

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY
The Honorable Roger E. Henderson

Appellate Case No. 2019-000147

RECEIVED
APR 04 2019
S.C. SUPREME COURT

Glenn Odom,Respondent,

v.

Town of McBee Election Commission and Shilon Green,Appellants.

RESPONDENT’S RETURN IN OPPOSITION TO APPELLANTS’ MOTION FOR LEAVE
TO SUPPLEMENT THE RECORD ON APPEAL

Pursuant to Rule 240(e), SCACR, Respondent Glenn Odom submits this return in opposition to Appellants’ motion for leave to supplement the record on appeal.

Under Rule 210(c), SCACR, the “Record *shall not*, however, include matter which was not presented to the lower court or tribunal.” (emphasis added). It is undisputed that the documents Appellants seek to include in the record “were not submitted to the circuit court as part of the initial appeal.” (Mot. of App. p. 3). The Court need go no further than this to deny the motion. The plain language of Rule 210 is the basis of Respondent’s opposition to including the material in the record on appeal.

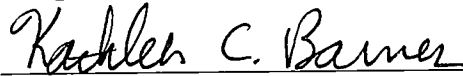
Respondent does not seek to prevent Appellants from rebutting an argument made in Respondent’s brief but, rather, to prevent Appellants from violating the Appellate Court Rules. Appellants have already, in this motion and their Reply Brief served before service of this Return, informed the Court of their version of the events that occurred in this case. Regardless, the alleged

reason for the delayed hearing does not change the fact that the statute provides the hearing “shall” occur within forty-eight hours and it did not. S.C. Code Ann. § 5-15-130. Appellants asserted that Respondent made an untimely challenge because S.C. Code Ann. § 7-13-830 only applies to challenges made before the vote total was declared. (Br. of App. p. 13). This is incorrect because Mr. Odom filed a letter with the MEC as to the challenged votes before the MEC declared the election results. (Br. of Resp’t pp. 12-13). Appellants’ brief states “the election results were declared on September 7, 2018”, and Mr. Odom filed his letter to the MEC one day prior, on September 6, 2018. (Br. of App. pp. 13, R. p. 11). Relevant to Appellants’ motion to supplement the record, the timing is significant. Mr. Odom filed a challenge, the MEC declared the election results, the MEC then held a contest hearing and addressed Mr. Odom’s challenge. Respondent’s point is that the MEC cannot declare election results with a challenge pending and then claim the challenge is untimely.

The documents were not presented to the lower court and should not be part of the Record on Appeal.

April 1, 2019

Respectfully submitted,



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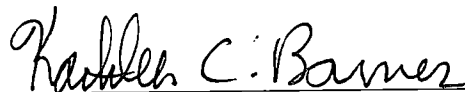
PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing *Respondent's Return in Opposition to Appellants' Motion for Leave to Supplement the Record on Appeal* has been served upon the following counsel of record by emailing one copy to the attorneys listed below on April 1, 2019.

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