’s dismissal of these cases as inapplicable and irrelevant demonstrates a disregard for the importance of issue preservation as a procedural requirement governing appeals in this state.

Finally, the notion that the Commission was concerned about the due process afforded to Respondent is disingenuous. Any attempt by the Commission to hide behind a thin veil of neutrality, at this point, is futile. As Respondent previously noted, the Commission argued in its brief that Appellant “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.” Comm’n Am. Brief at 8. That is the exact opposite of the Commission’s ruling at the hearing and is one of the grounds on which the Commission asked this Court to reverse its own decision. At the end of the day, the Commission’s arguments and request for a reversal only benefitted one person in this case,<sup>1</sup> and it was not Respondent or the voters of Lancaster City Council District Three. Regardless, the Commission is required to follow the law, and if it is displeased with the law, then it should take up that matter with the General Assembly.


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<sup>1</sup> As Appellant aptly noted, “all of the briefs filed by Respondent Lancaster County Election Commission agreed with the Appellant, both in the facts and the appeal process.” App.’s Return to Mot. for Costs at 3.

In sum, to answer the Commission's existential question in its motion to file a return out of time, asking this Court to weigh in on its argument for a third time after a remittitur has been issued in the case is, in fact, frivolous. The Commission continues to run afoul of Rule 269, SCACR, and its two recent filings with the Court are the latest evidence of this pattern of conduct. Based upon the foregoing, Respondent respectfully requests that the Court grant her motion and award the reasonable costs and attorney's fees she incurred in responding to the Commission's frivolous filings in this case.

Respectfully submitted,

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November 1, 2017

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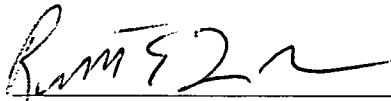
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I, the undersigned of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for Respondent Linda Blackmon-Brace, certify that I have served a copy of the Respondent's Reply to Respondent Lancaster County Elections Commission's Return to Motion for Costs upon all parties by depositing a copy in the United States Mail, postage prepaid, on November 1, 2017, addressed as follows:

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