RECEIVED
Sep 28 2022
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY Court of

Common Pleas

The Honorable Clifton B. Newman, Circuit Judge

Appellate Case No.: 2021-000518

Adele J. Pope.....Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina.....Respondent.

Record on Appeal
Volume I (Pages 1-474)

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770

Attorney for Appellant

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
Post Office Box 11549
Columbia, South Carolina 29211-1549
Telephone (803) 734-3596

Attorneys for Respondent
Attorney General of South Carolina

INDEX

VOLUME I (pp. 1- 474)

I. ORDERS

Order of Hon. Marc Westbrook , *Lominack v. Meyers,* 2002-1889,Oct. 25, 2002.....*See* 518
Order of Hon. Casey Manning Denying Motion to Change Venue, Richland County Case No. 2010-CP-40-4900 (Richland 4900), Nov.9, 2010…….…….. ***See* 600**
Order, of Hon. Frank Addy, Nov. 22, 2011 (FOIA 1[1])..…….…….....1
Form 4 Order of Hon. Frank Addy, Jan. 11, 2012 (Venue to Richland Cty.)…….…....10
Order of Hon. Casey Manning, (Continue, Richland 4900, FOIA 1 and FOIA 2[2]), July 5, 2012……..... 12
Order of Hon. Eugene Griffith, *Summer v. Wilson,* July 8, 2014……..….***See* 728**
Order, South Carolina Supreme Ct. Assigning R4900 & FOIA 1, Mar. 24, 2016…….....15
Order of Hon. Doyet Early, June 14, 2016 (Dismissal)……..….....16
Order of Hon. Doyet Early, June 20, 2016 (Dismissal, Legacy Trust) …….....19
Form 4 Order of the Hon. Doyet Early, July 22, 2016 (Deny. Reconsid. of Dismiss)…....22
Decision of Court of Appeals, June 19, 2019…….24
Order of Court of Appeals, August 22, 2019 (Denying Rehearing)……..…….32
Order of Supreme Court, April 1, 2020 (Denying Cert)……33
Order of the Hon. Clifton Newman, May 14, 2020 ……...…….……..34
Order of the Hon. Clifton Newman, April 1, 2021...……..…36
Order of the Hon. Clifton Newman, (Deny. Mot. Alt.,Am., April 23, 2021)…….41

II. PLEADINGS AND MOTIONS

Complaint, August 3, 2011, with Exhibits…….……..... 43
Exhibit A: FOIA request (Attorney General), June 30, 2011….....52
Exhibit B: FOIA request (Legacy Trust), dtd. June 30, 2011.....54
Exhibit C: Statement from Attorney General, dtd. October 2, 2009.....56
Exhibit D: Affidavit of Pope Supp. Prod.of Fee Contract, etc., Aug. 1, 2011……59
Exhibit A: Pinnacle Prospectus…….....71

---

[1] FOIA 2 is Richland County Case No. 2010-CP-40-4900 (FOIA portion), formerly Newberry County Case No. 2011-CP-32-379, filed August 10, 2010.

[2] FOIA 1, this case, refers to Richland County Case 2012-CP-40-350, formerly Newberry County Case 2011-CP-32-00364, filed August 3, 2010.

Exhibit B: Witness Lists (Richland 4900), Nov. 12, 2010……..……..73
Exhibit C: Ltr. of Black to Pope, July 15, 2011…….75
Exhibit E: Ltr. of Black to Pope, July 15, 2011……..……..78
Motion of AG to Dismiss/Strike September 6, 2011……..80
Exhibit A: Order Deny. Mot. Change, Venue, (R. 4900), Nov. 9, 2010…….84
Exhibit B: Mot. (Buchanan/Pope) to Compel Disc., (R.4900), June 7, 2011…..…91
Exhibit C: Pl. Mot. for Prot. Order, (Richland 4900), July 1, 2011…….……97
Exhibit D: Ltr. Silvernail to Gende, re: R.4900 Discovery, June 15, 2011……...101
Exhibit E: Ltr. of Gende to Silvernail,re: R. 4900 Discovery, June 17, 2011……103
Plaintiff's Return to Mot. of Defendant James Brown Legacy Trust to Dismiss,
Sept. 12, 2011…….. 106
Motion of Attorney General to Strike, September 14, 2011…….……...110
Plaintiff's Motion for Summary Judgment, September 21, 2011 w/ Exhibits…….. 112
Exhibit A: *Wilson, Loftis spar over hiring law firms*…….. 116
Exhibit B: *AG's Promise to release contracts may resolve Newberry James Brown FOIA case,* The Observer, Sept. 21, 2011…….118
Motion of Attorney General to Strike, September 27, 2011…….……...121
Motion of Attorney General to Strike or Exclude, October 13, 2011…….....123
Motion to Strike (Legacy Trust) October 18, 2011……125
Mot. of AG to Strike/Exclude Additional Affidavits, Jan. 9, 2012 ……..…..126
Motion of Attorney General to Consolidate, Richland 4900 & FOIA, Feb.1, 2012….. 128
Exhibit A-1: Form 4 Order, Hon. Frank Addy (Venue), Jan.11, 2012…..……..132
Exhibit A-2 Order, Hon. Frank Addy, Nov. 22, 2011…… 135
Exhibit B: Mot. to Compel Discovery, Richland 4900, June 7, 2011…….…145
Exhibit C: Pl. Mot. Protective Order, Richland 4900, July 1, 2011……...151
Exhibit D: Ltr. of Silvernail to Gende, re: Richland 4900, June 15, 2011…..…155
Exhibit E: Ltr. of Gende to Silvernail, June 17, 2011 re**:** Richland 4900…..…..157
Mot. of AG to Amend Motion to Dismiss, December 20, 2012……. 160
w/Amended Motion to Dismiss and Alt. Mot. to Strike……..…...162
Exhibit A: Affidavit of Meyers, October 20, 2011……...166
Exhibit B: Mot. toComp. Discovery, R 4900, June 7, 2011…….....169
Exhibit C: Pl. Mot. Protective Order, R4900, July 1, 2011……..... 175
Exhibit D: Ltr. of Silvernail to Gender, June 15, 2011……..……179
Exhibit E: Ltr of Gende to Silvernail, June 17, 2011……...…….181
Brief and Return in Opposition to Motion to Strike and/or Dismiss and
Supporting Summary Judgment, January 10, 2012……..….184
Answer of Attorney General, March 7, 2013……..…..… 190
Affidavit of Sr. Asst. AG Meyers, October 20, 2011……..……199
Ltr. of Sr. Asst. AG Meyers to Pope, dtd. August 5, 2011…… 201
Ltr. of S. Summer to AG Wilson & Keeper of Records, AG, June 10, 2012..…203
Ltr. of Sr. Asst. AG Meyers to Summer, July 10, 2012……..….205

ROA (portion) *Wilson v. Dallas*, pp. 516 – 533, VOL II……206
James Brown Legacy Trust Unsigned, 2008 ……..207
Schedule B to Legacy Trust, ……...……224
James Brown Legacy Trust, Unsigned, 2009,…….……225
Schedule A, Assets contributed to Legacy Trust…….240
Motion of Attorney General for Judgmt. on Pleadings, March 7, 2013…….……241
Motion to Stay of James Brown Legacy Trust, March 15, 2013……..……..244
Mot of Attorney General to Strike Additional Affs., March 28, 2012……...……..…248
Motion of AG to Strike Addl. Affidavits, March 29, 2012……...…….……250
Plaintiff's Status Report, filed April 1, 2013……..……252
Exhibit A: Conf. & Amendment (Legacy Trust), Jan. 4, 2011…….……257
Plaintiff's Motion to Alter, amend Vacate Order, June 27, 2016……..……..263
Appellant's Petition for Rehearing, Ct. Appeals, June 28, 2019……... 267
Resp. Attorney General's Petition for Rehearing, July 16, 2019…….……299
Petition for Certiorari, September 19, 2019…….……307
Response of AG In Opposition to Pope's Prop. Order, etc., January 19, 2021…..…..…321
Return of AG to Plaintiffs' Mot to Alter April 16, 2021…….325
Amended Mot. of Plaintiff to Alt. Amend, April 13, 2021…….……327
Exhibit A: Order, April 1, 2021……349

III. TRANSCRIPTS

Transcript of Hearing , September 14, 2011, Richland 4900 ……..…….354
Transcript of Hearing held January 11, 2012……..….360
Transcript of Hearing held May 17, 2016…….....368
Portions, Transcript of Hearing, Aug. 29, 2016, Richland 4900, pp. 1, 102–105……...766
Transcript of Hearing held November 19, 2020 ……...……..391
Argument of Asst. Solicitor General Smith……...……..392
Reply Argument of Mr. Silvernail……..……406
Statement by Mr. Hayes (Sweeny, Wingate, & Barrow)…….447
Response of Mr. Silvernail to Statement by Mr. Hayes…….…….448

Transcript of Hearing held April 16, 2021…….……..……449
Argument of Mr. Silvernail……..……451
Argument of Asst. Solicitor General Smith…….463
Argument of Mr. Silvernail……..466
Statement of Mr. Gende ……..……471

VOLUME II (pp. 475-879)

IV. EXHIBITS AND OTHER MATERIALS OR DOCUMENTS

Ltr. Meyers to Pope, August 5, 2011……..……475
Ltr. Pope to Meyers, August 7, 2011…….…….……477
Ltr. of Pope to Legacy Trust Custodian of Records, June 30, 2011……480
Affidavit of Pope, Sept. 12, 20[11]……..……...……481
Exhibit A – Pet. to Remove Bauknight (*Dallas v. Bauknight)* Feb. 5, 2009..…491
Summons, *Dallas & Bradley v. Bauknight*……..……496
Affidavit of Pope in Further Support of…Relief, Expedited Hearing, and In Camera Review, October 6, 2011……..……..497
Ex. A: AG's Litigation Retention Agreements, from website……..……. 505
Ex B. Pls' Mot. Protective Order Concerning Fee Agrmt., Aug. 9, 2011……...506
Ex. C Ltr. Pope to Meyers and Custodian of Records, Office of AG Re: Request for Documents under FOIA, October 5, 2011……...……509
Exhibit D, Form 4 Order Jg..Manning , Sept. 28, 2011 "continued"…….…514
Filing Ltr. to Newberry Clerk of Ct., AG, Oct. 21, 2011, filing the following:…….……515
Affidavit of Meyers dtd. October 20, 2011……..….516
Order of the Hon. Marc Westbrook, *Lominack vs. Meyers*……..……...518
Affidavit of W. J. Smith Supporting Release of Docs. Under FOIA, Dec. 9, 2011……520
Exhibit A: *Private Foundations, Copyright Heirs and Musical Milionaires: Why the James Brown "I Feel Good" Trust doesn't…(4/11)*…….524
Exhibit B: Affidavit of Thomas R. Young Supporting Release of Contract to Sue Buchanan and Pope, December 2011……537
Exhibit C: Affidavit, D. Spence, Ask. for FOIA Release, December 8, 2011… 539
Exhibit D: Affidavit of T. Pope, Supp. Immediate Release of McMaster/ Wingate Contract to Sue Buchanan and Pope Dec. 8, 2011……543
Exhibit E: Affidavit of S. Summer, December 2011……..,..545
Affidavit of Pope Opposing Striking or Disregarding Affidavits and Article of Smith and other Affidavits; Opposing Dismissal; and Supporting In Camera Review and Summary Judgment, Jan. 3, 2012……..…547
Exhibit A: Affidavit of Vic MacDonald Supp. FOIA Release, 12/9/11……..…554
Exhibit B: Affidavit of Steven Farrar, Esq/ 1/4/2012……...…556
Affidavit of Daryl Williams, Attaching Ltr. to Meyers , Jan. 6, 2012.....558
Exhibit: Ltr. of D. Williams to Meyers. Jan. 6, 2012, re: Ltr. of January 5, 2012 of Meyers to Ms. Sue Summer ……..…….…..559
Affidavit of Pope Supporting In Camera Review and Immediate Release of Docs. Requested under S.C. FOIA and for Expedited Ruling, filed Jan. 9, 2012…....560
Exhibit A - Ltr of Meyers to Ms. Sue Summer, January 5, 2012…….564
Exhibit. B Ltr. of Meyers to Pope, Re: Request for documents under the

South Carolina [FOIA], October 3, 2011…….……...…566
Ltr. of Pope to Meyers & Records Custodian, AG's Office, re:
Request, Docs. under FOIA, Oct. 5, 2011……..….568
Ltr. of Pope to Custodian of Records, AG's Office Re: Request
for Docs.under S.C. [FOIA], David G Cannon, AG, Oct. 17, 2011…….....573
Email Chain among David Cannon, Sherri Lydon, Asst. AG R. McNair,
others, Re: Proposed Felon Plea of David Cannon, Oct. 26-27, 2011…....575
Exhibit C – Motion to Strike Pope & Buchanan's Brief, *ex parte* David
G. Cannon, v. *Ex parte:* Georgia AG's Office et al, Jan. 31, 2011…….578
Affidavit of Russell Bauknight, January 10, 2012……...582
Exhibit A: Final Reply Brief, Appellants, *Wilson v. Dallas,* May 2011…….….586
Final Brief of Appellants, *Wilson v. Dallas*…….....590
Exhibit B: Freedom of Information Act…..……..…598
Exhibit C: Order Denying Buchanan Pope Motion to Change Venue,
Richland 4900, Nov. 9, 2010……...…....600
Memorandum of AG in Supp. of Mot. Dismiss/Strike/Opp. SJ, Jan. 11, 2012…...……606
Affidavit of Pope Opposing Motion to Consolidate Richland 4900 and FOIA case and
Supporting Expedited Release of Documents under FOIA, Feb. 22, 2012……..….621
Exhibit A. Stipulation of Facts, Admissibility of Exhibits,
Lewis & Babcock, vs. Estate, 2008-1551, w/ notes, Nov. 24, 2008…..631
Exhibits List, Trial, Nov. 25, 2008……639
Exhibit B – Chart – *State vs. Cannon* , Payments to Cannon, 1999-2006……..640
Affidavit of S. Summer dtd. March 26, 2012, with handwritten notes to Exhibits ……641
Exhibit Ltr. of Summer AG Keeper of Records, Dec. 6, 2011……...…….647
Exhibit B: Ltr. of Summer to Sr. Asst. AG Meyers, Jan. 8, 2012…….……..648
Exhibit C: Ltr. Ltr. of Summer to Sr. Asst. AG Meyers, Jan. 20, 2012……..…651
Exhibit D., Ltr. of Summer to Sr. Asst AG Meyers, dtd. 1/29/2012…….…..653
Ex. E. Ltr of Summer to AG Wilson & Keeper of Record, March 1, 2012……655
Exhibit F., Article *Wilson's Dodge of FOIA suggests*: *Wingate Sued James
Brown trustees without valid contracts (SC),*Jan. 24, 2012…….....656
Exhibit G. Article : *Wilson Denies FOIA reques*t in *James Brown Suit,
The Observer,* March 26, 2012……...….659
Ltr. of Smith to Manning dtd. 3/7/2013 w/ List of pending motions…….……..663
Ltr. of Smith to Clerk dtd. 3/13/2013……...…….. 666
Ltr. of Smith to Manning dtd. 3/28/2013……..…….……..667
Emails of Smith to Silvernail, and Others May 8, 2013…….……668
Emails, Smith to Silvernail, Others, May 7, 2014 …….……670
Email chain Smith to Silvernail, Others, November 13 2014……..671
Emails Smith to Manning, Others, Jan.27-29, 2015…… ……...…673
Plaintiff's Reply to Memoranda of Defendants, May 16, 2016……..… 675
Exhibit A, Motion of AG Wilson and Others to Supplement
Record on Appeal, or in the Alternative, to take Judicial

Notice of Records Filed in a Related Proceeding …….....….*See* 871
Plaintiff's Brief Regarding Issues for 11-2-20 Hearing……..……681
Exhibit A: Email, D. Black to Sr. Asst. AG Jones, Asst. G Jowers, A. Medlin, cc: F. Kingsmore, Dec. 17, 2010 Subject: Forward Appraisal Footnote, w/ Email of Wilkins to D. Black, F. Kingsmore,……686
Exhibit B: Legacy Trust Confirmation and Amendment, Dec. 31, 2010…...….689
Affidavit of Pope Opposing AG's Motion to Strike Affidavits, Oct. 27, 2020……..….695
Exhibit A: Ltr. of SWB to Bauknight, dtd. 1/5/11, with redactions by AG, Copies to AG Jones, AG Jowers, others……..……..……..704
Exhibit B: Ltr. of SWB to AG, dtd. 1/20/12……..……...705
Exhibit C: Order, *Summer v. Wilson*, dtd. 9/19/14…….…….……713
Exhibit D: Ltr. of SWB to AG, dtd. 3/25/13 re: Urgent Meeting Request …..721
Exhibit E: Ltr of SWB to AG, dtd. 4.12/13 re: Proposed Termination of Representation Agreement…….…..723
Exhibit F: Termination of Legal Representation (unsigned), AG & SWB…...725
Exhibit G: Order Requiring Production of Public Records, *Summer,* 7/8/14...728
Exhibit H: Ltr, SWB to AG McIntosh, dtd. 4/23/13…….734
Exhibit I: Ltr. of McIntosh to SWB, dtd. 4/24/13…….736
Exhibit J: Order Granting Atty. Fees, *Summer*, dtd. 8/19/15……..……738
Exhibit K: Ltr. of AG Smith to Silvernail, dtd. 5/20/20……...741
With Agreement for Legal Services……742
Memorandum of Attorney General for 11-2-20 Hearing, Nov. 2, 2020 ..…….....745
List of Exhibits to Brief of Attorney General……..757
Exhibit E-1 Affidavit of Sr. Asst. AG Meyers, October 20, 2011……...758
Exhibit E-3: Ltr. of Sr. Asst. AG Meyers to Pope, August 5, 2011…….. ……..760
Exhibit E-6: Record on Appeal, Appellate Case No. 2017 -001899 Coverpage, Volume II of V……...762
Exhibit E-7: Return and Opposition to Request for Stay and Request for Expedited Hearing, Scheduling and Related Relief, Richland 4900, 2013, p. 1 – 2……..763
Exhibit E-8:Coverpage, Vol. III of V, Ct. Appeals, 2017-001899…….765
Exhibit E – 9: Portions, Transcript of Hearing, August 29, 2016 Richland 4900, pp. 1, 102 – 105 ……766
Exhibit E-13: *Summer v. Wilson,* Reply to Memorandum in Opposition to Amended Motion to Alter or Amend, July 28, 2014……..770
. Exhibit E-16: Confirmation and Amendment of Legacy Trust/Settlement Entity, December 31, 2010, signed by AG Henry D. McMaster……773
Exhibit E-22 Ltr. of Summer to AG Wilson & Keeper of Record, June 10, 2012……..779
Exhibit E-24: Ltr. of Sr. Asst. AG Meyers to Summer, July 10, 2012: Regarding your FOIA request June 10, 2012…….……781
Plaintiff's Supplemental Memorandum in Support of Relief, Dec. 18, 2020

w/ Proposed Order Requiring Production of Public Records (not signed)……..…..782
Affidavit of Pope opposing Participation of Wingate Firm, Dec. 18, 2020……795
Exhibit A: Article *AG Responds to Article on Open Records Lawsuit*……....825
Exhibit B: Declaration of Peter Afterman, September 2, 2020……...827
Exhibit C: Affidavit of Peter Afterman, October 29, 2019…….830
AG's Response to Pope's Propose Order, Supp. Memo and Affidavit, 1/19/2021……834
Plaintiff's Response to Attorney General's Response to Proposed Order,
Supplemental Memorandum, and Affidavit, Jan. 29, 2021……838
Exhibit 1- Final Order, *Summer v. Wilson,* Sept. 19, 2014…….……842
Exhibit 2 – Order, *Summer v. Wilson*, January 16, 2015…….852

V. CERTIFICATE OF COUNSEL……...880

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

-v-

ALAN WILSON, *in his capacity as* Attorney General,
defendant.

C.A. №
11-CP-36-379

ORDER

FILED
NEWBERRY COUNTY
2011 NOV 30 P 2:13
JACKIE S. BOWERS
CLERK OF COURT

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County[1]. *See Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

[1] The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

1

000112

Honorable Casey L. Manning.[2] At the time of the stay, the parties to the fiduciary litigation (hereinafter "*McMaster* parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

---

[2] At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

> Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]
>
> The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

2

000113

II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (*citing Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRCP. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*[3] and *Richardson, Plowden, Grier & Howser v. Pyle*.[4] These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,[5] the

---

[3] 264 S.C. 172, 213 S.E.2d 588 (1975).

[4] 322 S.C. 371, 472 S.E.2d 232 (1996).

[5] This Rule states, in pertinent part, that

> Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of $50,000 or more; or (2) *disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.*

000114

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

> [t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. *See McDonald*, 276 S.C. at 575 ("Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction."). This judicial principle a great resemblance to the Rule 12(b)(8) standard annunciated by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that "[i]n South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim." *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant's *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. *See Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

---

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of mandamus cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

> [h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. *See Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

5

000116

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to "any person." S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRCP(" Parties may obtain discovery by one or more of the following methods. . . ."). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.[6]

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.[7] Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRCP ("When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action."); *Creighton v. Coligny Plaza Limited*

[6] Given this analysis, Defendant's motion to dismiss pursuant to Rule 12(b)(8) is also denied.

[7] In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

6

000117

Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.").

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-36-379

Adele Pope

PLAINTIFF(S)

Alan Wilson

DEFENDANT(S)

Submitted by:

Attorney for ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

Disposition Type (Check One)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
NEWBERRY COUNTY
2011 AUG 30 P 2:13
JACQUIE S. ROWERS
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Order Information

This order ☐ ~~ends~~ ☑ does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property.

JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	$	Judgment Amount	$
Taxable Costs	$	Taxable Costs	$
Attorney's Fees	$	Attorney's Fees	$
Interest	$	Interest	$
Other	$	Other	$
Total Amount to be Enrolled	$	Total Amount to be Enrolled	$

If applicable, describe the property, including tax map information and address referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

SCRCP Form 4 (09/2011)

050110

Judge Code Date

For Clerk of Court Office Use Only

This judgment was entered on the 30th day of January, 20 18 and a copy mailed first class this 31st day of January, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

Adam Silvernail, Esq.

The Hon. Emory Smith (Assistant Attorney General) and Mark Gende, Esq. (Courtesy Copy)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

s/ Jackie A. Bruce FC

CLERK OF COURT

SCRCP Form 4 (09/2011)

000111

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3600364

Adele J Pope	Attorney General Of South Carolina	Alan Attorney General Wilson Russell L. Trustee Bauknight	James Brown Legacy Trust Attorney General Of South Carolina

SCANNED

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
NEWBERRY COUNTY
2012 JAN 11 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☑ Statement of Judgment by the Court:

Venue transferred to Richland Cnty.

RECEIVED
AUG 19 2016
SC Court of Appeals

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. Additional Information for the Clerk:

ORM4M
SCRCP Form 4C (Revised 10/2011)

000013

INFORMATION FOR THE PUBLIC INDEX

This judgment/order imposes a lien on real property or personal property, or the amount should be enrolled. If so, complete the information below. Attach additional sheets if necessary.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

1-11-12

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on January 11, 2012, and a copy mailed first class or placed in the appropriate attorney's box on January 12, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Adam T Silvernail Po Box 1898 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Emory Smith Jr S.C. Attorney General's Office P.O. Box 11549 Columbia, SC 29211
A. Camden Lewis Lewis & Babcock, LLP P.O. Box 11208 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

S/Jackie S. Bowers (D)

Jackie S Bowers - Clerk of Court

Court Reporter

FORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

000014

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,,

Plaintiff

v.

Adele J. Pope and Robert L. Buchanan, Jr.,,

Defendants

Civil Action No.: 2010-CP-40-04900

and

Civil Action No.: 2012-CP-40-00350

ORDER CONCERNING PLAINTIFF'S MOTION FOR CONTINUANCE

RICHLAND COUNTY
FILED
2012 JUL -5 AM 10:58
JEANETTE W. McBRIDE
C.C.P. & G.S.

At a hearing on April 12, 2012 in Richland County, South Carolina before the Honorable L. Casey Manning, Plaintiffs, through counsel, moved for an Order continuing all outstanding motions in the following matters: 2010-CP-40-4900 (Case 4900), former Newberry County 2011-CP-36-379 (FOIA 1), which is now consolidated with Case 4900, and former Newberry County 2011-CP-36-00364 (FOIA 2), which has been transferred to Richland County as 2012-CP-40-00350, for a period of thirty (30) days in order to allow time for all parties to explore the possibility of a framework for settlement negotiations.

Counsel for the Office of the Attorney General consented to plaintiffs' motion with respect to the Office of the Attorney General's separate involvement in FOIA 1 and FOIA 2.

Counsel for Defendant Pope, Adam Silvernail, Esquire and Daryl Williams, Esquire, opposed Plaintiff's Motion on the grounds that their client had waited a long time to be heard on the matters set for the April 12, 2012 hearings and their client desired the Court to hear and rule on each pending motion.

The Court carefully considered the motion and the arguments of each party.

Based on the interests of justice and judicial efficiency, the Court hereby grants Plaintiffs' motion for a continuance of all the above-referenced matters. The Court's authority to continue all of the above-referenced matters, including matters in FOIA 2, is found in the designation of Case 4900 as complex to which the Honorable L. Casey Manning has been assigned Judge and granting Judge Manning authority to hear and decide all matters related to Case 4900 (see November 1, 2011 Order of The Honorable Allison R. Lee).

The parties are to report back thirty (30) days from the date of this Order, if settlement discussions are not progressing and submit a Scheduling Order to reset these continued Motions.

IT IS SO ORDERED.

(Signature Page Immediately Following)

THE HONORABLE L. CASEY MANNING
Circuit Judge, Fifth Judicial Circuit

Dated this 5 day of July, 2012

Columbia, South Carolina

The Supreme Court of South Carolina

Russell Bauknight, et al. — Plaintiffs,

v.

Adele J. Pope, et al., — Defendants.

Richland County
2010-CP-40-04900

Adele J. Pope, — Plaintiff,

v.

Alan Wilson, et al., — Defendants.

Richland County
2012-CP-40-00350

ORDER

IT IS ORDERED that the Honorable Doyet A. Early, III be vested with exclusive jurisdiction to hear and dispose of the above cases. Judge Early shall decide all matters pertaining to these cases, and pursuant to this assignment shall retain jurisdiction over these cases regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

Pursuant to this assignment, he is to have and exercise all powers and duties appertaining to a Circuit Judge of the Fifth Judicial Circuit while presiding over these cases.

Donald W. Beatty
Acting Chief Justice

March 24, 2016
Columbia, South Carolina

000012

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

Adele J. Pope,) Case No. 2012-CP-40-350

Plaintiff,)

v.) **ORDER**

Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee.)

Defendants.)

RICHLAND COUNTY
FILED
2016 JUN 24 AM 11:32
JEANETTE W. WALDO
C.C.P. & G.S.

This matter has come before this Court pursuant to various motions of the parties including motions to dismiss and for judgment on the pleadings of the Defendant Attorney General and a motion for summary judgment of the Plaintiff. After carefully reviewing the filings of the parties and considering the arguments of counsel concerning the motions in Aiken on May 17, 2016, this Court grants the Attorney General's Motion to Dismiss.

The Plaintiff has brought this action under the Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. seeking the following:

1. The final and all drafts, signed and unsigned , of the James Brown Legacy Trust.

2. All correspondence, email and/or other communications between any member of the Office of the . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

These documents are potentially discoverable documents under pending litigation in Richland /Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. FOIA is not a tool that may be used to bypass civil discovery in a pending case. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*,2002-CP-32-1890. October 25. 2002 stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." (copy on file in this case). Although the FOIA at issue in Judge Westbrook's case related to a post conviction case. the reasoning applies to civil cases such as the pending litigation in Richland and Aiken.

Our Supreme Court has not expressly addressed the issue in the civil context. it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). The Supreme Court has also recognized that "[i]n construing the federal FOIA. the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)[1]; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 409 S.E.2d at 409. Although *Robinson* involved criminal proceedings. our Supreme Court's recitation of the federal

---

1 "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. *See Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). *See also United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40(4) for "[m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)[2]; *United States v. Hvass*, 355 U.S. 570, 575 (1958)[3]; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).[4]

Because the above documents may be sought through discovery in the pending litigation and for the reasons set forth above, IT IS ORDERED that this case be dismissed.

AND IT IS SO ORDERED.

DOYET A. EARLY, III
PRESIDING JUDGE

June 14, 2016
Florence, South Carolina

2 "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights . . . ." *Id.*

3 "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base . . . ." *Id.*

4 "[E]xception [under Ohio discovery statute] for other "state law" may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id.*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	
	)	Case No. 12-CP-40-350
Plaintiff,	)	
v.	)	
	)	**ORDER GRANTING JAMES BROWN LEGACY TRUST'S MOTION TO DISMISS**
Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee.	)	
	)	
Defendants.	)	

RICHLAND COUNTY FILED
2016 JUN 20 PM 2:17
JEANNETTE W. WALKER C.C.P. & G.S.

This matter comes before the Court on the motion of Defendant James Brown Legacy Trust ("the Legacy Trust") for an order dismissing Plaintiff's complaint. The Plaintiff's complaint sought a declaratory judgment that Legacy Trust was a public body that was required to disclose certain documents under the Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. Having carefully considered all of the parties' arguments, the Court hereby GRANTS the Legacy Trust's Motion to Dismiss.

The Legacy Trust moves for an order dismissing this case pursuant to South Carolina Rule of Civil Procedure 12(b)(6) for failure to state facts sufficient to constitute a cause of action. The Legacy Trust asserts three grounds in support of its motion to dismiss: (1) the Legacy Trust is not subject to the Freedom of Information Act ("FOIA"); (2) the Legacy Trust no longer exists following *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013); and (3) the controversy is moot because Plaintiff is in possession of the documents requested by FOIA from the Legacy Trust.

As to its first ground, the Legacy Trust argues that it is not subject to the FOIA because it was created as a private trust and it is not a public body within the meaning of the act. In order

for an entity to be subject to the FOIA, it must fall within the definition of "public body." *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 400, 401 S.E.2d 161, 163 (1991). The FOIA's definition of "public body" does not explicitly cover a private trust. The definition does, however, extend to "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds." S.C. Code Ann. § 30-4-20(a) (2007). The Plaintiff argues that the Legacy Trust is subject to FOIA under this exception. *Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991).

However, our Supreme Court has ruled that "the application of the FOIA beyond traditional governmental entities is limited to statutorily defined public bodies, which are only those entities supported by public funds." *Disabato v. S.C. Ass'n of School Adm'rs*, 404 S.C. 433, 454-55, 746 S.E.2d 329, 340 (2013) (citing *Weston*, 303 S.C. at 403, 401 S.E.2d at 164). As the Supreme Court has held, a private entity is only subject to the FOIA where it "**receive[s] government funds *en masse***" or it is "**generally supported** by public funds." *Disabato*, 404 S.C. at 456, 746 S.E.2d at 341 (emphasis added).

Here, Plaintiff claims that some level of public funding has gone toward the creation of the Legacy Trust because of the Attorney General's involvement in the settlement agreement creating the Legacy Trust. Plaintiff has failed to alleged facts necessary to quantify this alleged support and has failed to allege any facts showing how the Legacy Trust was generally supported by public funds, created to expend public funds, or has received government funds *en masse*. Absent these factual allegations, Plaintiff's complaint is insufficient to hold the Legacy Trust subject to FOIA, and dismissal on this first ground is warranted.

Second, the Legacy Trust argues that it no longer exists following the South Carolina Supreme Court's holding in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), and, as such,

it cannot be subject to the FOIA. The Court agrees. The operation of the Legacy Trust and the entire compromise agreement creating the Legacy Trust were stayed pending the Supreme Court's review of the compromise agreement. In *Wilson v. Dallas*, the Supreme Court invalidated the compromise agreement that created the Legacy Trust. *Id.* at 450, 743 S.E.2d at 767-78. This Court finds that the Supreme Court's ruling that the compromise agreement could not replace James Brown's existing trusts by creating new trusts explicitly invalidated the existence of the Legacy Trust. *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765. As such, the Legacy Trust does not exist and cannot be subject to FOIA.

Finally, the Legacy Trust argues that the controversy is moot because Plaintiff is in possession of the documents requested from the Legacy Trust. When the documents subject to FOIA are produced, no justiciable controversy remains. *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Attorney General has stated in documents submitted to this Court that he has provided the only two documents that would be responsive to Plaintiff's FOIA request. Plaintiff does not contend otherwise. As such, the Court finds that no justiciable controversy remains and, accordingly, this case should be dismissed as moot.

The Court's dismissal of this action rests independently on each of Legacy Trust's three grounds for dismissal. Each ground is sufficient standing alone to grant Legacy Trust's motion to dismiss.

IT IS SO ORDERED.

DOYET A. EARLY, III
Circuit Judge, Second Judicial Circuit

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-40-0350

Adele J. Pope

PLAINTIFF(S)

Alan Wilson, as Attorney General for South Carolina, and James Brown Legacy Trust

DEFENDANT(S)

Submitted by: .	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

2016 AUG 10 AM 10:10
RICHLAND COUNTY FILED

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Based on the written motion by the Plaintiff, the Motion to Alter, Amend and/or Vacate the June 14, 2016 Order granting the Attorney General's Motion to Dismiss is hereby DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | 0136 Judge Code | 7-22-16 Date

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of August, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of ____, 20 ____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Adele J. Pope, Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Respondents.

Appellate Case No. 2016-001727

Appeal From Richland County
Frank R. Addy, Jr., Circuit Court Judge
Doyet A. Early, III, Circuit Court Judge

Opinion No. 2019-UP-219
Heard February 12, 2019 – Filed June 19, 2019

REVERSED AND REMANDED

Adam Tremaine Silvernail, of Law Office of Adam T. Silvernail, of Columbia, for Appellant.

Keith M. Babcock, Ariail Elizabeth King, and David Lee Paavola, all of Lewis Babcock L.L.P., of Columbia, for Respondent James Brown Legacy Trust, by Russell L. Bauknight, its Trustee.

Solicitor General Robert D. Cook and Deputy Solicitor General J. Emory Smith, Jr., both of Columbia, for Respondent Alan Wilson.

PER CURIAM: In this action seeking relief under the Freedom of Information Act (FOIA), Appellant Adele Pope seeks review of the circuit court's two separate orders dismissing her complaint.[1] We reverse these orders and remand for an order dismissing the Legacy Trust as a defendant and for further proceedings consistent with this opinion.[2]

FACTS/PROCEDURAL HISTORY

This FOIA action has a procedural history similar to a second FOIA action filed by Pope (involving a separate FOIA request dated July 19, 2011) and addressed by this court in a published opinion issued simultaneously with this opinion. *See Adele J. Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Op. No. 5657 (S.C. Ct. App. filed Jun 19, 2019). Unique to the present action is Pope's FOIA request dated June 30, 2011, in which Pope requested the following documents from Respondent Alan Wilson, in his capacity as Attorney General of South Carolina (AG):

> 1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust[; and]
>
> 2. All correspondence, email and/or other communications between any member of the Office of the [AG] and Russell L. Bauknight between August 1, 2010[,] and May 4, 2011[,] related to the value of the assets of the Estate of

---

[1] Included in Pope's assignments of error is the argument that the circuit court should have granted her summary judgment motion. However, "the denial of a motion for summary judgment is not appealable, even after final judgment." *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003).

[2] With the exception of mootness, we decline to address the Attorney General's additional sustaining grounds. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ("It is within the appellate court's discretion whether to address any additional sustaining grounds.").

> James Brown and/or the James Brown 2000 Irrevocable Trust.

Pope also requested from Respondent James Brown Legacy Trust (Legacy Trust) the "final and all drafts, signed and unsigned, of the James Brown Legacy Trust." This letter was also dated June 30, 2011, and both letters referenced FOIA.

In a letter dated August 5, 2011, in which the AG was responding to Pope's July 19, 2011 FOIA request, the AG referenced Pope's June 30, 2011 letter, stating,

> I have also been notified by attorneys in the Civil Division of the [AG] that you refer to a request dated June 30, 2011[,] in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

After having received no direct response to her June 30, 2011 letter, Pope filed this FOIA action in Newberry County on August 3, 2011, seeking the records referenced in her letters to the AG and the Legacy Trust and attaching copies of these letters to her complaint. The AG and the Legacy Trust then filed respective motions to dismiss this action, and Pope subsequently filed a motion for summary judgment. After conducting a hearing on January 11, 2012, the circuit court issued a Form 4 judgment transferring venue to Richland County. The AG later filed a motion for judgment on the pleadings.

In an order dated June 14, 2016, the circuit court granted the AG's motion to dismiss. In its order, the circuit court referenced the pending fiduciary litigation involving the parties (*Bauknight v. Pope*)[3] and concluded that FOIA "is not a tool that may be used to bypass civil discovery in a pending case." The circuit court also concluded that the requested documents were exempt under FOIA because the South Carolina Rules of Civil Procedure constitute "law" for purposes of the exemption in section 30-4-40(a)(4) of the South Carolina Code (2007), which

[3] Civil Action No. 2010-CP-40-4900.

allows a public body to exempt from disclosure "[m]atters specifically exempted from disclosure by statute or law." Pope filed a motion to alter or amend the circuit court's order, but the circuit court denied the motion.

On June 20, 2016, the circuit court granted the motion to dismiss filed by the Legacy Trust. In its order, the circuit court concluded (1) Pope's complaint failed to allege facts sufficient to characterize the Legacy Trust as a "public body" under FOIA; (2) the Legacy Trust no longer existed because it was invalidated by the supreme court's opinion in *Wilson v. Dallas*;[4] and (3) Pope's action was moot because she was in possession of the records requested from the Legacy Trust and the AG. Pope filed a motion to alter or amend the circuit court's order, but the circuit court denied the motion. This appeal followed.

LAW/ANALYSIS

I. Mootness

Pope assigns error to the circuit court's conclusion that her FOIA action is moot. Both the AG and the Legacy Trust argue this action is moot because the AG provided copies of the only documents responsive to Pope's request,[5] which were two unsigned drafts of the Legacy Trust attached to the AG's answer to Pope's complaint. The AG also asserts that these drafts "have long been of public record in *Wilson v. Dallas*, . . . a case in which [Pope] was a party." The AG states that he has no other documents that are responsive to Pope's request. However, Pope asserts that neither the AG nor the Legacy Trust complied with her request.

"A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Sloan v. Friends of Hunley, Inc. (Friends I)*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). "If there is no actual controversy, this [c]ourt will not decide moot or academic questions." *Id.* In *Friends I*, our supreme court addressed the question of mootness as it pertained to a FOIA action and affirmed the circuit court's ruling that the case was moot because the defendant provided the requested documents.

---

[4] 403 S.C. 411, 450–51, 743 S.E.2d 746, 767–68 (2013).

[5] The circuit court made this conclusion in its order granting the motion to dismiss filed by the Legacy Trust. Also, the AG asserted mootness as an additional sustaining ground for the order granting his separate motion to dismiss.

Id. at 26, 630 S.E.2d at 477–78.[6] The court held, "Because the information Sloan sought has been disclosed, there is no continuing violation of FOIA upon which the trial court could have issued a declaratory judgment." *Id.* at 26, 630 S.E.2d at 478.

In *Sloan v. South Carolina Department of Revenue*, our supreme court once again addressed the question of mootness in a FOIA action. 409 S.C. 551, 554–55, 762 S.E.2d 687, 688–89 (2014). The court affirmed the circuit court's finding that the plaintiff's request for a declaratory judgment was mooted when the defendant produced the requested information, but the court also held that the defendant's initial response was incomplete. *Id.* Further, after concluding the action was moot, the court added, "*This . . . does not end the case*, for [the plaintiff] further sought to recover his attorney's fees and costs as provided in section 30-4-100(b)." *Id.* at 555, 762 S.E.2d at 689 (emphasis added). We will address Pope's request for attorney's fees in another section of this opinion.

In determining whether this case is moot, we begin our analysis with the foundation on which Pope bases her claim: "Any person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(a) (2007).[7] In ruling this action was moot, the circuit court stated Pope did not contest the AG's claim that he had given her all the documents responsive to her request. However, the transcript of the May 17, 2016 motions hearing indicates that Pope challenged this claim. Pope also challenges this claim in her appellate brief. Because there still exists an actual controversy concerning the AG's compliance with Pope's FOIA request, this action is not moot. *See Friends I*, 369 S.C. at 26, 630 S.E.2d at 477 ("If there is no actual controversy, this [c]ourt will not decide moot or academic questions.").

---

[6] Therefore, the defendant was able to temporarily avoid the question of whether it was a public body for purposes of FOIA. *See id.* at 24, 630 S.E.2d 476–77 (noting the defendant "sought summary judgment arguing that [the plaintiff's] cause of action for a declaratory judgment finding [the defendant] a public body subject to FOIA was moot because they had fully complied with [the plaintiff's] FOIA request"). On appeal, the defendant finally admitted it was a public body for purposes of the plaintiff's FOIA action. *Sloan v. Friends of Hunley, Inc. (Friends II)*, 393 S.C. 152, 155, 711 S.E.2d 895, 896 (2011).

[7] We are citing to the version of the statute in effect at the time Pope sent her FOIA request to the AG.

II. Existence of Legacy Trust

Pope asserts the circuit court erred by concluding that the Legacy Trust was no longer in existence due to the supreme court's opinion in *Wilson v. Dallas*, which invalidated the compromise agreement creating the Legacy Trust. She argues that after the opinion in *Wilson v. Dallas* was issued, the Legacy Trust continued to litigate in *Bauknight v. Pope* and there is no evidence in the record showing that a dissolution of the entity as a charitable organization has taken place.

On the other hand, the Legacy Trust argues that the premise to Pope's FOIA action against it was that the Legacy Trust was subject to FOIA because of the AG's involvement in the creation of the trust and his anticipated continuing oversight of the trust. Pope's August 3, 2011 complaint states, in pertinent part, that the Legacy Trust

> is, on information and belief, a public body under [FOIA], with Russell L. Bauknight as its current trustee. The Legacy Trust is under the continuing and direct control of [the AG] through the AG's unfettered right at any time and from time to time to remove and replace the trustee of the Legacy Trust with such person as [the AG] shall select, with all trustees to serve at the AG's pleasure.

The Legacy Trust further asserts that the *Wilson* opinion mooted the premise for this action against the Legacy Trust because *Wilson* effectively terminated the AG's involvement in the Legacy Trust. Russell Bauknight's May 2, 2016 affidavit indicates that the AG has had no involvement in the Legacy Trust since the *Wilson* opinion was filed.

Based on the foregoing, we agree that the issuance of the *Wilson* opinion mooted the premise for naming the Legacy Trust as a defendant in this action. However, rather than merely dismissing the Legacy Trust as a defendant, the circuit court granted the Legacy Trust's motion to dismiss Pope's complaint based on the court's erroneous conclusion that the entire action was moot. *See supra* section I. Therefore, we reverse this order. On remand, the circuit court shall issue an order dismissing merely the Legacy Trust as a defendant.[8]

[8] Because we are ordering the circuit court to dismiss the Legacy Trust as a defendant, we need not reach the issue of whether the Legacy Trust is a public

III. FOIA Exemption

Pope argues the circuit court erred in concluding her FOIA request was subordinate to discovery rules. She asserts that her status as a defendant in pending fiduciary litigation does not affect her rights under FOIA.

We note the circuit court's order granting the AG's motion to dismiss was virtually identical to its order dismissing Pope's complaint in *Adele J. Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Op. No. 5657 (S.C. Ct. App. filed Jun 19, 2019). For the reasons discussed in section I of our published opinion in that case, we reverse the circuit court's order granting the AG's motion to dismiss the present action and remand for further proceedings.

IV. Attorney's Fees

Pope argues she is entitled to attorney's fees because the AG violated FOIA by refusing to provide the requested records. Because we are remanding the case for further proceedings, the question of attorney's fees is premature. *See* S.C. Code Ann. § 30-4-100(B) (Supp. 2018) ("If a person or entity seeking relief under this section prevails, he may be awarded reasonable attorney's fees and other costs of litigation specific to the request. If the person or entity prevails in part, the court may in its discretion award him reasonable attorney's fees or an appropriate portion of those attorney's fees.").

CONCLUSION

Based on the foregoing, we reverse the circuit court's two orders dismissing Pope's complaint and remand for an order dismissing the Legacy Trust as a defendant and for further proceedings consistent with this opinion. In light of this disposition, we need not address Pope's remaining issue. *See Futch*, 335 S.C. at 613, 518 S.E.2d at 598 (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

REVERSED AND REMANDED.

---

body. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

WILLIAMS, GEATHERS, and HILL, JJ., concur.

The South Carolina Court of Appeals

Adele J. Pope, Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Respondents.

Appellate Case No. 2016-001727

ORDER

Appellant and Respondent Alan Wilson have filed petitions for rehearing. After careful consideration of the petitions, the Court has discovered no material fact or principle of law that has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions are denied.

H. Bruce Williams J.

J.

D. Garfinkel J.

Columbia, South Carolina

cc:
Adam Tremaine Silvernail, Esquire
J. Emory Smith, Jr., Esquire
Keith M. Babcock, Esquire
Ariail Elizabeth King, Esquire
David Lee Paavola, Esquire
Robert D. Cook, Esquire

FILED
August 22, 2019

The Supreme Court of South Carolina

Adele J. Pope, Petitioner,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Respondents.

Appellate Case No. 2019-001581
Lower Court Case No. 2012-CP-40-00350

ORDER

Based on the vote of the court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY _____
CLERK

Columbia, South Carolina

April 1, 2020

cc:
Keith M. Babcock, Esquire
Ariail Elizabeth King, Esquire
David Lee Paavola, Esquire
Adam Tremaine Silvernail, Esquire
J. Emory Smith, Jr., Esquire
Robert D. Cook, Esquire
Jeanette W. McBride
Jenny Abbott Kitchings, Esquire

ELECTRONICALLY FILED - 2020 May 15 9:16 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action Number: 2012-CP-40-350
	)	
Adele J. Pope,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	ORDER OF DISMISSAL
Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	
	)	
Defendants.	)	
	)	

Pursuant to the South Carolina Court of Appeals Opinion Number 2019-UP-219, heard February 12, 2019, and filed on June 19, 2019, this Court hereby dismisses Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee from the above referenced matter.

AND IT IS ORDERED.

_____
Clifton Newman
Circuit Court Judge

ELECTRONICALLY FILED - 2020 May 15 9:16 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

Richland Common Pleas

Case Caption: Adele J Pope vs Alan Wilson , defendant, et al

Case Number: 2012CP4000350

Type: Order/Dismissal

So Ordered

s/ Clifton B. Newman, 2127

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER GRANTING MOTION TO AMEND, MOTION TO DISMISS, AND MOTION FOR JUDGMENT ON THE PLEADINGS**
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendants.	)	
	)	

This case has come before the Court pursuant to pending motions of the Attorney General to amend motion to Dismiss, for judgment on the pleadings, and to strike numerous affidavits filed by Plaintiff. After carefully considering these motions, Pope's responses to them and counsel's argument about them at a hearing on November 19, 2020, this Court grants the motion to amend and for judgment on the pleadings. Because of this ruling, the Court need not reach the motions to strike in this order.

BRIEF HISTORY OF PROCEEDINGS

Plaintiff brought this action by a Complaint filed in Newberry County on August 3, 2011. The Complaint requested, in part, that the Court declare public documents that she sought by a June 30, 2011, Freedom of Information Act request and that they be made available for inspection and copying.

Following the denial of his earlier motion to dismiss and the transfer of venue to Richland County, Defendant Attorney General filed an Answer to the Complaint that included the defenses asserted in the Motion to Dismiss and Motion to Amend Motion to Dismiss, and added the defense of lack of subject matter jurisdiction arguing that Plaintiff failed to accomplish mailing or delivery

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

of her FOIA request as required by §30-4-30(c) and because the items requested were exempt from disclosure under FOIA contenting e they are subject to the rules regarding discovery in the Rules of Civil Procedure. The Answer also included the defense that the Office of the Attorney General had no documents that could be considered responsive to the FOIA request except for a draft of the Legacy Trust attached thereto and included in the Record on Appeal in *Wilson v. Dallas*, 403 S.C. 411743 S.E.2d 746 (2013). The Respondent AG also filed a Motion for Judgment on the Pleadings on March 7, 2013.

Judge Early heard pending motions in this case on May 17, 2016. He issued an Order dated June 14 dismissing this case. He found that the documents at issues were potentially discoverable in pending litigation in Richland / Aiken counties and would be governed by the Rules of Civil Procedure. He found that the documents were exempt from disclosure under FOIA for this reason and that FOIA could not be used to bypass civil discovery. The Court denied Plaintiff's Motion to Alter or Amend by Form 4 Order dated August 11, 2011. Plaintiff appealed the above 2016 Orders.

The Court of Appeals reversed the circuit court's order dismissing the Complaint and remanded the case for further proceedings on the basis of its conclusion in *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448, (Ct. App., 2019) which included the statement that "[i]f the government invokes the exemption in section 30-4-40(a)(4), '[m]atters *specifically* exempted from disclosure by statute or law,'[footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record." The Court of Appeals found that the case was not moot since Plaintiff challenged the claim that the Attorney General had given her all the documents responsive to her request. The Court did not address the Attorney General's

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

additional sustaining ground that the Court lacks subject matter jurisdiction due to the failing of the Plaintiff to accomplish mailing or delivery of her FOIA request as required by §30-4-30(c) and also the ground that the Court should strike Pope's 14 affidavits as being irrelevant and because many of them are not based upon personal knowledge, contain hearsay, or are speculative.

PLAINTIFF HAS NO CLAIM UNDER FOIA
BECAUSE HER REQUEST WAS NOT RECEIVED BY MAIL OR DELIVERY

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney General never received this letter and Plaintiff has failed to show otherwise.

Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, indicating that the Office had not received a FOIA request that Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to the affidavit of Ms. Meyers dated October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

While FOIA serves a vitally important function in assuring that public business is performed in an open manner, Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." (emphasis added). The Office of the Attorney General never received the FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

The authority to sue under FOIA is limited to actions "to enforce the provisions of this chapter in appropriate cases . . . ." §30-4-100. Therefore, no basis exists for enforcement when no "receipt" of "written request" has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).

CONCLUSION

The Court grants the Motion to Amend the Motion to Dismiss, grants the Amended Motion to Dismiss, and grants the Motion for Judgment on the pleadings because the Attorney General never received the written FOIA request by mail or delivery. Attaching the FOIA request to this lawsuit, another lawsuit, or mailing it to retain counsel is not compliant with the statute. This action is therefore dismissed for lack of subject matter jurisdiction and failure to state a cause of action. As a result, the Court does not rule on the other grounds of the Attorney General's Amended Motion to Dismiss and Motion for Judgment on the Pleadings.

AND IT IS SO ORDERED
[Electronic signature of Clifton Newman, Circuit Court Judge, follows]

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350



Richland Common Pleas

Case Caption: Adele J Pope vs Alan Wilson , defendant, et al

Case Number: 2012CP4000350

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

ELECTRONICALLY FILED - 2021 Apr 23 8:45 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER DENYING MOTION TO ALTER OR AMEND**
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendants.	)	

This matter is before the Court on a Motion to Alter or Amend the Order of the Court issued on April 1, 2021.

Having fully considered the 59(e) Motion of the Plaintiff, the Court finds that it did not overlook or misapprehend any law, pleading, or facts and that the Motion should be denied.

The Motion to Alter or Amend is therefore **DENIED**.

AND IT IS SO ORDERED this __rd day of April 2021.

Clifton Newman
Presiding Judge

ELECTRONICALLY FILED - 2021 Apr 23 8:45 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

Richland Common Pleas

Case Caption: Adele J Pope vs Alan Wilson , defendant, et al

Case Number: 2012CP4000350

Type: Order/Amend

So Ordered

s/ Clifton B. Newman, 2127

STATE OF SOUTH CAROLINA	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	Civil Action No. 2011-CP-36-364
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee Defendants.	COMPLAINT

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:38
JACKIE S. BOWERS
CLERK OF COURT

Plaintiff would respectfully show unto the Court:

FOR A FIRST CAUSE OF ACTION
(Disclosure of Documents Under FOIA)

Parties and Jurisdiction

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.

2. Defendant Alan Wilson is the Attorney General of South Carolina ("AG Wilson"), and is successor in office to Henry D. McMaster ("AG McMaster").

3. Defendant James Brown Legacy Trust ("Legacy Trust") is, on information and belief, a public body under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 et seq. ("FOIA"), with Russell L. Bauknight as its current trustee. The Legacy Trust is under the continuing and direct control of AG Wilson through the AG's unfettered right at any time and from time to time to remove and replace the trustee of the Legacy Trust with such person as AG Wilson shall select, with all trustees to serve at the AG's pleasure.

RICHLAND COUNTY
FILED
2012 JAN 17 P 4:41
JEANNETTE W. McBRIDE
C.C.P. & G.S.

4. Contrary to the suggestion in its name, the Legacy Trust was not created by James Brown, and was never part of his estate plan. The Legacy Trust was created in late 2008 or early 2009 by AG McMaster, in his official capacity, and others, to receive funds AG McMaster redirected from Brown's estate plan to the new trust he created. Thus AG Wilson anticipates receiving about $85 Million (if Plaintiff's valuation is correct) or about $4.7 Million (if Bauknight is correct) – and any recoveries the State receives from Plaintiff in Case 4900, which the Legacy Trust will then manage and distribute both to a charitable trust created by AG McMaster and to private citizens. See Order of the Honorable Doyet A. Early, III, dtd. 5/26/09, Case 2008-CP-02-1647, on appeal to the S.C. Supreme Court.

5. Defendants are subject to the jurisdiction and venue of this Court pursuant to S.C. Code Ann. §30-4-20(a) and §30-4-100, and may be served with summons, process and copy of this Complaint at their respective addresses listed on Exhibits A and B attached hereto.

Facts and FOIA Request

6. On October 2, 2009 AG McMaster issued an announcement related to the use by his office and the State of private, contingency-fee attorneys known as "special counsel." A copy of that statement, with notes, is attached to this Complaint as Exhibit C.

7. On May 19, 2010 private, contingency-fee counsel Kenneth B. Wingate of Sweeney, Wingate & Barrow, PC (the "Wingate Firm"), as sole counsel for AG McMaster, the Legacy Trust and more than 10 private plaintiffs, filed suit against Plaintiff and Robert L. Buchanan, Jr. in Civil Action No. 2010-CP-40-4900 ("Case

4900").

8. The Case 4900 complaint, naming AG McMaster as a beneficiary, includes the following plaintiffs:

a. Russell L. Bauknight as trustee of the James Brown Legacy Trust;

b. Bauknight on behalf of McMaster in his capacity as Attorney General of the State of South Carolina; and

c. McMaster in his capacity as AG of the State of South Carolina.

9. AG McMaster and Bauknight did not attach or provide a signed copy of the Legacy Trust, although AG and Bauknight as his agent in Case 4900 assert Plaintiff caused tens of millions of dollars of damage to the Legacy Trust.

10. AG McMaster and the Legacy Trust, among other false allegations, assert that Plaintiff's and Buchanan's approximately $85 Million [$100 Million less the debt to TIAA-CREF] valuation of James Brown's assets was incorrect and improper. They asserted Plaintiff intentionally overstated Brown's assets on the estate tax return for the improper purpose of obtaining a large commission.

11. As described in Exhibit D, an affidavit of Plaintiff on file in Case 4900, AG McMaster also seeks money damages because Plaintiff declined to sign a document agreeing not to criticize McMaster for destroying James Brown's estate plan by creating the Legacy Trust.

12. If true, AG McMaster's false allegations against Plaintiff could subject Plaintiff to both civil and criminal penalties and destroy her career as an attorney.

13. On or about January 12, 2011 AG Wilson replaced AG McMaster, gaining by virtue of his office control over the Legacy Trust, including the right to remove and

replace the trustee at will.

14. On May 4, 2011, Bauknight filed sworn documents asserting Brown's worldwide music empire was worth less than $4.7 Million when he died on December 25, 2006, making it virtually impossible for Plaintiff and Buchanan to have done tens of millions of dollars of damage to Brown's empire between November 2007 and May 2009.

15. Bauknight's purported $4.7 Million valuation sharply conflicts with a securities prospectus issued by Bauknight's Case 4900 Co-Plaintiff (through Pinnacle) to raise $200 Million to acquire the James Brown worldwide music empire at the same time – about 40 times Bauknight's purported valuation. The prospectus is part of Exhibit D.

16. Since May 4, 2011, AG Wilson, through an assistant AG, and Bauknight offered Bauknight's $4.7 Million valuation of Brown's worldwide music empire as a supplement to the record in a pending James Brown case appeal. The motion to supplement was denied.

17. On information and belief, the actions of both AGs and AG Wilson's assistant described above were taken under color of State law and in an official capacity, and were or should have been consistent with the public interest and ordinary customs and procedures of the AG's office. Likewise, the actions of Bauknight speaking on behalf of the AG s since May 19, 2010 should have met the same standard.

18. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust. True

copies of her requests are attached hereto as Exhibits A and B. Plaintiff requested copies of:

> The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust

19. The request to AG Wilson, in addition, sought:

> All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

20. A copy of both requests was also delivered to the Wingate Firm which, on information and belief, as counsel for both the AG and the Legacy Trust, has a duty to comply with FOIA. See AG's standard Retention Agreement for Special Counsel.

21. Substantially more than fifteen days, excluding Saturdays, Sundays and holidays have elapsed and Plaintiff has received no response on behalf of AG Wilson.

22. As described in Exhibit D, the Wingate Firm has refused to release the requested documents and thousands of other already-public documents for nearly 10 months. AG McMaster's Retention Agreement for other Special Counsel – Wingate has refused to disclose his Retention Agreement – requires special counsel to comply with FOIA.

23. On July 16, 2011 Plaintiff received from attorney J. David Black, Esquire, a response, a copy of which is attached hereto as Exhibit E, denying the request for a copy of the Legacy Trust and threatening Plaintiff as follows:

> In the event that you continue to file unnecessary. . . FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

24. On information and belief, Plaintiff is entitled to review requested documents both in the hands of the AG Wilson and in the hands of the Legacy Trust in accordance with reasonable rules concerning the time and place of access, and no requested record is specifically excluded from disclosure under FOIA.

25. Attorney Black's response is in direct contrast to AG Wilson's position in the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act* in which AG Wilson states that the AG's Office uses and recommends the following FOIA guidelines:

> When in doubt, disclose requested information.
> . . .
> When in doubt, release the document. (p. 1)

26. On information and belief, the actions of the Legacy Trust, through Black, wilfully violate Plaintiff's right to obtain the requested documents and are an arbitrary and wrongful anticipatory interference of a person appointed and controlled by the AG with her right, and the right of other members of the public, to obtain records from both the AG and the Legacy Trust regarding the AG's oversight of the Legacy Trust which must be made available for inspection and copying.

27. Pursuant to FOIA, S.C. Code Ann. §30-4-10 et seq., any person has a right to inspect and copy any public record of a public body.

28. On information and belief, the AG's right of absolute control of the Legacy Trust, along with the support it is provided by the AG's office and the funds the AG's office and Legacy Trust expects to receive and control, including from the State's suit against Plaintiff in Case 4900, make it a public body under §30-4-20. See, for example, Opinions of Henry McMaster, AG, dtd. May 19, 2006 (in response to Merrill/Rutherford)

information and belief, the Court should declare the Legacy Trust a Public Body as defined in S.C. Code Ann. § 30-4-20(a), with all obligations under FOIA as set out therein.

FOR A THIRD CAUSE OF ACTION
(Attorneys' Fees Under S.C. Code Ann. § 30-4-100(b))

34. The allegations of paragraphs 1 through 33 are incorporated by reference as if fully and specifically set forth herein.

35. Plaintiff is informed and believes that if she prevails in this case, in whole or in part, she should be entitled to reasonable legal fees and costs of litigation pursuant to S. C. Code Ann. § 30-4-100(b).

36. On information and belief, the Court should enter an order awarding Plaintiff her legal fees and other litigation expenses incurred in this case pursuant to S. C. Code Ann. § 30-4-100(b).

37. Based upon the facts set out above, this Court should consider punitive measures to stop the threats of the AG's appointee, which are intended to chill and impair the public's right to public information.

WHEREFORE, Plaintiff respectfully prays to this Court for the following:

a. That this Court issue an order declaring that the above-described documents are public records under South Carolina law and that such records should be made available for inspection and copying to the Plaintiff by both Defendants as provided by law;

b. That, in addition, this Court should declare that The James Brown Legacy Trust is a public body subject to all of the obligations of a public body under FOIA;

c. That this Court should compel Defendant AG Wilson to perform his official duty and the Legacy Trust to comply with FOIA by permitting Plaintiff to inspect and copy the above-described public records as provided by law,

and enjoining them from interfering with such inspection and copying;

d. That this Court order Defendants to pay the Plaintiff her reasonable attorney's fees and other litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. § 30-4-100.

e. That the AG should direct the Wingate Firm and all special counsel to comply with their FOIA duties with respect to the Legacy Trust.

f. That this Court set at the earliest possible time a hearing on the matters set forth herein.

g. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

Attorney for Plaintiff

August 3, 2011

EXHIBIT - A

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
[illegible] S. BOWERS
[illegible] OF COURT

1228 Walnut Street
Newberry, South Carolina 29108

June 30, 2011

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act.

I would like to receive copies of the following documents:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust

2. All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,

Adele J. Pope

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4: 39
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - B

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4: 39
JACKIE S. BOWERS
CLERK OF COURT

1228 Walnut Street
Newberry, South Carolina 29108

June 30, 2011

Custodian of Records
The James Brown Legacy Trust
Post Office Box 1330
Columbia, South Carolina 29202

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act.

I would like to receive copies of the following documents:

- The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,

Adele Pope

Adele J. Pope

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - C

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:
JACKIE S. BOWERS
CLERK OF COURT

STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER ON CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL

October 2, 2009

FACTUAL NOTE:
In a major fraud case against drug giant Eli Lilly, the company recently made an effort in court to disqualify the attorneys Attorney General Henry McMaster appointed to serve as special counsel to the State of South Carolina, assisting his own attorneys. In a motion to the court, Eli Lilly's attorneys claimed it was illegal for the lawyers chosen to serve as special counsel to have subsequently made contributions to the attorney general's campaigns and therefore should be disqualified from representing the State.

The judge rejected the motion and ruled that the contributions were legal and proper. In fact, attorneys on both sides of the case had contributed to the attorney general's campaigns. Further, no public funds whatsoever were or will be used to compensate the attorneys.

During Attorney General McMaster's two terms in office, he has brought many lawsuits for the State. In several, due to their size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. These were all contingency cases, meaning the special counsel involved receive no compensation unless they win the case. If special counsel loses, they are paid nothing. If they win, the corporate defendant pays their fees and expenses. Win or lose, no tax funds are used to pay them. This is a wise economic strategy for the State, which is able to recover its damages from the defendant at no cost to the taxpayers in a meritorious case it could not otherwise have been able to bring. Since January 2003, the attorney general has appointed twenty-one (21) special counsel in six cases, one of which (Natural Resource Damage) was terminated in 2008 without any action taken.

Of these 21 special counsel appointments over the past seven years, only five (5), including their firms, subsequently made donations to General McMaster's campaigns, totaling $32,500.

A statement from General McMaster follows:

"As the judge in the Eli Lilly case confirmed in a ruling last week, the contributions my two campaigns for attorney general received from attorneys who serve as special counsel to the State are legal and proper.

However, these perfectly legal donations should not be allowed to create a distraction from the critically important issues our State faces now or in the future. I believe the best interests of the State will be served by eliminating the issue altogether. Otherwise, other defendants may be tempted to repeat these baseless allegations as a delaying

tactic in future cases involving special counsel. Further, when it comes to the issue of ethics in government, appearances matter as much as the law. It is important to avoid even the slightest possible appearance of any impropriety.

For all those reasons, I am today returning the $32,500 in donations special counsel attorneys, or their firms, have made to my campaigns for attorney general. And I will decline future contributions from my office's special counsel attorneys."

A LIST OF SPECIAL COUNSEL DONORS AND AMOUNTS TO BE RETURNED IS BELOW:

J. Preston Strom, Jr. - $3,500 – 9-30-08
Strom Law Firm - $3,500 – 9-30-08
Columbia SC
(Appointment signed 11-22-05)

J. Stephen Schmutz - 9-30-07 - $3500
Schmutz and Schmutz - 9-30-07 - $3500
Charleston SC
(Appointment signed 11-28-05)

William E. Hopkins Jr. – 12-31-08 - $1,500
Hopkins and Campbell LLP – 8-11-08 - $3,500
Columbia SC
(Appointment signed 1-22-08)

John Belton White, Jr. – 3-31-09 - $1,500, 11-13-07 - $2,000
Harrison, White, Smith and Coggins 7-5-07 - $3,500
Spartanburg SC
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

John S. Simmons – 9-30-08 - $3,000
Law Offices of John S Simmons – 6-30-07 - $3,500
Columbia SC
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

###

EXHIBIT - D

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; and Others, Plaintiffs. and HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina and others v. Adele J. Pope and Robert L. Buchanan, Jr., Defendants.	) IN THE CIRCUIT COURT)) Case No.: 2010-CP-40-4900)))) Affidavit of Adele J. Pope)Supporting Production of Legacy Trust,) Fee Contract with State/AG) and Related Documents prior to) Hearing on Motion for) Injunctions

RICHLAND COUNTY
FILED
2011 AUG -2 PM 1:03
JANETTE W. McBRIDE
C.C.P. & G.S.

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn deposes and says:

1. On May 19, 2010 Kenneth B. Wingate and his firm (collectively "Wingate[1]") filed this suit against Robert L. Buchanan, Jr. ("Bob") and me seeking tens of millions of dollars in tort damages for then-Attorney General Henry D. McMaster ("AG McMaster" or the "State") and about 15 private individuals ("Private Plaintiffs").

2. I ask the Court to require Wingate and Plaintiffs, before the hearing on my motion to enjoin them from acting for the AG/State, to produce signed copies of the originals and any amendments to the following documents:

a. Wingate's Retention Agreement(s) with the AG/Plaintiffs;

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:39
JACKIE S. BOWERS
CLERK OF COURT

[1] The Firm name is Sweeney, Wingate and Barrow, P.C.

b. The James Brown Legacy Trust ("Legacy Trust") [2];

c. The AG's authorization for Bauknight to assert he speaks on behalf of the AG.

3. Serving simultaneously as sole counsel for Private Plaintiffs[3] and the AG, Wingate named in the caption of the Complaint as parties:

a. RUSSELL L. BAUKNIGHT... on behalf of [AG McMaster];

b. BAUKNIGHT.. as Trustee of the James Brown Legacy Trust; and

c. AG McMaster.

4. For 9 months Wingate and Bauknight have refused to produce the requested documents either through discovery or, more recently, under the S. C. Freedom of Information Act ("FOIA")

5. I first learned of Wingate's involvement in April 2010 when Plaintiff Tommie Rae Brown's agent advised that if Bob and I did not drop a pending James Brown appeal AG Sonny Jones[4] would to sue us through contingency-fee counsel Wingate.[5]

---

[2] The Legacy Trust, although bearing Brown's name, was not created by James Brown or part of his estate plan. It was created by AG McMaster and Bauknight in either late 2008 or 2009.

[3] Private Plaintiffs include:
a. 5 of the 7 grandchildren/beneficiaries of a $285,000 education fund
b. 6 adults Brown gave personal effects under the Will but specifically excluded from his $85 Million worldwide music empire;and
c. 3 other persons Brown specifically excluded from both the Will and 2000 Trust.

[4] While we were PR/Trustees C Havird ("Sonny") Jones, acting for AG McMaster, tried to force Bob and me to use AG McMaster's Litigation Retention Agreement in hiring attorneys AG McMaster selected. By Order dated Jan.8, 2008, the Court declined his request.[See Tr., Hg. 12/21/07, Case 122]

[5] The appeal is in Case 2008-CP-02-1647 ("Case 1647"). In that appeal, Bob and I oppose a settlement which will take $50 Million from Brown's 2000 Trust, dedicated to educate 7 grandchildren and needy and deserving students, and give it to 6 of Brown's more than a dozen claimed heirs, all of whom Brown disinherited from his worldwide music empire.

6. I am informed and believe that a copy of the AG's Retention Agreement will help explain Tommie Rae's threat, and may shed light on whether a $1,000 contribution to AG McMaster's political campaign by a Wingate firm principal, Scott Barrow just after this suit was filed was improper.

7. Recently the Augusta Chronicle reported about a Litigation Retention Agreement AG Wilson approved which was made public, and discussed a $1,052 political contribution made long before the engagement – not immediately after, as here. [See "SC Treasurer's Friend Gets up to $3 million in State Work", 7/24/11]

8. I am informed and believe the Retention Agreement will show whether AG McMaster, who acted under color of state law and in his official capacity, and whose actions should have been consistent with the public interest, was in fact acting to punish Bob and me for conducting a proper appeal; not hiring lawyers he tried to force us to hire; and/or not signing a document preventing us from criticizing AG McMaster's destruction of James Brown's estate plan.[6]

9. The State/AG McMaster sued me for tens of millions of dollars – many times my personal net worth. AG McMaster, through Wingate, has made false allegations against me which, if true, would destroy my career as an attorney and expose me to both civil and criminal charges, including those of the IRS and SCDOR with whom I

---

[6] As an attorney advising creators of private foundations, I have a duty to caution clients in S.C., or intending to transfer a private foundation here, that AG Master claims the authority to take over any estate or private foundation involved in a formal testacy case; rewrite the Settlor's estate plan to McMaster's liking; and replace the Settlor's properly-serving trustees with AG McMaster's appointees. What AG McMaster and his staff did to destroy James Brown's estate plan is described in"Private Foundation, Copyright Heirs and Musical Millionaires: Why The James Brown 'I Feel Good' Trust doesn't...,"filed in this case [Smith & Pope, Dr., Apr.2011] I believe AG McMaster's suit violates my First Amendment rights.

have worked for more than 30 years on behalf of clients.

10. The requested documents will demonstrate how the AG proposes to share funds he hopes to collect from me and who will pay if Bob and I are successful in the counterclaims (on which Plaintiffs are now in default).

11. The requested documents should also answer the following questions:

a. Did either the Legacy Trust or a separate document give Bauknight legal authority to assert he speaks for AG McMaster?

b. If not, is Bauknight's assertion that he speaks on behalf of the AG improper?

c. If so, is either the State or McMaster liable for Bauknight's actions, including the default and any counterclaim judgment?

d. Can Bauknight continue to speak on behalf of the AG/State after filing sworn documents with the Court and IRS asserting Brown's worldwide music empire was worth less than $4.7 Million [7] at the same time he knew Brown's Royalties for 2010 were about $5.4 Million and Brown earned $4 - $6 Million each year from 2003 - 2006?

12. I am informed and believe that the requested documents and facts revealed since the filing of the complaint will demonstrate that Wingate's and Bauknight's commitment to Private Plaintiffs prevents them from serving the AG/State in this suit.

13. I am informed and believe that the Retention Agreement should provide what happens when – as here – it becomes clear that Defendants are not at fault and

---

[7] Bauknight revealed on May 4, 2011 - 4 years and 4 months after Brown died -- that he had used a valuation of $4.7 Million for Brown's worldwide music empire and $12 Million claim against former PR/Trustees Dallas and Cannon to obtain an IRS closing letter. Two months earlier, on February 11, 2011 Bauknight reported in a sworn accounting that Brown's Royalty receipts for 2010 were approximately $5.4 Million. [Acctg. Aiken Cty, 2/11/11]

Brown's $4-$6 million annual earnings for 2003 -2006 from his worldwide music empire are fully documented in exhibits and filings in Cases 122 and 322.

and December 28, 2006 (in response to McConnell)

29. Plaintiff, a South Carolina citizen faced with threats on behalf of the Legacy Trust and no response of AG Wilson has no adequate remedy at law, and requires an injunction to prevent interference with her rights, and those of other citizens, to these public records.

30. On information and belief, it was willful and reckless for the AG's appointee to assert that attorney-client privilege or work product privilege protects the AG or the Legacy Trust from allowing Plaintiff to inspect and copy the requested documents which create the vehicle used by AG McMaster and Bauknight to pursue collection of tens of millions of dollars from Plaintiff and which documents have been used as an authorization for Bauknight to act on behalf of the State.

31. Based upon the facts set forth above, this Court should enter an order declaring that the requested records are public records and should be made available to the public and Defendant by both AG Wilson and the Legacy Trust, as well as by all special counsel, for inspection and copying as provided for by FOIA.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment that Legacy Trust is a Public Body under FOIA)

32. The allegations of paragraphs 1 through 31 are incorporated by reference as if fully and specifically set forth herein.

33. In addition, based on the facts set forth above, and other factors set out in the Opinion of AG McMaster dtd. May 19, 2006, including but not limited to its creation and control by the AG and its being supported in whole or in part by public funds, on

the AG's Private Co-Plaintiffs do not represent the public interest and/or are, or may become, subjects of investigations by the AG or other Federal or State Agencies.

14. Just a few of the facts now known are:

a. 8 or more Private Plaintiffs are not residents of South Carolina.

b. Plaintiff (Georgia resident) Venisha was jailed in South Carolina on felony charges during the relevant period.

c. There is substantial evidence that some or all of Private Plaintiffs Bauknight[8], Yamma[9], Terry[10] and Tommie Rae[11], and their agents, are actively involved in the manipulation of the value of James Brown's securities and other assets for improper purposes.

d. Private Plaintiff (Yamma) has valued James Brown's assets at 30 times ($200 Million) Private Plaintiff Bauknight's $6.5 Million value.

e. Plaintiff Bauknight represented to the IRS that Brown's worldwide music empire and $12+ Million claim against former PR/Trustees Dallas and Cannon was worth less than $4.7 Million at his death.

f. 1 minor Plaintiff is a possible witness (not a suspect) in an

---

[8] Bauknight said in January 2009 he didn't know the value, but had heard Brown's assets were worth $80 Million.

[9] After being part of a prospectus to raise $200 Million to acquire the James Brown assets, Yamma apparently now joins Bauknight in asserting those same assets were worth only $6.5 Million. [See Prospectus, Exhibit A] 3 witnesses on Wingate's Witness List [Exhibit B] are also named in the $200 Million Prospectus (Joel Katz and Alvin & Calvin Waters)

[10] Plaintiff Terry was part of 2 $90 Million - $102 Million offers to buy Brown's assets. His son Forlando is a 39% owner of the purchase entity. Terry now apparently claims a right to buy Brown's worldwide music empire at Bauknight's new $4.7 Million .

[11] In February 2007 Tommie Rae, through an attorney, asserted Brown's "book of music" (Royalties), had a value as high as $100 Million. [Tr. 2/9/07, Case 122] Royalties are about ½ of Brown's worldwide music empire, the other half being his image and persona ("Publicity Rights"). In 2009 Tommie Rae, Terry and Bauknight stopped a 2-year Publicity Rights contract with GreenLight (May 2009 - May 2011) which has earned tens of millions annually for Einstein, Steve McQueen and others. The interference now appears to have been part of a devaluation scheme culminating in Bauknight's May 4 disclosure of the music empire at $4.7 Million.

unfortunate shooting death and ongoing murder investigation (adult charged) which took place at his 16th birthday party this year.

g. Plaintiff Terry was part of a scheme to sell the James Brown assets for $100 Million; create an IPO; and pay options or a "kickback" to former PR/Trustees Cannon and Dallas.

h. Wingate's Witness List names as a witness for AG McMaster Cannon, indicted in 2010 for felonies against Brown for every year from 1999 - 2006 and a 2008 forgery, now awaiting trial.

i. Wingate's Witness List names as a witness for AG McMaster Albert Dallas, found by the Court to have committed fraud under Probate Code §62-1-106 in James Brown cases, and who is being sued by the Estate/2000 Trust for secretly misappropriating more than $12 Million from James Brown.

j. Wingate – 14 months after filing suit has apparently failed to pay disclosed experts Hobbs and Provence. See AG's standard Retention Agreement.

k. Wingate - lacking experience in the James Brown cases – has made misrepresentations to this Court, including about the status of other cases in a proposed order which the Court in this case signed.[12]

15. I am informed and believe that, like other Retention Agreements, the Wingate Agreement is a public record.

16. In my more than 30 years as an attorney for litigants in trust and estate matters, I have never known an AG to be a co-Plaintiff using joint private counsel in a tort suit for money damages against a South Carolina citizen.

17. Although I have been involved in a number of matters in which the AG was involved, I do not recall any time when – as here – the AG is party to a case but the AG (or an associate) is not counsel of record for the AG only.

---

[12] See Order Denying Motion to Dismiss, proposed by Wingate, in which the Court found that four Aiken County cases were no longer pending when all were active.

18. I do not recall in 30 years seeing any private citizen – as Bauknight does here – assert in a case that he acts "on behalf of the Attorney General of the State of South Carolina."

19. I am informed and believe that AG McMaster's contingency-fee Litigation Agreement with Wingate as Special Counsel should contain significant provisions, as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob and me from the use of the State's power to support abusive acts of private counsel and Private Plaintiffs. [See AstraZeneca agreement AG McMaster signed on October 20, 2006 ("AZ"), which did not involve Private Co-Plaintiffs.]

20. Portions of the AZ agreement, with emphasis supplied, are:

RECITALS

WHEREAS, the Attorney General has concluded it is in the best interest of the State ...to retain Special Counsel specifically for this litigation matter

...

WHEREAS, Special counsel specifically represents that he has the skill, experience and competence necessary for the meaningful prosecution of this matter.

Article II. SERVICES

. . .

2. ... Special counsel shall provide legal services to the Attorney General... for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation. ...

3. ... All pleadings, motions, briefs, formal documents and agreements must bear the signature of the Attorney General or his designated assistant.

. . .

Article III. CASE MANAGEMENT

...F. **Public Records**

Any material, date, files, discs, or documents created, produced or

gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation. . . shall be considered the exclusive property of . . . South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4010 *et seq.*,...This agreement shall be considered a public document.

...

Article IV. COMPENSATION

. . . Special Counsel shall receive no compensation unless the State of South Carolina receives a settlement or damage award. . .

...

... the Attorney General shall retain 10%of Special Counsel's fees. . .

C. ...Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs ... including expert witness fees . . . Special Counsel's agreement to advance ... costs has been taken into consideration in establishing the fee schedule...

. . .

Article VI. TERMINATION

A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty or explanation.

21. My FOIA request for the Legacy Trust was met with a threat on behalf of Bauknight to file an abuse of process suit against me. [13]

22. Particularly troublesome in light of Private Plaintiffs' devaluation scheme is

---

[13] See Exhibit C. The FOIA response came from one of Bauknight's 10 (according to Bauknight) attorneys at Nexsen Pruet (NP). NP serves as counsel to Plaintiff AstraZeneca Pharmaceuticals, LP in the Spartanburg County, S.C. case entitled AstraZeneca, LP, Plaintiff v. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Civil Action No. 2011-CP-42-1213 which is referenced herein.

the AG's false allegation, through Wingate, and Bauknight, purportedly speaking on behalf of the AG, that Bob and I overvalued Brown's assets to the IRS under oath by nearly $80 Million for the improper purpose of getting a big commission.[14]

23. I am informed and believe that when such false accusations are made on behalf of the State's chief law enforcement officer, who also enforces tax and fraud laws, they are clearly intended to threaten and intimidate Bob and me, and we are entitled to know if AG McMaster authorized them and AG Wilson condoned them.

24. On July 21, 2011, defending the AG's use of private counsel in a filing in the AZ case, AG Wilson stated:

> On occasion, the Attorney General, in carrying out his responsibility, has found that it is necessary to hire outside counsel on a contingency-fee basis. These attorneys. . .take on substantial risks, litigating these matters against multi-billion dollar entities, which employ scores of national law firms. [15] [Footnote 1 in text] ... Private counsel undertake this representation under the direction and control of the Attorney General. .. . [Reply, p.3] [Emphasis supplied.]

25. In support of his AZ Retention Agreement, AG Wilson stated:

> Because the Attorney General is in control of the litigation, and possesses final authority over the case, there is no risk of bias or improper enforcement.

26. AG Wilson – deploring the imbalance of power when a financial giant is

---

[14] In an Order dated January 8, 2008 in Case No. 122, Judge Early awarded us $317,000 and unpaid costs for our service as Special Administrators of Brown's Estate from March 7, 2007 - November 20, 2007. Acknowledging our increased commitment as PR/Trustees, the Court also awarded Bob and me ongoing "time plus costs" payments, with interest at the legal rate on unpaid amounts. Neither AG McMaster nor any Interested Person objected to the January 8 Order. As of September1, 2009, as reflected in the Aiken County records, Bob and I were entitled to approximately $2.1 Million, plus future interest. [See Order dtd. 1/8/08, Case 122.]

[15]] For example, in contrast to the figures cited by Defendants... Astra Zeneca reported in mid-2009. . . that it had already spent $593 million defending Seroquel matters.

pitted against the AG's office with its $7 Million annual budget – stated:

> AstraZeneca seeks to ensure that itself, or any other major corporation engaging in widespread unfair and deceptive conduct, maintains such a massive advantage in resources that this [AG Wilson's] Attorney General's Office – and others around the country – are simply without resources to effectively enforce their state statutes.

27. I attended a hearing in July 2011 on the AG's motion to dismiss AZ's case challenging private counsel and heard AG Jones speak of the unfairness of giant entities such as AZ attempting to intimidate relatively small ones like the AG's office.

28. In this case against Bob and me, AG McMaster's office is the giant.

29. I am informed and believe that if the Court requires the Wingate Retention Agreement(s) and other requested documents to be delivered before the injunction hearing, it will help the parties and Court address the following essential questions related to the injunction request:

1. Is Bauknight's assertion that he speaks on behalf of AG McMaster legal?

2. Did all Private Plaintiffs sign the Retention Agreement (as is required for a contingent fee), and did they cede control to the AG so that the State would not trample on our Constitutional rights as citizens?

2. Is any public policy articulated for the State/AG joining Private Plaintiffs in this tort suit for money damages against us?

3. Is any Public Policy violated or served by AG McMaster's sharing a single private law firm and attorney-client privilege with Private Plaintiffs?

4. Did AG McMaster violate his own policy and/or the Retention Agreement by not maintaining control over the litigation and signing the complaint?

5. What does the Retention Agreement provide if Private Plaintiffs/Bauknight become targets of securities, tax or fraud investigations and their witnesses are under indictment or investigation in South Carolina?

6. How are the funds recovered from Bob and me, if any, shared?

7. How is our judgment against Plaintiffs, if any, to be paid?

8. May Wingate properly assert the State's privileges and immunities to attempt to relieve Private Plaintiffs from default?

9. Did AG McMaster approve seeking money damages against us for not signing an agreement not to criticize AG McMaster ?

10. Does the Retention Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?

11. What action, if any, has AG Wilson taken to amend the Retention Agreement or Bauknight authorization to act on behalf of the AG?.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope

Adele J. Pope

SWORN TO BEFORE ME this
1st day of August, 2011

(L.S.)
Notary Public for South Carolina
My commission expires: 7/13/2016

EXHIBIT A

Pinnacle Media & Entertainment, LLC
Amount Requested $200,000,000

Executive Summary

Contact Information
Pinnacle Media & Entertainment, LLC
Anthony "Chip" Lumar, Chairman/CEO
Yamara Brown Lumar, President
33 Peachtree Center Ave
Suite 600
Tel: 404-343-6848
Fax: 404-234-2826
www.pinnaclemediaent.com
chiplumar@pinnacleip.com

Management Team
Anthony "Chip" Lumar, Chairman/CEO
Dr. Yamara Brown Lumar, President
Dr. Terry E. Cox, Graham Windsor Group
Leveyd Cutler, Esq.
Alvin Wann, The Machine Group
Calvin Waters, The Machine Group
Fred McKnight, Undiscovered Live
Michelle Graves, Special Advisor to Mr. Lumar

Industry
Content provider to the entertainment industry
film/television/website

Company Resources
Intellectual Property Rights

Type of Financing Sought
Acquisition financing for the James Brown Estate

Total Internal Capital Invested
$1,300,000 has been pledged by the Owners for start up of Pinnacle Communications Inc., and Pinnacle Media & Entertainment for print rights acquisition, trade show sponsorships, production and marketing.

Professionals
(Accounting firm)
Craig C. Taliaferro
Taliaferro & Company, LLC
336 Interstate 84
Suite B1
Clifford, MA 01349
Tel: 617-230-0812

(Banking)
Washoyte Bank
Clark Lockard
Drive Manufacturer
Marietta, GA 30324
Tel: 770-420-0324
Fax: 770-420-0434

Pinnacle Communications, Inc c/o Chip Lumar
404-404-343-6848
www.pinnaclemediaent.com
pinnaclemediainfo@pinnacleip.com

Business Description

Pinnacle Media & Entertainment, LLC "PME" is an independent film production and distribution company. The company specializes in commercial grade theatrical films, documentaries, video and content for the major motion picture/television/cable industries. The company presently has the film option rights to several properties that can be acquired through its sister company, Pinnacle Communications, Inc;

Philosophy

There is an inherent marriage between music entertainment and the film/television industries. Both require massive amounts of content to satisfy the needs of their clients/customers, and this company intends to exploit this fact by appointing the daughter of a true living "Legend" *James Brown*, to be its leader. Pinnacle Communications Inc is currently reviewing over fifty titles for our film and distribution companies. Upon successful completion of funding, PME will launch the national television and cable networks with Atlanta as its national base of operations.

James Brown Estate Acquisition

On December 25, 2006, the legend, James Brown died at the age of 73. He left behind a legacy that will stand the test of time. His estate, the most valuable of assets has the potential to surpass the estates of Elvis Presley, Frank Sinatra, and Dean Martin, in yearly revenues generated, licensing rights, sampling rights, feature films, documentaries, tributes, and future record sales. We believe the estate of the late James Brown can and will generate over 100 million per year. Under the right management structure and capitalized properly, there will be no end in sight. With the right investment partner, Pinnacle Media & Entertainment will become the premier entertainment/management company in the world.

Currently the estate is under the protection of Greenberg Traig, more specifically Joel Katz; Mr. Katz has been an advisor, legal counsel, but more importantly a close personal friend to Mr. Brown for over 20 years. Mr. Katz has intimate knowledge of the estate, past, present and future. It is our hope that once the acquisition is completed, Mr. Katz and his team would remain in their current capacity and would assume the lead in the future development of the "James Brown Living Legend Experience"

Management

Our President is a distinguished graduate of Mercer University (1993) where she received her Doctorate in Pharmacy. Being the daughter of a star of music and film, Dr. Lumar has had intimate knowledge of both industries. Another advantage Dr. Lumar gives is her access to the Hollywood elite. Among some of the more notables Hollywood are Academy Award Winners Jamie Foxx, and Dan Aykroyd, other celebrities' friends includes actor Eddie Murphy, and playwright Tyler Perry.

The company will have only one paid employee initially as all other work not performed by the President is outsourced to contract professionals, i.e. directors, scriptwriters, cast and crew professionals on a per-project basis.

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

arrangement never before realized. The potential for profits from both companies is incalculable, and the returns on investment will be far greater than anyone can imagine.

Pinnacle Communications, Inc c/o Chip Lumar
404-404-343-0048
www.pinnaclemedianet.com
pinnaclemediainfo@pinnacleip.com

EXHIBIT B

Witness List

11/12/2010

Full Name	Addresses
Jeff Allen	145 West 57 Street 15th Floor New York NY 10019
Russell L. Bauknight	1517 Gervais St. P.O. Box 1330 Columbia, SC 29202
Jim Blackwell	3455 Peachtree Road NE, Suite 1700 Atlanta, GA 30326
Charles Bobbitt	3280 Golf-Linx Drive Snellville, GA 30039
Daryl J. Brown	1120 Court Drive, Apt. R Duluth, GA 30096
Forlando J. Brown	156 Liberty Hill Road Eastanollee, GA 30538
Larry Brown	110 Dresden Drive Martinez, GA 30907
Terry Brown	156 Liberty Hill Road Eastanollee, GA 30538
Tonya Brown	2417 Castlewood Dr. Augusta, GA 30904
Vanisha Brown	P.O. Box 652 Clearwater, SC 29822
Yamma N. Brown	305 Legran Bend Atlanta, GA 30328
Deanna J. Brown-Thomas	P.O. Box 652 Clearwater, SC 29822
Robert L. Buchanan	212 Newberry St., NW P.O. Box 463 Aiken, SC 29802-0463
David G. Cannon	9459 Marlboro Ave Barnwell, SC 29812-1982
Frank Copsidas	601 West 26th Street Suite 1080 New York, NY 10001
Albert H. Dallas	304 Black Street Thomson, GA 30824-2919
William F. Hammond	P.O. Box 1564 Augusta, GA 30903-1564
Tommie Ray Hynie-Brown	Los Angeles, CA
Joel A. Katz	3290 Northside Parkway, Ste 400 Atlanta, GA 30326
Adele J. Pope	1228 Walnut ST Newberry, SC 29180
Al Sharpton	106 West 145th Street New York, NY 10039
William H. Tucker	111 Park Ave, SW Aiken, SC 29801
Alvin Waters	Atlanta, GA
Calvin Waters	Atlanta, GA
Andre White	5122 Hunters Luck Stone Mountain, GA 30088

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

Witness List

11/12/2010

Full N	
Andre White	75 Piedmont Ave NE Atlanta, GA 30303

EXHIBIT C

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

July 15, 2011

VIA US MAIL

Adele J. Pope, Esquire
1228 Walnut Street
Newberry, South Carolina 29108

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Ms. Pope,

I am writing you in reference to your June 30, 2011 South Carolina Freedom of Information Act (FOIA) request for "The final and all drafts, signed and unsigned, of the James Brown Legacy Trust" (James Brown Trust).

As you are aware, for FOIA purposes, the James Brown Trust is not a public body as defined in the South Carolina FOIA Statute. *See* S.C. Code Ann. § 33-40-20(a). Accordingly, your request for public records is improper.

Furthermore, even in the event that such request were proper, the documents that you have requested are exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(7) as the FOIA request calls for the production of Attorney Work Product and Attorney Client Privileged Materials related to ongoing litigation.

Please be advised that FOIA is not intended as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers, 2002-CP32-1890 (Order of Judge Westbrook, 11th Jud. Cir., 2002) (citing NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975); *U.S. v. Murdock*, 548 F.2d 599, 602 (5th Cir. 1977); *Fruehauf Corp. v. Thornton*, 507 F.2d 1253, 1255 (6th Cir. 1974)).

In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2072
F 803.727.1403
E DBlack@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Very truly yours,

J. David Black

JDB/JGH

cc: James B. Richardson, Jr., Esquire
Russell L. Bauknight

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

EXHIBIT - E

NEXSEN|PRUET

J. David Black
Member
Admitted in SC

FILED
NEWBERRY COUNTY
2011 AUG -3 P 4:40
JACKIE S. BOWERS
CLERK OF COURT

July 15, 2011

VIA US MAIL

Adele J. Pope, Esquire
1228 Walnut Street
Newberry, South Carolina 29108

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Ms. Pope,

I am writing you in reference to your June 30, 2011 South Carolina Freedom of Information Act (FOIA) request for "The final and all drafts, signed and unsigned, of the James Brown Legacy Trust" (James Brown Trust).

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

As you are aware, for FOIA purposes, the James Brown Trust is not a public body as defined in the South Carolina FOIA Statute. *See* S.C. Code Ann. § 33-40-20(a). Accordingly, your request for public records is improper.

Furthermore, even in the event that such request were proper, the documents that you have requested are exempt from FOIA pursuant to S.C. Code Ann. § 30-4-40(a)(7) as the FOIA request calls for the production of Attorney Work Product and Attorney Client Privileged Materials related to ongoing litigation.

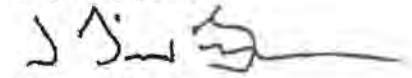
Please be advised that FOIA is not intended as a substitute for discovery and was not intended to provide procedures for obtaining information during litigation or to benefit private litigants. *Lominack v. Myers, 2002-CP32-1890 (Order of Judge Westbrook, 11th Jud. Cir., 2002) (citing NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 144 n.10 (1975); *U.S. v. Murdock*, 548 F.2d 599, 602 (5th Cir. 1977); *Fruehauf Corp. v. Thornton*, 507 F.2d 1253, 1255 (6th Cir. 1974)).

In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process and sanctions.

1230 Main Street
Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202
www.nexsenpruet.com

T 803.540.2072
F 803.727.1409
E DBlack@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Very truly yours,



J. David Black

JDB/JGH

cc: James B. Richardson, Jr., Esquire
Russell L. Bauknight

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

Adele J. Pope,) Case No. 11-CP-36-364

Plaintiff,)

v.)

Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,)

Defendants.)

MOTION OF ATTORNEY GENERAL TO DISMISS AND ALTERNATIVE MOTION TO STRIKE

SCANNED

FILED NEWBERRY COUNTY 2011 DEC -6 A 10:55 JACKIE S. BOWERS CLERK OF COURT

FILED RICHLAND COUNTY 2012 JAN 17 PM 4:40 JEANETTE W. McBRIDE C.C.P. & G.S.

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Alan Wilson, Attorney General moves for the dismissal of the Complaint herein pursuant to Rules 12(b)(3and (8), SCRCP, in that, for reasons set forth below, venue is improper and another action is pending between the same parties for the same claim:

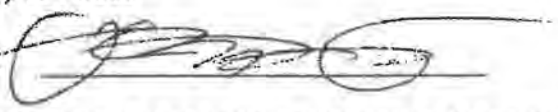
1. Venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010 (copy attached as Exhibit A only in support of 12(b)(3) motion). Further, even if, *arguendo,* the Bauknight Order were not controlling, under S.C. Code Ann. § 15-77-50 (1976), suits against officials of the State in their official capacities must be brought in the circuit where such question, action or controversy shall arise, and the Complaint does not allege a basis for venue in Newberry County. Venue should be in Richland where the other suit is pending.

2. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc., et al, supra.* Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See,* Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).

Subject to the Motion to Dismiss, the Attorney General moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and / or that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General
J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

September 2, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose and consultation as to the Motion to Dismiss is not required.



September 2, 2011 ATTORNEY FOR THE ATTORNEY GENERAL

EXHIBIT A

In Support of Rule 12(b)(3) Motion

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,
Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

RICHLAND COUNTY
FILED
2010 NOV -9 AM 9:21
JEANETTE W. McBRIDE
C.C.P. & G.S.

ORDER DENYING DEFENDANTS' MOTION TO CHANGE VENUE

This matter came before the Court on August 30, 2010 for hearing on Defendants' Motion to Change Venue from Richland County to Aiken County. Counsel for all parties were

SCANNED

present. Other motions in this case were also heard on August 30 and separate Orders will issue with regard to those motions.

PROCEDURAL POSTURE

This is a judicial proceeding involving an irrevocable trust of James Brown dated August 1, 2000, as modified by a court-approved settlement agreement, whose sole, professional trustee administers the trust in Richland County, South Carolina. This irrevocable trust is distinguishable from the Estate of James Brown, the administration of which is in the Aiken County Probate Court.

The complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRCP, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County.

FACTS

The original estate plan of James Brown included a Last Will and Testament which "poured over" the bulk of his estate to a separate, irrevocable trust known as the James Brown Irrevocable Trust that was created and funded on August 1, 2000. The James Brown Irrevocable Trust, by its terms, was to be divided into the Brown Family Educational Trust and the James Brown "I feel Good" Trust after his death.

After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is

attached to the complaint as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached to the complaint as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was revised to create a "Settlement Entity" in which are vested all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

Plaintiffs are all of the beneficiaries of the settlement trust, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. This office is located in Richland County, South Carolina.

ANALYSIS

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and

determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. See Order for Removal of July 19, 2010. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

> Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which **the trust's principal place of administration** is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

> Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is **the trustee's usual place of business where the records pertaining to the trust are kept**, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). The statute designates the trustee's place of business, that is, the place where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is necessary for the courts in the place where the trust records are kept and the trust assets are held to deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Bauknight. Mr. Bauknight's usual place of business is at his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if this Court were to determine that venue might be proper in either Richland or Aiken Counties, which it does not, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). This Court notes that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County, as the August 10, 2007, order of Judge Early directed the trust records to be delivered to 1218 Taylor Street in Columbia, which was Pope's office.

Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code

provides that "[a] proceeding under this section does not result in continuing supervisory proceedings." This trust litigation against the former trustees is unrelated to the prior litigation involving James Brown's estate or trust.

CONCLUSION

Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken County, the initial commencement of this action in Richland County requires that venue remain in Richland County.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Change Venue is DENIED.

L. Casey Manning

The Honorable L. Casey Manning
Circuit Judge

Signed this 8 day of Nov, 2010
at Columbia, South Carolina.

EXHIBIT B

In Support of Rule 12(b)(8) Motion

FILED
NEWBERRY COUNTY
2021 SEP -6 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)
)
) Case No. 2010-CP-40-4900
RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Esate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar, Carrington Lumar, and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY LUMAR, CARRINGTON LUMAR, and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,
Plaintiffs.

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

MOTION TO COMPEL DISCOVERY
(Requests for Production of Documents)

FILED
NEWBERRY COUNTY
2011 SEP -1 A 10:56
CLERK OF COURT

TO: **PLAINTIFFS RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN, AND ON**

BEHALF OF HENRY DARGAN MCMASTER, IN HIS CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA; DARYL J. BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.[1]

2. On October 11, 2010, Defendant Pope served Plaintiffs Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

---

[1] Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

hereto as Exhibits A-H.

3. Among the documents requested were "[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisement in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately $4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisement and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

December 2010. Said Plaintiffs asserted that these documents proved that James Brown's assets at death and those of the 2000 Irrevocable Trust were worth only about $6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

14. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

June 7, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT C

In Support of Rule 12(b)(8) Motion

FILED
NEWBERRY COUNTY
2021 SEP -6 A 10:56
JACKIE S. BOWERS
CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,

Defendants

Civil Action No. 2010-CP-40-4900

2011 JUL -5 AM 11:27

JEANNETTE W. McBRIDE
C.C.P. & G.S.

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:56
MARIE S. BOWERS
CLERK OF COURT

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING VARIOUS DOCUMENTS REQUESTED BY DEFENDANT ADELE J. POPE

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

July 1, 2011

EXHIBIT D

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
ANNIE S. BOWERS
CLERK OF COURT

LAW OFFICE OF
ADAM T. SILVERNAIL, LLC

POST OFFICE BOX 1898
1218 TAYLOR STREET
COLUMBIA, SOUTH CAROLINA 29202

June 15. 2011

By U.S. Mail:
Mark V. Gende, Esquire
Sweeny Wingate & Barrow P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
mvg@swblaw.com

4077-7389

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

Re: Bauknight and others vs. Pope and others
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322: and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,

Adam T. Silvernail

cc: Daryl L. Williams, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Adele J. Pope, Esquire

TEL: 803/779-1770 FAX: 803/403-8092 EMAIL: ADAM@SILVERNAILLAWFIRM.COM

EXHIBIT E

FILED
NEWBERRY COUNTY
2011 SEP -6 A 10:59
JACKIE S. BOWERS
CLERK OF COURT

S·W·B

SWEENY WINGATE & BARROW P.A.

E-MAILED 6-17-11

June 17, 2011

Reply to: Main Office

Mark V. Gende
(803) 256-2233 121
mvg@swblaw.com

FILED
NEWBERRY COUNTY
SEP -6 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

VIA ELECTRONIC MAIL AND U.S. MAIL
Adam T. Silvernail, Esquire
1218 Taylor Street
P.O. Box 1898
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENY, WINGATE & BARROW, P.A.

Mark V. Gende (CSH)

Mark V. Gende

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail
Daryl L. Williams, Esquire, via e-mail
Robin A. Braithwaite, Esquire, via e-mail

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4:39
JEANNETTE W. RICHARDSON
C.C.P. & G.S.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY) Civil Action No. 2011-CP-36-00364

Adele J. Pope,
Plaintiff,
v.
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee
Defendants.

PLAINTIFF'S RETURN TO MOTION OF DEFENDANT JAMES BROWN LEGACY TRUST TO DISMISS

SCANNED

FILED
NEWBERRY COUNTY
2011 SEP 12 P 12:33
JACKIE S. BOWERS
CLERK OF COURT

TO: DEFENDANT JAMES BROWN LEGACY TRUST AND/OR ITS COUNSEL

Plaintiff opposes the Motion of Defendant James Brown Legacy Trust ("Legacy Trust"), to Dismiss motion to dismiss for the reasons set out below:

Venue is Proper in Newberry County

1. As alleged in the Complaint herein, Plaintiff lives and works in Newberry County. Her requests for documents under the South Carolina Freedom of Information Act ("FOIA") were made from Newberry, and the responses of Defendants were sent to Plaintiff in Newberry.

2. Legacy Trust's argument that the filings, orders or claims in Richland County Case No. 2010-CP-40-4900 ("Case 4900") have any effect on the venue for this action is unfounded. Although that action involves some of the same parties and facts, it does not involve any claim for relief under FOIA, and private attorney Kenneth Wingate, sole plaintiffs' counsel in that case, represents at least 12 private clients who have no

interest in this matter.

3. Neither the venue for Case 4900 nor any of the more than 20 James Brown cases brought in Aiken County has any bearing on the proper venue for this action.

No Basis Exists for Dismissal Under Rule 12(b)(6), *SCRCP*

4. The Legacy Trust does not set forth any logic for dismissal under Rule 12(b)(6). Nor could it; the complaint clearly alleges that the James Brown Legacy Trust is a public body and has refused to produce public documents.

5. S.C. Code Ann. §30-4-100 provides that "any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief." Plaintiff has done precisely that, and there is no basis for dismissal under Rule 12(b)(6).

No Basis Exists for Dismissal Under Rule 12(b)(8), *SCRCP*

6. The Legacy Trust's assertion that the claims herein are "the same or substantially the same" as those pending in another action is incorrect. No claim or counterclaim in Case 4900 or any Aiken County case related to the Estate of James Brown or the 2000 Irrevocable Trust (the "Aiken County Cases") involves FOIA. Many of the Aiken County Cases, along with Case 4900, have been commenced in the Probate Court, which, pursuant to S.C. Code Ann. §30-4-100, has no jurisdiction over FOIA actions.

7. The documents sought herein are just a few of the documents which, because they are public documents held by public bodies, are available under FOIA.

8. Plaintiff has never exercised her rights under FOIA to obtain documents sought in the Aiken County Cases or Case 4900, since Plaintiff's rights under FOIA are

entirely distinct from her right to receive documents requested through discovery. Likewise, issues which have arisen in discovery in the James Brown cases have no bearing on Plaintiff's right under FOIA to view and copy public documents held by public bodies.

9. The Freedom of Information Act has no provision which could be construed to curtail a person who has been sued by the State from obtaining public documents held by public bodies.

10. Defendant Attorney General has unfettered control over the Legacy Trust through his right to remove and replace its Trustee at any time. On information and belief, Defendant Attorney General has participated in the retaining of counsel for the Legacy Trust and the preparation of this baseless motion to dismiss for the improper purpose of delaying the hearing on the merits in this action and thereby denying Plaintiff her rights under FOIA.

11. On information and belief, Defendants seek to conceal public documents which would show improper acts by members of the Attorney General's office, the previous Attorney General and/or the Trustee of the Legacy Trust, who purports to act as an agent of the State.

Motion to Strike Should Be Denied

12. The Legacy Trust fails to set out any specific basis for striking any portion of the Affidavit of Plaintiff (Exhibit D to the Complaint herein). All statements in the Affidavit are based on personal knowledge and are relevant and admissible. No part of any Affidavit of Plaintiff filed herein should be stricken.

This return is based on the Affidavit of Plaintiff filed herewith; Plaintiff's

Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure;* the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

Respectfully Submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

September 12, 2011

Attorney for Plaintiff

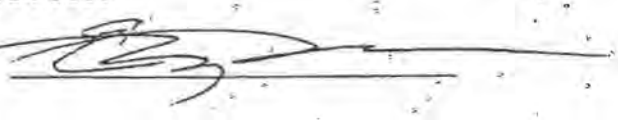
STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Adele J. Pope,	)	Case No. 11-CP-36-364
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MOTION OF ATTORNEY GENERAL
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	TO STRIKE
	)	
Defendants.	)	

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the affidavit of Adele Pope "Opposing Motion to Dismiss and Requesting Expedited Hearing" in that the affidavit contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

September 14, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000085

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.



September 14, 2011 ATTORNEY FOR THE ATTORNEY GENERAL

2012-350

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF NEWBERRY	)	Civil Action No. 2011-CP-36-00379
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, Defendant.	)	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

FILED
NEWBERRY COUNTY
2011 SEP 23 P 12: 14
JACKIE S. BOWERS
CLERK OF COURT

TO: DEFENDANT AND/OR HIS COUNSEL.

YOU WILL PLEASE TAKE NOTICE that on October 3, 2011 or at such other date as the Court shall direct at the Newberry County Courthouse, 1226 College Street, Newberry, South Carolina, Plaintiff Adele J. Pope, through her undersigned counsel, will move for an order granting her summary judgment on all claims in her complaint.

The grounds for this motion are that, viewing the evidence in the light most favorable to Defendant, there is no genuine issue of material fact as to the following:

1. The Office of the South Carolina Attorney General is a public body under the South Carolina Freedom of Information Act ("FOIA").

2. On July 19, 2011, Plaintiff requested the public records listed below (the "requested documents") from Defendant, pursuant to FOIA:

RICHLAND COUNTY
FILED
2012 FEB -3 AM 11:
JEANNETTE W. McBRIDE
C.C.P. & G.S.

a. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.

b. The published policies and/or rules and regulations of the Office of

SCANNED

the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).

c. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.

d. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina.

3. Defendant's office declined to provide the requested documents but did not allege that any such document was exempt from being disclosed under FOIA. As a result of the failure to produce requested documents, Plaintiff filed this action on August 10, 2011.

4. S.C. Code Ann. § 30-4-30(b) provides as follows:

> If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

5. A member of Defendant's office wrote to Plaintiff on August 5, 2011, stating that determination of the FOIA request was "premature" and suggesting that the requests would be held for determination after the conclusion of certain other litigation. (See Letter of Tracy Meyers to Adele Pope, dated August 5, 2011 [Exhibit C to the Complaint herein].)

6. FOIA does not provide for such a delay under any circumstances. Far more than 15 days have now passed since Plaintiff made her July 19, 2011 FOIA request,

and, pursuant to S.C. Code Ann. § 30-4-30(b), the request must now be considered approved.

7. On September 14, 2011 *The State* newspaper ran an article entitled "Wilson, Loftis Spar Over Hiring Law Firms," a copy of which is attached hereto as Exhibit A which included the following language:

> Wilson's office said it is transparent. Contingency agreements with outside law firms are available to members of the public who request them. The office [is] in the process of posting all such agreements on its Web site, said an agency spokesman.

8. Additionally, an article in the September 21, 2011 edition of the *Newberry Observer* entitled "AG's Promise to Release Contracts May Resolve Newberry James Brown FOIA Case" told that the article's author had received an email from a member of Defendant's staff agreeing to send the author a copy of the fee agreement requested herein. A copy of the article is attached hereto as Exhibit B.

For the reasons stated above, Plaintiff asks that the Court issue its order granting her summary judgment on all claims in the complaint herein. This motion is based on the South Carolina Rules of Civil Procedure, applicable case and statutory law, the affidavit of Adele J. Pope filed herewith, all earlier affidavits of Plaintiff on file herein, and such additional documentation as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

September 21, 2011

Attorney for Plaintiff

EXHIBIT A

The State
South Carolina's Homepage™

Wednesday, Sep 14, 2011

Posted on Wed, Sep. 14, 2011

Wilson, Loftis spar over hiring law firms

Being 'proactive' or 'pay for play'?

By GINA SMITH
gnsmith@thestate.com

State Attorney General Alan Wilson wants two law firms, accused of making pay-to-play political contributions in other states, to monitor transactions in South Carolina's multi-billion-dollar retirement system.

Wilson received $12,000 in campaign contributions from one of the firm's partners in 2010 although he says that money played no role in his recommendation.

State Treasurer Curtis Loftis opposes Wilson's proposal, saying its unnecessary. Their disagreement also is a sign of friction between two rising stars in S.C. Republican politics.

At issue is an announcement last month by Wilson, elected the state's top lawyer in November, that he wants to hire the two firms, one in Charleston and one in New York, to monitor transactions in the state's retirement system for fraud.

That system has $26 billion in assets.

Wilson said he has been in talks with Loftis to hire the firms to ensure the investments are watched closely. "In other states, we've seen problems with fraud," Wilson said. "I'm trying to be proactive here in South Carolina."

Loftis said monitoring by outside attorneys is not needed.

"As treasurer, I am the custodian of the state's funds," Loftis said in a statement. "It is important that these large-dollar contracts be without political involvement or interference. Campaign contributions have no place in the decision process of protecting our $26 billion trust fund.

"We currently monitor for fraud, waste and abuse utilizing several entities and a variety of methods," he said. "Our custodial bank has extensive abilities to monitor our securities, as well as the Retirement System Investment Commission and the State Treasurer's office."

The state recently sued a New York bank, saying it sold the retirement fund improperly risky investments.

Wilson says the S.C. Retirement System Investment Commission has the final say on whether the firms are hired, not Loftis. He plans to pitch the idea to commissioners during a Thursday meeting.

Wilson said the campaign contributions did not affect his recommendation of the firms. Instead, he said it was based on the firms' experience in monitoring pension plans and rooting out fraud.

"All a contribution gets you is my gratitude," he said, adding, if the commission would rather work with other firms instead of the two he is recommending, he will engage them instead.

"I don't care who does the work," Wilson said. "What matters to me is they do it well."

"I'm looking at their ability to perform a free service to protect the system," he added.

Under Wilson's proposal, the attorneys of Labaton Sucharow of New York, whose partners have contributed to Wilson, and Motley Rice in Charleston, who did not contribute, would review pension fund transactions free of charge for signs of fraud. They would be paid legal fees only if subsequently hired by the state to recover money.

Both law firms have been accused of taking part in pay-to-play arrangements in other states, contributing to

the election funds of public officials who award them contracts.

In 2010, partners of Labaton Sucharow contributed nearly $43,000 to New York Comptroller Thomas DiNapoli, who is in charge of the state's pension fund, according to media reports. The contributions came after DiNapoli tapped Labaton Sucharow to represent his office in litigation against a mortgage lender.

And after Jack McConnell Jr. opened a Motley Rice branch in Providence, R.I., becoming one of that state's top political contributors for the 2000 elections, that state's attorney general hired Motley Rice to conduct Rhode Island's highly-publicized lawsuit against lead paint manufacturers.

Efforts to reach both firms for comment Tuesday were unsuccessful.

Wilson said accusations are not proof of anything.

However, the relationship between some politicians and some law firms is the subject of increasing scrutiny.

Lisa Rickard, president of the U.S. Chamber Institute for Legal Reform, a national campaign founded by the U.S. Chamber of Commerce to clamp down on litigation, said her organization is speaking out against state attorney generals taking contributions from law firms and awarding them contracts.

"The reality is that these plaintive firms are traveling around the country, visiting with the state attorney generals and selling them on ideas for lawsuits," Rickard said, adding attorney generals should not use outside counsel.

"It's an appearance of impropriety," she said. "If they (attorney generals) are taking contributions and then giving contracts out without going through some kind of process where they're looking at other firms who can also do the work, then there's a problem. It looks like a quid pro quo is going on. These are elected officials who should have a transparent process for bidding out this work."

Wilson's office said it is transparent. Contingency agreements with outside law firms are available to members of the public who request them. The office in the process of posting all such agreements on its Web site, said an agency spokesman.

Reach Smith at (803) 771-8658.

© 2011 TheState.com and wire service sources. All Rights Reserved. http://www.thestate.com

EXHIBIT B

print

AG's promise to release contracts may resolve Newberry James Brown FOIA case

by Sue Summer
For The Observer
09.21.11 - 08:07 am

In Newberry on Sept. 12, Attorney General (AG) Alan Wilson filed a motion to dismiss a Freedom of Information Act (FOIA) lawsuit in which he was asked to release copies of public documents related to the James Brown music empire.

Among the requested documents was a contingency-fee agreement between former AG Henry McMaster and outside counsel, Columbia attorney Ken Wingate. Wingate represents the State and about 15 private plaintiffs in a Brown suit in Richland County.

Other Brown cases are pending in the Aiken County Circuit Court, the S.C. Court of Appeals, and the S.C. Supreme Court.

The FOIA lawsuit was filed by Newberry resident Adele Pope in August. She and Aiken attorney Robert Buchanan, former Brown trustees, have repeatedly attempted to obtain the fee agreement and other documents for 10 months.

Only two days after Wilson's motion to dismiss the Newberry FOIA suit, on Sept. 14, The State newspaper reported Wilson had announced, through an agency spokesperson, that contingency agreements with outside law firms are available to members of the public who request them and that the AG's office is in the process of posting all such agreements on its website.

"We hope this announcement means that the AG will release the public documents which Pope and Buchanan have been trying to obtain for almost a year, first from McMaster and now from Wilson," said Adam Silvernail, Pope's attorney.

The unreleased contingency-fee contract between McMaster and Wingate authorized Wingate to sue Buchanan and Pope on behalf of the state while simultaneously representing about 15 private plaintiffs.

In a hearing scheduled for Richland County Sept. 14, Pope and Buchanan sought to disqualify Wingate from representing both the state and the private individuals.

In a brief filed last week, Pope also asked that current Brown trustee, Columbia CPA Russell Bauknight, be enjoined from asserting that he acts for the state or the AG. Bauknight replaced Pope and Buchanan as trustee and serves at the AG's pleasure.

Bauknight and AG Wilson have both refused to produce the contingency-fee contract and other documents requested by Pope's two FOIA lawsuits, including documents related to the value of Brown's assets and a copy of McMaster's "Legacy" trust.

In 2008 McMaster forged an agreement with some of Brown's claimed heirs, all of whom were disinherited from his worldwide music empire, and gave them more than half of Brown's assets.

In late 2008 or early 2009, McMaster set up the "Legacy" trust with Bauknight as trustee. To date, no signed complete copy of the Legacy trust has been produced, but at least two incomplete drafts are on file in Aiken County.

Before the McMaster agreement, Brown's estate plan gave his music empire to the "I Feel Good" trust to provide scholarships for needy and deserving students.

Brown's music empire—with royalties to about 850 songs, as well as publicity rights—was widely reported to have a value of $100 million at his death, less a $15 million debt. At about $80 million, the "I Feel Good" trust would have been South Carolina's largest private foundation dedicated solely to scholarships for needy and deserving students.

In December 2010, however, Bauknight filed documents with the Internal Revenue Service placing a $4.7 million value on Brown's worldwide music empire at his death in 2006.

According to J. David Black of the Columbia law firm Nexsen/Pruet, which represented Bauknight in the IRS filing, Bauknight's $4.7 million value for Brown's music empire at death is based upon an independent professional appraisal, authorized by Bauknight. When reached by email, Black failed to disclose the name of the New York appraiser.

In Black's email, he claimed Brown's music empire was worth $4.7 million "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets." He said further that all of Brown's assets, including the music, had a value of only $5.7 million.

In 2007 David Cannon, one of three original trustees appointed by Brown, resigned after Pope and Buchanan discovered he had taken $900,000 from Brown's Trust the previous year. Cannon was indicted in 2010 for felony breach of trust with respect to Brown's assets between 1999 and 2006. He was also indicted for a 2008 forgery related to Brown.

Cannon has not yet been tried, but in November 2010 he was placed, along with former trustee Albert "Buddy" Dallas, on Wingate's witness list in the Richland County case.

Pope and Buchanan, who valued Brown's music assets at about $85 million, have challenged McMaster's agreement and Bauknight's valuation.

When asked by email when the Wingate contract would be available on the AG's website, spokesperson Mark Plowden responded Tuesday morning, "I am on medical leave, but will have someone send it to you."

Judge Casey L. Manning continued the Richland County hearing to consult with Chief Administrative Judge Alison Renee Lee.

© newberryobserver.com 2011

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Defendants.	Case No. 11-CP-36-364 MOTION OF ATTORNEY GENERAL TO STRIKE

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Supplemental Affidavit of Adele Pope dated September 16, 2011 in that the affidavit contains statements that are not based upon personal knowledge, that are hearsay and that are irrelevant. The Defendant Wilson also asks that this Supplemental Affidavit be struck as to himself as a Defendant because it references an intent to correct errors in an affidavit incorrectly dated September 12, 2008, which was filed only against the Defendant Trust.

Respectfully submitted,

ALAN WILSON
Attorney General
J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

September 27, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000087

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.



September 27, 2011 ATTORNEY FOR THE ATTORNEY GENERAL

RICHLAND COUNTY
FILED
2011 JAN 17 PM 4:37
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)
) Case No. 11-CP-36-364
Adele J. Pope,)
)
Plaintiff,)
)
v.)
) MOTION OF ATTORNEY GENERAL
Alan Wilson, in his capacity as) TO STRIKE OR EXCLUDE POPE
Attorney General of South Carolina and) AFFIDAVIT DATED 10/06/11
James Brown Legacy Trust, by)
Russell L. Bauknight, its Trustee,)
)
Defendants.)

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Affidavit of Adele Pope dated October 6, 2011, and filed in this case in that it contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant.

Respectfully submitted,

FILED
NEWBERRY COUNTY
2011 OCT 14 A 10:16
JACKIE S. BOWERS
CLERK OF COURT

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: _____

October 13, 2011 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.



October 13, 2011 ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT
Adele J. Pope, Plaintiff, vs. Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Defendant.	C/A No. 11-CP-36-364 MOTION TO STRIKE AFFIDAVIT AND EXHIBITS TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT BY DEFENDANT JAMES BROWN LEGACY TRUST, BY RUSSELL L. BAUKNIGHT, ITS TRUSTEE

FILED
NEWBERRY COUNTY
2011 OCT 20 P 1:25
JACKIE S. BOWERS
CLERK OF COURT

FILED
RICHLAND COUNTY
2012 JAN 17 PM 4:36
JEANNETTE W. McBRIDE
C.C.P. & G.S.

TO: ADAM T. SILVERNAIL, ESQ., ATTORNEY FOR PLAINTIFF:

The Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, by and through its undersigned attorney, hereby moves to strike or exclude the affidavit with attachments and other exhibits attached in support of Plaintiff's Motion for Summary Judgment. The affidavit of Adele Pope "In Support of Summary Judgment" contains statements that are not based upon personal knowledge, are speculative, are hearsay and are irrelevant. The exhibits attached to the affidavit should also be stricken.

IT IS SO MOVED.

A. Camden Lewis
LEWIS, BABCOCK & GRIFFIN, LLP
P.O. Box 11208
Columbia, South Carolina 29211

By: _____
A. Camden Lewis

Attorneys for Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee

Columbia, South Carolina

October 18, 2011.

SCANNED

2012-350

RICHLAND COUNTY
FILED
2012 JAN 10 PM 4:33
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

Adele J. Pope,) Case No. 11-CP-36-364

Plaintiff,)

SCANNED

v.)

Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,)

Defendants.)

MOTION OF ATTORNEY GENERAL TO STRIKE OR EXCLUDE ADDITONAL AFFIDAVITS

FILED
NEWBERRY COUNTY
2012 JAN 10 A 11:37
JACKIE S. BOWERS
CLERK OF COURT

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following seven affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike:

1. Affidavit of Adele Pope dated January 3, 2012 and attached affidavit of Vic MacDonald dated December 9, 2011

2. Affidavit of Jeffrey Smith dated January 3, 2012

3. Affidavit of Steven Farrar dated January 4, 2011

4. Affidavit of Sue Summer, January 5, 2012

5. Affidavit of Adele Pope dated January 6, 2012 and attachments

6. Affidavit of Daryl Williams dated January 6

All of the affidavits and attachments are irrelevant to the legal issues before this Court in the instant case. The affidavits referenced at items 1 -5, *supra,* also contain statements that are not based

upon personal knowledge, that are speculative, or that are hearsay.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

January 9, 2012 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.



January 9, 2012 ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Defendants.	)	Case No. 2012-CP-40-350 [formerly Newberry Co. Case No. 2011-CP-36-364]
Russell L. Bauknight, etc., Henry Dargan McMaster, in his capacity as Attorney General,etc, et al, Plaintiffs, v. Adele J. Pope and Robert L. Buchanan, Jr., Defendants.	)	Case No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2012 FEB -2 AM 11:10
JEANETTE W. McBRIDE
C.C.P. & G.S.

MOTION OF ATTORNEY GENERAL TO CONSOLIDATE CASES

Pursuant to Rule 42[1], Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to consolidate *Pope v. Wilson and Bauknight* case 2012-CP-40-350 with *Bauknight and McMaster v. Pope*, case 2010-CP-40-4900. Pursuant to an Order of the Honorable Frank Addy dated January 11, 2012, venue of case 2012-CP-40-350, *supra,* was transferred from Newberry County where it formerly was given the number 2011-CP-36-364. Attached Exhibit A-1.

1 A Court may order consolidation when "a common question of law or fact are pending before the court . . . ." Rule 42.

Although the claims in the complaints of the two cases are not identical, case 4900 is the subject of a number of allegations in and a lengthy exhibit to the Complaint in case 350. *See, eg.* Complaint in 350 at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General at issue in case 350 are also the subject of pending discovery related motions in case 4900. *See,* Exhibit D to case 350 Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto. Plaintiff is essentially pursuing through case 350 the same discovery issues that are pending before the Court in Case 4900. Therefore common questions of law or fact are present in the two cases. Rule 42.

Another FOIA case brought by Adele Pope in Newberry County (*Pope v. Wilson*, Case No. 2011-CP-36-379) is to be transferred to Richland County and consolidated with case 4900 pursuant to the Order of Judge Addy dated November 22, 2011. Exhibit A-2, attached. Consolidating case 350 with cases 4900 and 379 would permit all FOIA and discovery issues to be determined in one proceeding.

Therefore, the Attorney General respectfully requests that case 350 be consolidated with case 4900.

[Signature block on next page]

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
[SC Bar No. 5262]

BY: 

February 1, 2012 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that he does not believe that consultation with counsel for Plaintiff as to the foregoing Motion to Consolidate would serve any useful purpose.



February 1, 2012 ATTORNEY FOR THE ATTORNEY GENERAL

EXHIBIT A-1

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3600364

Adele J Pope	Attorney General Of South Carolina	Alan Attorney General Wilson Russell L. Trustee Bauknight	James Brown Legacy Trust Attorney General Of South Carolina

SCANNED

PLAINTIFF(S) DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

FILED
NEWBERRY COUNTY
2012 JAN 11 P 4:34
JACKIE S. BOWERS
CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☑ Statement of Judgment by the Court:

Venue transferred to Richland County.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

ORM4M
SCA SCRCP Form 4C (Revised 10/2011)

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | Judge Code | 1-11-12 Date

For Clerk of Court Office Use Only

This judgment was entered on January 11, 2012, and a copy mailed first class or placed in the appropriate attorney's box on January 12, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Adam T Silvernail Po Box 1898 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Emory Smith Jr S.C. Attorney General's Office P.O. Box 11549 Columbia, SC 29211
A. Camden Lewis Lewis & Babcock, LLP P.O. Box 11208 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

s/ Jackie S. Bowers (SEAL)

Jackie S Bowers - Clerk of Court

Court Reporter

FORM4M
SCCA SCRCP Form 4C (Revised 10/2011)

EXHIBIT A-2

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011-CP-36-379

Adele Pope

PLAINTIFF(S)

Alan Wilson

DEFENDANT(S)

Submitted by: Attorney for ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

Disposition Type (Check One)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____.

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____.

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

FILED
NEWBERRY COUNTY
2011 NOV 30 P 2:13
JACKIE S. BOWERS
CLERK OF COURT

IT IS ORDERED AND ADJUDGED: ☑ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Order Information

This order ~~ends~~ ☑ does not end the case.

Additional Information for the Clerk : _____

Complete if judgment requires payment of a sum of money or affects title to real or personal property

JUDGMENT AGAINST PLAINTIFF:		JUDGMENT AGAINST DEFENDANT:	
Judgment Amount	$	Judgment Amount	$
Taxable Costs	$	Taxable Costs	$
Attorney's Fees	$	Attorney's Fees	$
Interest	$	Interest	$
Other:	$	Other:	$
Total Amount to be Enrolled:	$	Total Amount to be Enrolled:	$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interests or costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

SCRCP Form 4 (09/2011)

Circuit Court Judge | Judge Code | Nov. 23, 2011 Date

For Clerk of Court Office Use Only

This judgment was entered on the 31st day of October, 20 11 and a copy mailed first class this 2nd day of November, 20 11 to attorneys of record or to parties (when appearing pro se) as follows:

Adam Silvernail, Esq.

The Hon. Emory Smith (Assistant Attorney General) and Mark Gende, Esq. (Courtesy Copy)

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

/s/ Michael L. Nadeau

CLERK OF COURT

ORIGINAL

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

-v-

ALAN WILSON, *in his capacity as* Attorney General,
defendant.

C.A. №
11-CP-36-379

ORDER

FILED
NEWBERRY COUNTY
2011 NOV 30 P 2:13
JACKIE S. BOWERS
CLERK OF COURT

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County[1]. *See Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

[1] The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

1

Honorable Casey L. Manning.[2] At the time of the stay, the parties to the fiduciary litigation (hereinafter "*McMaster* parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

---

[2] At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

> Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]
>
> The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Ct.App.1993) (*citing Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRCP. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*[3] and *Richardson, Plowden, Grier & Howser v. Pyle.*[4] These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,[5] the

---

[3] 264 S.C. 172, 213 S.E.2d 588 (1975).

[4] 322 S.C. 371, 472 S.E.2d 232 (1996).

[5] This Rule states, in pertinent part, that

> Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of $50,000 or more; or (2) *disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.*

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

> [t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. *See McDonald*, 276 S.C. at 575 ("Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction."). This judicial principle a great resemblance to the Rule 12(b)(8) standard annunciated by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that "[i]n South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim." *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant's *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. *See Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

---

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of mandamus cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

> [h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. *See Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to "any person." S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRCP(" Parties may obtain discovery by one or more of the following methods. . . ."). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.[6]

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.[7] Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRCP ("When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action."); *Creighton v. Coligny Plaza Limited*

[6] Given this analysis, Defendant's motion to dismiss pursuant to Rule 12(b)(8) is also denied.

[7] In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.").

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope,* 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.

Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

EXHIBIT B

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	) IN THE COURT OF COMMON PLEAS)) Case No. 2010-CP-40-4900
RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Esate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar, Carrington Lumar, and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown and HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY LUMAR, CARRINGTON LUMAR, and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN, Plaintiffs. v. Adele J. Pope and Robert L. Buchanan, Jr., Defendants.	))))

BEHALF OF HENRY DARGAN MCMASTER, IN HIS CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA; DARYL J. BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.[1]

2. On October 11, 2010, Defendant Pope served Plaintiffs Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

---

[1] Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

hereto as Exhibits A-H.

3. Among the documents requested were "[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisement in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately $4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisement and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

December 2010. Said Plaintiffs asserted that these documents proved that James Brown's assets at death and those of the 2000 Irrevocable Trust were worth only about $6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

14. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

June 7, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,

Defendants

Civil Action No. 2010-CP-40-4908

2011 JUL -5 AM 11:27

JEANNETTE W. McBRIDE
C.C.P. & G.S.

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING VARIOUS DOCUMENTS REQUESTED BY DEFENDANT ADELE J. POPE

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

July 1, 2011

EXHIBIT D

ADAM T. SILVERNAIL, LLC

POST OFFICE BOX 1898
1218 TAYLOR STREET
COLUMBIA, SOUTH CAROLINA 29202

June 15, 2011

By U.S. Mail:
Mark V. Gende, Esquire
Sweeny Wingate & Barrow P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
mvg@swblaw.com

4077-7389

Re: Bauknight and others vs. Pope and others
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,

Adam T. Silvernail

cc: Daryl L. Williams, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Adele J. Pope, Esquire

TEL: 803/779-1770 FAX: 803/403-8092 EMAIL: ADAM@SILVERNAILLAWFIRM.COM

EXHIBIT E

S·W·B

SWEENY WINGATE & BARROW P.A.

E-MAILED 6-17-11

June 17, 2011

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x 121
mvg@swblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL
Adam T. Silvernail, Esquire
1218 Taylor Street
P.O. Box 1898
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENY, WINGATE & BARROW, P.A.

Mark V. Gende (CSH)

Mark V. Gende

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail
Daryl L. Williams, Esquire, via e-mail
Robin A. Braithwaite, Esquire, via e-mail

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-40-350

MOTION OF ATTORNEY GENERAL TO AMEND MOTION TO DISMISS

The Defendant Alan Wilson, Attorney General moves to amend his currently pending motion to dismiss to assert lack of subject matter jurisdiction of this action under Rule 12(b)(1), SCRCP and to drop the existing ground of improper venue under Rule 12(b)(3) because venue has been transferred. The Attorney General maintains the existing motion to strike included in the original motion to dismiss and does not seek to amend it. Attached is the proposed motion to dismiss.

Amendment is appropriate because, under Rule 12(h)(3), lack of subject matter jurisdiction may be raised at any time. These grounds are also asserted by this Defendant in opposition to Plaintiff's Motion for Summary Judgment which has not been heard. The grounds are meritorious because Plaintiff has failed to serve her FOIA request on the Defendant by mail or delivery so as to trigger application of that statute, and because the items demanded in the FOIA request at issue in this proceeding are subject to the rules regarding discovery in the Rules of Civil Procedure applicable in Bauknight v. Pope, 2010-CP-40-4900, and exempt from disclosure under FOIA §30-4-40(a)(4) for that reason.

The dropping of the venue objection is, essentially, a housekeeping matter. Although the original request for dismissal on the basis of improper venue was meritorious, the Court has now transferred venue from Newberry to Richland which, in effect, moots that ground.

The remaining Rule 12(b)(8) ground for dismissal and the alternative motion to strike have not been heard and remain the same.

For the foregoing reasons, the Defendant Wilson respectfully requests that this Court grant this amendment and hear the amended motion to dismiss at the same time as it hears the other currently pending motions in this case.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY:

December 20, 2012 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Amend would serve no useful purpose

December 20, 2012 ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	
Plaintiff,	)	
	)	
v.	)	AMENDED
	)	MOTION OF ATTORNEY GENERAL
Alan Wilson, in his capacity as	)	TO DISMISS AND
Attorney General of South Carolina and	)	ALTERNATIVE MOTION TO STRIKE
James Brown Legacy Trust, by	)	
Russell L. Bauknight, its Trustee,	)	
	)	
Defendants.	)	
	)	

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Alan Wilson, Attorney General, moves for the dismissal of the Complaint herein pursuant to Rules 12(b)(1) and (8), SCRCP, in that, for reasons set forth below, the Court lacks subject matter jurisdiction of this matter and another action is pending between the same parties for the same claim:

1. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to mail or deliver her Freedom of Information Act request at issue to the Office of the Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exhibit A), the original of which is already on file in this case. 2. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the Bauknight Pope, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery.The items demanded in the FOIA request at issue in

this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject the rules regarding discovery in the Rules of Civil Procedure.

3. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc.,et al, supra.* Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See,* Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).

Subject to the Motion to Dismiss, the Attorney General moves to strike the Affidavit of Plaintiff attached as Exhibit D to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and / or that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General

[Signature block continued next page]

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

December 20, 2012 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose and consultation as to the Motion to Dismiss is not required.



December 20, 2012 ATTORNEY FOR THE ATTORNEY GENERAL

EXHIBIT A

IN SUPPORT OF RULE 12(b)(1) Motion

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Tracy A. Meyers, who being duly sworn, attests to the following:

1. She is a Senior Assistant Attorney General with the Office of the Attorney General.

2. Among her assigned duties, she is to review Freedom of Information Act requests made of the Office of the Attorney General. Incoming FOIA requests are sent to her.

3. She has reviewed the letter of June 30, 2011 addressed to the Custodian of Records of the Office of the Attorney General and attached as Exhibit A to the Complaint in Pope v. Wilson, et al (2011-CP-36-364. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.

4. Attachment of the June 30, 2011 letter to the complaint in the above suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request to the Office of the Attorney General by Ms. Pope or her attorney, a response to the

FOIA request will be made then if permitted by any Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that request.

Tracy A. Meyers

TRACY A. MEYERS

SWORN TO before me this 20th

day of October, 2011

Shirechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 6/2/18

EXHIBIT B

In Support of Rule 12(b)(8) Motion

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS Case No. 2010-CP-40-4900
RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Esate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney Lumar, Carrington Lumar, and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown and HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY LUMAR, CARRINGTON LUMAR, and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN, Plaintiffs. v. Adele J. Pope and Robert L. Buchanan, Jr., Defendants.	MOTION TO COMPEL DISCOVERY (Requests for Production of Documents)

TO: **PLAINTIFFS RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN, AND ON**

BEHALF OF HENRY DARGAN MCMASTER, IN HIS CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF SOUTH CAROLINA; DARYL J. BROWN; VENISHA BROWN; LARRY BROWN; TERRY BROWN; TOMMIE RAE BROWN; DEANNA J. BROWN THOMAS; AND YAMMA N. BROWN AND THEIR COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move, pursuant to Rule 37, SCRCP, and all applicable South Carolina Rules of Civil Procedure, for an order compelling the above-named Plaintiffs to respond to Defendant Adele J. Pope's First Set of Continuing Requests for Production of Documents, dated October 11, 2010; awarding this Defendant Pope costs, including attorneys' fees, of this motion; and such other sanctions as the Court shall deem just and proper.

The grounds for this motion are as follows:

1. Plaintiffs filed this action on May 19, 2010. Defendants have answered and counterclaimed, and Plaintiffs are currently in default as to the counterclaims.[1]

2. On October 11, 2010, Defendant Pope served Plaintiffs Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General for the State of South Carolina; Daryl J. Brown; Venisha Brown; Larry Brown; Terry Brown; Tommie Rae Brown; Deanna J. Brown Thomas; and Yamma N. Brown with her First Set of Continuing Requests for Production of Documents. The original requests are attached

---

[1] Plaintiffs have moved for relief from the entry of default, and that motion has yet to be heard.

hereto as Exhibits A-H.

3. Among the documents requested were "[a]ny and all documents which support any position you may have as to the value of the James Brown assets as of December 25, 2006."

4. On November 12, 2010, counsel for Plaintiffs served responses to those requests, indicating that the documents requested were "still being compiled" at that time.

5. On April 29, 2011 counsel for Defendant Pope wrote to counsel for Plaintiffs, requesting a time to review the documents responsive to Defendant Pope's requests. (See Exhibit I, attached.) Defendant Pope's additionally requested an immediate review of the James Brown Legacy Trust and documents related to valuation of the assets of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

6. On or about May 3, 2011 Plaintiff Russell L. Bauknight filed a Supplemental Inventory & Appraisement in the Aiken County Probate Court, which asserts that the value of James Brown's music empire and other assets at his death was approximately $4.7 million.

7. On May 6, 2011 several of the Plaintiffs herein filed a motion to supplement the Record on Appeal in Case No. 2008-CP-02-1647, currently pending before the South Carolina Supreme Court. That motion asserted that Bauknight had "engaged a nationally known firm to conduct the valuation and appraisal of the Estate and Trust." Included in the proposed supplement are the Supplemental Inventory & Appraisement and documents from the Internal Revenue Service, which indicated that the documents supporting the purported valuation had been in possession of the IRS since at least

December 2010. Said Plaintiffs asserted that these documents proved that James Brown's assets at death and those of the 2000 Irrevocable Trust were worth only about $6.5 million.

8. Also on May 6, 2011 counsel for Plaintiffs responded to counsel for Defendant Pope, indicating that he would suggest dates for Defendant Pope's counsel to review the responsive documents "shortly." (See Exhibit J, attached.)

9. On May 19, 2011 counsel for Defendant Pope again wrote counsel for Plaintiffs, pointing out that the documents filed in the Supreme Court made clear that the documents relating to the valuation of assets were available and again requesting dates to review the documents. (See Exhibit K, attached.)

10. After receiving no response from Plaintiffs, counsel for Defendant Pope again wrote to counsel for Plaintiffs on May 26, 2011, again requesting dates to review the documents. (See Exhibit L, attached.)

11. More than 10 days later, Defendant Pope has received no response from Plaintiffs.

12. More than six months have passed since Plaintiffs indicated that the documents responsive to Defendant Pope's requests were being compiled. More than five weeks after counsel for Defendant Pope originally requested dates to review the documents, Plaintiffs have not proposed a single date and have not offered any explanation for the delay.

13. This case has been pending for more than a year, and the Plaintiffs have not produced any documents whatsoever to support their claims. It is necessary that discovery proceed, so that dispositive motions may be heard.

14. Defendant Adele J. Pope is informed and believes that she is entitled to an Order compelling the above-named Plaintiffs to comply with Rule 34, as well as all costs associated with this motion, including attorneys' fees, as provided for in Rule 37(a)(4).

This motion is based on the South Carolina Rules of Civil Procedure, especially Rules 34 and 37, applicable case and statutory law, the entire record herein, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
1204 Main Street, Suite 200
Post Office Box 7425
Columbia, South Carolina 29202
Telephone: (803) 765-0600
Facsimile: (803) 765-0619
dwilliams@jeterandwilliams.com

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

Attorneys for Defendant Adele J. Pope

June 7, 2011

EXHIBIT C

In Support of Rule 12(b)(8) Motion

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,

Defendants

2011 JUL -5 AM 11:27

JEANETTE W. McBRIDE
C.C.P. & G.S.

Civil Action No. 2010-CP-40-4906

PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING VARIOUS DOCUMENTS REQUESTED BY DEFENDANT ADELE J. POPE

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope, including the Raymond G. Gonzalez, Esquire file referenced in Defendant Pope's Second Request to Produce to Plaintiff Bauknight, incorrectly designated Pope's First Request to Produce, (see Exhibit A) and approximately ten categories of documents listed in a June 16, 2005 letter from Adam Silvernail, Esquire, counsel for Defendant Pope (see Exhibit D).

The bases for this Motion for Protective Order include: (1) that Defendant Pope is seeking the production of documents in other on-going James Brown Estate matters that are irrelevant to the instant action, (2) that Defendant Pope is seeking document that are protected by attorney-client privilege and/or the work product doctrine, (3) that Defendant Pope refuses to enter into a consent confidentiality order covering any potentially relevant but sensitive estate documents.

Attached as Exhibits to this Motion are (1) concerning the Gonzales file: Defendant Pope's Request to Produce (Exhibit A), Plaintiffs' Response (Exhibit B), and Pope's counsel's subsequent correspondence threatening a motion to compel with respect to the Gonzalez file (Exhibit C), and (2) concerning the approximately 10 categories of documents requested by Defendant Pope, Adam Silvernail's June 15, 2011 correspondence demanding the documents (Exhibit D) and Plaintiffs' counsel's June 17 2011 reply, including the proposed Confidentiality Order (Exhibit E).

(Signature Page Immediately Following)

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

July 1, 2011

EXHIBIT D

LAW OFFICE OF
ADAM T. SILVERNAIL, LLC

POST OFFICE BOX 1898
1218 TAYLOR STREET
COLUMBIA, SOUTH CAROLINA 29202

June 15, 2011

By U.S. Mail:
Mark V. Gende, Esquire
Sweeny Wingate & Barrow P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
mvg@swblaw.com

4077-7389

Re: Bauknight and others vs. Pope and others
Richland County Case No. 2010-CP-40-4900

Dear Mark:

Thank you for your letter of June 13, 2011 advising that Plaintiffs' responses to our requests for production would be available starting today. We would like to begin reviewing them on Tuesday, June 21, 2011 and would like our first day's review to include the following:

1. Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order;
2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts;
3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities;
4. All documents related to the claims by and against Cannon and Dallas;
5. All information and documents related to claims for and against Al Bradley and/or his estate;
6. The file of Zumwalt, Almon & Hayes, PLLC;
7. The Tommie Rae Hynie/Brown domestic files;
8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;
9. All files and documents related to case no. 2008-CP-02-0322; and
10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

I know you will understand that this is not a complete list, but rather the point of departure for what we expect will be an exhaustive document review. Please let me know if beginning on Tuesday is agreeable.

Sincerely,

Adam T. Silvernail

cc: Daryl L. Williams, Esquire
J. Calhoun Watson, Esquire
Robin A. Braithwaite, Esquire
Adele J. Pope, Esquire

TEL: 803/779-1770 FAX: 803/403-8092 EMAIL: ADAM@SILVERNAILLAWFIRM.COM

EXHIBIT E

S·W·B

SWEENY WINGATE & BARROW P.A.

E-MAILED 6-17-11

June 17, 2011

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x 121
mvg@swblaw.com

VIA ELECTRONIC MAIL AND U.S. MAIL
Adam T. Silvernail, Esquire
1218 Taylor Street
P.O. Box 1898
Columbia, SC 29202-1898

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Civil Action No.: 2010-CP-40-4900
Our File: 4077-7389

Dear Adam:

I am in receipt of your June 15, 2011 correspondence concerning your desire to arrange a time to review plaintiffs' documents in this matter. I will work with you to arrange an agreeable date, but must make the following points.

First, Tuesday June 21, 2011 is not an available date. I suggest that we find a day during the week of June 27, 2011.

Second, prior to viewing the documents all parties must enter into a consent protective order, a proposed copy is attached. I am told that plaintiffs were required to do the same when they reviewed certain of the defendants' documents in the past. Please review the order and either execute it or contact me with any proposed changes.

Third, with respect to the ten categories of documents listed in your letter, I do not agree that the requested documents are relevant to our suit. Therefore, I formally object to all ten listed categories as irrelevant, overbroad, not reasonable calculated to lead to the discovery of admissible evidence, and harassing. Specifically, I object to:

1. The Greenberg Traurig files delivered to Mr. Bauknight pursuant to Court Order.

These documents are unrelated to this action.

2. All correspondence and other documents related to appraisals obtained by Mr. Bauknight, the appraisal itself and all earlier drafts.

The inventory and appraisal are filed under seal pursuant to Judge Early's order. As such, these confidential documents and work product will not be produced.

3. All correspondence with the Internal Revenue Service regarding estate and/or income tax issues of the Estate, the Trust and/or Brown entities.

We will produce relevant non-privileged Internal Revenue Service correspondence.

4. All documents related to the claims by and against Cannon and Dallas.

These documents are unrelated to the subject breach of fiduciary duty action. The Cannon and Dallas documents will not be produced in this litigation.

5. All information and documents related to claims for and against Al Bradley and/or his estate.

These documents are unrelated to the subject breach of fiduciary duty action and will not be produced in this litigation.

6. The file of Zumwalt, Almon & Hayes, PLLC.

These documents are unrelated to this litigation and will not be produced in this litigation.

7. The Tommie Rae Hynie/Brown domestic files.

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

8. The Deanna Brown Thomas/Yamma Brown litigation files from Leon Friedman;

These documents are unrelated to this litigation, and we specifically object to the production of documents related to the separate Supreme Court Appeal.

9. All files and documents related to case no. 2008-CP-02-0322.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

10. All files and documents related to the Bankruptcy proceedings of Albert H. Dallas.

These documents are unrelated to this litigation, and we specifically object to the production of documents from other ongoing cases.

In the event that relevant materials are discovered within a separate case, they will be produced at such time.

Finally, please be aware that the documents we will be making available for your review are largely comprised of the same documents that Ms. Pope and Mr. Buchanan delivered to Mr. Bauknight. The documents will be produced in the ordinary course in which they have been kept.

Sincerely,

SWEENY, WINGATE & BARROW, P.A.

Mark V. Gende (CSH)

Mark V. Gende

MVG/csh

Attachment

cc: J. Calhoun Watson, Esquire, via e-mail
Daryl L. Williams, Esquire, via e-mail
Robin A. Braithwaite, Esquire, via e-mail

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	IN THE COURT OF COMMON PLEAS Civil Action No. 2011-CP-36-364
Adele J. Pope, Plaintiff, v. Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee, Defendants.	BRIEF AND RETURN IN OPPOSITION TO MOTIONS TO STRIKE AND/OR DISMISSAL AND SUPPORTING SUMMARY JUDGMENT

Plaintiff Adele J. Pope submits this brief in support of her motion for summary judgment and in opposition to all motions of Defendants AG Alan Wilson and the James Brown Legacy Trust to dismiss this case and to strike affidavits which support immediate *in camera* review of all requested documents and summary judgment as to all issues. Plaintiff respectfully submits that at the hearing on January 11, 2012 — six months after defendants refused Plaintiff's proper requests under the S. C. Freedom of Information Act ("FOIA"), this Court should take the following immediate action:

a. Deny all motions to strike affidavits and filings.

b. Deny the motion to dismiss in accordance with the reasoning of the Order of the Honorable Frank R. Addy dated November 23, 2011 in Newberry County Case No. 2011-CP-36-364.

c. Require immediate delivery to the Court of all documents responsive to Plaintiff's FOIA request which are the subject of this action.

d. Immediately upon receipt of the FOIA documents and answers of Defendants, grant summary judgment as to all issues, including attorneys' fees.

000097

Plaintiff respectfully submits that the damage to her, to the media and to the general public will be mitigated by this Court's expedited grant of the relief set out above. A discussion of each step follows.

All motions to strike should be denied.

As part of their effort to prevent release of the public documents requested by Plaintiff, Defendants, in addition to the threat of sanctions by Defendant Legacy Trust, have take aggressive action to delay and prevent disclosure of documents requested under FOIA. Among the tactics is a wholesale assault on the widely representative affidavits, all based on personal knowledge, which show:

1. The Defendants, which are public bodies, should have complied with FOIA in July.

2. The media, writers and members of the general public believe that FOIA is important to our free society.

3. There is great public interest in James Brown matters.

4. Attorney's fees and costs are appropriate under the facts of this case.

Where, as here, public bodies have vigorously resisted compliance with FOIA, it is appropriate for Plaintiff and others to explain to the Court, through affidavits and documents, what has happened and what effect the delays caused by Defendants have had on both Plaintiff and the general public.

The affidavits and attachments are relevant to this matter. In any case, it is the Court's prerogative to weigh the evidence. Striking Plaintiff's affidavits in their entirety would be extreme and unwarranted, even if the Court should find that some portion of an affidavit is not relevant to its consideration of this matter.

Further, Defendants fail, generally to point out with specificity why the affidavits and attachments do not constitute admissible evidence.

FOIA neither prohibits nor specifically contemplates traditional discovery, but its purpose can be served only if public documents are release promptly with minimal costs. Thus affidavits constitute an appropriate and desirable path to the prompt resolution of FOIA suits. They are not only appropriate, but – where justice is served -- preferable to live testimony because they expedite the process.

Defendants' numerous motions to strike are without merit. They are a transparent attempt to further delay and deny Plaintiff the public documents which should have been sent to her without fanfare by July 2011. No affidavit or attachment should be stricken.

The Case should not be dismissed.

The Court should mirror in this FOIA case its findings and ruling as to dismissal in Case No.2011-CP-036-364, which are incorporated herein by reference, and deny Defendants' motions to dismiss.

Venue is Proper in Newberry County

As alleged in the Complaint herein, Plaintiff lives and works in Newberry County. Her requests for documents under the South Carolina Freedom of Information Act ("FOIA") were made from Newberry, and the responses of Defendants were sent to Plaintiff in Newberry. Venue is thus proper under S.C. Code Ann. § 15-77-50 (1976), because Newberry is within the "circuit in which the question, action or controversy arose."

Defendants' argument that the filings, orders or claims in Richland County Case No. 2010-CP-40-4900 ("Case 4900") have any effect on the venue for this action is unfounded. Although that action – like others – involves some of the same parties and facts, it does not involve any claim for relief under FOIA. The venue for Case 4900 has no bearing on the proper venue for this action.

There is No Basis for Dismissal Under Rule 12(b)(8), *SCRCP*

Defendants' assertion that the claims herein are "the same or substantially the same" as those pending in Case 4900 is simply incorrect. No claim or counterclaim in that action involves FOIA. The attachments to Defendant Attorney General's motion to dismiss are correspondence and motions related to efforts to obtain discovery documents from the the Wingate Firm's public and private clients, as well as the State, in case 4900. To date, the Case 4900 Plaintiffs have produced no documents apart from a 2-page witness list.

The documents sought herein are just a few documents which, because they are public documents held by public bodies, are available under FOIA.

Plaintiff has never asserted her rights under FOIA as grounds for the documents sought in Case 4900 discovery to be produced. Such an assertion would be misplaced, since Plaintiff's rights under FOIA are entirely distinct from her right to receive documents requested through Case 4900 discovery. Likewise, issues which have arisen in Case 4900 discovery have no bearing on Plaintiff's right under FOIA to view and copy public documents held by public bodies.

Although the documents sought in this action are among the many sought in Case 4900 discovery, the Freedom of Information Act has no provision which could be

construed to curtail a person who has been sued by the State from obtaining public documents held by public bodies. To do so would deny her right to due process.

Defendants have, on information and belief, filed their baseless motions to dismiss for the improper purpose of delaying the hearing on the merits in this action and thereby denying Plaintiff her rights under FOIA.

Immediate delivery of all FOIA documents to Court

Both to protect the originals and in accordance with accepted FOIA procedure, the Court should required immediate delivery of the documents requested by Plaintiff under FOIA, then deliver either the originals or certified copies, as appropriate, pursuant to an order for summary judgment as set out below.

Summary Judgment as to all issues

There are no facts to support the delay by these public bodies of the public documents Plaintiff requested six months ago under FOIA. Summary judgment should be granted on all issues, including attorney's fees and costs. Failure to do so promptly will send a message to public bodies that it is acceptable to use the power of the State to delay and deny citizens' rights under FOIA.

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *American Heart Association v. County of Greenville,* 331 S.C. 498,489 S.E.2d 921,922 (1997).

Facts of this Case

The material facts which support Summary Judgment as to all issues in this FOIA case are not in dispute, as set out in the Motion for Summary Judgment dated

September 22, 2011, and summary judgment should be granted.

Conclusion

For the reasons set out above, Defendants' motions to strike and dismiss should be denied, and Plaintiff's motion for summary judgment should be granted.

Respectfully submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

January 10, 2012

Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ANSWER OF ATTORNEY GENERAL
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	
	)	
Defendants.	)	
	)	

2013 MAR -8 AM 11:23
C.C.P. & G.S.

The Defendant Attorney General, answering the Complaint herein subject to, and without waiving his Motions in this case including his Motion to Dismiss and Motions to Strike and his Motion to Amend Motion to Dismiss, alleges the following including, subject to all of his motions and defenses, that he has no documents that could be considered responsive to the Freedom of Information Act request at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S. C. Sup. Ct., filed February 27, 2013)[1], a case in which Plaintiff was a party:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. The Defendant admits Paragraphs 1 and 2 of the Complaint.

[1] Because most of the allegations of Plaintiff in the instant Complaint regarding the Legacy Trust are irrelevant to that Complaint, this Answer is not intended to address how the Opinion in *Wilson, etc. et al v. Dallas*, et al, may apply, if at all, to the allegations in the instant complaint.

3. The Defendant Attorney General does not admit the first sentence of Paragraph 3 in that it is directed to the Defendant Legacy Trust rather than the Defendant Attorney General and the Trust is to determine what response should be made except that the Defendant admits that Russell Bauknight is the current trustee. As to the remainder of that paragraph, the Defendant craves reference to the pleadings or other documents he has filed in *Bauknight v. Pope*, 2010-CP-40-4900 (case 4900), and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

4. As to paragraph 4 of the Complaint, the Defendant craves reference to the pleadings or other documents he has filed in case 4900, and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

5. As to paragraph 5, the Defendant admits only that he has been served. He denies that this Court has jurisdiction of this matter and denies that venue was proper in Newberry County where this suit was originally brought. Venue was transferred in this case to Richland County pursuant to the Order of the Newberry Court of Common Pleas.

6. As to paragraph 6, the Defendant craves reference to Exhibit C to the Complaint and denies any allegations in the instant complaint which are inconsistent therewith.

7. As to Paragraph 7, the Defendant craves reference to the complaint in case 4900 and denies any allegations in the instant complaint which are inconsistent therewith.

8. As to paragraph 8, the Defendant craves reference to the case-4900) complaint and denies any allegations in the instant complaint which are inconsistent therewith.

9. As to paragraph 9, the Defendant craves reference to the Complaint in case 4900 and denies any allegations in the instant complaint which are inconsistent therewith. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

10. As to paragraph 10, the Defendant craves reference to the Complaint in case 4900, denies that the allegations in the 4900 Complaint are false, and denies any allegations in the instant Complaint which are inconsistent with the 4900 Complaint. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

11. As to paragraph 11, the Defendant craves reference to the Complaint in case 4900 and denies any allegations in the instant complaint inconsistent with the 4900 Complaint. As to the Exhibit D, referenced by Plaintiff, the Defendant admits only that Plaintiff filed the Affidavit but denies the allegation regarding the reason for seeking damages and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

12. As to Paragraph 12, the Defendant denies any allegations in the instant complaint that are inconsistent with the Complaint in case 4900, denies that allegations in the case 4900 complaint are false and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

13. As to paragraph 13, the Defendant admits that he succeeded Henry McMaster as Attorney General, but he denies any allegations inconsistent with the Complaint in case 4900 and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

14. As to paragraphs 14, 15, 16 and 17, the defendant denies any allegations that are inconsistent with the Complaint in case 4900 and any filings by him in that suit. As to paragraph 16, he also denies any allegations inconsistent with any of his filings regarding the referenced motion. The Defendant Wilson denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

15. As to paragraph 18, the Defendant Wilson denies that Plaintiff properly mailed or delivered her Freedom of Information Act request at issue directly to the Office of the Attorney General(OAG) as required by S.C. Code Ann. 30-4-30 (c). *See,* attached affidavit of Tracy Meyers and letter to Ms. Pope of 8.5.11, Exs. pp. 1 & 3, *infra.* He is without sufficient knowledge or information to admit or deny whether she properly mailed or delivered her FOIA request to the Legacy Trust. As to the description of the requests, he craves reference to the alleged letters for their contents.

16. The Defendant admits paragraph 19 but craves reference to the FOIA request for its exact contents.

17. As to Paragraph 20, the Defendant admits only that the document was sent to the Wingate firm, but denies that sending a copy there would trigger the running of time for the response to the FOIA from the OAG under §30-4-30(c). The Defendant craves reference to the Retention Agreement for its contents related to FOIA.

18. As to Paragraph 21, the Defendant admits that his Office did not respond to the referenced FOIA, but denies that the Office was required to do so under that law in that Plaintiff failed to mail or deliver her request to the Office of the Attorney General, even upon inquiry from Ms. Meyers, and therefore, did not trigger the running of time for the response to the FOIA from the Attorney General under §30-4-30(c). *See,* Exs. pp. 1 & 3, *infra.*

19. The Defendant denies Paragraph 22 in that he has moved to strike Exhibit D and is not required to respond to it. As a further response to this paragraph, he craves reference to paragraph 19 of this Answer, *supra,* and craves reference to the Retention Agreement.

20. As to paragraph 23, the Defendant craves reference to the letter for a complete description of its contents.

21. The Defendant denies paragraph 24 as to the OAG in that the request was not properly mailed or delivered to the OAG so as to trigger application of FOIA. Exs. pp. 1 & 3, *infra.* Further, without waiving this defense or any other defense raised as to this complaint including all grounds for lack of subject matter jurisdiction, the exhibits from *Summer v. Wilson,* 2012-CP-36-688 attached hereto demonstrate that the OAG does not have the documents responsive to the FOIA at issue in the instant case except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas, supra. See, exs., infra,* pp. 5, 7, 8 and 9. The Defendant Attorney General does not admit the allegations of paragraph 24 which are directed to the Defendant Legacy Trust rather than the OAG as such matters are for the Trust to determine what response should be made.

22. The allegations in paragraph 25 regarding the Black letter do not apply to the Defendant Attorney General or the FOIA directed to the OAG. Further, the Defendant craves reference to the Guide for a complete description of its contents.

23. The allegations in paragraph 26 regarding the Legacy Trust do not apply to the Defendant Attorney General or the FOIA directed to the OAG. Such matters are for the Trust to determine what response should be made. The OAG was not properly served with the FOIA at issue so as to trigger a requirement to respond thereto.

24. As to paragraph 27, the Defendant craves reference to the FOIA statute (S.C. Code Ann. §30-4-10, *et seq.*) and denies any allegations in the instant complaint which are inconsistent therewith.

25. The Defendant Attorney General does not admit the allegations of paragraph 28 because they are directed to the Defendant Legacy Trust rather than the OAG and the Trust is to determine what response should be made.

26. The Defendant Attorney General denies the allegations of paragraph 29 which are directed to him and does not admit those allegations as they are directed to the Defendant Legacy Trust in that the Trust is to determine what response should be made.

27. The Defendant Wilson does not admit the allegations of paragraph 30 as they are directed to the Defendant Legacy Trust , and the Trust is to determine what response should be made. To the extent that this paragraph refers to case 4900, the Defendant Wilson craves reference to the Complaint in that case and denies allegations in paragraph 30 that are inconsistent therewith. To the extent that this paragraph refers to the FOIA as to the OAG, the Defendant craves reference to the above paragraphs of this Answer, The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

28. To the extent that the allegations of paragraph 31 are directed to him, the Defendant Wilson denies them for the reasons set forth above including Answer paragraph 21, *supra*. The Defendant Wilson does not admit the allegations of paragraph 31 to the extent they are directed to the Defendant Legacy Trust in that the Trust is to determine what response should be made.

29. Paragraph 32 is a cumulative Paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and Paragraphs of the Complaint and reasserts them.

30. The Defendant Wilson does not admit the allegations of paragraph 33 as they are directed to the Defendant Legacy Trust, and the Trust is to determine what response should be made.

31. Paragraph 34 is a cumulative paragraph to which no response is necessary. To the extent that, arguendo, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and paragraphs of the Complaint and reasserts them.

32. The Defendant denies paragraphs 35, 36, and 37.

33. The Defendant denies the requests in the Prayer for Relief to the extent they are directed to him except that he agrees to the current hearing date of March 18, 2013, and subject to his pending motions and all defenses, he is serving and filing his Answer now, although not required, in an effort to bring all matters before the Court so that they may be determined at the hearing on the 18th. To the extent that the requests in the Prayer for Relief are directed to the Defendant Legacy Trust, the Defendant Wilson does not admit them as the Trust is to determine what response should be made.

FOR A SECOND DEFENSE

34. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the *Bauknight v. Pope*, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be

used to bypass the rules regarding discovery. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

FOR A THIRD DEFENSE

34. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to accomplish mailing or delivery of her Freedom of Information Act request at issue so as to be received by the Office of the Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exs. p. 1, *infra)* the original of which is already on file in this case.

FOR A FOURTH DEFENSE

35. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc.,et al, supra.* Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint.

FOR A FIFTH DEFENSE

36. Subject to and without waiving any defenses raised as to this Complaint by this Answer or by Motion, including all grounds for lack of subject matter jurisdiction, the Attorney General responds herein that the Freedom of Information Act is very important to his Office and that his Office has no documents that could be considered responsive to the FOIA at issue except for an attached draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas, supra,* at Exs., *infra,* pp. 8 & 9 .

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays as follows:

1. That judgment for the Defendant be entered as to the Complaint and that the relief sought by the Plaintiff be denied.

2. For such further relief as the Court deems just and proper.

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: _____

ATTORNEYS FOR DEFENDANT ATTORNEY GENERAL

March 7, 2013

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF RICHLAND)

PERSONALLY APPEARED before me, Tracy A. Meyers, who being duly sworn, attests to the following:

1. She is a Senior Assistant Attorney General with the Office of the Attorney General.

2. Among her assigned duties, she is to review Freedom of Information Act requests made of the Office of the Attorney General. Incoming FOIA requests are sent to her.

3. She has reviewed the letter of June 30, 2011 addressed to the Custodian of Records of the Office of the Attorney General and attached as Exhibit A to the Complaint in Pope v. Wilson, et al (2011-CP-36-364. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.

4. Attachment of the June 30, 2011 letter to the complaint in the above suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request to the Office of the Attorney General by Ms. Pope or her attorney, a response to the

FOIA request will be made then if permitted by any Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that request.

Tracy A. Meyers

TRACY A. MEYERS

SWORN TO before me this 20th

day of October, 2011

Shunechia P. Navarro

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 10/2/18

ALAN WILSON
SECURITIES COMMISSIONER

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:25
JACKIE S. BOWERS
CLERK OF COURT

August 5, 2011

Adele J. Pope, Esq.
1228 Walnut Street
Newberry, South Carolina 29108

Re: Request for documents under the South Carolina Freedom of Information Act

Dear Ms. Pope:

I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA"). I have also been notified by attorneys in the Civil Division of the South Carolina Office of the Attorney General ("SCAG") that you refer to a request dated June 30, 2011 in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to obtain through the FOIA requests. I have been informed there are at least three related motions that relate to the FOIA request: (1) a "Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope" filed July 5, 2011, filed by the Plaintiffs; (2) a "Motion to Compel Discovery" dated June 7, 2011, filed by your counsel; and (3) a "Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction", dated July 26, 2011, filed by your counsel.

While there exists an ongoing case in which I have been informed both a "Motion for Protective Order" and a "Motion to Compel Discovery" are outstanding, it seems premature for me to release the requested documents. I am not involved in the civil case in any way and believe the wisest thing to do is to let the presiding judge make the decision on which items, if any, are to be produced and which, if any, are not.

The FOIA was designed to give the public and the press access to the workings of their government. FOIA is not designed to supplement the rules of civil or criminal discovery. For these reasons, I propose to put your requests on hold pending the outcome of your current litigation. Once litigation is complete, I would then provide you with all of the information you have requested that is available (i.e. not exempt) pursuant to the Act. In the meantime, I will also forward copies of all six letters to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate.

Sincerely yours,

Tracy Meyers

Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn

Sue Summer
1903 Main St
Newberry, SC 29108
10 June 2012

FILED
NEWBERRY COUNTY
2012 DEC 18 P 2:09
JACKIE S. BOWERS
CLERK OF COURT

Attorney General Alan Wilson & Keeper of Records
Office of the S.C. Attorney General
PO Box 11549
Columbia, SC 29211

By email and registered mail

Dear sir or madam:

I request the following documents under the Freedom of Information Act, and I would like to remind you, with all due respect, that I am not a party in litigation regarding the James Brown estate (as has so often been used by the AG as a reason in denying these documents to others). Some of these requests have been made previously, but I believe all are public documents—and in two cases the reason originally given for denying the release of the documents has been rendered moot.

1. There is no question that the McMaster/Wingate contract is a public document, and a letter from assistant AG Jones acknowledged that fact. He further said the AG's office wanted to release a copy and would do so—except for a stay issued by Judge Manning. My position then was that there was no stay (I was in court at the hearing), but the AG argued there was and refused to release the document in full. After Judge Manning issued an order with no mention of stay, the AG's office then argued his stay was oral. Your office later sent generic, partial documents and claimed that more specific portions (where signatures were to be affixed) were not public. Now that Judge Manning has affirmed that there was no stay, there is no reason why the AG's office cannot now release a full copy of the contract, and I ask to be sent a copy forthwith.

2. Knowing the specifics of how money is to enter the Legacy Trust and to whom it will be paid out is critical in understanding the tax consequences of the McMaster settlement deal—and in evaluating whether the charity was indeed protected, which was ostensibly why McMaster entered the estate proceedings and created the Legacy Trust. McMaster was paid by the State out of the public coffers for his work on this trust, as were the other attorneys from his office who participated in the settlement deal. Since then the AG's office has devoted hours upon hours in concealing the very documents paid for by taxpayer dollars. Therefore, the entirety of the Legacy Trust is a public document, and I ask to be sent a full copy.

3. My request for the Hynie diaries was also previously refused, citing a gag order from Judge Early. A May 22 hearing was held on the gag orders, which were first violated by Ms. Hynie herself in a TV interview six months after the orders were issued. If Judge Early lifts the orders, I want to make sure that my FOIA request for a copy is in place so that a copy may be forwarded to me immediately—and if a copy cannot be sent, please release to me all communications related thereto. It is my understanding that the diaries hold a critical piece of evidence regarding

"Exhibit C"

the spousal claim of Tommie Rae Hynie—evidence that the AG's office might have used to save about one-quarter of the music empire for the charity McMaster claimed to be protecting. I also request any electronic or written communication regarding the AG's office's recent support for Hynie in her effort to maintain the gag orders through her attorney Robert Rosen. (It is in the public interest to bring into the light and discuss the following scenario: The AG's office says the diaries cannot be released because of a gag order, then the AG's office files documents with the court to maintain the gag order. Why would that happen, when the diaries may include important evidence that affects the future of the James Brown "I Feel Good" Trust?).

4. I request any documents related to the $4.7 million at-death valuation of James Brown's music empire. According to pleadings I have read, the SC Probate Code requires the documentation/appraisal to be filed with the Probate Court, a duty of the current trustee Russell Bauknight who serves at the AG's pleasure. I am most interested to see the documentation for why the AG's office would approve this figure. (If the AG's office has no documentation of the valuation, surely the AG's office would not have signed off on a $4.7 million filing with the IRS when the AG's office has the duty of enforcing laws, including tax laws.)

5. I request all electronic or other written communication regarding why the AG's office sought no restitution from David Cannon, even though he has a million-dollar home in Honduras.

Thank you for your prompt attention to these requests, and I request any fees to be waived in the public interest. After all, there are perhaps thousands of young people for whom the James Brown "I Feel Good" Trust might open educational opportunities—and that alone makes these questions of great public importance.

Sincerely,

Sue Summer

AG Wilson Continues Battle To Conceal James Brown Documents and Deny FOIA Requests

ALAN WILSON
SECURITIES COMMISSIONER

July 10, 2012

Ms. Sue Summer
1903 Main Street
Newberry, SC 29108

Re: Your Freedom of Information Act ("FOIA") request dated June 10, 2012

Dear Ms. Summer:

Thank you for your phone message today requesting that this Office reissue its letter to you dated July 3, 2012 with a corrected salutation. Per your request, we are today responding again to your FOIA request dated June 10, 2012, a copy of which is enclosed for reference.

I am writing in response to your South Carolina Freedom of Information Act request dated June 10, 2012, and received by the Office on June 12, 2012.

In response to request 1, as the Office has previously advised you, the records of the Attorney General's Office have previously been searched for such information and copies of all documents responsive to the request that are not attorney work product, privileged, or otherwise except pursuant to section 30-4-40 of the Act have previously been provided to you.

In response to request 3, pursuant to the attached Order, signed by the Honorable Doyet A. Early, III, these diaries cannot be disseminated. Accordingly, this matter is "specifically exempted from disclosure by statute or law." In addition, the diaries are the subject of pending motions before the Circuit Court, including the Motion to Vacate or Declare Void/Moot Orders related to Diaries of Tommie Ray Hynie Brown. In further response to request 3, there are no other documents responsive to this request that are not attorney work product, privileged, or otherwise exempt from the Act.

There are no documents responsive to requests 2, 4, and 5.

Yours very truly,

Tracy A. Meyers
Assistant Deputy Attorney General

TAM/tpn

REMBERT C. DENNIS BUILDING • POST OFFICE BOX 11549 • COLUMBIA, SC 29211-1549 • TELEPHONE 803-734-3970 • FACSIMILE 803-734-3677

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem, ... Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N. M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are, ... Appellants,

and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N. M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are . . . . . Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000.

RECORD ON APPEAL
Volume II
(Pages 462-922)

STATE OF SOUTH CAROLINA)
)
) THE JAMES BROWN LEGACY TRUST
)
COUNTY OF AIKEN)

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this ____ day of _____, 2008, and is executed by (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown; and (iii) the Brown Family LLC, as Settlors, and _____, as the Trustee. This Trust shall be known as The James Brown Legacy Trust.

ARTICLE I)
Establishment of Trust

The Settlors have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustees the property described in Schedule A, annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustees in the future and any property that may be received or which has been received by the Trustees hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustees as hereinafter set forth.

ARTICLE I.
Acceptance by Trustees

The Trustees herein above named have agreed to accept said Trusteeship and all interests in property which may come to them by reason of this Agreement for the benefit and use of the beneficiaries, all in accordance with the provisions hereinafter set forth, and hereby acknowledge receipt of certain assets which are or shall be described on the receipt to be delivered by the Trustees to the Settlors, which receipt is attached to this Agreement. In keeping therewith, the Trustees are hereby vested with all right, title, and interest in and to such assets as are listed on the receipt which is attached hereto as Schedule A and are authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

ARTICLE 2.

Further Assignments and Additional Contributions

3.1 **Additional Instruments and Assignments.** The Settlors covenant and agree to make, execute and deliver to the Trustees such other and further assignments, covenants or instruments as the Trustees may deem necessary or appropriate to effectuate the purposes of this Agreement.

3.2 **Additional Contributions.** The Settlors, and any other person with the Trustees' consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement and pursuant to the Private Agreement of August 10, 2008 and any Addenda Agreements thereto.

ARTICLE 3.

Statement of Intent

This Trust Agreement and the Trust it creates are irrevocable and such Trust is intended to comply with the Private Agreement of August 10, 2008 (a copy of which is attached hereto as Exhibit A) the Contribution Agreement dated _____, 2008 (a copy of which is attached hereto as Exhibit B) and any addenda thereto executed by the Settlors or their agents.

ARTICLE 4.

Payments of Expenses and Distributions of Property

5.1 **Trust Beneficiaries and Distributional Interests.** The Trustee shall hold all assets contributed to this Trust under the terms of the said Contribution Agreement or otherwise and shall distribute the net income of the Trust (the "distributional interests") to the Trust Beneficiaries listed below as follows:

5.1.1 Fifty percent (50%) to the Trustee(s) of the trust provided for under Article V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "I Feel Good" Trust);

5.1.2 Twenty-five prevent (25%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

5.1.3 Twenty-five percent (25%) to The Brown Family LLC;

Such distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties,

provided that netting such legal expenses shall not reduce the distributional share of the I Feel Good Trust below fifty percent (50%).

5.2 **Income in Respect of a Decedent.** Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the Trustee of the I Feel Good Trust as all or a portion of such Trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Family LLC or of Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.3.

(A formula as to the manner of such distributions as provided herein above is set forth in Schedule B, attached hereto.)

5.3 **Sale of Assets.** Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. To the extent that estate or inheritance taxes should be due with respect upon the death of Tommie Rae Brown or any owner of the Brown Family, LLC with respect to any distributional interest in this Trust, the Trustees and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

ARTICLE 6.
Limitations on Powers of Trustees; Voting

6.1 **Actions of Trustees Requiring Approval of Beneficiaries.** The Trustees shall have all of the powers described in Article 9, below; provided, however, the Trustees shall require approval of a majority of the Beneficiaries in order to:

6.1.1 Sell all or substantially all of the assets of the Trust;

6.1.2 Terminate the Trust.

Any such vote shall be made by each Beneficiary (as defined in §7.2, below) having a vote equal to such Beneficiary's distributional interest as provided in Section 5.1, above, by or through its acting fiduciary in the case of entities or by or through the individual, agent under power of attorney or Personal Representative or other acting fiduciary in the case of Tommie Rae Brown.

6.2 **Notice of Vote.** Any Beneficiary may at any time request a vote of the beneficiaries as to any such matter as may call for a vote under this instrument by giving notice and a request to the other Beneficiaries for a vote pursuant to the terms of Sections 8.4 and 8.5, below. If a noticed party does not

respond with its vote on the applicable matter in writing within 30 days of such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter and the decision to be voted on shall be determined by the majority vote of those voting.

ARTICLE 6.

Resignation, Removal, Appointment and Succession of Fiduciaries

7.1 **Resignation and Appointment Procedure.** Any person or organization at any time serving as a fiduciary hereunder, whether as Trustee or in any other capacity (a "Fiduciary") may resign at any time by providing written notice to another then acting Co-Fiduciary (if there is one), or, if none, to the then beneficiary or one of the then beneficiaries of the affected Trust, setting forth the effective time and date of such resignation on or before such effective time. Notwithstanding the previous sentence, the resignation of a Fiduciary acting alone shall only be effective upon the appointment and qualification of a successor Fiduciary.

All Fiduciary appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Fiduciary(ies) then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

7.2 **Right of Beneficiaries to Remove and Replace.** The Beneficiaries (being the James Brown "I Feel Good" Trust, Tommie Rae Brown and the Brown Family LLC) acting by majority vote may at any time remove any then acting Trustee or Trustees and appoint a successor Trustee or Trustees. Any such vote shall be made by each beneficiary in accordance with their distributional interests.

7.3 **Disability of a Fiduciary.** The determination that a Fiduciary is a disabled person shall be made by a court of competent jurisdiction.

7.4 **Termination of Fiduciary Powers.** An outgoing Fiduciary, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Fiduciary ceases for any reason to be a Fiduciary hereunder, there shall be delivered to such Fiduciary's successor or to another then acting Fiduciary hereunder all of the assets (Trust or otherwise) which were in the possession of such Fiduciary and there shall be made available to each successor Fiduciary a complete financial record and inventory of assets affected thereby. With respect to any properties thus transferred by the outgoing Fiduciary or by such Fiduciary's representative, such Fiduciary shall stand and be discharged of all further duties and obligations.

7.5 **Successor Fiduciary Powers and Authority.** Each successor Fiduciary, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Fiduciary. Title to the entire property (of the Trust or otherwise) shall automatically vest in

any successor Fiduciary without the necessity of any conveyance. The assumption of authority by a successor Fiduciary shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Fiduciary or to such Fiduciary's legal representative). Any corporation into which any corporate Fiduciary acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Fiduciary hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

7.6 **Exoneration from Liability for Acts of Prior Fiduciaries.** Each successor Fiduciary shall be exempt from any liability in any way related to the prior actions or omissions of the previous Fiduciaries, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Fiduciary.

7.7 **Trustee Settlements.** The "Beneficiary" or the "Primary Beneficiary" of any Trust created hereunder or, if none, any individual who is at the time (a) a beneficiary entitled to receive current distributions from any Trust created hereunder, and (b) not then serving as a Trustee, may at any time or from time to time settle any Trustee's or former Trustee's accounts and to the extent permissible by law each settlement shall be binding and conclusive upon all persons who may be interested in the Trust, whether directly or contingent, born or unborn, infant or adult. If the person herein designated with the power to consent to settlements is a disabled person, such power shall only be exercised by his or her guardian or other legal representative.

ARTICLE 7.
Fiduciary Provisions

8.1 **Delegation of Ministerial Acts.** Each Fiduciary hereunder is authorized, by written instrument filed with such Fiduciary's Co-Fiduciary or Co-Fiduciaries, to delegate to such other Co-Fiduciary or Co-Fiduciaries, or any one of them, such Fiduciary's duties with respect to general ministerial acts, specifically including the signing of checks, the execution of tax returns and the execution of instruments of contract, sale or conveyance with respect to a particular Trust's assets, including the opening of checking, brokerage or similar accounts. Upon written assurance by any Fiduciary that such Fiduciary has been delegated such ministerial duties, any third parties shall accept the signature of such Fiduciary as binding upon the affected Trust, shall not require further authorization of any other Fiduciary, and shall be indemnified and held harmless to the extent of such Trust's assets on account of any loss, liability or expense arising out of the acceptance of the signature of any Fiduciary as the basis of any transfer, withdrawal or other transaction.

8.2 **Trustee Compensation.** For their services as Trustees, the Trustees are entitled to receive an amount which is reasonable for the services rendered at the time services are rendered. At any time there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there shall be a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustees' fees payable hereunder, all Trusts hereunder shall be treated as one Trust.

8.3 **Inventory; Appraisals; Bond.** Except as otherwise required by law, the Trustees shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

8.4 **Notice.** Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.5 **Notice to Disabled Parties.** If a person who is a disabled person is a party to any legal proceeding relating in any manner to any Trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

8.6 **Right to Retain Assets.** The Trustees are specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlor's hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries and contributed to this Trust on account of the death of James Brown, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustees shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlors contemplate that the Trustees will engage in complex transactions and that the Trustees will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of their duties as Trustees.

ARTICLE 8.
Fiduciary Powers

In the administration of any Trust created hereunder, the Trustees shall have all of the powers granted by law, including but not limited to the powers granted to Trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. In addition to the powers granted under said statute, the Trustees shall have the powers granted above to receive, hold, manage and dispose of the aforesaid property contributed by the Beneficiaries which any one or more of them may have received on account of the death of James Brown.

Without limiting the foregoing, the Trustees shall also have the following powers:

9.1 **Determinations.** To determine what property is covered by general descriptions in this instrument.

9.2 **Investments and Reinvestments.** Subject to Article 6, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as they shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlors request that the Trustees honor the wishes of the Trust beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustees determine that such wishes are clearly in contradiction to the purposes and terms of any such Trust.

9.3 **Conveyance of Assets.** To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of any Trust created hereunder and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of any Trust created hereunder, at public or private sale, at such price and upon such terms as the Trustees shall deem proper and to lease the same for a term extending beyond the life of any Trust created hereunder without prior application to any court for permission to do so.

9.4 **Non-Traditional Investments.** In addition to the powers granted under this Article, the Trustees (other than any beneficiary) are expressly authorized to acquire and retain investments not regarded as traditional for Trusts. The Trustees may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.

9.5 **Management and Holding of Assets.** To invest and reinvest all or part of the assets of any trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Fiduciary, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies, securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates

of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustees, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Fiduciary(ies) may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Fiduciary(ies) shall be under no obligation to inspect or verify such stock or securities nor shall the Fiduciary(ies) be responsible for any loss by such bank, trust company, or securities brokerage firm. The Fiduciary(ies) shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Fiduciary(ies) have been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Fiduciaries shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

9.6 **Consolidation and Division of Assets.** To hold and administer the assets of the Trusts created hereby in one or more consolidated funds, in whole or in part, in which any separate Trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Fiduciary(ies) shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

9.7 **Borrowing.** To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of such Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Fiduciary(ies) deem(s) advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.

9.8 **Lending.** To lend all or any portion of the funds of any Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustees may in their discretion impose.

9.9 **Receipts, Disbursements and Allocations.** To allocate receipts and disbursements between income and principal in such manner as the Trustees (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC §2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. §20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of

property qualifying for the marital deduction, in which case such allocation shall follow state law, and (ii) in the discretion of the Trustees (other than any beneficiary).

9.10 **Distributions.** Without the consent of any beneficiary, the Trustees (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without regard to the income tax basis of specific property allocated to any beneficiary (including any Trust) and without making pro-rata distributions of specific assets. In addition, the Trustees are authorized to select specific assets in funding fractional share distributions and are not required to select a percentage of each specific asset.

9.11 **Occupancy and Use.** Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.

9.12 **Related Party Transactions.** To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any Trust the Settlors may have established and to retain such property so long as the Trustees hereunder may deem advisable, whether or not such property is of the class in which Trustees are authorized by law or any rule of court to invest; and to make loans to, or borrow from, any such Trust or Trusts upon such terms and conditions as the Trustees deem advisable.

9.13 **Management of Closely Held Businesses.** In connection with (a) the continuation or operation of any business or investment interests which become a part of any Trust under this instrument (whether on initial funding, by purchase by the Trustees, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustees are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which any Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.

9.14 **Division or Combination of Trusts.** In the event that the Trustees determine that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S-corporation), administrative, liability, environmental, or other reasons), the Trustees shall have the power to divide any

such Trust into further trusts or shares. The Trustees shall also have the power to combine any such Trust created hereunder with any other Trust, whether created by the Settlors or another person, if the terms of the trusts are substantially the same and the Trustees are the same.

9.15 **Power to Deal With Environmental Hazards.** To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Fiduciaries shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustees that the property is not subject to such environmental hazards as the Trustees may specify; (b) to decline to serve as a Fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate Trust, to be held and administered upon the same governing terms as any other Trust or Trusts for any one or more of the beneficiaries hereunder which the Settlors may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Fiduciary, will or may cause any such Fiduciary to be considered an "owner" or "operator" of property, or which shall otherwise cause any Fiduciary to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Fiduciaries shall not be personally liable to any beneficiary of any Trust created hereunder, or to any other party interested in any Trust created hereunder, for any claim against any Trust for the diminution in value of trust property arising from the compliance by the Fiduciaries with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustees under this paragraph may be charged against income or principal as the Trustees (other than a beneficiary) shall determine.

9.17 **Uneconomical Trusts.** If at any time any Trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustees, of Fifty Thousand ($50,000) Dollars or less, the Trustees (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiary or Primary Beneficiary, or if none, to the person or persons then entitled to receive or have the benefit of the income therefrom, or to the legal representative of such person. If there is more than one current beneficiary, the Trustees shall make such distribution to such current beneficiaries in the proportion in which they are beneficiaries or if no proportion is designated, to such beneficiaries, per stirpes.

9.18 **Limitations.** Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any Trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such

as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ARTICLE 9.
Definitions

10.1 **Trustee, Fiduciary, Personal Representative.** The words "Trustee", "Fiduciary", and/or "Personal Representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

ARTICLE 10.
Power in Trust Protector to Amend

11.1 **Appointment of the Trust Protector.** Should a need arise for a Trust Protector and should a Trust Protector not then be serving, or should there arise circumstances under which it is apparent to the Trustee or to a majority of the then beneficiaries of any Trust created hereunder that the parties' intentions in creating any Trust created under this Agreement may be better served by a modification of any such Trust, then a Trust Protector shall be chosen to consider whether the Trust should be amended. The Trust Protector shall be chosen by a majority vote of the Beneficiaries as provided in Article 6, above.

11.2 **Extraordinary Authority.** Because the parties recognize that it may not be able to anticipate developments and changes which may occur during the term of Trusts created under this Agreement, it wishes to give the Trust Protector extraordinary power and authority over the modification of the Trusts created herein and the distribution of the Trust assets at a time prior to, or later than, that which the parties have otherwise provided herein. These broad powers are granted for the purpose of permitting the Trust Protector to effect the parties' set forth in this Trust Agreement.

11.2.1 **Authority to Amend.** The Trust Protector shall have the power, by an instrument filed with the Trust records, to amend the administrative provisions of this Agreement (including the provisions relating to the Trustee); provided, (i) no power of amendment shall be effective to extend the period for the vesting of any property under the Trust beyond the period for vesting defined elsewhere in this Agreement, (ii) that any such amendment shall be for the sole purpose of effecting the parties' objectives expressed herein.

11.3 **Appointment and Removal of Trustees.** Upon the prior consent of a majority vote of the Beneficiaries, the Trust Protector may remove any Trustee at any time, with or without cause, and

may appoint a successor Trustee to fill any vacancy in the office of Trustee, however caused. The Trust Protector may only serve as Trustee after having resigned as the Trust Protector.

11.4 Liability. No personal liability shall attach to the Trust Protector except for gross negligence or willful wrongdoing. The Trust Protector for any Trust shall be treated for all purposes as a "special trustee" whose powers, duties, and responsibilities are thus limited to those specifically vested in such position (and none, such as responsibility for administration, investments, etc., that result generically to a trustee).

11.5 Written Requirements. No exercise of any power, designation of successor, resignation, or other action of the Trust Protector provided for in this Article shall be effective until such action shall be manifested by an instrument or instruments in writing signed by the person or persons authorized to take such action and delivered to the Trustees or, in the case of the exercise of the power to appoint a Trustee for any Trust for which there is no then serving Trustee, to the person designated as Trustee.

11.6 Successor Trust Protectors. All provisions of this Agreement relating to the Trust Protector shall apply to the original Trust Protector to all subsequent Trust Protectors.

ARTICLE 11.
Termination of Trusts

Notwithstanding anything to the contrary, the trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the trust assets to the beneficiaries of the current income thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such Trust. Furthermore, to the extent determined by the Trustees (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) Trusts having the same provisions as those referred to above, except that such newly created (or amended) Trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such Trust's jurisdiction. To the extent that any provision of this paragraph would cause any Trust established under this instrument to fail, such provision shall be inapplicable.

ARTICLE 12.
Jurisdiction and Governing Law

All questions pertaining to the construction, validity and effect of this instrument and any Trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

ARTICLE 13.

Protection of Charitable Status

The Settlors intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that ensures that the "I Feel Good" Trust qualifies and continues to qualify as a charitable trust. The Settlors agree to modify the terms herein to the extent necessary to preserve the charitable tax-exempt status of the "I Feel Good" Trust to the extent allowed by law.

ARTICLE 14.

Headings

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

ARTICLE 15.

Spendthrift Provisions

No beneficiary of any Trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such Trust or in the principal or income of such Trust. The beneficial and legal interest in, and the principal and income of, any such Trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of this Trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any Trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the Trust's jurisdiction.

EXECUTION

IN WITNESS WHEREOF, the Settlors have set their hands and affixed their seals, and the Trustees, in acceptance of this Trust, have set their hands and affixed their seals.

_____

_____

Attorney General of South Carolina for the James Brown "I Feel Good" Trust

Tommie Rae Brown, individually and on behalf of her minor child, James B[redacted]

Manager, Brown Family LLC

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF AIKEN)

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named Settlors, sign, seal and as their act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

SWORN BEFORE ME THIS _____
day of _____, 2008.

Notary Public for South Carolina
My Commission Expires: _____

Trustee, James Brown Legacy Trust

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named _____, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

_____

_____

SWORN BEFORE ME THIS _____
day of _____, 2008.

_____
Notary Public for South Carolina
My Commission Expires: ___

SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

SCHEDULE B

ALLOCATION AND DISTRIBUTION OF NET INCOME

Distributions of Net Income shall be made to the beneficiaries based on the following formula:

After determination of distributions of Net Income to the Beneficiaries based on the above formula, any component of Net Income that is ordinary income shall first be distributed to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. Next, the Trustees shall distribute any component of Net Income that is capital gain to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. After allocation of ordinary income and capital gain to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income, the Trustees shall distribute remaining Net Income to the Trustees of the James Brown "I Feel Good" Trust to the extent of its share of Net Income. After fully satisfying the share of Net Income allocated to the Trustees of the James Brown "I Feel Good" Trust, the Trustees shall allocate the remaining Net Income pro rata among Tommie Rae Brown and the Brown Family LLC.

STATE OF SOUTH CAROLINA)
)
) THE JAMES BROWN LEGACY TRUST
)
COUNTY OF AIKEN)

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this ____ day of _____, 2009, and is executed by the Settlors (collectively hereinafter known as the 'Settlors") (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown, and (iii) Larry Brown, Venisha Brown, Deanna J. Brown Thomas, Yamma N. Brown Lamar, Daryl Brown and Terry Brown, (the "Brown Adult Children") and _____, as the Trustee. This trust shall be known as The James Brown Legacy Trust (the "Trust").

ARTICLE I
ESTABLISHMENT OF TRUST

Pursuant to the Contribution Agreement of even date herewith, the Settlors have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A (also referred to herein as the "James Brown Assets"), annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustee in the future and any property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II
ACCEPTANCE BY TRUSTEE

The Trustee herein above named has agreed to accept said Trusteeship and all interests in property which may come to the Trustee by reason of this Agreement for the benefit and use of the Beneficiaries (as defined in Section 11.2 below), all in accordance with the provisions hereinafter set forth. In keeping therewith, the Trustee is hereby vested with all right, title, and interest in and to such assets as are listed on Schedule A and is authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

ARTICLE III
STATEMENT OF INTENT

This Trust Agreement and the Trust it creates are irrevocable and this Trust is intended to comply with the Private Agreement of August 10, 2008 ("Original Agreement") as amended by the Addendum dated _____, 2009 to the Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (as amended, the "Agreement") (a copy of which is attached hereto as Exhibit A) ("Private Agreement"), and the Contribution Agreement dated _____, 2009 (a copy of which is

attached hereto as Exhibit B) ("Contribution Agreement"), as the same may be amended or modified by any addenda thereto executed by the Settlors or their duly authorized agents. Any capitalized term not defined herein shall have the meaning ascribed to it in the Agreement.

ARTICLE IV
PURPOSE

The Trustee is specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlors' hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries on account of the death of James Brown and contributed to this Trust, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustee shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlors contemplate that the Trustee will engage in complex transactions and that the Trustee will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of its duties as Trustee.

ARTICLE V
PAYMENTS OF EXPENSES AND DISTRIBUTIONS OF PROPERTY

5.1 Beneficiaries and Distributional Interests. The Trustee shall hold all assets contributed to this Trust and shall distribute the net income and the principal of the Trust to the Beneficiaries in accordance with their beneficial ownership interests in the Trust assets (the "Distributional Interests").

The Beneficiaries recognize that the result of the Original Agreement was to give the "I Feel Good" Trust (as hereinafter defined) a 50% interest in the James Brown Assets and the Settlement Entity (as defined in the Agreement), subject to the funding of educational trust described below and a pro-rata share of expenses and income (except as expressly provided below with respect to legal expenses). Treating the addition of Terry Brown to the settlement arrangement set out in the Agreement as an expense results, after accounting for such expense, in the following Beneficiaries and their respective Distributional Interests:

(a) Forty-seven and one-half percent (47.5%) to the Trustee(s) of the trusts provided for under Articles V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "James Brown Trust") (such trusts being the "I Feel Good" Trust or the "Charitable Trust" further described in Article VII of the James Brown Trust and the "Brown Family Education Trust" further described in Article VI of the James Brown Trust); provided, however that the first $2,000,000 payable pursuant to this Distributional Interest shall be payable solely to the Trustee(s) of the Brown Family Education Trust

and the balance solely to the Trustee(s) of the Charitable Trust (the Charitable Trust and the Brown Family Education Trust are referred to herein as the "Brown Trusts");

(b) Twenty-three and three-fourths percent (23.75%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

(c) Four and seventy-nine hundredths percent (4.79%) to each of the Brown Adult Children, each of which interests shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina.

Any distributions of principal to the Trust Beneficiaries shall be in accordance with the same percentage interests.

All distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties, provided that netting such legal expenses shall not reduce the distributional share of the Brown Trusts below forty-seven and one-half percent (47.5%).

5.2 Income in Respect of a Decedent. Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the trustee of the Charitable Trust (assuming the Brown Family Education Trust has been fully funded) as to all or a portion of such trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Adult Children or Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.

5.3 Sale of Assets. Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. In addition, upon the partial liquidation of the assets of the Trust, the Trustee shall distribute the proceeds of the liquidation to the Beneficiaries according to the Distributional Interest, such that the Beneficiaries may receive, from time to time, distributions of principal as well as net income. To the extent that estate or inheritance taxes should be due as a result of the death of Tommie Rae Brown or any Brown Adult Children, or any other beneficiaries with respect to any Distributional Interest in this Trust, the Trustee and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

ARTICLE VI
LIMITATIONS ON POWERS OF TRUSTEE; VOTING

6.1 Actions of Trustee Requiring Approval of Beneficiaries. The Trustee shall have all of the powers described in Article 9, below; provided, however, the Trustee shall require approval of a two-thirds majority of the voting interests held by all the Beneficiaries in order to:

(a) sell all or substantially all of the assets of the Trust; and

(b) except as provided in section 5.3, terminate the Trust.

For purposes of voting by the Beneficiaries hereunder, the Charitable Trust shall have a 50% voting interest, Tommie Rae Brown, a 25% voting interest, and the Brown Adult Children, a 25% voting interest in the aggregate, which shall be divided equally among the six of them, and may be voted separately by each individual. Any such vote shall be made by each Beneficiary by or through its acting fiduciary in the case of entities having a fiduciary, or by or through the individual, agent under power of attorney or personal representative or other acting fiduciary in the cases of Tommie Rae Brown and the Brown Adult Children.

6.2 Notice of Vote. The Trustee or any Beneficiary may at any time request a vote of the Beneficiaries as to any such matter as may require a vote under this Agreement by giving notice and a request to all the Beneficiaries for a vote pursuant to the terms of Sections 8.3 and 8.4, below. If a noticed Beneficiary does not respond with its vote on the applicable matter in writing within 30 days after such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter.

ARTICLE VII
RESIGNATION, REMOVAL, APPOINTMENT AND SUCCESSION OF TRUSTEE

7.1 Resignation and Appointment Procedure. Any person or organization at any time serving as Trustee hereunder may resign at any time by providing written notice to all the Beneficiaries (or to the parents, guardians of the person, or persons having custody of a Beneficiary who is a minor or otherwise not sui juris) currently entitled to income or principal, setting forth the effective time and date of such resignation on or before such effective time, subject to and only effective upon the appointment and qualification of a successor Trustee; provided, however, that a successor trustee has been duly appointed and has accepted such appointment.

All Trustee appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Trustee then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

7.2 Right to Remove and Replace. The Trustee of the Trust shall be chosen and appointed by the South Carolina Attorney General, who has the power and right to remove and replace the Trustee.

7.3 Disability of a Trustee. The determination that a Trustee is a disabled person shall be made by a court of competent jurisdiction.

7.4 Termination of Trustee Powers. An outgoing Trustee, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Trustee ceases for any reason to be a Trustee hereunder, there shall be delivered to such Trustee's successor hereunder all of the assets (Trust or otherwise) which were in the possession of such Trustee and there shall be made available to each successor Trustee a complete financial record and inventory of assets affected thereby. With respect to any

properties thus transferred by the outgoing Trustee or by such Trustee's representative, such Trustee shall be discharged of all further duties and obligations.

7.5 Successor Trustee Powers and Authority. Each successor Trustee, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Trustee. Title to the entire property (of the Trust or otherwise) shall automatically vest in any successor Trustee without the necessity of any conveyance. The assumption of authority by a successor Trustee shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Trustee or to such Trustee's legal representative). Any corporation into which any corporate Trustee acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Trustee hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

7.6 Exoneration from Liability for Acts of Prior Trustees. Each successor Trustee shall be exempt from any liability in any way related to the prior actions or omissions of the previous Trustees, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Trustee.

ARTICLE VIII
TRUSTEE PROVISIONS

8.1 Trustee Compensation. For services as a Trustee, the Trustee is entitled to receive an amount which is reasonable for the services rendered at the time services are rendered, as agreed upon by the Trustee and a majority of the Beneficiaries, voting as provided for in Article VI herein. If for any reason, there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there is a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustee's fees payable hereunder, any and all Trusts hereunder shall be treated as one Trust.

8.2 Inventory; Appraisals; Bond. Except as otherwise required by law, the Trustee shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

8.3 Notice. Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be

physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). The address for all notices to Beneficiaries shall be as set forth opposite their signatures below, provided that any Beneficiary may change such address by written notice to all parties hereto in accordance with this Section 8.3. Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.4 Notice to Disabled Parties. If a person who is a disabled person (who is not otherwise represented by a personal representative or guardian or not otherwise entitled to notice by a procedure provided for in this Agreement) is a party to any legal proceeding relating in any manner to any trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

ARTICLE IX
TRUSTEE POWERS

In the administration of the Trust, the Trustee shall have all of the powers granted by law, including but not limited to the powers granted to trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. Without limiting the foregoing,

the Trustee shall also have the following powers (which shall apply equally to any other trust created pursuant to this Agreement):

9.1 Right to Retain Assets. The Trustee is specifically granted the authority to accept and retain the James Brown Assets, whether these are liquid and/or illiquid and/or non-income producing assets, as Trust investments, subject however to the purpose contemplated in the establishment of the Trust as set out in Article IV.

9.2 Investments and Reinvestments. Subject to Articles IV and VI, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as the Trustee shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlors request that the Trustee honor the wishes of the Beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustee determines that such wishes are clearly in contradiction to the purposes and terms of any the Trusts.

9.3 Conveyance of Assets. To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of the Trust and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of the Trust, at public or private sale, at such price and upon such terms as the Trustee shall deem proper and to lease the same for a term extending beyond the life of the Trust without prior application to any court for permission to do so.

9.4 Non-Traditional Investments. In addition to the powers granted under this Article, the Trustee (other than any beneficiary) is expressly authorized to acquire and retain investments not regarded as traditional for trusts. The Trustee may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.

9.5 Management and Holding of Assets. To invest and reinvest all or part of the assets of the Trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Trustee, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies,

securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustee, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Trustee may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Trustee shall be under no obligation to inspect or verify such stock or securities nor shall the Trustee be responsible for any loss by such bank, trust company, or securities brokerage firm. The Trustee shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Trustee has been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Trustee shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

9.6 Consolidation and Division of Assets. To hold and administer the assets of the Trust created hereby in one or more consolidated funds, in whole or in part, in which any separate trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Trustee shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

9.7 Borrowing. To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of the Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Trustee deems advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.

9.8 Lending. To lend all or any portion of the funds of the Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustee may in Trustee's discretion impose.

9.9 Receipts, Disbursements and Allocations. To allocate receipts and disbursements between income and principal in such manner as the Trustee (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC § 2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. § 20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of property qualifying for the marital deduction, in which case such

allocation shall follow state law, and (ii) in the discretion of the Trustee (other than any Beneficiary).

9.10 Distributions. Without the consent of any Beneficiary, the Trustee (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without making pro-rata distributions of specific assets. In addition, the Trustee is authorized to select specific assets in funding fractional share distributions and is not required to select a percentage of each specific asset. The Trustee shall, however, when making distributions, take into account any appreciation and depreciation of the assets and use reasonable efforts to fairly allocate gains and losses among the Beneficiaries.

9.11 Occupancy and Use. Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.

9.12 Related Party Transactions. To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any trust the Settlors may have established and to retain such property so long as the Trustee hereunder may deem advisable, whether or not such property is of the class in which Trustee are authorized by law or any rule of court to invest; and to make loans to, or borrow from, the Trust upon such terms and conditions as the Trustee deems advisable.

9.13 Management of Closely Held Businesses. In connection with (a) the continuation or operation of any business or investment interests which become a part of the Trust under this instrument (whether on initial funding, by purchase by the Trustee, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustee are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which the Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.

9.14 Division or Combination of Trusts. In the event that the Trustee determines that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S corporation), administrative, liability, environmental, or other

reasons), the Trustee shall have the power to divide the Trust into further trusts or shares. The Trustee shall also have the power to combine any such trust created hereunder with any other trust, whether created by the Settlors or another person, if the terms of the trusts are substantially the same and the Trustee are the same.

9.15 Power to Deal With Environmental Hazards. To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Trustee shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustee that the property is not subject to such environmental hazards as the Trustee may specify; (b) to decline to serve as a fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate trust, to be held and administered upon the same governing terms as any other trust or trusts for any one or more of the beneficiaries hereunder which the Settlors may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Trustee, will or may cause any such Trustee to be considered an "owner" or "operator" of property, or which shall otherwise cause such Trustee to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Trustees shall not be personally liable to any beneficiary of the Trust created hereunder, or to any other party interested in the Trust created hereunder, for any claim against any trust for the diminution in value of trust property arising from the compliance by the Trustee with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustee under this paragraph may be charged against income or principal as the Trustee (other than a beneficiary) shall determine.

9.16 Uneconomical Trusts. If at any time any trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustee, of Fifty Thousand ($50,000) Dollars or less, the Trustee (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiaries in proportion to their Distributional Interests in the Trust.

9.17 Determinations. To determine what property is covered by general descriptions in this instrument.

9.18 Limitations. Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ARTICLE X
ADDITIONAL ASSIGNMENTS AND CONTRIBUTIONS

10.1 Further Assurances. The Settlors covenant and agree to make, execute and deliver to the Trustee such other and further assignments, and instruments as the Trustee may reasonably deem necessary or appropriate to effectuate the purposes of this Agreement.

10.2 Additional Contributions. The Settlors, and any other person with the Trustee's consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement.

ARTICLE XI
DEFINITIONS

11.1 Trustee, Fiduciary, Personal Representative. The words "Trustee", "fiduciary", and/or "personal representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

11.2 Beneficiaries. The term "Beneficiary" shall mean the Beneficiaries named or described in Section 5.1 hereof and, where applicable, their heirs, devisees, and successors.

ARTICLE XII
TERMINATION OF TRUSTS

Notwithstanding anything to the contrary which would cause an earlier termination of the Trust or any other trusts created hereunder, the Trust and any other trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the Trust assets to the Beneficiaries of the current income and principal thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such trust. Furthermore, to the extent determined by the Trustee (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) trusts having the same provisions as those referred to above, except that such newly created (or amended) trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such trust's jurisdiction. To the extent that any provision of this paragraph would cause any trust established under this instrument to fail, such provision shall be inapplicable.

ARTICLE XIII
JURISDICTION AND GOVERNING LAW

All questions pertaining to the construction, validity and effect of this instrument and any trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

ARTICLE XIV
PROTECTION OF CHARITABLE STATUS

The Settlors intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that does not adversely affect the current qualification and continued qualification of the "I Feel Good" Trust as a charitable trust. If necessary or desirable, the Settlors agree to modify the terms of this Agreement to the extent necessary to preserve the charitable tax-exempt status of the I Feel Good Trust to the extent allowed by law.

ARTICLE XV
HEADINGS

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

ARTICLE XVI
SPENDTHRIFT PROVISIONS

No beneficiary of any trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such trust or in the principal or income of such trust. The beneficial and legal interest in, and the principal and income of, any such trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of such trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the trust's jurisdiction.

[The remainder of this page is left blank intentionally.]

EXECUTION

IN WITNESS WHEREOF, the Settlors have executed this Agreement and affixed their seals, and the Trustee, in acceptance of this Trust, has caused this Agreement to be executed and its seal affixed.

Addresses:

Attorney General of South Carolina for the James Brown "I Feel Good" Trust, as Settlor and Beneficiary

Tommie Rae Brown, individually and on behalf of her minor child, James Brown II, as Settlor and Beneficiary

Larry Brown, as Settlor and Beneficiary

Venisha Brown, as Settlor and Beneficiary

Deanna J. Brown Thomas, as Settlor and Beneficiary, individually and on behalf of her minor child, Jason Brown-Lewis

Yamma N. Brown Lumar, as Settlor and Beneficiary, individually and on behalf of her minor children, Sydney [redacted] and Carrington [redacted]

Darryl Brown, as Settlor and Beneficiary, individually and on behalf of his minor child, Janise [redacted]

Terry Brown, as Settlor and Beneficiary

_____, as Trustee

5406756/3

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named Settlors, sign, seal and as their act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

_____

SWORN BEFORE ME THIS ____
day of _____, 2009.

_____
Notary Public for South Carolina
My Commission Expires:_____

_____
Trustee, James Brown Legacy Trust

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named _____, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

_____

SWORN BEFORE ME THIS ____
day of _____, 2009.

_____
Notary Public for South Carolina
My Commission Expires:_____

SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

All of Settlors' rights and interest in any assets or proceeds whatsoever to be received or payable to any of the Settlors , now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to persona, image, likeness, royalties etc. (collectively, the "James Brown Assets").

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	
Plaintiff,	)	
	)	
v.	)	
	)	MOTION OF ATTORNEY GENERAL
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	FOR JUDGMENT ON THE PLEADINGS
	)	
Defendants.	)	

FILED
2013 MAR -8 AM 11:23
C.C.P. & G.S.

Subject to and without waiving his Motion to Dismiss and Motion to Amend his Motion to Dismiss, the Defendant Alan Wilson, Attorney General moves for judgment on the pleadings pursuant to Rule 12 (c), SCRCP, in that the moving party is entitled to judgment as a matter of law in this case:

1. Subject to all of his motions and defenses in this case including lack of subject matter jurisdiction, the FOIA request of Plaintiff Summer attached to her complaint as exhibit C in Summer v. Wilson, 2012-CP-36-688 and the response filed by the Defendant Attorney General as an attachment to his answer in Summer, demonstrate that the OAG has no documents that could be considered responsive to the Freedom of Information Act request at issue except for a draft of the Legacy Trust included in the Record on Appeal in *Wilson v. Dallas*, Op. No. 27227 (S. C. Sup. Ct., filed February 27, 2013), a case in which Plaintiff was a party. *See*, exhibits attached to Answer of Attorney General in the instant case at pp. 5-9.

2. The Court lacks subject matter jurisdiction of this action because the Plaintiff failed to mail or deliver her Freedom of Information Act request at issue to the Office of the

Attorney General as required by S.C. Code Ann. 30-4-30 (c). This ground is supported by the attached affidavit of Tracy Meyers (Exhibit A), the original of which is already on file in this case.

3. The Court lacks subject matter jurisdiction of this action because the Complaint and attachments make clear that Plaintiff seeks the documents for the purposes of the Bauknight v. Pope, 2010-CP-40-4900, litigation pending now which is governed by the Rules of Civil Procedure regarding civil discovery in *Bauknight*. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

4. Another action is pending among the same parties as to the same or substantially the same claim under Rule 12(b)(8). *Bauknight, etc.,et al, supra.* Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs, 7-11 and Exhibit D to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See,* Exhibit D to Complaint, ¶2b; Attached Exhibit B, Motion to Compel, p. 3, ¶ 3, June 7, 2011 (attachments to Motion omitted); Attached Exhibit C, Motion for Protective Order and including Exhibits D & E thereto (exhibits B & C (including Exhibits D & E) are attached in support of only the Rule 12(b)(8) Motion). Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the

Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).[1]

For the foregoing reasons, the Defendant Wilson respectfully requests that he be granted judgment in this action.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: _____

March 7, 2013 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion for Judgment on the Pleadings would serve no useful purpose.

_____

March 7, 2013 ATTORNEY FOR THE ATTORNEY GENERAL

1 The Newberry County Court of Common Pleas has already ruled against a similar ground, and a related subject matter jurisdiction defense in its Order dated November 22, 2011 in another Pope FOIA suit, *Pope v. Wilson* (former Newberry case 2011-CP-36-379, now consolidated with *Bauknight v. Pope*, 2010-CP-40-4900). That Order would not be binding on the instant suit, and the Defendant asserts these grounds in this Answer to preserve them. The subject matter ruling did not address the exemption or §30-4-30 (c) arguments set forth, *supra*.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Adele J. Pope, Plaintiff, vs. Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, Defendant.	)	C/A No. 12- CP-40-350 JAMES BROWN LEGACY TRUST's MOTION TO STAY

Defendant James Brown Legacy Trust, through its trustee Russell L. Bauknight, moves this Court to stay the above-captioned action pending resolution of certain issues in *Wilson, et al. v. Dallas, et al.*, Opinion No. 27227 (filed February 27, 2013).

The South Carolina Supreme Court recently issued an opinion in the case of *Wilson, et al. v. Dallas*. In that opinion, the Court considered a "compromise agreement," approved by the Circuit Court, which had created the James Brown Legacy Trust ("the Legacy Trust"). The Supreme Court held that the compromise agreement was not just and reasonable and reversed the lower court's approval of the compromise. The opinion states that the settlement could not replace James Brown's estate plan and trusts by creating new trusts.

The Legacy Trust was to be funded with a future interest. Due to Judge Early's Order prohibiting distributions during the appeals process, it was never funded and no distributions have been made. If the status of the Legacy Trust continues as presently determined by the South

Carolina Supreme Court, the Legal Trust will not exist after remittitur.[1]

Trial courts have the authority and discretion to stay an action. *See, e.g. Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 328 S.E.2d 621 (1985)(holding that trial court abused discretion in denying stay). Stays have been employed in a variety of circumstances in South Carolina, including situations where resolution of a controlling issue is pending in another proceeding. See, e.g., 4 *S.C. Jur. Actions* § 40 (citing *Piedmont Press Ass'n v., Record Pub. Co.*, 1256 S.C. 43, 152 S.E. 721 (1930)). Since there is a significant question as to whether the Legacy Trust exists, which will be resolved at the time of the remittitur, Defendant Bauknight respectfully requests that the motions as to the Legacy Trust be stayed.

A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK & GRIFFIN, LLP
P.O. Box 11208
Columbia, South Carolina 29211

By: Ariail E. King
Ariail E. King

Attorneys for Defendant James Brown Legacy Trust, by Russell L. Bauknight, its Trustee

Columbia, South Carolina

March 15, 2013

[1]There has been no remittitur yet as on March 14, 2013, four Petitions for rehearing were filed: one on behalf of the Attorney General, one on behalf of Mr. Bauknight, one on behalf of James B., and one on behalf of Mrs. Pope. None of the petitions challenge the Supreme Court's holding as to the Legacy Trust.

Rule 11 Statement

Pursuant to Rule 11(a), SCRCP, the undersigned counsel certifies that she attempted to has not consulted with opposing counsel regarding this motion in that, as apparent from earlier correspondence, such consultation would not serve a useful purpose.

Ariail E. King

Ariail E. King

000217

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	
Plaintiff,	)	
	)	
v.	)	
	)	CERTIFICATE OF SERVICE
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	
	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2013 MAR 15 AM 10:42

I hereby certify that I have served additional exhibits to the Answer of the Office of the Attorney General upon counsel for the other parties by mailing copies to each of them at the addresses below via the United States Mail this March 13, 2013.

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
P.O. Box 1898
Columbia, SC 29202-1898

Keith M. Babcock, Esquire
Ariail E. King, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Attorney for the Attorney General

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	[formerly Newberry Co. Case No.
Plaintiff,	)	2011-CP-36-364]
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	MOTION TO STRIKE ADDITIONAL AFFIDAVIT
	)	
Defendants.	)	

JEANETTE W. McBRIDE
C.C.P. & G.S.
2012 MAR 29 AM 10:46
RICHLAND COUNTY
FILED

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following two affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike:

1. Affidavit of Adele Pope dated February 22, 2012 and attachments [This affidavit is attached to Return to Motion to Consolidate]

2. Affidavit of Adele Pope dated January 9, 2012 in support of Attorney's fees.

The affidavits and attachments contain material irrelevant to the legal issues before this Court in the instant case. The affidavits also contain statements that are not based upon personal knowledge, that are speculative, or that are hearsay.

[Signature block on next page]

1 The Defendant 's Motion to Consolidate this case with *Bauknight v. Pope*, case no. 2012-CP-40-4900, is currently pending.

Respectfully submitted,

ALAN WILSON
Attorney General

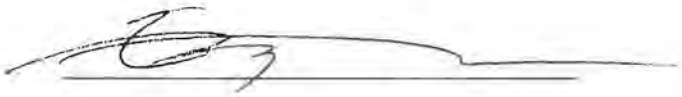
J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

March 28, 2012 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose.



March 28, 2012 ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2012-CP-40-350
	)	[formerly Newberry Co. Case No.
Plaintiff,	)	2011-CP-36-364]
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,	)	MOTION TO STRIKE ADDITIONAL AFFIDAVITS DATED MARCH 26 AND 27
	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2012 MAR 30 AM 9:07
JEANETTE W. McBRIDE
C.C.P. & S.C.

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following two affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike including an extraordinary number of affidavits executed by Plaintiff, herself:

1. "Supplemental Affidavit" of Adele Pope dated March 27, 2012.

2. Affidavit of Sue Summer dated March 26, 2012 and attachments.

The affidavits and attachments contain material irrelevant to the legal issues before this Court in the instant case. The affidavits and attached news articles also contain statements that are not based upon personal knowledge, that are speculative, or that are hearsay.

[Signature block on next page]

1 The Defendant 's Motion to Consolidate this case with *Bauknight v. Pope*, case no. 2012-CP-40-4900, is currently pending.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

March 29, 2012 ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose.



March 29, 2012 ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. ~~2011~~ 2012 CP-40-350
	)	
	)	
Adele J. Pope,	)	
Plaintiff,	)	PLAINTIFF'S STATUS REPORT AND MEMORANDUM OF LAW
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee	)	
Defendants.	)	

2013 APR -1 PM 3:33

By direction of the Honorable L. Casey Manning on March 18, 2013 Plaintiff Adele J. Pope submits this report of the Status of this case in light of S. C. Supreme Court decision No. 27227, issued February 27, 2013 and subsequent events.

Summary of Status and Relief Requested

The following summarizes the status of this case ["Case 350"]:

1. This case, brought under the South Carolina Freedom of Information Act ("FOIA"), has been pending for nearly 18 months and is ready to be heard and finally decided at the Court's earliest convenience.

2. Pursuant to the Supreme Court's suggestion (in footnote 29 of the opinion), the FOIA cases "should be considered by the circuit court in the first instance."

3. The Defendant James Brown Legacy Trust (the "Legacy Trust")'s argument that it will not exist if the Supreme Court's opinion stands is baseless, and the Legacy Trust is unquestionably a public body created by the South Carolina Attorney General.

4. All documents held by the Legacy Trust and/or its counsel are under the control of the Attorney General and subject to the provisions of FOIA.

5. The motion to consolidate this case with Case 4900 is now moot in light of the AG's indication that he will seek to withdraw from Case 4900.

These matters are discussed in detail below.

History of Case

Pope made proper requests under the FOIA for the public documents sought herein in June 2011. Those documents include:

> The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust (requested from both Defendants) and
>
> All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust (requested from Defendant AG only)

Counsel for the Legacy Trust refused to release any documents and threatened to seek sanctions or other relief against Pope if she made further requests to the Legacy Trust under the FOIA. (See Ex. C to Ex. D of the Complaint herein.) The Attorney General failed to timely respond to Pope's FOIA request.

This case was filed on August 3, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the requested documents are public; an Order directing their production; and her attorneys' fees incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

At the request of Defendant AG, this case was transferred to Richland County and given its current case number. Subsequently, both Defendants moved separately to consolidate this case with Case No. 2010-CP-40-4900 ("Case 4900"), which is a complex tort case.

Despite continuing requests by Plaintiff for a hearing, no motions have been decided since the case was transferred to Richland County more than a year ago.

On March 15, 2013, the Legacy Trust moved for a stay, based on its assertion that it no longer exists as a result of the Supreme Court's February 27 decision in another case.

Plaintiff opposes this request as set out below and asks again that this matter be heard at the Court's earliest convenience.

The Legacy Trust has Existed for Years, and No Stay Should be Granted.

The Legacy Trust was created by then-Attorney General Henry McMaster prior to May of 2010. Since its creation, the Legacy Trust has prosecuted a Richland County tort action against Pope for more than 2 years; engaged counsel and defended this action for nearly 18 months; sought, for more than a year, to intervene in another FOIA action brought by Pope; and been actively managed by Russell L. Bauknight for more than 3 years (See Affidavit of Bauknight, dtd. 1/10/12). Not once prior to March 15, 2012 had the Legacy Trust questioned its continued existence, despite being directly and continuously involved in litigation.

As is clear from the Supreme Court's opinion, the Court did not declare the Legacy Trust void. Instead, the Court reversed the approval of a *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests that the Supreme Court eradicated the Legacy Trust *ab initio*.

Furthermore, The Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multimillion-dollar claim against Plaintiff for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, wherein it has indicated no doubt as to its existence.

Its 18-month participation in this case also shows that the Legacy Trust has been funded in some manner. It has been and continues to be represented by a well-respected firm which, ostensibly, has been or expects to be paid for its work.

In short, the Legacy Trust exists, despite any current question of the manner or

amount of its funding.

The Legacy Trust is a Public Body and Must Produce the Requested Documents

The Legacy Trust was created by former Attorney General Henry D. McMaster in his official capacity, as is demonstrated by both known drafts of the document. These drafts show "the Attorney General of South Carolina" as one of the Settlors of the Trust. It is absurd to suggest that an entity created by the Attorney General of South Carolina could be considered anything other than a public body.

Our Supreme Court held in *Weston v. Carolina Research and Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), that indirect public support of an organization could cause that organization to be treated as a public body. In *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (2003), the Kansas Court held that an organization's use of state employees (who were not paid outside their state salaries) meant that it was a public body for FOIA purposes. This is particularly instructive, since many attorneys within the AG's office have, in their capacities as state employees, expended considerable time in defending the Legacy Trust's existence and pursuing its continued funding under the August 2008 settlement agreement.

In 2006, Attorney General McMaster – citing both of the above cases – opined that "'indirect' or 'in kind' public funding, such as by virtue of an entity's use of public employees or governmental resources, is sufficient to invoke FOIA." (See Opinion dtd. 5/19/06) Following the case law and the Attorney General's own opinion, the vast state resources dedicated to the Legacy Trust give rise to its status as a public body.

Further, in January 2011, Attorney General McMaster – without the Trustee of the Legacy Trust – signed an amendment indicating that the settlement "created an entity (the 'Settlement Entity') to hold all of the assets related to James Brown . . . ." See Exhibit A,

attached. This "Confirmation and Amendment" confirms by its own language that the Legacy Trust (which is the "Settlement Entity") had been in existence since the settlement was executed.

The Legacy Trust asks this Court to find that the Attorney General can create an entity which does not have to produce its own public documents if the Supreme Court later finds the Attorney General's actions were improper. The Court should decline to do so and set a hearing on this matter at its earliest convenience.

Respectfully submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1901 Hampton Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770 m
Facsimile: (803) 403-8092
adam@silvernaillawfirm

Attorney for Plaintiff

March 27, 2013

EXHIBIT A

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement) The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions

2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Bauknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.

3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.



Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

NPCOL1:2098327.4-ACR-(GMK) 044146-00004

Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Todd[illegible] Bar Board

1/4/11

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindsay Delores Brown, Vantsha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lumar, Sydney L., Carrington L., and Tonya Brown

Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

Robert N. Rosen
T. Heyward Carter, Jr.
S. Alan Medlin
David L. Michel
Post Office Box 1510
Charleston, South Carolina 29402
Attorneys for Tommie Rae Brown

Louis Levenson
Levenson & Associates
125 Broad Street
Atlanta, Georgia 30303

Attorney for Larry Brown, Daryl J. Brown, Janise Vanisha B., Lindsey Delores Brown, Vanisha Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown-Lamar, Sydney L., Carrington L., and Tonya Brown



Terry Bryan

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2012-CP-40-350
	)	
	)	
Adele J. Pope,	)	
Plaintiff,	)	PLAINTIFF'S MOTION TO ALTER, AMEND OR VACATE ORDER GRANTING ATTORNEY GENERAL'S MOTION TO DISMISS
	)	
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee	)	
Defendants.	)	

RICHLAND COUNTY
FILED
2016 JUN 27 PM 2:41
JEANNETTE W. McBRIDE
C.C.P. & G.S.

Plaintiff Adele J. Pope ("Plaintiff") hereby moves for an Order altering, amending and/or vacating the Order of the Honorable Doyet A. Early, III, dated June 14, 2016, mailed for filing on June 21, 2016, and received by Plaintiff on June 24, 2016, pursuant to Rule 59(e), *South Carolina Rules of Civil Procedure*. The grounds of this motion are as follows:

1. The Court overlooked or misapprehended that the Circuit Court Order of the Honorable Marc H. Westbrook, issued on or about October 25, 2002, is not binding precedent or applicable to civil cases under the FOIA.

2. The Court overlooked or misapprehended that the FOIA is intended to provide a speedy and inexpensive method for anyone to obtain public documents from public bodies upon proper request, and that the Court's Order herein has denied Plaintiff that right and violates the letter and spirit of the FOIA.

3. The Court overlooked or misapprehended that, under the FOIA, Plaintiff is entitled to reasonable attorneys' fees and costs for the almost-five-years the AG has refused to produce the relevant documents, namely:

The Final and all drafts, signed and unsigned, of the James Brown Legacy Trust

(requested from both Defendants) and

All correspondence, email and/or other communications between any member of the Office of the South Carolina Attorney General and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust (requested from Defendant AG only).

4. The Court overlooked or misapprehended that Plaintiff, by virtue of being sued by the Attorney General of South Carolina in 2010, did not lose her FOIA rights.

5. The Court overlooked or misapprehended that the 2015 Order of the Honorable Eugene C. Griffith, Jr., in another James Brown FOIA matter, is more apposite to this case than the 2002 Westbrook Order.

6. The Court overlooked or misapprehended that making FOIA compliance subject to discovery would unduly prejudice the media and citizen non-parties to pending litigation.

7. The Court overlooked or misapprehended that citizens and the media may not freely participate in discovery in cases in which they are not parties.

8. The Court overlooked or misapprehended that the Order subjecting this case to discovery is preventing the fair public analysis of whether the AG's $4.7 million claimed value of the James Brown assets or the Buchanan/Pope $84 million valuation is correct.

9. The Court overlooked that the value of James Brown's assets at death, which was the subject of this FOIA request, is an important public question.

10. The Court overlooked or misapprehended that its Order prevents the media from reviewing under FOIA the role of the AG in a sale of 3 songs James Brown gave to his "I Feel Good" Charity, including "Please Please Please" and "Try Me," and distributions of $1 million to Tommie Rae Brown, even though she has not been finally determined to be Brown's spouse; $1 million to certain children challenging James Brown's Trust; and an

Order authorizing payment of nearly $700,000 in legal and GAL fees to Tommie Rae's son, even though he has not been determined to have any interest in James Brown's Estate.

11. The Court overlooked or misapprehended that subjecting Pope's FOIA request to discovery in cases in two counties in which the FOIA request was not made has violated both her Due Process and Equal Protection rights under the 5th and 14th Amendments to the United States Constitution and under the South Carolina Constitution.

12. The Court overlooked or misapprehended that it was improper and inconsistent with the letter and spirit of the FOIA to move a 2011 FOIA case from Newberry to Richland County and subject it to discovery in a third county in which neither the Attorney General nor the McMaster Legacy Trust is a party.

13. The Court overlooked or misapprehended that the "common interest" privilege AG Wilson claims with Tommie Rae and other will contestants, and their attorneys and agents in other civil proceedings, has no role in FOIA.

14. The Court overlooked or misapprehended that FOIA is an appropriate mechanism for Plaintiff to seek and receive documents held or used by the AG to support his claim that James Brown's music empire is worth $4.7 million where he has publicly accused Plaintiff and Robert Buchanan of intentionally overstating the value of the said music empire by $79 million.

This motion is based on the South Carolina Rules of Civil Procedure, especially Rule 59(e); the positions taken by the Attorney General and the McMaster Legacy Trust in civil cases related to James Brown, including the Attorney General's claimed privilege with Tommie Rae Brown, will contestants and others; the rulings related to persons other than Plaintiff in James Brown FOIA matters since this case was filed on August 3, 2011; and the entire record herein, including affidavits in this matter and by journalists and citizens in

other James Brown FOIA matters. The Court is asked, pursuant to SCRE Rule 201, to take mandatory judicial notice of these documents in the consideration of this motion to alter, amend or vacate.

Respectfully submitted,

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernaillawfirm.com

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 27, 2016, he has served a copy of the foregoing document on counsel for the Defendants by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

Ariail E. King, Esquire
David L. Paavola, Esquire
Lewis Babcock, LLP
PO Box 11208
Columbia, SC 29211

J. Emory Smith, Esquire
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

RICHLAND COUNTY
FILED
2016 JUN 27 PM 2:41
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Adam T. Silvernail

90158

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-001727

Adele J. Pope..... Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee.....Respondents.

APPELLANT'S PETITION FOR REHEARING

Adam T. Silvernail (Bar No. 80219)
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernaillawfirm.com

Counsel for Appellant

RECEIVED
JUN 28 2019
SC Court of Appeals

Appellant respectfully requests, pursuant to Rule 221, SCACR, a rehearing of the decision rendered on June 19, 2019. This petition is presented to provide the Court with information within the record needed to accurately assess the continuing role of Respondents James Brown Legacy Trust (Legacy Trust) and the Attorney General of South Carolina (AG) in delaying and denying Appellant and other citizens of South Carolina access to public documents to which they are entitled under the South Carolina Freedom of Information Act (FOIA)[1] related to the estate of entertainer James Brown and his "I Feel Good" Trust.

The Court is asked to consider the facts and applicable law presented herein as well as matters related to the actions of the AG and Legacy Trust in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) and Richland County Case 2010-CP-40-4900 (Richland 4900) of which the Court may take proper judicial notice.[2]

Appellant respectfully requests that the Court modify its opinion to declare that Respondent Legacy Trust, like the AG, is a public body as defined in FOIA, and that Appellant is entitled to summary judgment and immediate FOIA compliance by both the AG and Legacy Trust as to all documents requested under FOIA. The matter should be remanded to the circuit court for enforcement of the Court's ruling, a determination of the award of attorney's fees and costs to Appellant, and the allocation of those fees and costs between the AG and the Legacy Trust.

In this extraordinary FOIA case the Court has acknowledged Appellant's FOIA rights eight years after her FOIA request was made. If the Court fails to find that the Legacy Trust is a public body and direct immediate FOIA compliance, costs will be increased and Appellant may have to wait for a decade to obtain documents from the State official charged with the enforcement of FOIA

---

[1] S.C. Code Ann. §30-4-10, et seq.

[2] Specifically, Appellant asks that the Court take judicial notice of its own files for Appellate Case Nos. 2017-1899 and 2018-2229 arising from Richland 4900, as well as Appellate Case No. 2019-0362, arising from Aiken 1337 (discussed below).

which should have been delivered in 2011. The same would be true if counsel who is holding the AG's documents which are subject to FOIA, and has itself agreed to comply with FOIA, can continue to help the AG evade its statutory obligations under FOIA. Such further delay would harm Appellant and fly in the face of both the letter and spirit of FOIA.

The Attorney General Creates and Controls the Legacy Trust

James Brown died on Christmas Day 2006 leaving all of his assets except his personal and household effects to a trust he established in 2000. At his death, by a "fractional share" formula related to Brown's final estate tax proceeding, a fraction of Brown's assets and income is placed in a taxable trust for the education of seven specific grandchildren to age thirty-five (35). Everything else goes to Brown's "I Feel Good" Trust, a private charitable foundation dedicated solely to providing scholarships for needy students studying in South Carolina and Georgia.

In October 2007 AG Henry McMaster, now Governor of South Carolina, officially entered the James Brown proceedings to protect James Brown's "I Feel Good" Charity.

Brown's Inventory & Appraisement (I&A) filed the following month valued Brown's music empire at $100 million, less Brown's $15 million debt to the New York Teacher's Assn. (TIAA). The value was based on a letter of intent from TJBL to buy the music empire.

A February 2008 WIS-TV interview in which the AG and Brown's grandson Forlando Brown (Forlando) participated states:

> ...[Brown's] assets contain his 6-acre Beech Island home and even more importantly, rights to James Brown's image and music. Altogether, the estimated worth is more than $100 million. "So the children", McMaster says, "the needy children stand to gain a lot." [R., p. 311]

As to the possibility that litigation might diminish the "I Feel Good" Charity, Governor McMaster said:

There is a concern some could be whittled away, but we think there

> is so much money involved because the name is so big and the rights to his image – really a valuable thing. We're trying to look at this long term. [R., p. 311]

In 2008 TJBL made two additional attempts to purchase the James Brown assets for between $90 million and $102 million. [R., p. 311]

On July 30, 2008 the AG approved Robert Buchanan, Jr. and Appellant Pope, who had been serving as Brown's PR/Trustees since November 2007, as permanent trustees of Brown's 2000 Trust. Eleven days later, however, the AG contracted to replace them That day, August 10, 2008, the AG brokered a settlement deal which dismembered Brown's estate plan and threatened the 900 copyrights James Brown had given his "I Feel Good" Charity. [R., p. 312]

The AG asserted the right to "stipulate" who would be James Brown's heirs under the U.S. Copyright Act, 17 U.S.C. §§ 101 *et seq.* (Copyright Act) and thus be entitled to certain "Termination Rights" under Sections 304 and 203 of the Copyright Act to some of Brown's U.S. royalties. He stipulated that Tommie Rae Hynie Brown (Tommie Rae), her son James Brown II (James) and five clients of Louis Levenson, Esq., would be Brown's heirs "for all purposes."

Tommie Rae, James and the Levenson clients, with knowledge of each other's potential impediments, agreed to "stipulate" that Tommie Rae was Brown's spouse under the Copyright Act and that they were Brown's only children. They agreed to pool all of their Termination Rights proceeds, and certain other assets, in Respondent Legacy Trust; put the AG in effective control by the right to appoint and replace the trustee at will; and give Tommie Rae and the AG 75% voting control (50% to the AG and 25% to Tommie Rae). They even agreed that half of the income and assets of the Legacy Trust would go to a charity controlled by the AG.

The AG overlooked two critical factors. First, Termination Rights stand apart from Brown's estate plan. No attempt by Brown to exclude heirs in his will or attempt of the AG to stipulate heirs would prevent Brown's half dozen or more claimed heirs – some already DNA- proven – from

sharing in a proper Termination Rights election.

Second, the AG and "stipulated" heirs ignored, or concealed, that Termination Rights proceeds, which would slowly mature beginning in 2012, apply only to U.S. royalties, and U.S. royalties make up only about half of James Brown's $4 million annual worldwide royalty stream. Thus $2 million a year of the " I Feel Good" Charity's income; half the copyrights; all of Brown's image and likeness (right of publicity); and all of the remainder of the assets Brown gave the "I Feel Good" Charity will never be threatened or diminished by Termination Rights. Further, multiple strategies are available to the "I Feel Good" Charity, and others, to lessen the impact of Termination Rights elections.

Despite these factors, the AG claimed that it had conducted proper due diligence when he decided to put all of James Brown's assets in the Legacy Trust; give Tommie Rae and the Levenson clients about $2 million a year of income; and use their Termination Rights and James Brown's fortune to defend his plan. The AG continued this position in his March 2013 Petition for Rehearing in *Wilson v. Dallas.* At page 16 the AG said:

> As the contribution agreement states: "The parties hereunder recognize that it may be difficult at this time to value accurately the interests and rights being contributed hereunder to the Legacy Trust. However, the parties are reasonably informed that a large portion of the value of the assets and interests contributed hereunder resides in the rights granted to heirs under the federal copyright act. Accordingly, the parties recognize that the beneficial interest received hereunder by Mrs. Brown and/or the Levenson clients *may be of lesser value than the interests they are contribution to the Legacy Trust* ... [Emphasis supplied]

In September 2008 Buchanan and Pope filed Brown's estate tax return. Schedule F of the return reported Brown's worldwide music empire, consisting of this 900 copyrights; claims against David Cannon and others for the $17 million Cannon took; Brown's right of publicity (image and persona), his valuable tangible personal property (TPP) and other miscellaneous assets at $84

million – about $99 million less the TIAA debt. Based on information then available, and available now, the $84 million valuation was reasonable and conservative. The valuation of the copyrights and right of publicity was consistent both with a formula presented to Judge Early in 2007 and unopposed by the AG and the non-professional valuation formula accepted by the IRS in 2002 for the valuation of the copyrights of songwriter Harlan Howard. *In re Estate of Harlan Perry Howard*, No. M2008-00540-COA-R3-CV (Tenn. App. 2009).

The estate tax return was promptly made public, and no objections were made to the value.

By January 2009 Russell Bauknight was serving at the pleasure of the AG as trustee of the Legacy Trust, a position he holds today. Tommie Rae, James and the Levenson clients had placed their Termination Rights proceeds in the Legacy Trust.

On or about January 17, 2009, the AG filed an unsigned, incomplete copy of the Legacy Trust in Aiken County. [R., p. 312] It did not show that Bauknight was trustee.

On January 30, 2009 Terry Brown (Terry) joined the settlement and placed his Termination Rights proceeds in the Legacy Trust. The AG and Tommie Rae maintained their 75% voting control of the Legacy Trust, but the ownership was modified slightly as follows: AG's Charity, 47.5%; Tommie Rae, 23.75%; Terry, 4.79%; Venisha Brown (Venisha), 4.79% and four other Levenson clients 4.79% each.

Immediately after Terry joined the settlement, Bauknight, without disclosing his role as trustee of the already-funded Legacy Trust, recommended that Judge Early approve the AG's settlement. [R. p. 300]

On March 26, 2009 a second, modified, incomplete, unsigned copy of the Legacy Trust was filed in Aiken County. [R., p. 312] The Legacy Trust document make clear the AG's control. Assets may not be sold other than in the ordinary course of business without his agreement. Nor can a modification or dissolution of the Legacy Trust occur without the AG's consent.

On April 6, 2009 Senior Assistant Attorney General Havird "Sonny" Jones, who has overseen the AG's involvement in James Brown matters since 2007, assured Judge Early:

> THE ATTORNEY GENERAL IS GOING TO...MAKE SURE IT IS TAKEN CARE OF AND WE HAVE CONTROL OVER [THE] CHARITABLE TRUST AND SETTLEMENT ENTITY [Legacy Trust], SO WE'LL MAKE SURE THIS CHARITABLE TRUST SET UP UNDER THIS SETTLEMENT WILL BE CARRIED FORTH PROPERLY.... [R., p. 300]

On May 26, 2009 Judge Early, persuaded that the AG had conducted extensive due diligence, approved the AG's settlement, as modified.

In the fall of 2009 Judge Early lifted the automatic stay imposed by the appeal by Buchanan and Appellant which would become *Wilson v. Dallas.*

From 2009 until 2013 Buchanan, Pope and a small legal team were the only persons working to protect the "I Feel Good" Charity. Under the direction of two AGs, at least five taxpayer-paid lawyers were working for Respondent Legacy Trust. Another dozen lawyers, under the control and with the approval of the AG, were using Brown's "I Feel Good" Charity's funds to defeat the claims of anyone who opposed the AG's heirs "stipulation" or the Legacy Trust.

The AG and Legacy Trust Sue Buchanan and Pope in Richland 4900

In April 2010 an attorney for Tommie Rae advised that Sr. Assistant AG Jones had hired the law firm of Kenneth Wingate, Esq., (Wingate), and Wingate would sue if Buchanan and Pope did not drop their appeal of the AG's settlement. [R., p. 301]

On May 18, 2010 Bauknight signed the 23% - 40% Wingate contract for the Legacy Trust, and Wingate agreed to a contract which made clear that the documents it was holding were subject to FOIA and that the AG controls all litigation related to the charity. AG McMaster did not sign the Wingate contract, but this was not known until the fall of 2013.

On May 19, 2010 the AG and the Legacy Trust sued Buchanan and Pope for tens of millions

of dollars in Richland 4900 for the benefit of the Legacy Trust and its beneficiaries, including the AG. [R. pp. 33-4]

In Richland 4900, Bauknight, in addition to suing as trustee of the Legacy Trust, has for nine years claimed to act "on behalf of" the AG, Tommie Rae, James, and other Legacy Trust beneficiaries to whom Buchanan and Pope owed no duty. [R. 34]

Richland 4900 and the $79 Million Devaluation of the Music Empire

The AG and Legacy Trust claim in the Richland 4900 complaint that Buchanan and Pope should have accepted TJBL's $100 million offer in 2007. They also claimed Buchanan and Pope overstated the value of James Brown's assets in James Brown's IRS proceeding in order to get a big commission. The complaint, which is being pursued by the AG and Legacy Trust today, asserts that as a result of the failure of Buchanan and Pope to accept the $100 million offer, the James Brown assets in 2010 were worth tens of million of dollars less than in 2007. The complaint also asserts that Buchanan and Pope knew nothing about the Copyright Act or its impact on the value of the James Brown assets.

On August 23, 2010 the AG and other Legacy Trust beneficiaries told the Court of Appeals in *Wilson v. Dallas*:[3]

> 6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the [2000] Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million ($85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million ($100,000,000.00) Dollars[4],

[3] The representation was made in a return by the AG, Bauknight and others to a request of Buchanan's and Pope's *pro bono publico* appellate counsel James Richardson, Jr., for an extension to file their initial brief in *Wilson v. Dallas*. [R., p.337]

[4] The difference between $100 million and $85 million is the $15 million TIAA debt.

in affidavits, pleadings, and testimony...

> Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal.[5] By contrast Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million ($12,000,000.00) Dollars. [R., p. 336]

In response to the claimed devaluation from about $84 million to $12 million or less Wm. Jeffrey Smith, Esq., and Appellant Pope circulated a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*[6] [R. pp. 1335-1338; R. pp. 1581-1600]

The claimed $4.7 million valuation arrived in September 2010, but the AG, Bauknight and others agreed to withhold it from the *Wilson v. Dallas* Court for eight months.

Buchanan and Pope moved to dismiss the Richland 4900 complaint or change venue to Aiken County. They also claimed that Richland 4900 was unconstitutional.

In response, Bauknight stated under oath that he managed the Legacy Trust and kept its assets, books and records at his Columbia office. [R., p. 59]

Subject to the motion to dismiss, Buchanan and Pope answered, counterclaimed and sought discovery, including:

> Any and all documents which support any position you may have as to the value of the James Brown assets as of December

---

[5] This statement was incorrect. There was a professional appraisal of approximately 800 of Brown's 900 copyrights, including the major copyrights, in 2006 conducted by the Royal Bank of Scotland (RBS). RBS valued the royalty stream from the 800 copyrights at $42 million or more.

[6] The draft of *Private Foundations* was circulated in April 2011 to peers and the AG. It explains how the combined devaluation of Brown's music empire from about $99 million (less a $15 million debt to TIAA) to $12 million, and sale to Terry at that reduced valued, would leave the "I Feel Good" Charity with almost nothing. [R.p. 372]

25, 2006. [R., p. 66, L 2 – 5]

In December 2010 the AG and Bauknight filed their initial brief in *Wilson v. Dallas* and did not disclose the claimed $4.7 million valuation.

The AG and the Legacy Trust did not produce the requested documents in Richland 4900 in 2011, and they have not been produced today. [R. pp. 66-67].

In December 2010 Bauknight filed documents in James Brown's IRS estate tax proceeding claiming Brown's worldwide music empire (estate tax return Schedule F) was worth only $4.7 million. That year alone Brown's royalties brought in $5.4 million. [R., p. 303]

The damage caused by Bauknight's $79 million devaluation to $4.7 million, and the shifting of 31% of assets out of the "I Feel Good" Charity was immediately apparent in 2011 by a reading of Brown's 2000 Trust.

On or about January 4, 2011 the AG amended the Legacy Trust to allow Terry to begin due diligence on his right of first refusal (ROFR) to buy the music empire. Terry then transferred his 4.79% interest in the Legacy Trust to Forlando. [R., pp. 223 - 227] Terry and Forlando were both part of two of the three TJBL attempts to buy the music empire at $90 - $100 million.

On May 3, 2011, Bauknight filed a supplemental I&A in the Aiken Probate Court, changing the value of the music empire (Schedule F) from nearly $85 million to under $4.7 million. [R., p. 66, ¶6]

On or about May 6, 2011, Bauknight, the AG, and other Legacy Trust beneficiaries asked the Supreme Court to supplement the record on appeal (ROA) in *Wilson v. Dallas* to show that Brown's music empire was worth only $4.7 million when he died. The AG and Legacy Trust beneficiaries claimed Bauknight had engaged a "nationally known firm to conduct the valuation and appraisal of the Estate and Trust." The appraisal was not attached. [R., pp. 66,67]

Buchanan and Pope opposed the motion and cited voluminous evidence that Brown's assets

were worth $100 million or more. They continued efforts to obtain the claimed $4.7 million value in Richland 4900. [R., p. 67]

The AG and Bauknight "on behalf of" the AG began making the false claim to the Supreme Court that Buchanan and Pope had intentionally overstated James Brown's asset to the IRS by $79 million in order to secure a $5 million commission on a $5 million estate. If true, this false claim would have been a federal felony. *See* 18 U.S.C. § 1001.

Pope's position in the face of these accusations in 2011 was the same as it is today:

> I am informed and believe that when such false accusations are made on behalf of the State's chief law enforcement officer, who also enforces tax and fraud laws, they are clearly intended to threaten and intimidate [Buchanan] and me, and we are entitled to know if AG McMaster authorized them and AG Wilson condoned them. [R., pr. 41]

The Role of FOIA Noncompliance in Advancing the Legacy Trust's Agenda

In 2011, as today, a handful of public documents were all that was needed to show that the AG's 2008 settlement and the Legacy Trust's claims were inaccurate. Those documents are:

1. The AG's Litigation Retention Agreement with Wingate to sue Buchanan Pope in Richland 4900 in 2010 to try to stop the appeal which became *Wilson v Dallas* (Wingate contract);

2. The authorization, if any, by which Bauknight has claimed in Richland 4900 since 2010 that he speaks for the State/AG;

3. The handwritten admissions of Tommie Rae that she was married; living with her husband; and possibly pregnant before conducting a marriage ceremony with James Brown in 2001;

4. The Legacy Trust and amendments, including the January 2011 amendment and transfer of the 4.79% interest of Terry to Forlando in the month Forlando planted the false Grammy © story noted by the Supreme Court in 2013.

5. The September 2010 claimed $4.7 million valuation of James Brown's worldwide Music empire (Schedule F, Estate Tax Return) used by the AG and Legacy Trust for 8 years to suggest that Buchanan and Pope are greedy, incompetent felons who falsified IRS filings to get a $5 million commission from a $5 million estate.

The AG, Wingate and Bauknight have worked in concert in FOIA proceedings since 2011 to prevent the dissemination of these critical public documents.

As discussed later, Between February 2013 and March 2015 Appellant's counsel made twelve separate requests for a hearing in each of her two 2011 FOIA cases. No hearing was held.

Appellant's FOIA Requests for the $4.7 Million and Legacy Trust Documents

In June 2011 Pope made a FOIA request for the $4.7 million valuation, the Legacy Trust documents, and related documents. The request was sent to the AG, the Legacy Trust and Wingate.

On June 30, 2011, David Black, Esq., counsel for the Legacy Trust, wrote Pope. Claiming the Legacy Trust was not a public body, he stated:

> In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no choice other than to file an action against you for abuse of process and sanctions. [ROA, pp. 48, 49]

On July 1, 2011 the AG and Legacy Trust, through Wingate, moved in Richland 4900 for a protective order as to the documents sought under FOIA. [R., pp. 70, 71]

On August 3, 2011, Pope filed this FOIA action in Newberry County, and on August 10, 2011, she filed a second FOIA suit, also in Newberry County. Taken together, the relief sought in the two FOIA suits was:

> 1. That the AG produce the Litigation Retention Agreement between the State/AG and Wingate;
>
> 2. That the AG produce any documents which would show whether Bauknight was authorized to act "on behalf of the Attorney General of South Carolina" in Richland 4900.
>
> 3. That the AG produce the $4.7 million appraisal and related documents;
>
> 4. That the AG and Respondent Legacy Trust produce finals and drafts signed and unsigned, of the Legacy Trust and all amendments;

5. That the AG require Wingate, over which it has effective control, to comply with the FOIA requests.

6. The both the AG and Legacy Trust be declared public bodies under FOIA and bear the legal fees and costs necessary to secure FOIA compliance by the Legacy Trust and AG.

The August 3 complaint explained the relationship of the false claims being lodged against Buchanan and Pope in Richland 4900:

9. AG McMaster and Bauknight did not attach or provide a signed copy of the Legacy Trust, although AG and Bauknight as his agent in Case 4900 assert Plaintiff caused tens of millions of dollars damage to the Legacy Trust.

10. AG McMaster and the Legacy Trust, among other false allegations, asserted that Plaintiff's and Buchanan's approximately $85 Million valuation of James Brown's assets was incorrect and improper. They asserted Plaintiff intentionally overstated Brown's assets on the estate tax return for the improper purpose of obtaining a large commission. [R., p. 18]

An affidavit of Pope filed on August 3, 2011, supports the FOIA requests and asserts the importance of obtaining the claimed $4.7 million appraisal before a hearing in Richland 4900 to enjoin Wingate from representing both the AG and Terry, who was seeking to buy the James Brown assets. [R. pp. 33- 43] The affidavit asserted that FOIA compliance would help answer the following questions:

a. Did either the Legacy Trust or a separate document give Bauknight legal authority to assert he speaks for AG McMaster?

b. If not, is Bauknight's assertion that he speaks on behalf of the AG improper?

c. If so, is either the State or AG liable for Bauknight's actions, including the default and any counterclaim judgment?

d. Can Bauknight continue to speak on behalf of the AG/State after filing sworn documents with the Court and IRS asserting Brown's

worldwide music empire was worth less than $4.7 million [7] ? [R., p. 34]

The affidavit advised the court of the substantial evidence that some or all of the beneficiaries of the Legacy Trust, or their agents, were actively involved in the manipulation of the value of Brown's assets.[R., pp. 37, 38] It noted that Terry, supporting the $4.7 million value claim, had been part of two $90 - $100 million offers for Brown's music empire, and that Tommie Rae had asserted that the 900 copyrights alone might be worth $100 million. [R, p. 5, Fn. 11] It explained how the AG, Terry and others stopped a 2-year "publicity rights" contract negotiated by Buchanan and Pope with GreenLight, a company which had earned tens of millions annually by exploiting the images and personas of Einstein, Steve McQueen and others. [R., p. 36, Fn. 11]

Pope's affidavit stated that in 30 years of practice she had never known an "AG to be a co-Plaintiff using joint private counsel in a tort suit for money damages against a South Carolina citizen;" where neither the AG (nor an associate) was counsel of record. Nor had she seen a suit where a private citizen purported to act "on behalf of" the AG, as Bauknight was doing. [R., pp. 38, 39]

The affidavit cited the AG's October 20, 2006 litigation retention agreement with private counsel in the AstraZeneca (AZ) litigation, which did not involve private co-Plaintiffs, and suggested the undisclosed Wingate contract should contain a provision:

> ... as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob [Buchanan] and me from the use of the State's power to support the abusive acts of private counsel and Private Plaintiffs [See AstraZeneca agreement AG McMaster... [R., p. 39]

The August 3, 2011 affidavit recited some of the many public policy questions raised by

---

[7] Footnote 7 stated that on May 4, 2011, 4 years and 4 months after Brown's death, Bauknight revealed that he had used a $4.7 million valuation for Brown's worldwide music empire, even though 2 months earlier he had confirmed that Brown's royalty receipts for 2010 were approximately $5.4 million. [R., p. 36, Fn.7]

the extraordinary Richland 4900:

> 1. Is Bauknight's assertion that he speaks on behalf of the AG in Richland 4900 legal?
>
> 2. Did all Private Plaintiffs sign the Wingate contract (as is required for a contingent fee) to bring Richland 4900?
>
> 3. Did the AG violate his own policy and/or the Wingate contract by not maintaining control over the Richland 4900 litigation and signing the contract?
>
> 4. How is the Buchanan/Pope counterclaim judgment against the Richland 4900 Plaintiffs, if any, to be paid?
>
> 5. Did the AG approve seeking money damages against Buchanan and Pope for not signing an agreement not to criticize him?
>
> 6. Does the Wingate Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?

On August 9, 2011, the AG and Legacy Trust served a Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike Defendant Pope's Motion to Compel Plaintiffs' fee agreement in Richland 4900. Wingate claimed the AG's public contract was the "epitome of privileged communication[s]." [R., pp. 343 – 345, 344]

In September 2011 the Legacy Trust moved to dismiss this FOIA suit, claiming venue in Newberry was improper. The Legacy Trust stated:

> Dismissal under Rule 12(b)(6) should be granted, as venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. [R., p. 79]

On September 11, 2011, an affidavit opposing the motion to dismiss and requesting an expedited hearing was filed. [R., pp. 299 – 315]

On September 12, 2011, Appellant filed a Return to Motion of Defendant James Brown

Legacy Trust to Dismiss. [R., pp. 81 – 84] Appellant asserted that the FOIA requests were properly made in Newberry, and that there was no basis for this FOIA suit to be transferred to Richland County or consolidated with Richland 4900. Appellant asserted that her rights to receive documents under FOIA are entirely distinct from discovery in Richland 4900, and that the transfer would only result in delaying a hearing of the FOIA case on the merits. [R., p. 83]

On October 6, 2011 Appellant filed in this FOIA case the AG's and Legacy Trust's Richland 4900 motion to prevent release of the public Wingate contract in which the AG made the following claim about his public contract which Governor McMaster had not signed:

> Fee agreements are the epitome of privileged communication, Plaintiffs. . . therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement. [R., p. 335]

That fall the AG posted other Contingency Fee Litigation Retention Agreements with outside counsel, but excepted those whose disclosure was "currently under review by a court." The AG did not disclose that it was his own motion which had placed the Wingate contract "under review." [R., p. 342] The AG's public website stated:

> Below are all active, contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases that the Attorney General's office itself would otherwise be unable to pursue. [R., p. 342]

It would be late 2013, after *Wilson v. Dallas,* before a Federal Court, over Bauknight's objection, directed that the Wingate contract be made public. The Wingate contract showed that AG McMaster never signed the Wingate contract. Three years later, in sworn 2016 testimony, now-Governor McMaster stated emphatically that he never sued Buchanan and Pope as AG in

Richland 4900; that he did not authorize Richland 4900 to be brought in the name of the State/AG; that he did not authorize Bauknight to act on behalf of the State/AG in Richland 4900; and that he did not know he was a Richland 4900 Plaintiff until after leaving office in January 2011.

In September 2011 Appellant filed a motion for summary judgment, including a determination that the Legacy Trust is a public body. It was supported with an affidavit dated September 29, 2011 which outlined in detail the structure and operation of the Legacy Trust, including the AG's control of the day-to-day functions of the Legacy Trust [R. pp. 316 – 326] The September 29, 2011 affidavit stated in part:

> 39. The State/AG continues to support the Legacy Trust – now paying its own attorneys and allowing the Legacy Trust to hire distinguished outside counsel to fight this FOIA request so that the public will be prevented from knowing:
> ...
> b. What members of the AG's Office were involved in the fabricated $4.7 Million valuation of Brown's assets?
>
> c. Why did the State authorize the Wingate Firm/Legacy Trust Trustee to accuse Bob Buchanan and [Appellant] of causing tens of millions of dollars of damage to Brown's music empire while at the same time the trustee (Bauknight) presented to the IRS a fabricated $4.7 million valuation of the music empire?
>
> d. Why did AG Wilson not fire Bauknight and admonish his staff for presenting the $4.7 Million to the Supreme Court when public documents make clear it was outrageous? [R., p. 9]

The section of the September 29, 2011 affidavit entitled "The Valuation is public and should be disclosed" set out in detail that Brown had earned more than $5 million a year between 2003 and 2006, and that the income since his death made clear that the $4.7 million, which reduced scholarships to needy students by about $3 million a year, was wrong. [R., pp. 324 – 326, and Chart 1, Exhibit C, D, E & F, pp. 327 - 333]

On October 6, 2011 Appellant filed an Affidavit of ... Pope in Further Support of All Relief

Requested in the Complaint, Expedited Hearing and *In Camera* Review. [R., p. 334 – 342]

On October 14, 2011, the AG moved to strike Appellant's affidavit supporting summary judgment and the attachments to the summary judgment motion. [R., p. 91]. This was one of a number of motions to strike. [R., p. 98] Appellant opposed the motions to strike. [R., pp. 352, 353]

On October 25, 2011 the AG filed a memorandum in opposition to summary judgment and in support of his motions to strike the affidavits of journalists, experts, and others which support Appellant's requests for FOIA compliance. [R., p. 354 – 367] The affidavits and attachments were not stricken.

By affidavit of Wm. Jeffrey Smith dated December 9, 2011, and related affidavits of Thomas R. Young, Jr., and others, Appellant urged the FOIA court to consider the public importance of the damage being done both to FOIA and the "I Feel Good" Charity by the FOIA noncompliance related to Bauknight's $79 million devaluation and claimed $4.7 million value. [R., pp. 369 – 400. Affidavits of Smith; Young, Spence, T. Pope, Summer, and *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*, pp 372 – 384]

On January 10, 2012 Pope moved for expedited consideration of her summary judgment motion; opposed all motions to strike; and asserted that there was no basis for the dismissal motions of the AG and Legacy Trust. She reiterated that the AG, the Legacy Trust and other Richland 4900 Plaintiffs had still refused to produce anything other than a 2-page witness list in Richland 4900. The motion stated:

> 1. The Defendants, which are public bodies, should have complied with FOIA in July [2011].
>
> 2. The media, writers and members of the general public believe that FOIA is important to our free society.

3. There is great public interest in James Brown matters.

4. Attorney's fees and costs are appropriate under the facts of this case. [R., p.98]

In defense of the affidavits of journalists and others supporting the FOIA requests, which the AG was seeking to strike, Pope's motion stated:

> Where, as here, public bodies have vigorously resisted compliance with FOIA, it is appropriate for Plaintiff and others to explain to the Court, through affidavits and documents, what has happened and what effect the delays caused by Defendants have had on both Plaintiff and the general public. [R., p. 98]

On January 11, 2012 a hearing was held in Newberry County on the AG's motion to transfer this FOIA case to Richland County and consolidate it with Richland 4900. [R., pp. 266 – 291] The circuit court stated:

> I ordered the other case consolidated. Once this matter is transferred to Richland County, in terms of venue – and that's the grounds that I'm using to transfer this case – either party may seek consolidation; either party may seek an expedited hearing with the judge. And I hope you get the information sooner, rather than later.
>
> But that's what I feel is appropriate to do under the circumstances and based upon everything that has transpired with the – this case, Case 4900, and Case 379. I've consulted with some other judges on this very issue, and I have yet to hear one of them remark to me that they think that this is a bad idea. There seems to be a consensus, so that's what I'm doing. [R, p. 273]

By order dated January 11, 2012 the Honorable Frank Addy changed venue of this FOIA case from Newberry County to Richland County, where it became Case No. 2012-CP-40-350. [R., p 103]

On February 1, 2012, the AG moved to consolidate this FOIA case with Richland 4900. [R. pp. 103 -105]

On December 30, 2012 the AG began claiming that the complaint in this action should be denied because Appellant's FOIA request, which was properly made to the AG, the Legacy Trust and Wingate, as well as attached to the complaint, was not properly presented to the AG. The AG alleged:

> Plaintiff has failed to serve her FOIA request on the Defendant by mail or delivery so as to trigger the application of the statute, and because the items demanded in the FOIA requests at issue in this proceeding are subject to the rules regarding discovery in the Rules of Civil Procedure applicable to Bauknight v. Pope, 2010-CP-40-4900, and exempt from disclosure under FOIA § 30-4-40(a)(4) for that reason. [R., p. 135]

The Legacy Trust and FOIA Noncompliance Continue after *Wilson v. Dallas*

On February 27, 2013 the Supreme Court issued its first *Wilson v. Dallas* decision. The Supreme Court admonished the AG to conclude Richland 4900 and the FOIA suits "in the first instance."

On March 6, 2013 Appellant Pope obtained a meeting with the AG to discuss the tax problems and damage done to the "I Feel Good" Charity Bauknight had caused by the $79 million devaluation and $4.7 million claimed value. She and counsel had a second meeting with the AG's senior staff to the same effect. [*Wilson* did not correct the substantial income tax problem Bauknight caused by his shifting of 3/10 of the assets and $1 million a year of income out of the "I Feel Good" Charity by the $4.7 million value, with no corresponding estate tax benefit.]

At the March 2013 meeting the AG and his staff had been in possession of *Private Foundations* for two years, and the Copyright Act was clear that neither James Brown himself, nor the AG, had the right to declare Brown's heirs. Yet the AG, Legacy Trust which he controlled, and Bauknight acting "on behalf of" the AG have continued to try to reinstate the AG's 2008 settlement.

For six years the AG, the Legacy Trust and Bauknight have actively disrupted FOIA cases and discovery in Richland 4900 and elsewhere to conceal documents which show that the May 29,

2013 announced intention to Judge Early by Tommie Rae and the Levenson to disregard *Wilson v. Dallas* will severely damage Brown's "I Feel Good" Charity.

The AG, allowing Bauknight to continue to speak for the State/AG and the Legacy Trust in Richland 4900, is not only ignoring *Wilson v. Dallas* but preventing the return of to the "I Feel Good" Charity of 3/10 of its assets, and $1 million or more of income a year.

On March 7, 2013 the AG served his answer in this FOIA case. [R., pp. 159 – 167] The AG attached a draft of the Legacy Trust which had been included in the ROA in *Wilson v. Dallas.* He stated in part:

> Because most of the allegations of Plaintiff in the instant Complaint regarding the Legacy Trust are irrelevant to that complaint, this Answer is not intended to address how the Opinion in *Wilson etc. et al v. Dallas* may apply, if at all, to the allegations in the instant complaint.

The AG's answer repeatedly referenced the Richland 4900 Complaint and craved reference to it; repeated the claim that the FOIA request was not properly mailed or delivered and asserted he was without sufficient knowledge or information to know whether it was properly mailed to the Legacy Trust; [R., p. 162] The AG admitted that the AG had not responded to the FOIA request, but claimed he was not required to do so; [R., p. 162] As to the Legacy Trust, the AG stated in part:

> 23. The allegations in paragraph 26 regarding the Legacy Trust do not apply to the Defendant Attorney General or the FOIA directed to the OAG. The OAG was not properly served with the FOIA at issue so as to trigger a requirement to respond thereto.

On March 7, 2013 the AG also moved for judgment on the pleadings in this FOIA case. [R., p.] The AG referenced the case of *Summer v. Wilson* a 2012 Newberry County FOIA case in which a journalist following the progress of Pope's 2011 FOIA requests had made her own FOIA requests for some of the same documents. In addition, the journalist sought the so-called "Hynie

diary," long-public handwritten admissions by Tommie Rae which show that she was married; living with her husband; and possibly pregnant before concealing her marriage and conducting a 2001 ceremony with Brown.

On March 14, 2013 the AG told the Supreme Court in its petition for rehearing in *Wilson v. Dallas* that he was getting out of Richland 4900 and hoped to complete the FOIA cases within a short time. At page 5 of the AG's Petition for Rehearing in *Wilson v. Dallas* the AG stated:

> Accordingly, we now advise this Court that, it is our plan, that, having completed our function in intervening in this case, the Attorney General will, upon the appointment of a new trustee, assume a posture of monitoring the action, as we typically do in many charitable trust matters. Chief Justice Toal is correct that "the AG's involvement [is] no longer necessary to stave off maladministration."

The AG continued its support for the Legacy Trust in its impassioned, but incorrect, claim in its Return to Petitions for Rehearing filed March 25, 2013:

> The valuable James Brown music rights, obtained in the settlement for the charitable trust, was a boon in effectuating Brown's laudable purpose. The circuit court served as the ultimate protector of that desire which was so important to Mr. Brown. . .

On March 15, 2013 the Legacy Trust filed a motion to stay this FOIA case. [R., p. 1215, 216]. The Legacy Trust claimed it did not exist. Yet for the next six years it has actively pursued Richland 4900 for the benefit of the AG, Tommie Rae and other Legacy Trust beneficiaries in accordance with the announced intention of May 29, 2013 to disregard *Wilson v. Dallas* discussed below. The Legacy Trust asserted incorrectly that [i]f the status of the Legacy Trust continues as presently determined by the South Carolina Supreme Court, the Legal [Legacy] Trust will not exist after remittitur.[R, pp. 215, 2016]

On March 18, 2013 the Honorable L. Casey Manning requested a status report in light of the Supreme Court's first *Wilson v. Dallas* decision. [R., p. 218] Appellant, through counsel, stated

in part:

> As is clear from the Supreme Court's opinion, the Court did not declare the Legacy Trust void. Instead, the Court reversed the approval of the *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests the Supreme Court eradicated the Legacy Trust *ab initio*.
>
> Furthermore, the Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multi-million dollar claim against Plaintiff [Pope] for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, where it has indicated no doubt of its existence. [R, p. 220]

Appellant referenced and attached documentation from the January 2011 Legacy Trust amendment, signed by Attorney General McMaster without the participation of Bauknight. [R., p. 221] Appellant stated:

> The Legacy Trust asks this Court to find that the Attorney General can create an entity which does not have to produce its own public documents if the Supreme Court later finds that the Attorney General's actions were improper. The Court should decline to do so and set a hearing on this matter at its earliest convenience. [R., p. 222]

On May 8, 2013 the Supreme Court issued its decision in *Wilson v. Dallas*. The Supreme Court voided the AG's settlement and voided Bauknight's appointments as SA/ST and PR/Trustee. It made no statement about his role as trustee of the Legacy Trust, which provided that its existence did not depend on court approval.[8]

Within two days the AG, Tommie Rae and Levenson had secured Bauknight's appointment

[8] In six years there has been no evidence of any action on the part of the AG to dissolve the Legacy Trust, or disburse its Termination Rights proceeds, including the 47.5 % Tommie Rae and others placed in the Legacy Trust and agreed to give to the "I Feel Good" Charity in exchange for the AG's action on behalf of Brown's estate/2000 Trust not to challenge their status as Brown's heirs under the Copyright Act.

as SA/ST for Mr. Brown's estate and 2000 Trust.

That same day, May 10, 2013, the AG, Legacy Trust, and Bauknight on behalf of the AG and other Legacy Trust beneficiaries, told the Richland 4900 Court, through their private counsel:

> ... [T]he Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 of the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. While the court does recognize that the Attorney general is contesting releasing some documents pursuant to FOIA, the court no longer puts any primacy or priority on any court hearing these matters. We believe that such position is entirely appropriate, because the documents requested under FOIA are subject to a claim of privilege which is the subject of a motion for protective order before this court in Case 4900. The claim of privilege must be decided before any court can make a determination of the application of any FOIA claim.
>
> Therefore, the Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that Richland 4900 be held in abeyance in its entirety until all the underlying issues related to the Plaintiffs are resolved by the Aiken Court. Should you deem it best for Plaintiffs to make a formal motion to stay, I would be pleased to do so.

In the fall of 2013, over objection of Bauknight, a Federal Judge in S.C. District Court Case 3:08-cv-00014- WOB denied an attempt to impose a confidentiality order of the Wingate litigation retention agreement. When released, it showed that Wingate's 23% - 40% contingency contract to sue Buchanan and Pope was not signed by the AG or most of the Legacy Trust beneficiaries, but by Bauknight and three lawyers for Legacy Trust beneficiaries.

On November 22, 2013 Appellant requested a FOIA hearing on the two FOIA cases. None was held. [Supp. R. p. 23]

On April 17 and 29, 2014 Appellant requested a hearing on the two FOIA cases. Wingate

objected for the AG and Legacy Trust. They were not held.

On May 7 and 28, 2014 Appellant requested a FOIA hearing on the two cases. No hearing was held. [Supp. R. p. 23]

By order dated September 14, 2014 the AG was directed in a journalist's 2012 FOIA case to release many of the documents Appellant had been seeking since June 2011. [R., p. 250]

On October 8, 2014 Appellant requested a hearing in the two FOIA cases. [Supp. R. p. 23] No hearing was held. Another request was made on November 13, 2014, and another on December 2, 2014. No hearing was held. [Supp. R. p. 23]

On January 14, 2015 the Honorable Eugene C. Griffith ruled in the journalist's case that the AG had to produce all of the document on the AG's privilege log. He also lifted the stay imposed by the appeals filed by Bauknight and the AG, and ruled:

> 5. Plaintiff is the prevailing party in this action under FOIA and is entitled to an award of attorneys' fees and cost; the Court will determine the amount of the fees and costs after the FOIA appeals are concluded.

Despite the FOIA rulings about the same documents sought in this FOIA case, the AG and Legacy Trust continued to refuse to produce the documents.

On March 20, 2015 Appellant requested a hearing in the two FOIA cases. No hearing was held. [Supp. R. p. 23]

The AG, through counsel, claimed that the FOIA cases must be delayed and subjected to the mediation, which took place on October 12, 2015 in a joint mediation ordered in Richland 4900 and Aiken 1337 by both Judge Early and Judge Manning.

On March 2, 2016, the circuit court officially ordered the stay in Case 4900 which had been *de facto* in effect since 2013. On March 24, 2016 Judge Early was assigned to this FOIA case [R.

12] and lifted the Richland 4900 stay.

On May 17, 2016 Judge Early heard the motions of the AG and the Legacy Trust to dismiss the 2011 FOIA complaints in this case and the FOIA case seeking the Wingate contract. [R., p. 274 – 291] Of the $4.7 million appraisal the AG had used to accuse Buchanan and Pope of a federal felony, and which Appellant asked that he secure from his Richland 4900 counsel, where, under the Wingate contract, it was subject to the FOIA, if he did not have it within his office, the AG said:

> As to the appraisal, we don't have that. And so we can't produce what we don't have which is what Judge Griffith ruled in the *Summer v. Wilson* case about the request for the same document.
>
> She tries to argue that we should pull in Sweeny Wingate firm documents but she did not make a request for documents from the Sweeny Wingate firm. She made the request from our custodian of records. And that is not enough to pull in lawyer files. And so therefore we believe she is not entitled to it. [R. 277]

The Court, assigned to the 5-year-old FOIA case and 6-year-old Richland 4900 had the following discussion with the AG:

> THE COURT: But isn't the end result we are going to end up in 4900 which I'm now having to resolve or rule on and preside in, and discovery is going wide open in 4900 and all of this stuff is going to be discoverable; is it not? Aren't we just wasting our time?
>
> MR. SMITH: I believe that this case is a waste of time, Your Honor, and it's inappropriate.
>
> THE COURT: I don't mean a waste of time, but isn't it duplicative? 4900 is going to open to discovery in the James Brown case, everything that's gone on. Why are we fussing about jurisdiction? And why are we fussing About ---
>
> MR SMITH: Because the Plaintiff continues to press this

FOIA case and is asking for attorney's fees. That's why – and is not willing to drop it. That's why we're here.

We agree that the documents that she is seeking, the efforts to obtain documents, should be made in 4900. ... And that's where it should be, not here in an independent Freedom of Information Act action. [R., pp. 278, 279]

Appellant's counsel stated that both the AG and Legacy Trust:

The Legacy Trust has never notified the Court in that action [Richland 4900] that it has any doubt about its continued existence, and it's never sought to change anything in that case as far as I am aware...

I'm not aware of any proceeding that's been brought to terminate the Legacy Trust and it's identified none...

This trust was also funded, ...with contributions that had already been made or were being made at the time [2008 and 2009] of copyright termination interests by some of the parties to the settlement. [R., p. 289]

Appellant also argued that the AG and his staff spent years defending the Legacy Trust's existence in the Supreme Court, and that Appellant is entitled to a declaration that it is a public body, and the documents. [R., pp. 290, 291]

On June 14, 2016 the AG signed orders dismissing the AG and Legacy Trust. They were filed on June 20 and received by Appellant on June 24, 2016. [R., p. 252]

On June 27, 2016 Appellant served a motion to alter, amend or vacate the order granting the Legacy Trust's motion to dismiss. [R., pp. 262 – 265] Among other issues, Appellant said:

3. The Court overlooked or misapprehended that the...Legacy Trust at all times since the commencement of this action has been an active party in Richland...4900...; has moved to intervene in another FOIA case; and has, through its Trustee, Russell Bauknight, taken action confirming its existence. [R., p. 262]

Argument

I. The Court Erred in Directing that the Legacy Trust be Dismissed on Remand.

In its opinion, this Court made no finding on whether the Legacy Trust was a public body subject to FOIA. Instead, the Court reversed the Order appealed from and remanded with a direction that the circuit court dismiss the Legacy Trust as a party to this action. This instruction is based on the Court's finding "that the issuance of the Wilson opinion mooted the premise for naming the Legacy Trust as a defendant in this action." No further explanation is given for this finding, and Appellant respectfully submits that it is in error.

First, the record and law cited by Appellant herein fully support a finding that the Legacy Trust is a public body. *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), holds that even indirect public support of an organization could cause that organization to be treated as a public body. Likewise, *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (Kan. 2003), holds that an organization's use of state employees (who were not paid outside their state salaries), meant that it was a public body for FOIA purposes.

Importantly, the Legacy Trust did not dispute that it was supported by the use of multiple members of the Attorney General's office in defending its creation, funding and continued existence. See *Wilson*, 743 S.E.2d 746, 768.[9]

Even if the *Wilson* decision had somehow terminated the Legacy Trust (which is inconsistent with the record herein, including the Legacy Trust's own positions), the Court appears

[9] "The AG has taken unprecedented action in this case. After effecting a total takeover of Mr. Brown's estate by excluding its trustees and banding together with parties who stand only to gain from the invalidation of the testator's devise, the AG disposed of the court-appointed trustees, created a new settlement entity, and inserted himself into the day-to-day operations of a newly created charitable trust, the Legacy Trust." *Id.*

to have overlooked that *Wilson* was not decided until nearly two years after the FOIA request was made in June 2011. At that time, both the Legacy Trust and the AG were defending the Legacy Trust's funding and the propriety of the AG's actions in creating the Legacy Trust in the appeal which would later result in *Wilson* and also pursuing Richland 4900.

If *Wilson* did affect the continued existence of the Legacy Trust or its status as a public body, any documents possessed or controlled by the Legacy Trust during the period during which the AG had unfettered control over it would have remained public and must have been preserved for FOIA compliance.

The South Carolina Public Records Act, S.C. Code Ann. §30-1-10, *et seq.*, requires that public bodies maintain their public records. Further, the chief administrative officer of any public body is required, if he has no successor, to deliver public documents in his possession to the Archives. *See* S.C. Code Ann. §30-1-40. The statutory scheme for maintaining and preserving public records cannot be reconciled with a finding that the obligations the Legacy Trust had to maintain or release public records was extinguished by the Supreme Court's holding in *Wilson*.

Further, the record in this case demonstrates that the Legacy Trust does exist and is a public body. The Legacy Trust was an active, public body subject to FOIA at its creation in late 2008 or early 2009. [R. 17] It remains so today.

On March 18, 2013, between the first Wilson decision and the final May 8, 2013, decision, the Legacy Trust claimed in this FOIA action that if the final Wilson decision was consistent with the first ruling, the Legacy Trust would not exist. After the final decision, however, the Legacy Trust continued to function in Richland 4900 and elsewhere.

In the six years since the first *Wilson* decision, the Legacy Trust has pursued Richland 4900 with and for the AG, Tommie Rae and others the AG chose as beneficiaries of the Legacy Trust.

In addition, its trustee, Bauknight, has remained an agent for Tommie Rae and other will contestants in Richland 4900. The AG had done nothing to curb Bauknight's alliance with those seeking to dismember Brown's "I Feel Good" Foundation.

The Legacy Trust moved for and received summary judgment on Appellant's counterclaims against it in Richland 4900, and it continues to this day to defend that result on appeal before this Court.

Importantly, the Legacy Trust was 47 1/2% charitable on the day of the Wilson decision. If -- contrary to the evidence -- the Legacy Trust did cease to exist, Bauknight would have been required under S.C. Code Ann. §62-7-413 and the Internal Revenue Code to take certain actions to protect the charitable assets. The AG is the state's official charged with assuring such actions are taken. There is no evidence in the record to suggest that a charitable dissolution took place.

The Legacy Trust was created and is controlled by the AG. It was active for nearly four years before the *Wilson* decision. It has continued to litigate for six years since. Nothing in the record supports dismissal of the Legacy Trust as a defendant.

Given all of the above, this Court's finding that the circuit court erred in dismissing the claims against the Legacy Trust as moot, but that the Legacy Trust should nonetheless be dismissed in light of the later-decided *Wilson,* should be reversed. Because the issue of whether the Legacy Trust is public is not moot, the Court should proceed with deciding this issue which was briefed extensively by the parties.

II. The Court Erred in not Directing the AG to Turn Over all Responsive Documents.

Although the Court determined that Appellant's FOIA claims against the AG were not moot, it stopped short of finding that she is entitled to all responsive documents from the AG. Appellant respectfully submits that, particularly in a now 8-year-old FOIA matter, it is error for this Court to remand that question for further proceedings.

Section 1 of the FOIA states:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials **at a minimum of cost or delay to the persons** seeking access to public documents or meetings. S.C. Code Ann. § 30-4-15. (emphasis supplied)

This Court in its opinion quotes[10] the above passage, with the same portion emphasized. Further, in Footnote 9 of the published opinion, the Court cites and quotes from four reported South Carolina FOIA cases to support its acknowledgment that FOIA is taken very seriously by the courts. It nonetheless remands this 8-year-old case for further proceedings.

Based on the record before this Court and the law cited in the Court's opinion herein, Appellant submits that this Court is in a position to direct the AG's production of responsive documents to the FOIA request. The only basis ever advanced by the AG for nondisclosure of documents to Appellant was that her FOIA requests were subordinate to discovery in Richland 4900. [R. 239] The Court held on that point:

> In sum, we decline to depart from precedent by imposing a blanket prohibition on disclosure whenever the person seeking public records is simultaneously being sued by the public body in possession of those records. *Opinion* at 10.

Having dispensed with the AG's sole argument regarding an alleged exemption, this Court should promote the stated purposes of FOIA by directing that the AG must fully respond and produce all

---

[10] While this is quoted in the separate, published opinion in *Adele J. Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Op. No. 5657 (S.C. Ct. App. filed Jun 19, 2019), the Court incorporates Section 1 of the published opinion into its opinion in this case.

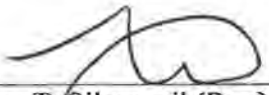
requested documents, leaving only the issue of attorneys' fees and costs for determination on remand.

Conclusion

For the foregoing reasons, Appellant respectfully petitions this Court to grant a rehearing on the points above or, alternatively, to substitute this Court's June 19, 2019 opinion with one which:

1. Eliminates the direction that the Legacy Trust be dismissed on remand;
2. Finds based on the record herein that the Legacy Trust is a public body subject to FOIA;
3. Directs the AG and the Legacy Trust to fully respond to the FOIA requests, and produce all requested documents; and
4. Remands the matter for a final determination of attorneys' fees and costs.

Respectfully submitted,



Adam T. Silvernail (Bar No. 80219)
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernaillawfirm.com

Counsel for Appellant

June 27, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2016-001727

RECEIVED
JUL 16 2019
SC Court of Appeals

Adele J. Pope. . . . . Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee, ... Respondents.

RESPONDENT ATTORNEY GENERAL'S PETITION FOR REHEARING

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
(803)734-3677 (Fax)
esmith@scag.gov

Counsel for Respondent
Attorney General

Pursuant to Rule 221, SCACR, the Respondent Attorney General respectfully petitions for rehearing of this appeal. This Court's Opinion of June 19, 2019, included the following conclusion:

> In ruling this action was moot, the circuit court stated Pope did not contest the AG's claim that he had given her all the documents responsive to her request. However, the transcript of the May 17, 2016 motions hearing indicates that Pope challenged this claim. Pope also challenges this claim in her appellate brief. Because there still exists an actual controversy concerning the AG's compliance with Pope's FOIA request, this action is not moot. *See Friends I*, 369 S.C. at 26, 630 S.E.2d at 477 ("If there is no actual controversy, this [c]ourt will not decide moot or academic questions.").

This Court reversed the circuit court's order dismissing Pope's Complaint and remanded for further proceedings on the basis of its conclusion in its Opinion in *Pope v. Wilson*, Op. No. 5657 (Ct. App., filed June 19, 2019) which included that "[i]f the government invokes the exemption in section 30-4-40(a)(4), '[m]atters *specifically* exempted from disclosure by statute or law,'[footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record." Respectfully, that Opinion in the instant appeal overlooked or misapprehended the following points:

1. Appellant did not raise and preserve any issue that she had not received all the documents that she had requested. Therefore, this action is moot.

2. This Court should have addressed the additional sustaining ground that Appellant failed to submit her Freedom of Information request to the Office of the Attorney General so as to require a response to that request under the terms of that law.

3. The matters that Appellant requested were exempt from disclosure under the Rules of Civil Procedure, and therefore, FOIA, because they were under the control of the Court pursuant to pending motions in civil litigation.

ARGUMENT

The Respondent Attorney General strongly supports the Freedom of Information Act, and his Office and his predecessors have a long history of advocating the importance of that law. His position in this case is that he has complied with the law as discussed below.

I

Appellant Has Not Properly Raised And Preserved Any Claim That The Attorney General Has Not Produced All Responsive Documents As To Her FOIA Request

At the hearing in May 2016, the following exchanges did not dispute that the Attorney General had produced all documents in his possession:

> MR. SILVERNAIL: it's clear the Attorney General did in fact have public records that were responsive to our request because he produced them in his amended answer in 2013, those two drafts of the Legacy Trust documents . . .
>
> THE COURT: You want me to order them to, under FOIA to produce it again even though you've already gotten it?
>
> MR SILVERNAIL: We would like a declaration that these are public documents and Mrs. Pope is enttled to them . . . the Supreme Court has found that production of the documents along the way after litigation begins does not moot the question of declaratory relief or attorney's fees . . . The other argument that we take issue with from the Attorney General is that he doesn't have to produce the valuation because he does not possess it.

R. p. 282 , l. 3 – p. 283, l. 18. In other words, Appellant did not contest that the Attorney General had produced all the documents that he had in his Office. Instead, she argued that the Attorney General's Office should have produced any documents in the possession of the

Sweeny, Wingate and Barrow law firm. R. p. 283, ll, 6 – 25. Appellant never made such a request for documents from that firm in her FOIA letter (R. V., I, p. 26) nor did she reference the litigation in that letter. Moreover, Appellant abandoned this circuit court oral argument about the law firm on appeal. *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993)(issues not briefed are deemed abandoned). She never once mentioned that argument, contending only generally that "neither Respondent has complied with the FOIA requests." Brief of Appellant at p. 21. Although the Attorney General's Brief argued mootness by production of the only responsive document, Appellant did not respond. She instead argued other issues in reply to his Brief. Although she addresses mootness in her reply to the Legacy Trust's Brief, she does not mention the Sweeny law firm and contends only that document production does not moot a FOIA request.

Although Appellant's "Statement of Facts" at page 8, states that "the AG did not release the $4.7 million appraisal; the Legacy Trust documents, or the related documents to support his $4.7 million claim," she makes no legal argument that he had these documents to produce. As noted in the Attorney General's Brief at page 6, the Attorney General's Office provided in his Answer to the Complaint the only document that it had that was responsive to that request. Appellant's vague references above are insufficient to challenge this representation in the Statement of Facts.

Appellant has not properly raised and preserved any argument that the Attorney General has not produced the documents responsive to her FOIA request. Accordingly, this case is moot. *Sloan v. Friends ofHunley, Inc.*, 630 S.E.2d 474, 478, 369 S.C. 20, 26 (2006) (holding

that once the requested documents are produced, a justiciable controversy no longer exists, and the case is moot).

II

Appellant Had No Claim Under FOIA Because Her Request Was Not Received By Mail Or Delivery

This case also may be completely resolved if this Court would address and adopt this additional sustaining ground. Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." As recounted in the Statement of Facts in the Attorney General's Brief, the Office of the Attorney General never received the FOIA request by mail or delivery. This Office advised Appellant in writing on August 5, 2011, that the Office had not received the request which she had referenced in a motion, and that if she would forward it a response would be expedited. R. p. 170. The Office supplied an affidavit supporting that it never received the FOIA request other than as an attachment to the complaint. R. p. 141. Appellant's attaching the request as an exhibit to the Complaint alleging failure to respond, is not sufficient to require a response under FOIA. In fact, she concedes that responding to the request after the Complaint was served might not avoid her claim for attorney's fees. She is only willing to say that his responding then "<u>might</u> have been relevant to avoidance of attorneys' fees." Reply Brief at page 4 (emphasis added). Appellant's unwillingness to concede that a response to a written FOIA request first received by Complaint avoids attorney's fees,

underscores the importance that a written response be transmitted to the public body before a response may be demanded in litigation.

III
The Requested Documents Were Exempt From Disclosure Because Of Pending Motions Before The Court Regarding Ongoing Civil Discovery

The documents requested in the Freedom of Information Act request of the Attorney General were the subject of pending Motions in the main part of case 2010-CP-4900. See, R. V. I, p. 33 (Exhibit D to Complaint, ¶2b); R. p. 66, ¶ 3 (Motion to Compel,); R. pp. 70-78 (Motion for Protective Order and exhibits D & E thereto). Through the pending motions, the documents came under the control of the circuit court in case 4900, and that court would then determine whether the documents must be released. The motions had not been heard as of the date of the hearing in this case in May, 2016. As discussed in his Petition for Rehearing in Appeal 2016-001708, the documents are now exempt from discovery, and therefore, FOIA, as a matter under the control of the court because their production has been under consideration by the court pursuant to Rules of Civil Procedure 26, 34, and 37, *supra*. These rules make clear that the court presiding over discovery makes the decision about the disclosure of documents under pending motions. These provisions constitute exemptions under Rule FOIA, and the circuit court's consideration of these motions constitutes "the rule of law", which must be observed. *In re Anonymous Member of S. Carolina Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001); *see also, Palmetto Alliance, Inc. v. S. Carolina Pub. Serv. Comm'n*, 282 S.C. 430, 436, 319 S.E.2d 695, 698 (1984). "It is well-settled that 'the scope and conduct of discovery are within the sound discretion of the trial court . . . .'"

Moreover, recognition of these exemptions is consistent with the May 19, 2017, amendments to FOIA that allow a public body to "file a request for hearing with the circuit court to seek relief from unduly burdensome, overly broad, vague, repetitive or otherwise improper requests . . ." §30-4-110(A). Although this provision was adopted after the circuit court dismissed Appellant's suit, it is consistent with that action. Appellant's attempt to use FOIA to bypass motions pending before the court is burdensome and improper given the controlling effect of the discovery rules. Given this legislative amendment, civil discovery objections can readily be asserted under §30-4-110, without argument about whether they fall under the rule of law exemption. Accordingly, less need exists for future guidance on the relationship of civil discovery to FOIA, and this case may be decided on the basis of mootness and the failure of Appellant to submit her request in writing to the Office of the Attorney General.

CONCLUSION

The Attorney General has supplied Appellant with the only document responsive to her request. This Court should affirm the circuit court's decision on grounds of mootness and/or affirm on the basis that Appellant failed to submit her request to the Attorney General's Office so as to require a response. This case has been pending for nearly eight years despite pendency of discovery motions about those documents in civil litigation and despite the Attorney General's supplying the only responsive document it had more than 6 years ago. The Record on Appeal consists of two volumes and over 500 pages of documents. Remanding the case for further proceedings with another appeal thereafter is unnecessary on this Record and under this case law. This matter should be concluded, and the decision of the circuit court affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

July 16, 2019

RECEIVED

SEP 19 2019

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-001727

Adele J. Pope.....Petitioner,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell Bauknight, its Trustee.....Respondents,

---

PETITION FOR WRIT OF CERTIORARI

TO: The Honorable Chief Justice and Associate Justices of the Supreme Court.

Adele J. Pope ("Petitioner") respectfully petitions this Court for a writ of certiorari by which to review the opinion of the South Carolina Court of Appeals ("court of appeals") in *Pope v. Wilson, et al,* Op. no. 2019-UP-219. Petitioner submits that this Court should issue the requested writ, as this matter presents the novel question of law of whether an entity created and controlled by the South Carolina Attorney General is a "public body" for purposes of the South Carolina Freedom of Information Act.

CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a timely petition for rehearing was made to the court of appeals, and the same was denied by Order dated August 22, 2019.

QUESTION PRESENTED

Did the Court of Appeals err in failing to find the James Brown Legacy Trust was a public body and directing that the Legacy Trust be Dismissed on remand?

STATEMENT OF THE CASE

On June 30, 2011, Petitioner made a request of the James Brown Legacy Trust for certain documents under the S.C. Freedom of Information Act, including copies and/or drafts, signed or unsigned, of the James Brown Legacy Trust.[1] [R. 28] Counsel for the James Brown Legacy Trust responded on July 15, 2011, asserting that the James Brown Legacy Trust was not a public body and threatening to sue Petitioner if she made further requests of the James Brown Legacy Trust under the FOIA. [R. 48]

On August 3, 2011 Petitioner commenced this action by filing a summons and complaint for declaratory and injunctive relief against the South Carolina Attorney General (the "AG") and the Legacy Trust in the Newberry County Court of Common Pleas. [R. 15-24] In lieu of answering, the James Brown Legacy Trust moved to dismiss under Rule 12(b)(3), 12(b)(6) and 12(b)(8). [R. 79-80] On September 29, 2011 Petitioner moved for summary judgment. [App. 3-7]

The Newberry Court thereafter transferred venue to Richland County over Petitioner's objection. [R. 13] Petitioner's counsel made numerous requests that the pending motions, including hers for summary judgment, be heard. [App. 24-26]. On May 17, 2016, the lower court conducted a hearing on the pending motions. [R. 9] On June

[1] Petitioner made a request at the same time for documents to Alan Wilson, as Attorney General of South Carolina. Because the question presented in this Petition relates to the James Brown Legacy Trust, the statements of the case and facts incorporate those matters directly bearing on the Legacy Trust.

14, 2016, the lower court issued its order dismissing the James Brown Legacy Trust based on the court's findings that the case was moot; that the legacy trust did not exist; and that the James Brown Legacy Trust was not a public body. [R. 9-11]

Petitioner's timely motion to alter, amend or vacate the order of dismissal was denied [R. 1-2], and her notice of appeal was filed in the court of appeals on August 19, 2016. [R. 1]

The court of appeals issued its opinion on June 19, 2019, reversing the lower court orders but directing that the Legacy Trust be dismissed on remand. The court of appeals did not identify a standard of review. No clear explanation of the court of appeals' logic in directing the James Brown Legacy Trust's dismissal is given in its opinion, and the court of appeals declined to address the question of whether the James Brown Legacy Trust is a public body. [App. 123-130; App. 128, n. 8] Petitioner's petition for rehearing was denied by order of the court of appeals, dated August 22, 2019. [App. 188]

STATEMENT OF FACTS

James Brown died on December 25, 2006, leaving behind his Last Will and Testament and the James Brown 2000 Irrevocable Trust, both dated August 1, 2000. [R. 372; R. 376] Nearly all of James Brown's music empire was devised to the James Brown "I Feel Good" Charity to educate needy and deserving students in South Carolina and Georgia. [*Id.*] Several acknowledged or alleged family members brought litigation relating to the service of the three fiduciaries named in James Brown's estate plan. On November 20, 2007, Petitioner and Robert L. Buchanan, Jr. were appointed as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust. *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

In the fall of 2007 the AG entered the James Brown Aiken proceedings to protect the needy student beneficiaries of the "I Feel Good" Foundation. Since then, two AGs and various AG attorneys and staff members have worked on James Brown matters. [R. 380]

In December 2007, certain acknowledged children of James Brown (represented by Louis Levenson, Esq.) and Tommie Rae Hynie, who claimed to be Mr. Brown's surviving spouse, filed four separate contests to the Will and 2000 Trust. *Id.*

On August 10, 2008 the AG brokered a settlement which the South Carolina Supreme Court later described as a "total dismemberment of Brown's carefully crafted estate plan." *Wilson* at 445, 746 S.E.2d at 764.

The AG and settling parties agreed to create a new trust called the James Brown Legacy Trust, which would "receive, hold, manage and be authorized to sell the James Brown assets." The trustee and any successor trustee for the James Brown Legacy Trust was to be selected solely by the AG. *Id.* at 421, 743 S.E.2d at 752. Nearly half of the James Brown Legacy Trust's assets were to be distributed to a new charity created by the AG. *Id.*

The settling parties agreed to surrender any intellectual property rights to Brown's music or persona created under federal copyright laws or laws for heirs to the James Brown Legacy Trust. *Id.* at 421, 743 S.E.2d 752.

The settling parties agreed the settlement would be a binding private agreement whether or not approved by a court. *Id.* at 422, 743 S.E.2d 753. Russell L. Bauknight ("Bauknight") became trustee of the James Brown Legacy Trust in late 2008 or early 2009. He continues to serve today. [R. 412]

On May 26, 2009 the circuit court approved the AG's settlement and replaced the fiduciaries under Brown's estate plan, Petitioner and Buchanan, with Bauknight. Buchanan and Petitioner appealed.

On May 19, 2010, the AG and the James Brown Legacy Trust sued Buchanan and Petitioner in Richland County seeking tens of millions of dollars. (the "Wingate Suit")[2] As relevant to this and other FOIA matters, the AG and the James Brown Legacy Trust claimed Buchanan and Petitioner should not have appealed the AG's settlement; should have accepted a $100 million offer for Brown's assets; and lacked knowledge about copyright law. [R. 17; R. 19; R. 33-34]

The AG, James Brown Legacy Trust and settling parties share private counsel, Sweeny Wingate & Barrow, P.C. in the Wingate Suit. [R. 33]

In December 2010 the AG and others secretly amended the James Brown Legacy Trust. [R. 478]

On June 30, 2011, Petitioner made the FOIA requests which are the subject of this appeal. Petitioner seeks from the James Brown Legacy Trust all signed and unsigned copies of the Legacy Trust, its 2011 amendment, and any other amendments.

On July 15, 2011 the James Brown Legacy Trust declined to comply with the FOIA request. Counsel for the Legacy Trust responded in part:

> In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no other choice than to file an action against you for abuse of process or sanctions. [R. 48]

---

[2] The Wingate Suit, Richland County Case No. 2010-CP-40-4900, is sometimes referred to as "Richland 4900."

On May 8, 2013 the South Carolina Supreme Court found that there was no reasonable basis for the undue influence claims asserted by Brown's will contestants other than as a means to dismantle Brown's estate plan. They found that the result of the AG's settlement was to enable those who were disinherited to obtain Brown's assets to the detriment of the charitable entity Brown so fervently desired. The Court found that the AG's settlement was an "unprecedented misdirection of the AG's authority in estate cases." *Wilson* at 445, 743 S.E.2d at 764.

The Supreme Court found that Brown had gone to "remarkable lengths to protect his right to designate the appropriate legacy for his life's work, including having numerous provisions in his estate documents and informing family members of his intentions in advance." *Wilson* at 439, 743 S.E.2d at 762.

The Supreme Court did not, however, void the James Brown Legacy Trust. The James Brown Legacy Trust continues to act, and to hold the Termination Rights proceeds and other assets of the settling parties.

On March 15, 2013 the James Brown Legacy Trust filed a motion to stay this FOIA case. [R. 215, 216]. The James Brown Legacy Trust claimed it might not exist. Yet for the next six years it has continued to pursue the Wingate Suit for the benefit of the AG, Tommie Rae and other James Brown Legacy Trust beneficiaries. The James Brown Legacy Trust asserted incorrectly that "[i]f the status of the James Brown Legacy Trust continues as presently determined by the South Carolina Supreme Court, the Legal [Legacy] Trust will not exist after remittitur." [R. 215, 216]

On March 18, 2013 the Honorable L. Casey Manning requested a status report in light of the Supreme Court's first *Wilson v. Dallas* decision. [R. 218] Petitioner, through

counsel, stated in part:

> As is clear from the Supreme Court's opinion, the Court did not declare the Legacy Trust void. Instead, the Court reversed the approval of the *settlement agreement.* Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests the Supreme Court eradicated the Legacy Trust *ab initio.*
>
> Furthermore, the Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multi-million dollar claim against Plaintiff [Pope] for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, where it has indicated no doubt of its existence. [R. 220]

In the status report, Petitioner referenced and attached documentation from the January 2011 James Brown Legacy Trust amendment, signed by Attorney General McMaster without the participation of Bauknight. [R. 221] Petitioner stated:

> The Legacy Trust asks this Court to find that the Attorney General can create an entity which does not have to produce its own public documents if the Supreme Court later finds that the Attorney General's actions were improper. The Court should decline to do so and set a hearing on this matter at its earliest convenience. [R. 222]

On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas.* The Supreme Court voided the AG's settlement and voided Bauknight's appointments as SA/ST and PR/Trustee under James Brown's estate plan. It made no statement about Bauknight's role as trustee of the James Brown Legacy Trust, which provided that its existence did not depend on court approval.

On May 10, 2013, the AG, James Brown Legacy Trust, and Bauknight on behalf of the AG and other James Brown Legacy Trust beneficiaries, told the lower court in the Wingate Suit, through their private counsel:

> ... [T]he Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 of the prior opinion. Footnote 29, while

only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. While the court does recognize that the Attorney General is contesting releasing some documents pursuant to FOIA, the court no longer puts any primacy or priority on any court hearing these matters. We believe that such position is entirely appropriate, because the documents requested under FOIA are subject to a claim of privilege which is the subject of a motion for protective order before this court in Case 4900. The claim of privilege must be decided before any court can make a determination of the application of any FOIA claim.

Therefore, the Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that Richland 4900 be held in abeyance in its entirety until all the underlying issues related to the Plaintiffs are resolved by the Aiken Court. Should you deem it best for Plaintiffs to make a formal motion to stay, I would be pleased to do so.

On November 22, 2013 Petitioner requested a FOIA hearing on this and another FOIA case. None was held. [App. 23]

On April 17 and 29, 2014 Petitioner requested a hearing on the two FOIA cases. Wingate objected for the AG and James Brown Legacy Trust. They were not held.

On May 7 and 28, 2014 Petitioner requested a FOIA hearing on the two cases. No hearing was held. [App. 23]

On October 8, 2014 Petitioner requested a hearing in the two FOIA cases. [App. 23] No hearing was held. Another request was made on November 13, 2014, and another on December 2, 2014. No hearing was held. [App. 23]

On March 20, 2015 Petitioner requested a hearing in the two FOIA cases. No hearing was held. [App. 23]

On March 24, 2016 the Honorable Doyet A. Early, III was assigned to this FOIA case [R. 12].

On May 17, 2016 Judge Early heard the motions of the AG and the James Brown

Legacy Trust to dismiss the 2011 FOIA complaints in this case and the FOIA case seeking the Wingate contract. [R., p. 274 – 291]

Petitioner argued that the AG and his staff spent years defending the James Brown Legacy Trust's existence in the Supreme Court and pursuing the Wingate Suit, in part for the benefit of the AG's (new) charity, and that Petitioner is entitled to a declaration that it is a public body and the documents requested. [R. 290, 291]

On June 14, 2016 the circuit court issued orders dismissing Petitioner's FOIA complaint as to both the AG and James Brown Legacy Trust. The orders were filed on June 20 and received by Petitioner on June 24, 2016. [R. 252]

On June 27, 2016 Petitioner served a motion to alter, amend or vacate the order granting the James Brown Legacy Trust's motion to dismiss. [R. 262-265] Among other issues, Petitioner said:

> 3. The Court overlooked or misapprehended that the...Legacy Trust at all times since the commencement of this action has been an active party in Richland...4900...; has moved to intervene in another FOIA case; and has, through its Trustee, Russell Bauknight, taken action confirming its existence. [R. 262]

Nonetheless, the court of appeals did not make any determination of whether the James Brown Legacy Trust was a public body and instead directed that it be dismissed on remand without any clear explanation of why.

At the commencement of this case, Petitioner properly sought a declaration that the James Brown Legacy Trust was a public body subject to the FOIA. [R. 15-25] The circuit court made an explicit finding on that issue. [R. 5-7] Petitioner and the James Brown Legacy Trust fully briefed the question of whether it was a public body. [App. 41-52; App. 67-73; App. 107-112]

Argument

The Court of Appeals Erred in Failing to Find that the James Brown Legacy Trust is a Public Body and Directing that the James Brown Legacy Trust be Dismissed on Remand.

In its opinion, this Court made no finding on whether the James Brown Legacy Trust was a public body subject to FOIA, despite reversing the lower court's order finding that the James Brown Legacy Trust was not a public body. Instead, the Court remanded the matter with a direction that the circuit court dismiss the James Brown Legacy Trust as a party to this action. [App. 128] This instruction is based on the Court's finding "that the issuance of the *Wilson* opinion mooted the premise for naming the James Brown Legacy Trust as a defendant in this action." [*Id.*] No further explanation is given for this finding, and Petitioner respectfully submits that it is in error.

First, the record and law cited by Petitioner in her briefs below fully support a finding that the James Brown Legacy Trust is a public body. *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), holds that even indirect public support of an organization could cause that organization to be treated as a public body. Likewise, *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (Kan. 2003), holds that an organization's use of state employees (who were not paid outside their state salaries), meant that it was a public body for FOIA purposes.

Importantly, the James Brown Legacy Trust did not dispute that it was supported by the use of multiple members of the Attorney General's office in defending its creation, funding and continued existence. See *Wilson*, 743 S.E.2d 746, 768.[3] Further, it

[3] This Court stated, "The AG has taken unprecedented action in this case. After effecting a total takeover of Mr. Brown's estate by excluding its trustees and

commenced and has continued litigation for nine years for the benefit of the AG's (new) charity, its largest beneficial owner.

Even if the *Wilson* decision had somehow terminated the James Brown Legacy Trust (which is inconsistent with the record herein, including the James Brown Legacy Trust's own positions), the Court appears to have overlooked that *Wilson* was not decided until nearly two years after the FOIA request was made in June 2011. At that time, both the James Brown Legacy Trust and the AG were defending the James Brown Legacy Trust's funding and the propriety of the AG's actions in creating the James Brown Legacy Trust in the appeal which would later result in *Wilson*.

If *Wilson* did affect the continued existence of the James Brown Legacy Trust or its status as a public body, any documents possessed or controlled by the James Brown Legacy Trust during the period in which the AG had unfettered control over it would have remained public and must have been preserved for FOIA compliance.

The South Carolina Public Records Act, S.C. Code Ann. §30-1-10, *et seq.*, requires that public bodies maintain their public records. Further, the chief administrative officer of any public body is required, if he has no successor, to deliver public documents in his possession to the Archives. *See* S.C. Code Ann. §30-1-40. The statutory scheme for maintaining and preserving public records cannot be reconciled with a finding that the obligation the James Brown Legacy Trust had to maintain or release public records was extinguished by the Supreme Court's holding in *Wilson*.

---

banding together with parties who stand only to gain from the invalidation of the testator's devise, the AG disposed of the court-appointed trustees, created a new settlement entity, and inserted himself into the day-to-day operations of a newly created charitable trust, the Legacy Trust." *Id.*

Further, the record in this case demonstrates that the James Brown Legacy Trust does exist and is a public body. The James Brown Legacy Trust was an active, public body subject to FOIA at its creation in late 2008 or early 2009. [R. 17] It remains so today.

On March 18, 2013, between the first Wilson decision and the final May 8, 2013, decision, the James Brown Legacy Trust claimed in this FOIA action that if the final Wilson decision was consistent with the first ruling, the James Brown Legacy Trust would not exist. After the final decision, however, the James Brown Legacy Trust has continued to function for more than six years in in the Wingate Suit and elsewhere.

In the over six years since the first *Wilson* decision, the James Brown Legacy Trust has pursued the Wingate Suit with and for the AG, Tommie Rae and others the AG chose as beneficiaries of the James Brown Legacy Trust. In addition, its trustee, Bauknight, has remained an agent for Tommie Rae and other will contestants in the Wingate Suit.

The James Brown Legacy Trust moved for and received summary judgment on Petitioner's counterclaims against it in Wingate Suit, and it continues to this day to defend that result on appeal in the court of appeals. *See* Appellate Case No. 2018-2229, pending in the court of appeals.

Importantly, the James Brown Legacy Trust, through the AG's (new) charity, was 47 1/2% charitable on the day of the Wilson decision. If -- contrary to the evidence -- the James Brown Legacy Trust did cease to exist, Bauknight would have been required under S.C. Code Ann. §62-7-413 and the Internal Revenue Code to take certain actions to protect the charitable assets, including its claim against Petitioner. The AG is the state's official charged with assuring such actions are taken. There is no evidence in the record to suggest that a charitable dissolution took place.

The James Brown Legacy Trust was created and is controlled by the AG. It was active for nearly four years before the *Wilson* decision. It has continued to litigate for over six years since. Nothing in the record supports dismissal of the James Brown Legacy Trust as a defendant.

By reversing the circuit court's order finding that the James Brown Legacy Trust was *not* a public body, but directing that it must be dismissed as a defendant on remand, the court of appeals has prevented both a determination of the James Brown Legacy Trust's status under the FOIA, and the requirement that it comply.

Given all of the above, the court of appeals' finding that the circuit court erred in dismissing the claims against the James Brown Legacy Trust as moot, but that the James Brown Legacy Trust should nonetheless be dismissed in light of the later-decided *Wilson*, should be reversed. Because the issue of whether the James Brown Legacy Trust is public is not moot, this court should grant a writ of certiorari and proceed with deciding this issue, including the James Brown Legacy Trust's obligations under the FOIA, which was briefed extensively by the parties.

Conclusion

For the foregoing reasons, Petitioner respectfully asks this Court to accept this case for review of the court of appeals' opinion.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

Adam T. Silvernail (Bar No. 80219)
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernaillawfirm.com

Counsel for Petitioner

September 19, 2019

ELECTRONICALLY FILED - 2021 Jan 19 1:28 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	**RESPONSE TO POPE'S PROPOSED ORDER, SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT**
v.	)	
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendants.	)	

Plaintiff's Proposed Order should be rejected as it provides no valid response to the Attorney General's Proposed Order, and her Supplemental Memorandum and Affidavit should be rejected as irrelevant and untimely.

SUPPLEMENTAL MEMORANDUM AND AFFIDAVIT SHOULD BE REJECTED

The Attorney General objects to Plaintiff's Supplemental Memorandum and 29 page affidavit with 11 pages of exhibits filed after this case was heard and the Court directed the parties to submit proposed orders. Without authorization or a request for leave to file, she submitted these documents after the record was closed in this case and the parties were directed to submit proposed orders. Moreover, the documents add nothing to this case. Much of the affidavit is an irrelevant rehash of Plaintiff's version of history that she has recounted in her numerous affidavits that are already subject to motions to strike. Nothing in the affidavit is new information that became available to Plaintiff after the hearing in this case. Plaintiff requests relief that goes beyond the scope of her own proposed order, her Complaint as well as FOIA in asking for a sworn detailed certificate of the Attorney General regarding withheld documents and the imposition of "exemplary damages." The affidavit and memorandum should be rejected as

ELECTRONICALLY FILED - 2021 Jan 19 1:28 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

untimely and irrelevant to the disposition of this case. Should the Court want a more detailed response, the Attorney General's Office will be glad to submit one upon request.

PLAINTIFFS PROPOSED ORDER SHOULD BE REJECTED.

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney never received this letter.

Plaintiff says that the Attorney General's Office was aware of the request, but awareness is not the same as receipt. Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, that the Office had not received that request, which Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to Ms. Meyers' affidavit of October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." (emphasis added). The Office of the Attorney General never received the

ELECTRONICALLY FILED - 2021 Jan 19 1:28 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

Plaintiff says that the Attorney General admitted that a copy of the letter was mailed to Sweeny Wingate and Barrow, but his Answer denied that doing so was compliant with the statute which requires that the agency receive the letter. The letter was addressed to the "Custodian of Records" at the Office of the Attorney General not to SWB, and does not show on it that the firm was being copied. Moreover, SWB was not authorized to receive and respond to FOIA requests for the Attorney General.

Plaintiff notes that the Attorney General did not raise this defense in his Motion to Dismiss. He did not do so because that Motion was based upon the limited grounds of improper venue and the pendency of another action between the parties under Rules 12(b)(3) and (8). The Attorney General raised the defense in opposition to Plaintiff's Motion for Summary Judgment and in a Motion to Amend Motion to Dismiss due to lack of subject matter jurisdiction. He also raised the defense in his answer.

The authority to sue under FOIA is limited to actions "to enforce the provisions of this chapter in appropriate cases . . . ." §30-4-100. Therefore, no basis exists for enforcement when no "receipt" of "written request" has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).[1] Plaintiff tries to

[1] "In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action . . . . Where a plaintiff has not complied with these procedures, district courts lack jurisdiction over the claim under the exhaustion doctrine and will dismiss the claim for lack of subject matter jurisdiction." *Gasparutt, supra.* Although this California District Court decision is not binding on this Court, it is consistent with this Court's conclusion that Plaintiff cannot enforce FOIA in this action when she has not complied with that statute, herself.

ELECTRONICALLY FILED - 2021 Jan 19 1:28 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

distinguish *Gasparatti* as an exhaustion case, but the requirement for exhaustion recognized by that Court came after the initial requests for documents. 22 F. Supp. 2d 1114, 1116 ("In order to maintain a judicial action under FOIA, a plaintiff must first request documents from an administrative agency and if his request for documents is refused must exhaust his administrative remedies before filing a court action."). Plaintiff never first requested the documents at issue and instead proceeded to sue.

Because of the proposed ruling that the Court lacks subject matter jurisdiction and Plaintiff has failed to state a cause of action in that the Attorney General did not receive the FOIA request by mail or delivery, we do not address Plaintiff's other arguments including those regarding the motions to strike herein. Should the Court want to consider those arguments, we respectfully request the opportunity to respond to them.

The Attorney General respectfully requests that this Court consider signing his proposed order.

Respectfully submitted,
/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803.734.3680; Fax: 803.734.3677
Email: esmith@scag.gov

January 19, 2021

ATTORNEYS FOR THE ATTORNEY GENERAL

ELECTRONICALLY FILED - 2021 Apr 16 8:31 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS
Adele J. Pope,) Plaintiff,)	Case No. 2012CP4000350 **RETURN TO PLAINTIFF'S MOTION TO ALTER OR AMEND**
Alan Wilson, in his capacity as Attorney General of South Carolina,) Defendants.)	

Plaintiff's Motion to Alter or Amend should be denied. The motion, like most of her other filings, contains lengthy, irrelevant arguments based upon Plaintiff's versions of proceedings in various litigation over the Brown estate. We do not agree with her baseless accusations and speculation, but choose not to address them because of their irrelevance. Instead, the simple and correct response to this Motion is that this Court properly dismissed this case because "[w]ithout proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered." Order at p. 3. This conclusion was supported by the Meyers affidavit that was attached to and part of the Attorney General's Answer that referenced it. Contrary to Plaintiff's assertion, exhibits attached to pleadings are part of the pleadings and therefore, properly the subject for a motion for judgment on the pleadings. Rule 10, SCRCP, expressly states that "[a] copy of any . . .document . . . which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Therefore, the Meyers affidavit was properly before this Court regarding the lack of mailing or delivery of the FOIA request to the Office of the Attorney General. It is an affidavit under oath and is dispositive as to the lack of proper mailing or delivery.

Plaintiff also asserts without basis that the Court of Appeals rejected this argument. It did not. The argument was, as she says, in an additional sustaining ground, but the Court did not reach it. It instead remanded for further proceedings which would necessarily include other issues raised by the Defendant.

For the foregoing reasons, the Attorney General respectfully requests that Plaintiff's Motion be denied. Should this Court want to hear argument regarding any other issues in this case, we would respectfully request the opportunity to brief them although they are largely addressed by earlier filings.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Phone: 803.734.3680; Fax: 803.734.3677
Email: esmith@scag.gov

April 16, 2021

ATTORNEYS FOR THE ATTORNEY GENERAL

ELECTRONICALLY FILED - 2021 Apr 16 8:31 AM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Case No. 2012-CP-40-350
	)	
Adele J. Pope,	)	
Plaintiff,	)	
	)	**AMENDED**
v.	)	**MOTION TO ALTER, AMEND OR**
	)	**VACATE ORDER GRANTING MOTION**
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	**TO AMEND, MOTION TO DISMISS, AND MOTION FOR JUDGMENT ON THE PLEADINGS DATED APRIL 1, 2021**
Defendants.	)	

TO: DEFENDANT AND ITS COUNSEL:

YOU WILL PLEASE TAKE NOTICE that ten days after the service hereof, or as soon thereafter as she may be heard, Plaintiff Adele J. Pope (Pope) will move, pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*, before the Honorable Clifton Newman ("Judge Newman"), for an Order altering, amending and/or vacating his Order dated April 1, 2021 which failed to grant Plaintiff judgment under FOIA, S.C. Code Ann. §30-4-10, *et seq.;* dismissed this 9 ½-year-old FOIA case; and granted judgment on the pleadings and other relief to the Attorney General of South Carolina ("AG"). A copy of said order is attached hereto. The grounds of this motion are set out below.[1]

1. The Court overlooked or misapprehended the well-pled and supported fact that Pope timely delivered her June 2011 FOIA request to the AG, the Legacy Trust, and to SWB, sole

[1] This amended motion is filed to included the attachment, which was not included on the original motion. No changes or additions are made hereto beyond the addition of this footnote and the attachment.

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

counsel for the AG and Legacy Trust in Richland County Case 2010-CP-450-4900 ("Richland 4900") at the time of the FOIA request and until at least 2016; and SWB had a duty under the Wingate Contract to inform the AG of the June 2011 FOIA request and both the AG and SWB, in addition to the Legacy Trust, had a duty to deliver the documents requested in Plaintiff's June and July 2011 FOIA requests, including the following documents requested on June 30, 2011:

> 1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust [also known as the "Settlement Entity"]
>
> 2. All correspondence, email and/or other communications between any member of the [OAG] and Russell L. Bauknight between August 1, 2010 and May 4, 2011 related to the value of the assets of the Estate of James Brown and/or The James Brown 2000 Irrevocable Trust.

2. The Court overlooked or misapprehended that judgment on the pleadings cannot be granted where, as in this case, the Complaint alleges:

> 18. On June 30, 2011, Plaintiff sent to AG Wilson and the Legacy Trust separate requests under FOIA for public records related to the Legacy Trust.
> . . .
> 20. A copy of both requests was also delivered to the Wingate Firm which, on information and belief, as counsel for both the AG and the Legacy Trust, has a duty to comply with FOIA. See AG's standard Retention Agreement for Special Counsel.

3. The Court overlooked or misapprehended that S.C. Code Ann. §30-4-30(c) requires that a public body must respond to a written FOIA request within the specified time after *receipt*, but does not specify any method of delivery, nor any particular person or department within a public body to which a FOIA request must be directed.

4. The Court overlooked or misapprehended that, in reversing the Circuit Court's 2016 grant of judgment on the pleadings in the related FOIA case of *Pope v. Wilson*, 427 S.C. 377, 831 S.E.2d 442 (Ct.App. 2019), the Court of Appeals summarized the standard for granting judgment

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

on the pleadings as follows:

> "Any party may move for a judgment on the pleadings under Rule 12(c), SCRCP. When considering such motion, the court must regard all properly pleaded factual allegations as admitted." *Falk v. Sadler*, 341 S.C. 281, 286, 533 S.E.2d 350, 353 (Ct. App. 2000). "On review of the motion, the court may not consider matters outside the pleadings." *Id.*
>
> In evaluating a Rule 12(c) motion, the court must consider that "a complaint is sufficient if it states any cause of action or it appears that the plaintiff is entitled to any relief whatsoever. Our courts have held that pleadings in a case should be construed liberally so that substantial justice is done between the parties." *Id.* at 287, 533 S.E.2d at 353 (quoting *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). Moreover, "a judgment on the pleadings is considered to be a drastic procedure by our courts." *Id.* (quoting *Russell*, 305 S.C. at 89, 406 S.E.2d at 339).

5. The Court overlooked or misapprehended that the Answer of the AG served in this FOIA suit on March 7, 2013, and filed the following day, **admits that the FOIA request was delivered to SWB** and refers to the Wingate Contract, which it calls the "Retention Agreement," which states:

> The Defendant [AG] craves reference to the Retention Agreement for its contents related to FOIA. [AG's Answer, ¶17]

6. The Court overlooked or misapprehended that at the time of the FOIA request in 2011 the AG, the AG's trustee Russell Bauknight, and SWB had all concealed the Wingate Contract/Retention Agreement from Robert Buchanan, Jr. and Plaintiff for months despite repeated requests; that the AG, through SWB, claimed the Wingate Contract was the "epitome of a private document"; and that the AG, SWB and Bauknight had all concealed from multiple courts the clear mandate of the Wingate/Contract/Retention Agreement, namely:

a. The Wingate Contract is a public document subject to FOIA;

b. All documents used by SWB in Richland 4900 are Property of the State of SC;

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

c. All documents used in Richland 4900 are subject to FOIA;

d. SWB has a duty to notify the AG and comply with FOIA when it receives a FOIA request.

7. The Court overlooked or misapprehended that *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998), the only authority cited by the AG in support of the relief granted in the Order, involved the Federal FOIA and an agency which had published specific procedures for making a FOIA request; *Gasparutti* is therefore inapplicable to this case, where neither the South Carolina FOIA nor any known policy published by the AG requires any specific form or addressing of a FOIA request.

8. The Court overlooked or misapprehended that *Gasparutti* was decided on the basis that the plaintiff therein had not exhausted his administrative remedies before filing suit. Federal appellate caselaw does not support the AG's contention that receipt of the FOIA request is a precedent to this Court's subject matter jurisdiction over the matter. "[E]xhaustion is a prudential consideration rather than a jurisdictional prerequisite, [and] the district court was not precluded . . . from deciding the merits of Wilbur's FOIA claim notwithstanding his failure to comply with the CIA's FOIA appeal deadline." *Wilbur v. C.I.A.*, 355 F.3d 675 (D.C. Cir. 2004).

9. The Court overlooked or misapprehended that the AG has demonstrated that, to the extent *Gasparutti* is applicable at all, the AG's conduct has demonstrated that Plaintiff's resubmission of the 2011 FOIA request would have been futile. As set out in the affidavit of Tracy Meyers, which alleges that she did not receive the 2011 FOIA request, Meyers stated:

> 6. Upon the conclusion of the suit and the delivery or mailing of the same FOIA request [which the AG, Legacy Trust and SWB already had] to the [OAG] by Ms. Pope or her attorney, a response to the FOIA request will be made by them if permitted by the Order of the Court in case 2011-CP-36-364 or any other judicial proceeding related to matters that are the subject of that

request. [Emphasis supp.]

10. The Court overlooked or misapprehended that the AG made clear in 2011 that it would *not* substantively respond to Plaintiff's June 30, 2011 FOIA request even if she delivered another copy of the request; it is therefore against the letter and the spirit of the FOIA to dismiss this 9 ½ year old FOIA case because the AG takes the position that it did not receive the copy of the FOIA request which was mailed directly to it – especially where it is undisputed that the AG's counsel *had* received the request and that the office of the AG was aware of it.

11. The Court overlooked or misapprehended that if the AG and SWB had simply complied with the AG's statutory duty and the duty of both under the Wingate Contract in July 2011, two 9 ½-year-old FOIA suits by Plaintiff, including two appeals, and a 2012 FOIA suit by a journalist which resulted in a judgment against the AG, would have been avoided, but the AG, Legacy Trust run by the AG's trustee, Russell Bauknight, and SWB all refused to release the public Wingate Contract, and the AG continues to refuse to release it under FOIA in April 2021.

The Court Overlooked that the Court of Appeals Rejected the AG's Claim that Plaintiff Did not Properly Deliver her June 30, 2011 FOIA Request

12. The Court overlooked or misapprehended that the AG raised its purported non-receipt of the 2011 FOIA request as an additional sustaining ground during the appeal of this case and presented the same argument and authority which it has presented to this Court.

13. The Court overlooked or misapprehended that, after the Court of Appeals reversed the dismissal of this case notwithstanding the AG's argument that it did not receive the 2011 FOIA request, the AG again argued that matter in its Petition for Rehearing. The Court of Appeals denied that Petition without requesting a return from Plaintiff.

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

The Undisputed Record Shows that the AG's 9 ½- Year FOIA Noncompliance Continues to Advance the May 29, 2013 Announced Plan to Disregard *Wilson v. Dallas* and Reinstate the AG's 2008 Settlement

14. The Court overlooked or misapprehended that the AG's FOIA noncompliance prior to *Wilson v. Dallas*, like Richland 4900, was intended to enforce the AG's 2008 settlement which dismembered James Brown's estate plan, and the AG's FOIA noncompliance for the last 8 years has been to help carry out the announced May 29, 2013 plan of Tomirae Hynie and Louis Levenson, Esq., of their intention to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement which gave Hynie spousal status and $1 million a year and a quarter of Brown's "I Feel Good" charity for half of the termination right proceeds she and her son put in the Legacy Trust in 2009.

15. The Court overlooked or misapprehended that if the AG had complied with proper FOIA requests made by Plaintiff in 2011 and a journalist in 2012 (*Summer v. Wilson*), a handful of public documents would have made clear the damage the AG's 2008 settlement did to James Brown's charity and that the spousal, tax, valuation and U.S. Copyright Act claims Hynie and Bauknight were making to the Supreme Court, and which the AG endorsed, were clearly erroneous.

16. The major public documents which the AG has withheld under FOIA to advance the dismembering of James Brown estate plan in favor of Hynie, Forlando and five former Levenson clients as sought in the Richland 4900 Complaint are:

> a. The public so-called "Hynie diary" which confirms in Hynie's handwriting that her 2001 ceremony with Brown was bigamous and the AG has known this since the document was widely disseminated in 2007 and early 2008.
>
> b. The Wingate Contract, still being withheld under FOIA in 2021, supports the sworn 2016 testimony of now-Governor McMaster that he did not authorize

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

SWB to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act on behalf of the State/AG in that case; and did not know he was a Richland 4900 Plaintiff until after leaving office as AG in January 2011. It also shows that the entire Wingate Contract and every document used in Richland 4900 is public; property of the State of SC; and subject to FOIA.

c. The Afterman $4.7 million claimed value of Brown's music empire, which earned $7.83 million in 18 months when Buchanan and Plaintiff were PR/Trustees, was fabricated by one of Hynie's lawyers, Afterman and Legacy Trust lawyers being paid $375- $500 an hour. In Forlando Brown's words, it is "bogus." Forlando says this even though the $79 million devaluation of Brown's music empire shifted $1 million a year and nearly 1/3 (31%) of Brown's "I Feel Good" Trust away from needy students and over to the trust for Forlando and 6 other family members for more than a decade.

While the AG continues to conceal the Afterman/Bauknight $4.7 million valuation under FOIA, the AG's own expert Roger Miller testified in 2018 that Brown's copyrights alone were worth as much as $60 - $80 million when the AG took control of Brown's assets in 2009 (15 – 20 x annual revenues).

d. The Legacy Trust Amendment signed by Governor McMaster just before he left office as AG; the related assignment to Forlando of 4.79% of the Legacy Trust in January 2011, the month Forlando planted the false Grammy© claim noted by the Supreme Court; and related public Legacy Trust documents owned by the State/AG might help explain Bauknight's claim in 2009 that he held most of the termination rights proceed that would be worth $8.8 million by 2018, but claimed under oath in 2016 that the Legacy Trust had never existed.

Legacy Trust lawyer Threatens Sanctions or Lawsuit for Pursing FOIA Rights (2011)

17. The Court overlooked or misapprehended that the AG's "October 2020 Documents," recently released under FOIA, confirm that from 2009 until 2013 David Black, Esq., and other Legacy Trust attorneys were paid $375 - $500 an hour to enforce the AG's 2008 settlement which dismembered James Brown's estate plan.

18. The Court overlooked or misapprehended that on July 15, 2011 Black claimed the AG's Legacy Trust, the primary Plaintiff in Richland 4900, was private, and threatened Plaintiff with sanctions or a lawsuit if she exercised her FOIA right to receive a copy of the Legacy Trust

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

amendment Governor McMaster, then AG, had signed 7 months earlier.

19. The Court overlooked or misapprehended that this was the beginning of nearly 10 years of threats, sanctions and FOIA disruption by Black, the Legacy Trust and its owner/successors, and Sweeny, Wingate & Barrow, PA ("SWB") to benefit Hynie and SWB's other private Richland 4900 clients.

SWB Directs the Attorney General Not to Comply With His FOIA Duties (2012)

20. The Court overlooked or misapprehended that on January 20, 2012, in a letter described as **URGENT – PRIVILEGED ATTORNEY/CLIENT COMMUNICATION**, on file in this case, SWB attorney Mark Gende, Esq., advised the AG not to comply with his duty under FOIA to produce the Wingate Contract, even though the Wingate Contract states on its face that it is a public document subject to FOIA; that every document used by SWB in connection with Richland 4900 is property of the State of S.C.; and every document held by SWB is subject to FOIA.

21. The Court overlooked that this document was sent to AG Wilson, Sr. Asst., AG Havird Jones, Sr. Asst. AG Tracy Meyers, Asst. AG Mary Frances Jowers; and other AG staff, but, despite multiple FOIA requests, was withheld by the AG under FOIA until 2020 when it became part of the "October 2020 Documents" on file in this case.

22. The Court overlooked or misapprehended that SWB advised AG Wilson that if he complied with his FOIA obligations he would "certainly incur the sanction of costs and attorneys' fees in the pending FOIA actions" and that this would be "more costly and embarrassing than a decision to continue litigating..."

23. The Court overlooked or misapprehended that SWB advised AG Wilson not to perform his proper duty under FOIA because it would "jeopardize the rights of your [Richland 4900] co-

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

litigants," and the AG has followed that advice.

24. The Court overlooked or misapprehended that Hynie and other private clients of SWB constituted a majority of the AG's co-litigants in 2012 when SWB advised the AG not to comply with his FOIA duties.

The AG Follows SWB's Advice Not to Comply With his FOIA Duties from 2012 until 2021

25. The Court overlooked or misapprehended that on February 15, 2013 the AG followed SWB's advice not to comply with FOIA, but to litigate, and resisted release of the public Wingate Contract, Hynie diary, Bauknight/Afterman $4.7 million and Legacy Trust documents, claiming:

> Plaintiff [Summer, a journalist] cannot obtain under FOIA documents as to which disclosure or release is under review or order of a court pending in another proceeding, including… Richland 4900. [Emphasis supp., Ord. Jg. Griffith, 9/19/14]

26. The Court overlooked or misapprehended that the AG also made the entirely incorrect statement that he had responded to the journalist's multiple FOIA requests and had supplied any documents it had except the so-called Hynie diary and the Wingate Contract.

27. The Court overlooked or misapprehended that the AG's claimed excuse for not releasing the Wingate Contract, which confirmed that everything used in Richland 4900 belonged to the State and was subject to FOIA, was that it was "under review" in a pending "motion or court order."

28. The Court overlooked or misapprehended that the "review" the AG claimed should prevent release of the public Wingate Contract (and all other documents) was a motion the AG himself, through SWB, had filed in 2011 (after the FOIA request) and which SWB and the AG prevented from being heard until 2020 by requesting (and getting) a 3-year stay from 2013 – 2016; and by SWB's bitterly resisting (successfully) at least three separate motions to lift the stay and

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

have motions heard in Richland 4900 between 2016 and 2020.

29. The Court overlooked or misapprehended that the journalist moved for summary judgment in the Summer FOIA case, the day the Supreme Court suggested that the circuit court should hear Plaintiff's FOIA matters "in the first instance," but the AG, Bauknight and SWB were able to derail and delay FOIA compliance in the Summer FOIA case until (and after) September 19, 2014, when Judge Griffith ruled:

> Documents in the Wingate Firm's possession that were prepared, owned used, possessed or retained in whole or in party by the Attorney General are subject to this order and must be produced.

30. The Court overlooked or misapprehended that in 2015 the AG finally produced the Wingate Contract, the Legacy Trust amendment and certain other documents, but still refuses to release them under FOIA in this case 6 years later.

31. The Court overlooked or misapprehended that the October 2020 Documents make clear that the AG not only failed to comply with the FOIA mandate of *Wilson v. Dallas*, but openly disregarded the FOIA order of Judge Griffith in *Summer v. Wilson* and continues to do so by redacting Richland 4900 documents used by Hynie, the Legacy Trust and SWB private clients in their strategy to dismember James Brown's charity in Richland 4900 between 2010 and 2013.

The AG Relies on Unconstitutional, *Ex Parte* and Ill-Gotten Orders and Motions of Hynie and other Richland 4900 Plaintiffs to Evade or Delay FOIA Compliance

32. The Court overlooked or misapprehended that from 2011 until 2021 that AG has used unconstitutional, *ex parte*, and ill-gotten orders, as well as its own motions, through SWB, and those of Hynie, Bauknight and other Richland 4900 Plaintiffs, to claim that the AG is "barred from release [under FOIA] by pending motions or court order."

33. The Court overlooked or misapprehended that many Richland 4900 Plaintiffs,

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

including the estate of Venisha Brown, Yamma Brown and others, are now openly claiming in Federal Court, and it is part of the record in this case and Richland 4900, that Bauknight, Hynie and Afterman are improperly secreting documents which cannot be privileged since the open mission of Hynie and Afterman from 2013 to 2021 has been to dismember James Brown's charity; take U.S. royalties James Brown gave to his "I Feel Good" charity; and secure and take to London, U.K. the termination rights proceeds Hynie and her son James put into the Legacy Trust in 2009.

34. The Court overlooked or misapprehended that Bauknight, concealing in 2013 that he had shared the Afterman $4.7 million valuation with Hynie, Forlando and more than a dozen Will/Trust contestants, secured a confidentiality order in Case 3:08-cv-00014-WOB, and both the AG and Bauknight have used the ill-gotten confidentiality order to conceal the contents of the Afterman $4.7 million value. They have done so even though Hynie's son revealed to the Supreme Court in his *Wilson v. Dallas* rehearing petition that Afterman arrived at the absurd value by valuing Brown's 900+ copyrights at $23 million; Brown's claims related to the $17 million Cannon took at near zero; Brown's iconic tangible personal property (TPP) at near zero; Brown's valuable right of publicity at near zero; and reducing the $23 million by $19 million for Brown's TIAA debt – an overstatement of about $4 million.

35. The Court overlooked or misapprehended that the AG claims it cannot produce the Afterman $4.7 million claimed value under FOIA even though it has been used by the AG since 2010 to falsely accuse Buchanan and Appellant of a federal felony.

36. The Court overlooked or misapprehended that the AG's refusal to release the Afterman $4.7 million claimed value violates FOIA, the *Summer* Order, *Wilson v. Dallas*, and the Due Process rights of Buchanan and Appellant who continue to be falsely accused of a crime by the

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

AG, as well as Bauknight and SWB purporting to act on behalf of the State/AG.

37. The Court overlooked or misapprehended that the Wingate Contract makes clear that the Afterman $4.7 million claimed value and all related documents are property of the State of S.C. and subject to FOIA no matter which Richland 4900 attorney or party is holding them.

The AG's March 2013 Personal Knowledge of Damage to the "I Feel Good" Charity of the Afterman $4.7 Million Value

38. The Court overlooked or misapprehended that on March 6, 2017 the AG, the Solicitor General and the Chief Deputy AG, in a meeting with Plaintiff and her counsel, and a meeting of the Solicitor General and Chief Deputy a few days later, gained personal knowledge of the damage to James Brown's charity done by concealing the fabricated $4.7 million Afterman claimed value.

39. The Court overlooked or misapprehended that concealing the Afterman $4.7 million value under FOIA, and not correcting claims made by Bauknight to the IRS based on the fabricated value, has shifted nearly 1/3 (31%) of Brown's "I Feel Good" charity over to Forlando and other family members, causing hundreds of thousands of dollars of unnecessary income taxes and depriving needy student of $1 million of scholarship funds a year for more than a decade.

The AG Tells the Supreme Court he Will Conclude FOIA Matters Promptly and Doesn't

40. The Court overlooked or misapprehended that on March 14, 2013 the AG told the Supreme Court that he was getting out of Richland 4900 and hoped to conclude the FOIA matters shortly, then remained in Richland 4900 until 2017 and is still refusing to produce public documents under FOIA and attempting to suppress criticism of his 9 ½ year FOIA noncompliance.

The AG's March 2013 Answer in this FOIA Case Supports Hynie and the Legacy Trust

41. The Court overlooked or misapprehended that on March 8, 2013, with knowledge of the damage his FOIA noncompliance was causing James Brown's "I Feel Good" charity, the AG

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

filed an Answer in this FOIA case which fully supports the Richland 4900 Complaint, the purpose of which was to enforce the AG's 2008 settlement; make Hynie James Brown's spouse; and give her a quarter of the music empire and its $4 million annual royalty stream for half of the termination rights proceeds which she and her son had put in the Legacy Trust.

42. The Court overlooked or misapprehended that the AG's refusal to comply with FOIA, and the disruption caused by the AG's private attorney SWB and by Bauknight, has followed the same pattern as in the Summer FOIA case, except that Judge Griffith refused the AG's proposed transfer of the FOIA case to Richland County; directed FOIA compliance for the first time 2 years after the suit was filed; and directed that about $40,000 in attorneys' fees and costs be paid by the State/AG in that case for its 2-year refusal to comply with FOIA.

The AG's Refusal to Comply with FOIA Supports Hynie and Other SWB Private Clients

43. The Court overlooked or misapprehended that the AG's October 2020 Documents filed in this case confirm that on April 24, 2013 the AG made clear that it had never been a client of SWB in Richland 4900, stating:

> This is to advise that the Attorney General's Office has no responsibility for legal fees to [SWB] as this Office did not employ the firm's services.
>
> And:
>
> As you are aware, if the Supreme Court decision stands as is, any fees [SWB] have heretofore received in the 4900 case are required to be disgorged and returned to the trust established by James Brown.

44. The Court overlooked or misapprehended that despite this clear statement, from 2013 until 2020 the AG's Answer in this FOIA case fully supports Richland 4900 in which Hynie and other SWB clients continue their effort to dismember James Brown's charity and even though

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

SWB had secured years of delays in FOIA hearings and two SWB attorneys lacked candor about their representation of the State/AG in depositions ordered by Judge Toal in 2017.

The Supreme Court Acknowledged the AG's Commitment to Get Out of Richland 4900

45. On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas* which, in footnote 30, acknowledges the AG's commitment to get out of Richland 4900.

46. The Court overlooked or misapprehended that with the AG out of Richland 4900 the sole Beneficiary/Owners of the Legacy Trust, the primary Richland 4900 Plaintiff, and their approximate shares in the costs and outcome of Richland 4900 were: Hynie, 46%; Forlando, 9%; and five Levenson clients, 9% each.

The AG Allows the Legacy Trust to Evade FOIA by Claiming it Does Not Exist

47. The Court overlooked or misapprehended that in 2009 both the AG and Bauknight assured the Honorable Doyet A. Early that the AG would carefully oversee the operation of the Legacy Trust which already held termination rights proceeds of the private settling parties which, the AG and Hynie claimed, might be more valuable than James Brown's Estate/2000 Trust.

48. The Court overlooked or misapprehended that the claim was wholly inaccurate at the time made, and is wholly inaccurate now because termination rights will never be able to be exercised against the "I Feel Good" Charity's non-U.S. royalties, which make up about half of the annual royalty stream which was about $4 million when Buchanan and Petitioner were PR/Trustees and has been $3.5 million - $4 million a year since.

49. The Court overlooked or misapprehended that experts Wallace Lightsey, Esq., Wm. Jeffrey Smith and others, and the Ray Charles litigation, have confirmed that multiple strategies exist for charities which hold copyrights to minimize and/or delay the impact of termination rights

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

elections on their royalty streams, but that sharing a music consultant with someone claiming to be the spouse, but who is not, is not one of those strategies.

50. The Court overlooked or misapprehended that journalists, experts, a State Senator and others, by their affidavits filed in this case since 2011, have shown that the citizens of South Carolina and media in S.C. have great interest in the value of James Brown's music empire and "I Feel Good" Charity and the actions which the AG is taking to assure that the royalties to what is now 1100+ copyrights James Brown devised to his "I Feel Good" Trust for scholarships for needy students are being properly protected from attempts of Hynie and others to siphon off scholarship funds James Brown intended for needy students.

51. The Court overlooked or misapprehended that the AG, based on the Afterman $4.7 million which has been concealed under FOIA for 9 ½ years, supported and/or joined in Bauknight's incorrect claims to the Supreme Court in 2011 and later that the AG's 2008 settlement saved taxes; that the AG's 2008 settlement was good for Brown's charity; that James Brown's Estate/2000 Trust had no corpus to speak of; that nobody was trying to buy the James Brown assets; and, based on the concealed Afterman claimed valuation, James Brown's worldwide music empire was worth only $4.7 million when he died.

52. The Court overlooked or misapprehended that by 2018 the AG's own Richland 4900 experts had testified that the TPP valued at near zero could be worth as much as $20 million; that that "frothy" investors were willing to pay 15 – 20 times revenues, as much as $60 - $80 million, for the copyrights; and that the termination rights of all heirs, with certain exceptions, had grown to only $8.8 million by 2018.

53. The Court overlooked or misapprehended that an AG in charge both of FOIA

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

compliance and overseeing James Brown's "I Feel Good" charity allowed Bauknight, who signed the Wingate Contract for the Legacy Trust in 2010 and stated under oath in 2012 that he had managed the Legacy Trust in Richland County since 2009, to simply claim that it disappeared with no explanation for what happened to a substantial portion of the termination rights proceeds to U.S. royalties from 1100 copyrights put into the Legacy Trust in 2009.

54. The Court overlooked or misapprehended that because of the AG's control of FOIA, the Legacy Trust, and Richland 4900 until 2013, its refusal to release critical public documents is troublesome, especially where the AG has allowed James Brown's charity to advance 100% of the costs of Richland 4900 to the Legacy Trust since 2010 and Hynie and her son James are now residents of London, U.K.

55. The Court overlooked or misapprehended that AG Tracy Meyers, who claimed in 2011 that she had not received the valid FOIA request, has been included at least since early 2012 in SWB's direction to the AG not to comply with his FOIA duties, suggesting that she may not have inquired of other AG staff to see who did or did not receive Plaintiff's June 30, 2011 FOIA request.

The AG's Representations to the Circuit Court on May 17, 2016 were Incorrect

56. The Court overlooked or misapprehended that the AG and Legacy Trust lacked candor with the Court at the hearing on May 17, 2016, with neither informing the Circuit Court that the AG had never engaged SWB as an attorney, and the AG claiming that all of the documents sought under FOIA were discoverable in Richland 4900, in which the AG is a named party.

57. The Court overlooked or misapprehended that after claiming that the FOIA request should be addressed in Richland 4900, in which the AG was a party, the AG moved the same Circuit Court to be dismissed as a party to Richland 4900 under Rule 21, claiming that it had never

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

been a party.

58. The Court overlooked or misapprehended that the AG told the Circuit Court on May 17, 2016 that "[w]e believe we provided the documents the Plaintiff seeks," when the AG had actual knowledge that under the Wingate Contract the State owned every document used in Richland 4900; that it had used but withheld the Afterman $4.7 million valuation for 5 years; and that it was continuing to withhold both the $4.7 million valuation and the Legacy Trust documents.

59. The Court overlooked or misapprehended that at the May 2016 hearing the AG raised the claim that Meyers had not received the document, but carefully noted that "we didn't get the request from her," never claiming that it was not timely received from someone, and – as SWB had advised – electing to litigate rather that follow the mandate to comply with FOIA.

60. The Court overlooked or misapprehended that the AG's counsel improperly characterized Plaintiff's FOIA request as "a waste of time," and sought to strike 14 affidavits of journalists, Plaintiff and other citizens which urged the AG to comply with his FOIA duties and release the James Brown documents, which were of great public importance.

The AG's Brief in the FOIA Appeal Continued the AG's disingenuous Claims

61. The Court overlooked or misapprehended that the AG, to further avoid his FOIA duties as well as his duties to protect the "I Feel Good" charity from Hynie and those aligned with her, claimed disingenuously that he had supplied Plaintiff with all of the documents she had request under FOIA, even though he had not.

62. The Court overlooked or misapprehended that that the AG continued to claim that Richland 4900 was another action pending between the same parties, even though the AG had obtained an order under Rule 21 dismissing it as a party.

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

63. The Court overlooked or misapprehended that Plaintiff was not entitled to summary judgment in this matter as she had requested on September 29, 2011 despite the AG's FOIA mandate that "when in doubt, release the document."

FOIA Noncompliance has Wasted Millions of Dollars of Brown's Charity

64. The Court overlooked or misapprehended that the AG's and Legacy Trust's FOIA noncompliance and other efforts since May 29, 2013 to reinstate the AG's 2008 settlement have resulted in Bauknight's expenditure of tens of millions of dollars from James Brown's "I Feel Good" charity which Brown intended to be used for the education of needy students, and the AG has made no effort for the Legacy Trust owner-successors pay the tab.

The AG's 2020 Efforts to Strike Affidavits Critical of his FOIA Noncompliance from the Public Record is Improper

65. The Court overlooked or misapprehended that the AG's refusal to release the Afterman $4.7 million claimed value which is the heart of Hynie's fraudulent value and termination rights claims, and the Legacy Trust amendments made as Forlando planted the false Grammy© claim, have helped Hynie, Forlando and the Cannon trustees with whom Forlando was aligned from 2007 until 2018 defraud multiple state and federal courts.

66. The Court overlooked or misapprehended that the 14 or more affidavits filed in this case reflect the appropriate concern of Plaintiff, journalists, and other citizens that the AG is using FOIA abuse to dismember a charity he has a public duty to protect, and the AG's 2020 efforts to scrub the public record of his failure to comply with his public duty under FOIA violates the Due Process rights of Plaintiff and these citizens and the criteria for sealing public record.

67. The Court overlooked or misapprehended that the Court of Appeals did not honor the

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

AG's request to strike these legitimate citizen complaints about the AG's failure to comply with his obligations under FOIA.

The AG's Actual Knowledge of the Damage his FOIA Noncompliance is Doing to a Charity He Claims to be Protecting Supports Reversal of this Lower Court's FOIA Dismissal

68. The Court overlooked or misapprehended that on March 6, 2013 the AG, the Solicitor General, and the Chief Deputy AG were personally told of the damage caused to James Brown's charity by the Bauknight/Afterman $4.7 million claimed value, which includes:

> a. shifting $1 million a year and nearly 1/3 (31%) of the "I Feel Good" Trust from needy student beneficiaries to Forlando Brown and 6 other family members for more than a decade, under the "fractional share" clause of Brown's trust;
>
> b. causing Brown's estate to be liable for hundreds of thousands of unnecessary income tax each year, which was not payable when Brown's assets were properly valued at about $84 million ($100 million less the correct $15 million TIAA debt).

The FOIA Answer Confirms the AG's FOIA Noncompliance Benefits Private Individuals

69. The Court overlooked or misapprehended that on March 7, 2013, one day after learning personally of the damage the Bauknight/Afterman $4.7 million claimed value was doing to James Brown's charity, the AG, served his Answer in this FOIA suit; adopted the Richland 4900 complaint which seeks to enforce the AG's 2008 settlement; adopted the terms of the Wingate Contract, which he called the "Retention Agreement," for FOIA obligations even though he was concealing it; and moved to dismiss based on the letter of AG Tracy Meyers of August 5, 2011 and Affidavit of Meyers, dated October 20, 2011.

70. The Court overlooked that the AG's March 2013 Answer in this FOIA suit supports the dismembering of James Brown estate plan addressed in *Wilson v. Dallas* and the continuing

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

fraud on state and federal courts by Hynie, Forlando and those associated with them.

71. The Court overlooked that AG's Answer in this FOIA Suit contained the following:

> 9. ...the Defendant [AG] craves reference to the Complaint in case 4900 and denies any allegations in the instant [FOIA] complaint which are inconsistent therewith... [Complaint, p.3]
>
> 10. ...the Defendant [AG] craves reference to the complaint in Case 4900 and denies that the allegations in the 4900 Complaint are false... and denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit. [Complaint, p. 3]
>
> . . .
>
> 13. ...the Defendant [AG] admits that he succeeded Henry McMaster as [AG], but denies any allegations inconsistent with the Complaint in Case 4900 and denies that Plaintiff [Pope] may litigate issues in the instant [FOIA] case that are before the Court in case 4900 or that could be raised in that suit. [Complaint, p. 3]
>
> ...
>
> 15. ... Defendant Wilson denies that Plaintiff properly mailed or delivered her [FOIA] request at issue directly to the ...OAG... He is without sufficient knowledge or information to admit or deny whether she property mailed or delivered her FOIA request to the Legacy Trust. As to the description of the requests, he craves reference to the alleged letters for their contents [p.4]
>
> 17....admits...that the document was sent to the Wingate firm [SWB]....The Defendant craves reference to the Retention Agreement [Wingate Contract] for its contents related to FOIA. [p.4]
>
> 18. ...Defendant [AG] admits that his office did not respond to the referenced FOIA....
>
> 22....allegations in paragraph 25 regarding the Black letter do not apply to the [AG]... such matters are for the Trust to determine what response should be made...[p.5]
>
> 33. The Defendant denies the requests in the Prayer for Relief to the extent they are directed to him except that he agrees to the current hearing date of March 18, 2013... he is serving and filing his Answer now...in an effort to bring all matters before the Court so they may be determined at the hearing on the 18th... p.7 [Emphasis supplied throughout]

Conclusion

For the reasons set forth above, Plaintiff respectfully asks that this Court alter, amend and/or vacate its April 1, 2021 Order; direct that the AG comply with FOIA; and grant Plaintiff

attorney's fees and costs incurred by the AG's FOIA violations for more than nine years. This motion is based on the entire record herein; applicable statutory and case law; and any memorandum which may be presented at or before the hearing on this motion.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

Attorney for Plaintiff

April 13, 2021

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP400350

EXHIBIT A

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350
ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
Adele J. Pope,	)	Case No. 2012CP4000350
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER GRANTING MOTION TO AMEND, MOTION TO DISMISS, AND MOTION FOR JUDGMENT ON THE PLEADINGS**
	)	
Alan Wilson, in his capacity as Attorney General of South Carolina,	)	
	)	
Defendants.	)	

This case has come before the Court pursuant to pending motions of the Attorney General to amend motion to Dismiss, for judgment on the pleadings, and to strike numerous affidavits filed by Plaintiff. After carefully considering these motions, Pope's responses to them and counsel's argument about them at a hearing on November 19, 2020, this Court grants the motion to amend and for judgment on the pleadings. Because of this ruling, the Court need not reach the motions to strike in this order.

BRIEF HISTORY OF PROCEEDINGS

Plaintiff brought this action by a Complaint filed in Newberry County on August 3, 2011. The Complaint requested, in part, that the Court declare public documents that she sought by a June 30, 2011, Freedom of Information Act request and that they be made available for inspection and copying.

Following the denial of his earlier motion to dismiss and the transfer of venue to Richland County, Defendant Attorney General filed an Answer to the Complaint that included the defenses asserted in the Motion to Dismiss and Motion to Amend Motion to Dismiss, and added the defense of lack of subject matter jurisdiction arguing that Plaintiff failed to accomplish mailing or delivery

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350
ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

of her FOIA request as required by §30-4-30(c) and because the items requested were exempt from disclosure under FOIA contenting e they are subject to the rules regarding discovery in the Rules of Civil Procedure. The Answer also included the defense that the Office of the Attorney General had no documents that could be considered responsive to the FOIA request except for a draft of the Legacy Trust attached thereto and included in the Record on Appeal in *Wilson v. Dallas*, 403 S.C. 411743 S.E.2d 746 (2013). The Respondent AG also filed a Motion for Judgment on the Pleadings on March 7, 2013.

Judge Early heard pending motions in this case on May 17, 2016. He issued an Order dated June 14 dismissing this case. He found that the documents at issues were potentially discoverable in pending litigation in Richland / Aiken counties and would be governed by the Rules of Civil Procedure. He found that the documents were exempt from disclosure under FOIA for this reason and that FOIA could not be used to bypass civil discovery. The Court denied Plaintiff's Motion to Alter or Amend by Form 4 Order dated August 11, 2011. Plaintiff appealed the above 2016 Orders.

The Court of Appeals reversed the circuit court's order dismissing the Complaint and remanded the case for further proceedings on the basis of its conclusion in *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448, (Ct. App., 2019) which included the statement that "[i]f the government invokes the exemption in section 30-4-40(a)(4), '[m]atters *specifically* exempted from disclosure by statute or law,'[footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record." The Court of Appeals found that the case was not moot since Plaintiff challenged the claim that the Attorney General had given her all the documents responsive to her request. The Court did not address the Attorney General's

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350
ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

additional sustaining ground that the Court lacks subject matter jurisdiction due to the failing of the Plaintiff to accomplish mailing or delivery of her FOIA request as required by §30-4-30(c) and also the ground that the Court should strike Pope's 14 affidavits as being irrelevant and because many of them are not based upon personal knowledge, contain hearsay, or are speculative.

PLAINTIFF HAS NO CLAIM UNDER FOIA
BECAUSE HER REQUEST WAS NOT RECEIVED BY MAIL OR DELIVERY

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the "Custodian of Records of the Office of the Attorney General":

> 1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
>
> 2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney General never received this letter and Plaintiff has failed to show otherwise.

Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, indicating that the Office had not received a FOIA request that Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to the affidavit of Ms. Meyers dated October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

While FOIA serves a vitally important function in assuring that public business is performed in an open manner, Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. ("(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350
ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor." (emphasis added). The Office of the Attorney General never received the FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

The authority to sue under FOIA is limited to actions "to enforce the provisions of this chapter in appropriate cases . . . ." §30-4-100. Therefore, no basis exists for enforcement when no "receipt" of "written request" has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).

CONCLUSION

The Court grants the Motion to Amend the Motion to Dismiss, grants the Amended Motion to Dismiss, and grants the Motion for Judgment on the pleadings because the Attorney General never received the written FOIA request by mail or delivery. Attaching the FOIA request to this lawsuit, another lawsuit, or mailing it to retain counsel is not compliant with the statute. This action is therefore dismissed for lack of subject matter jurisdiction and failure to state a cause of action. As a result, the Court does not rule on the other grounds of the Attorney General's Amended Motion to Dismiss and Motion for Judgment on the Pleadings.

AND IT IS SO ORDERED
[Electronic signature of Clifton Newman, Circuit Court Judge, follows]

ELECTRONICALLY FILED - 2021 Apr 01 3:04 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350
ELECTRONICALLY FILED - 2021 Apr 13 1:23 PM - RICHLAND - COMMON PLEAS - CASE#2012CP4000350

Richland Common Pleas

Case Caption: Adele J Pope vs Alan Wilson , defendant, et al

Case Number: 2012CP4000350

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

State of South Carolina)
) Court of Common Pleas
County of Richland) 2010-CP-40-04900

Russell L. Bauknight, et al)
vs.) Transcript of Record
)
Adele J. Pope and Robert L.)
Buchanan, Jr.)

September 14, 2011
Columbia, South Carolina

FILED
RICHLAND COUNTY
2011 OCT 24 A 11:01
JACQUELINE ... CLERK ...

B E F O R E:

Honorable Casey L. Manning, Judge.

A P P E A R A N C E S:

Mark V. Gende, Esq.
Kenneth B. Wengate, Esq.
Attorneys for the Plaintiffs

Daryl L. Williams, Esq.
Adam T. Silvernail, Esq.
J. Calhoun Watson, Esq.
Alexis Lindsay, Esq.
Attorneys for the Defendants

Joy E. Holston
Official Court Reporter

THE COURT: Please state your names for the record, please.

MR. GENDE: Mark Gende, G-E-N-D-E, for the plaintiffs.

MR. WINGATE: Ken Wingate for the plaintiffs.

MR. WILLIAMS: Daryl Williams for defendant, Adele Pope.

MR. SILVERNAIL: Adam Silvernail for the defendant, Adele Pope.

MS. LINDSAY: I am Alexis Lindsay, I am here for Cal Watson for defendant.

THE COURT: Everybody out there had a brief meeting in chambers and I knew a little bit about this case because I heard a motion eight months ago, somewhere in that range concerning part of this. Back then I understand, I may be mistaken but I thought Judge Early was suppose to kind of hear all of this. And it has been back and forth a little bit. But based on looking at the roster and the motions that have been filed today I concluded the best thing to do, especially with the background that Judge Lee has already had a meeting with you all and there is a process of designating this a complex case, and a complex case assigning one Judge. And because of that background I think we will continue this case with the status quo being maintained to allow Judge

Lee an opportunity and me an opportunity to see whether or not she will conclude that one Judge, my feeling is this and I will be honest with y'all, one Judge should hear this from the beginning to end. And my misunderstanding, I thought Jack Early was going to hear everything, those motions. I think the last time I was here was two separate things, one involved like the venue being here in

Richland County rather than back in Aiken and all of these issues. But anyway in my opinion it is logistically complicated where one Judge should hear everything from beginning to end. Whether that is me or somebody else, I don't know at this time. But I think it would be fair to all parties involved if I proceed today by continuing this case and waiting to determine or to see if Judge Lee will designate one Judge to hear not only this particular motion but everything involved with the matters that remain here in Richland County. I am hoping I am saying that correctly because I think part of it is still in Aiken County. Am I right so far? Actually there are two or three different lawsuits going on at the same time, is that a fair observation? I am continuing this case, maintaining the status quo until Judge Lee makes a decision about assigning to one Judge. So I hope no one was inconvenienced but it is an effort in this decision to be fair to everybody involved. I hope y'all understand.

Thank you all so very much. I will do a form for you.

MR. WINGATE: Your Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point.

THE COURT: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all so very much.

9142011BAUKNIGHT
*** END OF REQUESTED TRANSCRIPT OF RECORD ***

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Newberry)

I, Joy E. Holston, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in Richland County, South Carolina on the 14th day of September, 2011.

I do further certify that I am neither of kin,

counsel nor interest to any party hereto.

October 9, 2011

Joy E. Holston, Court Reporter

My Commission expires: March 13, 2016

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

Adele J. Pope,) Case No. 2011-CP-36-364

Plaintiff,)

v.)

Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,) CERTIFICATE OF SERVICE

Defendants.)

RICHLAND COUNTY
FILED
2012 JAN 17 PM 4:35
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I hereby certify that I have served upon counsel for the other parties at the addresses below this October 21, 2011 the original affidavit of Tracy Meyers, the September 14, 2011 transcript of proceedings before the Honorable Casey Manning in Bauknight v. Pope (2010-CP-40-4900) and the Order of the late, Honorable Marc Westbrook, in Lominack v. Myers (2002-CP-32-1890, October 25, 2002).

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
P.O. Box 1898
Columbia, SC 29202-1898

A. Camden Lewis, Esquire
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, SC 29211

2011 OCT 24 A 11:00

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Attorney for the Attorney General

State of South Carolina)
)
County of Newberry)

In The Court of Common Pleas
Eighth Judicial Circuit
2011-CP-36-00364

Adele J. Pope,

Plaintiff,

vs.

Alan Wilson, in his capacity as Attorney General of South Carolina and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,

Defendants

2011-CP-36-00379

Adele J. Pope,

Plaintiff,

vs.

Alan Wilson, in his capacity as Attorney General of South Carolina,

Defendant.

Transcript of Record

January 11, 2012
Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

000266

And this case doesn't need to be transferred to Richland County and combined with this other case that has numerous additional parties and different counsel and -- and it -- you know, this should've been simple litigation. And we're still here 5 1/2 months later.

MR. SMITH: Your -- Your Honor, you don't -- the -- the judge designated Case 4900 and Judge Manning as the judge for a complex case and did that for a reason. And that process should not be avoided by splintering off of this issue and bringing it in a separate county.

And regarding the ten-days' notice for an alternative motion for transfer of venue and consolidation, the Court has the power to shorten the response time. They're on notice. All these things that we've discussed today, we discussed in Laurens two months ago. And this -- we believe that this Court certainly has the authority to do what it did in Case 379 and do that here.

MR. SILVERNAIL: I -- I -- a -- a correction: I -- this is not a splintering of any issue from Case 4900. While the same documents may be at issue in -- among the documents sought in discovery there, and while the parties may be similar, there is no FOIA claim in Case 4900. This issue is decided under different law, different standards, and could have a different outcome.

And, you know, we are asking for the documents under

Freedom of Information Act here. You know, and I get the impression that if any -- from the logic that the attorney general is using, if any of these other folks who have filed an affidavit in this case were to file this -- a similar suit seeking these documents in their home counties, I can't imagine they would argue that that case also had to be consolidated with the litigation in Richland County.

MR. SMITH: Your Honor, we don't need to speculate about other parties. The only party that's before us as to FOIA is Ms. Pope, who is a party to the Richland litigation. And -- and -- and certainly, we -- we've put into the record, too, as for the purposes of summary judgment, which Your Honor can consider with regard to these issues, there is an order of Judge Westbrook -- the late Judge Westbrook, when he was a circuit court judge, saying that FOIA can't be used to bypass discovery, which is what they're trying to do here.

MR. SILVERNAIL: Well ---

MR. SMITH: The judge that considers the FOIA should be the same judge considering the discovery who can determine whether FOIA gives any greater rights than what they would otherwise have under discovery. We've spent all this time, the -- the filing of affidavits, and going around and around in these cases. If they had taken it up

in Richland or agreed to move it forward in Richland, we might be getting some answers shortly.

MR. SILVERNAIL: Your Honor, I -- Judge Westbrook's order is two pages. It's from a circuit court case. I believe the order is dated in 2002. I -- I had the pleasure of seeing a trial before Judge Westbrook long before I was a lawyer. And I -- he was an excellent judge. This order has almost no facts. I -- it's a circuit court order. As far as I know, it's never been reviewed by an appellate court.

And the cases he cites to support the conclusion that you cannot use FOIA instead of discovery or in addition to discovery -- forgive me; I -- I'm paraphrasing here because I don't remember his exact language. The cases he cites actually say: You get no more and no fewer rights under FOIA if you are a litigant than you would if you were a -- a member of the public.

Now, I think forcing a properly brought, separate FOIA suit into pending litigation in Richland County with a bunch of other parties is giving my client fewer rights than other members of the general public would have. And that seems like a constitutional problem to me. And we certainly object to doing so.

You know, this is separate issues. The fact that these documents are among what seem to be many, many

documents sought in Case 4900 -- you know, and the purpose -- you mentioned earlier that you doubted my client just had intellectual curiosity about these documents. That may be the case.

But the Freedom of Information Act doesn't have -- I mean, if they are public documents, if they are requested and if they are held by public bodies, they must be released. And my client has requested them. We believe they're public documents, and nobody has told us otherwise.

We know the attorney general is a public body. We believe the James Brown Legacy Trust is a public body. And so far, we've gotten no response that attempted to place any of these documents in -- under an exemption under FOIA. Instead, what we've gotten are, I -- I think, no response in -- in this case, in -- in other FOIA requests or in the other case -- if I have these backwards -- the response was: We think it's wisest to wait until the Richland County litigation ends. And, you know, in any case, FOIA provides for -- you make the request, you get the documents, unless they are exempt or nonpublic or not held by public bodies.

I -- and this seems like a simple question that doesn't need to be tied up in the discovery matters pending in the other case. I -- you know, that may be before a -- a judge who's been assigned to it. But I don't know that

that -- I -- or I believe that that doesn't provide any reason to force this case before that judge as well.

THE COURT: And I agree with almost everything you're saying, Mr. Silvernail. I would have to believe that they have court going on pretty much incessantly in Richland County. And they have common-pleas terms and common-pleas-nonjury terms and a lot more court than we get in Newberry. Would I be mistaken? You practice there.

MR. SILVERNAIL: I -- I -- I do practice there, Your Honor. Frankly, I am a young lawyer. And I have not practiced extensively in Richland County. I could not speak to that. I don't -- I -- I would respectfully say that I don't think it's relevant to whether this case should be sent to Richland County. I've seen no affirmative reason for it to be sent there.

And -- and we believe, although, you know, the rules do provide for consolidation when it's available and transfer when it's available, consolidation, as far as I can read the rules and the comments, is if you have two cases before the same circuit, they might be able to be consolidated. I -- I don't think that this case can be consolidated with another case in Richland County with no notice to any of the additional parties who aren't in the room today.

And -- and I don't think it could be consolidated even

-- even with that. I think it's sort of making two steps into one, where neither step might be quite right or available. And, you know, we are here and talking about whether there's any good reason not to do it. And there -- you know, my client filed the suit, followed the law in the request, and -- and here we are.

The burden under the Freedom of Information Act is, is there any good reason not to produce those documents? And so far, aside from 5 1/2 months of procedural wrangling, nobody's said that there is. And -- and we're still here, waiting for ---

THE COURT: I'd be ---

MR. SILVERNAIL: --- a document.

THE COURT: --- very surprised if some other judge said that you are not entitled to those documents. I'm -- I'm with you on that. I ---

MR. SILVERNAIL: Well ---

THE COURT: --- agree with you on that.

MR. SILVERNAIL: --- Your Honor, you -- you have previously found that this Court properly had jurisdiction over -- over the other case. We do not believe that the -- the following part about transferring it was proper, and we've asked for reconsideration. And -- and we believe that you were absolutely correct in the portions of the order we did not ask you to reconsider. It ---

THE COURT: Okay. I'm inclined to transfer -- at the very least, transfer venue to Richland County, if not consolidate this with Richland County. They'll give you another case number and another track that you can pursue this matter on. I ordered the other case consolidated. Once this matter is transferred to Richland County, in terms of venue -- and that's the grounds that I'm using to transfer this case -- either party may seek consolidation; either party may seek an expedited hearing with the judge. And I hope you get the information sooner, rather than later.

But that's what I feel is appropriate to do under the circumstances and based upon everything that has transpired with the -- this case, Case 4900, and Case 379. I've consulted with some other judges on this very issue, and I have yet to hear one of them remark to me that they think that this is a bad idea. There seems to be a consensus, so that's what I'm doing.

Now, concerning Case 379, the last correspondence I received from you, Mr. Silvernail, in your motion for reconsideration, that is still pending?

MR. SILVERNAIL: Yes, it is.

THE COURT: You don't want to do that today?

MR. SILVERNAIL: I ---

THE COURT: You sure you want a hearing on it?

STATE OF SOUTH CAROLINA
CIRCUIT COURT
COUNTY OF RICHLAND

ADELE POPE
2010-CP-40-04900

-vs-

ALAN WILSON, et al

-&-

ADELE POPE

-vs-
2012-CP-40-00350

ALAN WILSON and
JAMES BROWN LEGACY TRUST,
et al

TRANSCRIPT OF RECORD

Heard on May 17, 2016
Aiken, South Carolina

BEFORE:
THE HONORABLE DOYET A. EARLY, III

APPEARANCES:

Adele Pope, Esq.
Russell L. Bauknight
Ariail E. King, Esq.
Adam T. Silvernail, Esq.

J. David Black, Esq,
J. Emory Smith, Esq.
David Paavola, Esq.
Mark V. Gende, Esq.

Cheri L. Young, RPR
Circuit Court Reporter
P O Box 5232
Aiken, SC 29804-5232

ON TUESDAY, MAY 17, 2016 AT 3:17 P.M.:

THE COURT: All right, gentlemen. Let's see if we're all on the same page. I have set in 350, the Attorney General's motion to amend, motion to strike, motion for judgment on the pleadings, motion to dismiss, Pope's motion for summary judgment. Does that sound right?

MR. SMITH: Yes, Your Honor.

MR. SILVERNAIL: Yes, Your Honor.

THE COURT: 4900.

MR. PAAVOLA: We also have a motion to dismiss in 350

THE COURT: Wait a minute now. Whoa, whoa, whoa. You're in what case?

MS. KING: 350.

MR. PAAVOLA: 350.

THE COURT: What do y'all have in 350?

MR. PAAVOLA: Motion to dismiss and also --

THE COURT: I can't hear you.

MR. PAAVOLA: Motion to strike affidavits, Your Honor, and motion to dismiss.

THE COURT: You're with the attorney general?

THE MR. PAAVOLA: No. We represent the Legacy Trust.

THE COURT: I don't mean a waste of time, but isn't it duplicative? 4900 is going to open to discovery in the James Brown case, everything that's gone on. Why are we fussing about jurisdiction? And why are we fussing about --

MR. SMITH: Because the Plaintiff continues to press this FOIA case and is asking for attorney's fees. That's why -- and is not willing to drop it. That's why we're here.

We agree that the documents that she is seeking, the efforts to obtain documents, should be made in 4900. In fact, we believe that the, essentially the same requests have been made within 4900 as to many of the documents she seeks in both of these cases. And that's where it should be, not here in an independent Freedom of Information Act action.

THE COURT: But aside from that, though, you say you've already given her everything that you have and you don't have the other thing that she wants?

MR. SMITH: Yes, Your Honor. As to Case 350.

THE COURT: Anything else you want to tell me?

MR. SMITH: Well, she says we ought to get

them from Sweeny Wingate if they have them. Our position is she did not ask for that. She asked for the records from our -- the record for the FOIA request is for the custodian of records. It's not for anybody who might have access to a document.

And I've outlined extensive authority about that issue in our brief. And so she can't make us go get stuff from Sweeny Wingate. And I don't know if they even have it. And so --

THE COURT: But Sweeny Wingate's the lawyers in 4900, so obviously all of that stuff is discoverable.

MR. SMITH: Your Honor, we believe that the -- that this is -- anything that she wants should be sought through discovery in Case 4900 rather than through this independent FOIA action, and that the rules of civil procedure control discovery and that a party cannot bypass the rules of civil procedure and judicial control of the discovery process by making FOIA requests and going around and then seeking attorney's fees.

It was not set up that way. And that's not what the law reads. And we set forth extensive authority as to -- including responding to their authority that Freedom of Information Act requests

MR. SILVERNAIL: Now, Mr. Smith addressed this by the various motions. But as Your Honor heard, they all run together a little bit in justification. And I want to respond to a few of the themes that go throughout what they've argued to the Court.

They've asked Your Honor to dismiss this case because of lack of subject matter jurisdiction based on their position, as stated, that Mrs. Pope did not mail her FOIA request or deliver it. Now, there isn't any evidence in the record --

THE COURT: I don't think they said that. They said they didn't receive it.

MR. SILVERNAIL: They said both, Your Honor. And so we're here, though, in a case that was filed on August 3rd, 2011. The FOIA request was attached to the complaint as an exhibit. The Attorney General was served. He's appeared. If the argument was we didn't get it originally, and that came about in September of 2011, we'd probably have a different situation. It didn't. It came about via an amended motion to dismiss a couple years ago.

And, you know, all that had to happen, if it hadn't made it there, was for the Attorney General

who then knew exactly what we were asking for, why and how, just needed to say, gee, golly, we've had, you know, a mail error, something's gone wrong, but here are the documents, here are the public documents.

That's a red herring argument in this case. The argument that they have used throughout this is that Mrs. Pope doesn't have any rights to ask for documents from the Attorney General under the FOIA because she's involved in litigation. And I understand Your Honor's concerns about, you know, discovery being wide open in Case 4900. But I've got to point out that the FOIA in discovery, they may intersect at the documents at some point but they run totally separate tracts that don't intersect as far as the analysis.

The only question under the FOIA is: Are these documents public. There is no statute under the FOIA that gives us different classes of individuals, different people who can and can't. The law is that if you are a person you are entitled to make a request for public documents and you're entitled to a response. And that response has to be one of three things: Either, here are the documents we've got that are responsive; or, we

don't have any documents that are responsive; or, we have documents that are responsive but they fit into one of the few specific exemptions under FOIA. And the response has to identify those and identify the exemption under which they don't release it.

And so we've never gotten that response from the Attorney General in this case. We have instead gotten assertions that because discovery was ongoing in Case 4900, and although I think the two are unrelated I would point out that Your Honor inherited all the whatever-number-of-dozens discovery motions there were in 4900. That didn't go anywhere too quick over the last five or six years.

These documents were not forthcoming in discovery but it really doesn't matter. If she had gotten them in discovery she would be entitled to ask for them under the FOIA because this law doesn't set out any procedure for differentiating between one person and another. The only thing this laws sets out procedures for differentiating are the documents: If there's a privilege that applies; if there's sensitive personal information; if there's an ongoing criminal probe. And as far

as we know they don't claim any of those exemptions. We haven't seen that.

And, you know, it's clear the Attorney General did in fact have public records that were responsive to our request because he produced them in his amended answer in 2013, those two drafts of the Legacy Trust documents.

THE COURT: So you want -- I'm not sure. You want me to order them to, under FOIA to produce it again even though you've already gotten it?

MR. SILVERNAIL: We have sued here for declaratory relief. We would like a declaration that these are public documents and Mrs. Pope is entitled to them. And under the case law including very recent case law in South Carolina, the Supreme Court has found that production of the documents along the way after litigation begins does not moot the question of declaratory relief or attorney's fees.

And we've cited in our brief and I bring Your Honor's attention to the 2014 case of Sloan versus the South Carolina Department of Revenue. That was a case in which the Department of Revenue had responded to Mr. Sloan's FOIA request in some way that seemed to defer a final answer until some

later date.

And, three weeks, I believe, after he filed suit they said, okay, okay, here are your documents. That went all the way to the Supreme Court after the Circuit Court decided we really don't have a case here. You know, you got the documents. We're all finished.

The Supreme Court said, no, indeed you are entitled to declaratory relief because you sought it. You're also entitled to your attorney's fees, I believe, including the fees incurred on appeal or at least with the possibility of that.

And so, you know, at the very best we've got a similar situation here if that's all the Attorney General has. However, the other argument that we take issue with from the Attorney General is that he doesn't have to produce the valuation because he does not possess it.

Now, number one, the Summer versus Wilson case was a Newberry County FOIA proceeding. My client wasn't a party to that. I don't think we're bound by any of the findings in that case. However, I don't know that it matters much because the FOIA does not require a public body to possess a document in order for it to be available under

the FOIA. There's a laundry list in the FOIA of documents which have been, among other things, possessed or used by a public body. And the end of that list is an or which indicates any one of those things is satisfactory.

Now this idea that Mrs. Pope needed to seek out the Attorney General's lawyers, Sweeny, Wingate and Barrow, and make a specific request to the Attorney General that I would like this from their files is a little bit troubling because I don't know that we ever have to come to a public body, especially a state agency, and identify for them where they will find the documents that we want.

This is the Attorney General's lawyer. The fee agreement that was produced, that we'll talk about in a little bit in the other case, in another court says that the lawyer's files are subject to the FOIA. It is the Attorney General's responsibility to figure out what documents are where, if they have been used by him, if they're possessed by him. All right. Otherwise this statute would be meaningless. If it required you to hold the documents then it would just say possessed. It would not have this list that was possessed, used, or other things.

And so, we believe that that's not an adequate response. And as far as I can tell in the record in this case the Attorney General has never stated, and Mr. Smith I believe just said, that they don't know whether or not Sweeny, Wingate, Barrow has that. But we're entitled to a proper FOIA response that says what they've got, what they're producing, and if they claim any exemption what that is. And we've never gotten that in what now amounts to nearly five years.

Now, you know, this idea that we should have gone and done this through discovery is just way outside the law. There are cases that say FOIA doesn't expand the scope of discovery, it's not a supplement or a replacement. We couldn't go to Judge Manning until the case was sent to him but within Case 4900, you know, it claimed that we have a FOIA right to this so they should give it to us in discovery. Apparently does not fly.

Now, this was not that. This was a FOIA request. It was done --

THE COURT: Just stop a second. If you were to win, get what you want, tell me succinctly what you're asking for.

MR. SILVERNAIL: I am asking for a

declaration that Mrs. Pope is entitled to all public documents responsive to her request, an injunctive section directing the Attorney General to turn those over to us and/or give a proper response identifying what would not be turned over and why, and for the attorney's fees in having had to pursue this action rather than getting a response of some sort anywhere along the line between now and 2011.

MR. SMITH: Your Honor, may I respond?

THE COURT: Sure.

MR. SMITH: First of all, I think it's interesting that he said that the only question in this case is, are the documents public --

THE COURT: Public.

MR. SMITH: -- because Ms. Pope has filed at least 14 affidavits in this case about why she thinks she needs these documents. And we believe -- we've moved to strike all of them, and if he's correct that the only question is whether the documents are public, then this was a complete waste of our time. And we believe it was.

THE COURT: Well, are they public?

MR. SMITH: Your Honor, we believe that we've given them everything that we have. The Legacy

Trust documents, we don't have the valuation. And if I may respond briefly to that. He contends that the -- he can still get documents under FOIA even though they are at issue in --

THE COURT: 4900.

MR. SMITH: -- civil discovery in 4900.

The late Judge Marc Westbrook in the case Luminek V Myers, and I attached a copy of his opinion to one of our filings in this case, said that it's well-settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants. Our Supreme Court has said with regard to criminal discovery, not civil discovery, but we believe the same rationale would apply, has said that FOIA is not to be used to bypass limits on discovery in criminal proceedings. It cited a US Supreme Court case and quoted from it in saying, in construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery.

So we believe that under case law that they cannot use FOIA to bypass civil discovery. And so

she cannot recover here.

Under -- he said that we don't have an exemption, has not pointed to an exemption under the Freedom of Information Act but we have. It's under 30-4-40 which states that a public body may but is not required to exempt from disclosure the following information. Item four. Matters specifically exempted from disclosure by statute or law. A rule of civil procedure is law. It controls access to civil discovery documents by parties and therefore is controlling on Ms. Pope here. And she cannot make an end run around that rule through the Freedom of Information Act.

He contends that we can be made to produce third-party documents such as this appraisal that he seeks because the Freedom of Information Act refers to documents used.

The Freedom of Information Act also refers to custodians of records. Section 30-4-30(B) permits the custodian of public records to charge reasonable rates. A record in the hands of a third party is not one in the hands of a custodian of public records for the purposes of charging. And so therefore the legislature did not intend to reach third-party documents.

Also there's a time limit, as Your Honor knows, under FOIA for responding within 15 days. And that would be inconsistent with a duty to get documents from third parties because the third party might not cooperate, might not be able to get it so couldn't respond within the 15 days required.

Also they use the word 'use' here as something that would suggest momentary use of a document. I don't know what our office policy is or other government agencies' policies are. It may vary from office to office. I think some private businesses require, however, that employees, prospective employees produce their original social security card for identification.

Under their theory if an employee coming on board brought their social security card into the office to say this shows I am who I am and that I'm a citizen and I have social security or, and here is my -- or here is my passport this proves who I am and the agency official took it in hand and wrote down the information, maybe made a copy of it and gave it back, they would have used it. So then they could make a Freedom of Information Act request for the social security card, the passport, or whatever else, and get it because it was used.

That's a nonsensical interpretation of FOIA and they haven't provided any case law support for it.

It has to mean the documents that are in the possession and being used by the agency, that's in its custody, that's accessible to the custodian of record. And that's just simply not the case here.

THE COURT: You haven't answered my question. Are these public records, public documents?

MR. SMITH: We provided the Legacy Trust documents, the copies that they -- I think there were drafts. We provided those. And so we agreed that those were copies and we turned them over. We did not have the appraisal so therefore we don't --

THE COURT: You still haven't answered my question.

MR. SMITH: It's not a public record then if we don't have it, Your Honor. So that's the answer. It's not a public document. We don't have it.

THE COURT: I'll take it under advisement. I'll make a ruling on it. My concern is that 4900 is going to get on an efficient track for disposition along with the case here in Aiken, whether or not we consolidate them or not, that's

for June -- well, had it set. Now we got some bumps in the road. I'm just going to go ahead and set it. If you come you come, if you don't you don't. It's too hard to get too many peoples' schedules lined up.

But once we consider that, discovery is going forward. All of these documents are going to be discoverable I would think. And --

MR. SMITH: That's why, Your Honor, we think that the FOIA case should be dismissed and that any documents that are retrievable during discovery be, through discovery be sought in that manner. In fact, in these cases some of the very documents at issue are at issue in the discovery process.

THE COURT: I would think most all of them are. But anyway, they made a FOIA request so I've got to rule whether or not it should be dismissed or whether or not you should produce them, whether or not they're public, whether or not they're entitled to attorney's fees for their FOIA requests. And I will do that.

Anything else dealing with the FOIA that we need to deal with here today?

MR. SMITH: That's in Case 350. We do have Case 4900 which has got similar issues.

THE COURT: I'm just talking about the FOIA case, 350. Anything else anybody wants to address in respect to 350?

MR. BLACK: Your Honor, if I may.

THE COURT: Mr. Black.

MR. BLACK: You asked if it's a public document. The only thing I would ask the Court to look at is that there is that federal court order that looked at that document, the appraisal that's subject here that Ms. Pope has seen that was protected by confidentiality. It is not a public document. The AG doesn't have it. Mr. Bauknight has it. And that's why they're trying to get to it so they can parade it around. But she has seen the document. This is all about them trying to get attorney's fees, Your Honor.

MR. SMITH: That's correct, Your Honor.

We've cited that case in our memoranda. It's Brown V Pope, federal district judge, Acting District Judge Wehrman made that ruling and we provided a copy of that order in our attachments, I think, to our initial brief in that, in -- filed on May 2nd.

THE COURT: Which I got right here. Thank you.

Hold on one second.

MR. SILVERNAIL: Real quickly, Your Honor. That order was in a case to which neither the Attorney General nor the Legacy Trust was a party and so that review was in a different -- that was strictly discovery.

The question here will relate to what is and is not a public body, what is and is not a public document by virtue of its possession or use by a public body.

THE COURT: Thank you. Yes, sir.

MR. PAAVOLA: Yes, Your Honor, were you willing to hear our motion for summary -- dismissal --

THE COURT: I just said, does anybody else have anything else in 350.

MR. PAAVOLA: Yes, I do, Your Honor.

David Paavola on behalf of the James Brown Legacy Trust. And we are here today asking the Court to grant our motion to dismiss the FOIA action against the Trust.

As the Court's well aware, the Freedom of Information Act is, was created to help keep citizens informed of activities of public officials and making public duties open to the citizens. It

requested and we believe that moots the case as well under Sloan V Friends of the Hunley, 369 SC 20.

THE COURT: Any response?

MR. SILVERNAIL: First, Your Honor, the fact that Mrs. Pope is already in possession of a document from somewhere else is irrelevant under the FOIA. In fact, what we all hope for when we're working under FOIA that we ask the public body for documents, we find that there is no surprise there. That's why the FOIA exists. They call it the Sunshine Law because it lets us look in to see what's going on.

And so the provision of documents from another source just doesn't satisfy any public body's FOIA obligations. If you got them you produce them and then your obligations are met.

Now as to this about the Legacy Trust not existing, it's a confusing argument to get around, I feel like, because it's got some lawyers from a fine law firm standing here with us today who seem to have a client and it's been here since 2011 defending this case as well anybody can defend a case. And so the Legacy Trust additionally appears to have a current asset because it's a Plaintiff in

Case 4900 against Mrs. Pope and claims to have a claim worth tens of millions of dollars against her.

The Legacy Trust has never notified the Court in that action that it has any doubt about its continued existence, and it's never sought to change anything in that case as far as I'm aware.

And as I cited in my brief though, once a trust is created which can be done the property requirement for creating a trust is met even with a revocable designation of a beneficiary to an insurance policy. That, meaning that the trust is created even if you later change the beneficiary, stop paying the premiums on the policy. The trust may never actually have a dollar in its coffers but this expectancy that's revocable is satisfactory to create a trust. I'm not aware of any proceeding that's been brought to terminate the Legacy Trust and it's identified none.

This trust was also funded, according to the settlement agreement, with contributions that had already been made or were being made at the time of copyright termination interests by some of the parties to the settlement.

And that really brings us to the crux of the

I've noticed in the briefs in the affidavit of Mr. Bauknight that the Legacy Trust presented shortly before this hearing, their position seems to be a bit more nuanced. And that it does not exist as a court-approved trust, and it does not exist in the form Ms. Pope sought to get documents from it.

If it exists it exists. If it did exist there were documents. If there aren't then somebody needs to respond. And mind you, the Legacy Trust has produced nothing because its taken the position it's not a public body. When Ms. Pope made a FOIA request to it it responded by writing her a letter saying if you make another FOIA request to us we'll sue you or seek sanctions or something along those lines.

And so here we are just asking the Court to declare the Legacy Trust to be a public body and that we're entitled to the public documents within its possession. Thank you.

THE COURT: All right. That brings us down to -- what does it bring us down to? We've done the motion for summary judgment, motion to dismiss, motion to strike the affidavits. Where are we now with 350? Anything else left in 350?

MR. SMITH: I think, Your Honor, we've essentially covered everything in 350 in one way or another, at least as between the Plaintiff and Ms. Pope. We did move to strike her affidavits but I referenced that in my argument. We believe they should all be struck as hearsay, speculative and --

THE COURT: That's the motion to strike?

MR. SMITH: Yes.

THE COURT: Now --

MR. SMITH: Multiple --

THE COURT: And I've got everybody's memo on all of that and attachments, exhibits.

MR. SMITH: Yes, Your Honor.

THE COURT: And your motion, your memo in response, two of those.

MR. SILVERNAIL: Yes, Your Honor.

THE COURT: And everything on that. Can you think of anything else in 350 we need to look at?

MR. SILVERNAIL: I believe we've covered everything although I didn't -- because of the way the arguments were arranged, we've moved for summary judgment. I've covered all the reasoning for that, however.

THE COURT: All right. Now let's -- I assume we move to 4900.

State of South Carolina)) County of Richland))		In The Court of Common Pleas Fifth Judicial Circuit
Adele J. Pope, Plaintiff, vs. Alan Wilson, in his official capacity as Attorney General for the State of South Carolina, Defendant.	)	2010-CP-40-4900
Adele J. Pope, Plaintiff, vs. Alan Wilson, in his official capacity as Attorney General for the State of South Carolina, Defendant.	)	2012-CP-40-0350

Transcript of Record

November 19, 2020
Columbia, South Carolina

B E F O R E:

The Honorable Clifton B. Newman, Judge

A P P E A R A N C E S:

Adam T. Silvernail, Esquire
Attorney for the Plaintiff

J. Emory Smith, Jr., Esquire
Attorney for the Defendant

Aaron J. Hayes, Esquire
Attorney for Sweeny, Wingate, and Barrow

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

THE COURT: Okay, we're ready to go. Mr. Silvernail.

MR. SILVERNAIL: Good morning, Your Honor.

THE COURT: Good morning.

MR. SMITH: Your Honor, if I may? I think the motions pending are for the attorney general. I realize Mr. Silvernail has something to say, but I think that the pending motions are the ones that the attorney general has made.

THE COURT: All right, he was the first one to move, so that's why I called his name. So, you're still timely.

MR. SMITH: I'm sorry, sir?

THE COURT: I said he was the first one to move, to get up.

MR. SMITH: Okay. So, who ---

THE COURT: So, I recognized ---

MR. SMITH: --- would you like to speak ---

THE COURT: --- him first.

MR. SMITH: --- first, Your Honor?

THE COURT: You're still fine. Yes, sir, Mr. Attorney General.

MR. SMITH: All right, sir, would you prefer that we be masked or unmasked while speaking?

THE COURT: It's generally better to be unmasked; it's easier to understand what you're saying.

MR. SMITH: All right, sir. I hope that that will

improve the clarity of my presentation. I don't know that it will affect the substance much.

THE COURT: Yes, sir.

MR. SMITH: But these are two -- there are two FOIA actions before you today. One is in what I will call case 350 that I would like to address first, and then the other is in case 4900. It's a FOIA action that was originally brought in Newberry County and consolidated with the main part of case 4900, *Bauknight v. Pope*. The case 350 also originated in Newberry County. It's not consolidated, but it was ---

THE COURT: The court reporter is waving for some reason.

MR. SMITH: You can't hear me?

COURT REPORTER: I need him to keep his voice up, please.

(A PAUSE.)

MR. SMITH: Two, two Newberry cases, one consolidated with case 4900. The other, case 350, was transferred to Richland but not consolidated. I think there may be a motion to consolidate that's been pending for a while. I don't know that -- I don't believe it was ever addressed, but I think we could just proceed with argument on that case.

What I'd like to do, if it suits Your Honor, is take

up case 350 first. There are common elements, however, to both cases procedurally. Judge Early dismissed both of these FOIA actions in 2016, finding that because civil discovery was available to Ms. Pope, who was a litigant in the *Bauknight v. Pope* and other cases, that she should not be proceeding under FOIA. Ms. Pope appealed those decisions to the Court of Appeals. The Court of Appeals reversed, saying that just a general being subject of discovery was not enough. That if there was an exemption -- for purposes of the exemption under FOIA for matters specifically exempt from disclosure by statute or law, that they would have to be pointing to a specific discovery exemption.

That ruling was made with respect to both cases, but the court did not address other issues raised by the state's motions. And the state has pending in case 350 a motion to amend its motion to dismiss, a motion for judgment on the pleadings, motion to strike affidavits of Ms. Pope.

In case 350, we contend that the court does not have jurisdiction of this case because the FOIA request was never mailed or delivered to the Office of the Attorney General. We've gotten affidavits among our exhibits that I attached of Tracy Meyers from 2011 who was then over our discovery saying that she had researched mail logs. We

never got it.

Ms. Pope attached the FOIA response to the complaint in case 350 and, and, and sued us over it because we didn't respond. But we didn't respond because we hadn't got it -- gotten it. That is jurisdictional. I cite a federal case here that says that:

> In order to maintain a judicial action under FOIA, a plaintiff must first request the documents from an administrative agency and if his request is refused, must exhaust his administrative remedies before filing a court action. Where a complainant has not complied with these procedures, district courts lack jurisdiction over the claim.

So, because she never mailed it to us or delivered it to us, there's no jurisdiction. The fact that she attached it to her complaint and sued us about it, triggering review under the FOIA statute, does not give the court jurisdiction because we were never given an opportunity to respond to it outside of FOIA. So, we believe that the case stops right there.

THE COURT: So, you've cited a 1998 case from California. Is that the only place in the country where an agency has sought to dismiss a complaint because it wasn't served? It's never occurred in South Carolina before?

MR. SMITH: Sorry? What now?

THE COURT: It's never occurred in South Carolina before?

MR. SMITH: What? The fact that -- failing to serve the ---

THE COURT: And seeking to dismiss it for lack of jurisdiction because it wasn't served, this same issue.

MR. SMITH: That, that's it, Your Honor.

THE COURT: I'm asking. Are there any instances of litigation?

MR. SMITH: Not that I'm aware of, Your Honor, but the statute says:

> The authority to sue under FOIA is, is limited to actions to enforce the provisions of this chapter in appropriate cases.

When there is no -- there's no basis for enforcement when there is no receipt of written request, which section 34-30-C says must happen. And so we can't be sued for something we never got. She failed to comply with the requirements of FOIA or, in any event, her mail never got to us, or the delivery never got to us and so, therefore, it stops right there.

THE COURT: And what type of service is required?

MR. SMITH: Just something that would bring it to the agency. Mail, delivery, it doesn't specify the method but

it says: Each public body upon written request for records made under this chapter shall within fifteen days. We, we had no receipt of written -- a written request so as to trigger it and so, therefore, we believe that jurisdiction is lacking.

So -- but even if the court did have jurisdiction here, we've given her everything. She asked for two things. She asked for: The final and all drafts written and unsigned of the James Brown legacy trust.

And, two:

> All correspondence, email, or other communications between any member of the Office of the Attorney General and Russell Bauknight related to the valuation of the assets of the estate of James Brown and/or the James Brown irrevocable trust.

With respect to the legacy trust, we never -- we gave her the only thing we had, which was an unsigned legacy trust draft. In her -- one of her more recent filings, Ms. Pope attaches and refers to another document as an amendment to the trust, but it is not. It is an amendment to a settlement agreement, not to the trust. The attorney general reported this position in the filing of *Summer v. Wilson*, a case in which plaintiff's husband represented journalist Sue Summer, and I attached that among our

exhibits. The Office of the Attorney General has nothing further to provide. The legacy trust that was originally a party to this case has been dismissed. So, we've given her everything on that.

The valuation, the attorney general has nothing responsive. I cite again the *Summer v. Wilson* case, the FOIA case in which the journalist was represented by Ms. Pope's husband. The order of Judge Griffith in that case said that the Office of the Attorney General did not have to produce the appraisal because it didn't have it. Plaintiff would have access to those filings. In other words, she already had access to the same information.

Finally, the appraisal plaintiff seeks is confidential pursuant to a court order in a federal case involving her, and she would have access to it through that case. That's *Brown v. Pope* before Judge Wehrman, a magistrate judge, in 2013. She again brings up ---

THE COURT: That's pending, was pending where? A magistrate judge in ---

MR. SMITH: It was a district ---

THE COURT: --- South Carolina?

MR. SMITH: --- court case, and it's confidential pursuant to that case, but she would have access to it. So, we don't have it, but she would have it or have access to it.

She cites two documents in her recent filing showing that we have it, or that we, we've got something about it. One is a document she received from some source that I don't believe she identifies, but it's Everett Kendall to Russell Bauknight -- Everett Kendall was with Sweeny, Wingate, Barrow -- to Russell Bauknight and everything is redacted except for the words he is in that letter. And so she thinks it must be about the appraisal, but nothing indicates that it is. She's just speculating, and we represent, Your Honor, that it does not relate to the valuation. If Your Honor would like to, to see it, we will be glad to produce it for *in-camera* review, but it has nothing to do with her FOIA request.

The other document that she has shown -- produced that she contends shows we've got something is an email proposing a footnote to a document stating that Russell Bauknight engaged a firm to conduct an appraisal and notes that the appraisal is not part of the record of the case. It doesn't attach the appraisal; therefore, it's not related to the value of the assets and is not responsive to Pope's FOIA request. So, we don't have anything on that.

She asks, however, that we go into the records of Sweeny, Wingate, and Barrow law firm and produce what, if anything, they have related to this. She is not entitled to that because her request is directed to the custodian of

records at the Office of the Attorney General. That would reach physical files within the Office of the Attorney General. She doesn't ask for, nor would her request reach files of anybody representing the attorney general in that proceeding, just our physical files and as I've said, we don't have anything.

She nevertheless produces some document, a document that she says that -- I'm sorry. I want to make sure I get this right -- a letter from former Chief Deputy Attorney General John McIntosh in 2013 about representation by Sweeny, Wingate, Barrow. That letter was about whether a retainer agreement had been signed. It was a matter between the attorney general and Sweeny -- Sweeny, Wingate, and Barrow about that. It is not something would -- that would form a basis for her to reach their documents.

But regardless of whether a retainer agreement existed, the Office of the Attorney General clearly benefitted from representation of Sweeny, Wingate, Barrow of the common interest of the charitable beneficiaries in this case, case 4900, and, therefore, attorney-client privilege would apply. And in my memorandum, I quote attorney -- from Sonny Jones, an attorney with the Office of the Attorney General, about the Wingate firm's role. Plaintiff attended that hearing and was well informed. Because the attorney general benefitted from the

representation of Sweeny, Wingate, Barrow, the common interest of the charitable beneficiaries privileges apply, and the production of the firm's file cannot be required. Therefore, we don't believe she is entitled to that.

Also, I failed to mention she recently produces this 2013 letter from John McIntosh to the Wingate firm about the -- that we said is about whether a retainer agreement was signed. She was aware of that same position in filings much earlier, and I reference those. And she said that the attorney general had informed Sweeny, Wingate, Barrow that the firm did not represent the attorney general's office. She was aware of the same thing that was in the McIntosh letter. So, it's not new information to her. She knew about this years ago and is bringing it up now as if this was some new revelation.

The letter was about whether there was a retainer agreement signed, whether or not that was done. There would be a common interest privilege at a minimum protecting the Office of the Attorney General and Sweeny, Wingate, Barrow and so, therefore, any documents with that firm would not have to be produced.

So, we believe that, one, there's no jurisdiction because we never got a request, and attaching it to a lawsuit is not sufficient for purposes of the statute. Two, we have given her what we have on the legacy trust.

If -- even if the court did have jurisdiction, we don't have the valuation documents that she also wants, and she can't get Sweeny, Wingate, Barrow documents. So, we believe that the suit should be -- judgment should be entered for the attorney general for those reasons.

But in the course of the court's consideration of this case, we have moved, made multiple motions to strike against at least fourteen affidavits filed by plaintiff in this case. Affidavits overall are irrelevant in this case as to -- they deal with why she thinks she needs the documents. Under FOIA, the question is whether the agency has the documents, whether they are subject to an exemption. It doesn't -- it's irrelevant to that, whether a party needs them or doesn't need them, and so, therefore, all of these affidavits are completely irrelevant.

In addition to that, they are not based upon personal knowledge; they contain hearsay and are speculative. And many of it, the, the statements in these affidavits are vitriolic, just completely baseless speculation, and so we believe that they should all be struck.

I identify them in our memorandum that we filed for this November 2nd hearing. I filed it that day. That was when the case was originally scheduled to be heard, and I think in the other case we, we dealt with the motions to strike, and you wanted me to produce the copies of them

which are on file but in some organized group. And I will be glad to do that for Your Honor if you would like in this case, but it's a lot of stuff. It's fourteen affidavits, and some of them may have attachments to them, but I will be glad to do that for you if you would like.

Then attorney's fees, she asks for those. She's not entitled to prevail in this case, we believe, Your Honor, and so, therefore, she's not entitled to fees. Moreover, she has not produced a statement supporting the amount of fees that she requests, and so that would need to be done also.

So, for these reasons, Your Honor, we ask that you strike the affidavits and grant judgment to the attorney general in case 350. And I think for purposes of order, it would probably best if Mr. Silvernail went ahead and responded to, to this case before we take up 4900.

I would note that the motion to amend the motion to dismiss is something that, that should be granted as a matter, respectfully, of course. It's -- just, it relates to all these grounds that I've dealt with today, Your Honor.

MR. SILVERNAIL: Good morning, Your Honor.

THE COURT: Good morning. Hold on just a moment.

MR. SILVERNAIL: Yes, sir.

(A PAUSE.)

THE COURT: Yes, sir.

MR. SILVERNAIL: I thank you for having us this morning, Your Honor. I appreciate you doing this in Richland County.

In response to Mr. Smith's arguments, you know, overall there was a total lack of dates given in his argument and those dates are really important, given the substance of those arguments.

The initial FOIA request in this matter was made on June 30, 2011. And he's correct that the Office of the Attorney General took the position when it answered or moved to dismiss this lawsuit in 2011 that it had not received the initial request. Now, you know, if we were standing here in 2011 or 2012, I think that would likely bar going further with this case if the AG had responded as it should have by saying, gosh, we didn't get that. Here's your FOIA response. I think that is the outcome that should have come.

All of this business in this California case about -- and I apologize, Your Honor. I forgot I was wearing this. It may make it easier for you to hear without. All of this business about jurisdiction of the court, I believe, has been waived at this point, and I note that the Court of Appeals in its opinion reversing Judge Early's dismissal of this case actually notes and quotes from the AG's letter

saying they didn't get this response and acknowledges the AG's position that they didn't receive the initial response. Nonetheless, the Court of Appeals, rather than saying, oh dear, we don't have any jurisdiction over this, which the AG raised and argued in its brief, said, okay, we need to reverse this and remand it based on Judge Early's findings about mootness. And so that's where we find ourselves in front of Your Honor today.

I would submit that a good deal of what the AG is arguing today was already put in front of and either disregarded or ruled against by the Court of Appeals, which reversed this case, case 350 that we're talking about first.

THE COURT: What was the language of the Court of Appeals in addressing what you just said?

MR. SILVERNAIL: Which part, Your Honor, the receipt of -- the nonreceipt of the initial FOIA request?

THE COURT: Yes.

MR. SILVERNAIL: In the opinion they note -- and this is in the body, not in a footnote. They recite the substance of what the request was, and then they go on to say in a letter dated August 5, 2011, in which the AG was responding to Pope's July 19, 2011, FOIA request which forms the substance of the other case we haven't talked about yet:

had addressed that issue in his brief.

THE COURT: It sounded as if you were reading something not from the opinion but from something else. What were you just reading?

MR. SILVERNAIL: I was reading you -- that is from the Court of Appeals' opinion from June of last year.

THE COURT: Okay. They have all of that in the opinion?

MR. SILVERNAIL: Yes, sir, and, you know ---

THE COURT: Okay. Let me just take a quick look at it.

MR. SILVERNAIL: Certainly.

MR. SMITH: Excuse me, Your Honor, if I may? I don't want to interrupt Mr. Silvernail, but in footnote 2 to that opinion, the court says:

> With the exception of mootness, we decline to address the attorney general's additional sustaining grounds.

So, they did not address the issue in that opinion.

THE COURT: So, you all disagree on what the opinion says. I'll look at it later, and you can proceed.

MR. SILVERNAIL: And, Your Honor, I don't really know that it's necessary to go through that part in detail because ultimately the attorney general has, without question, had this request and been aware of it since the

service of this lawsuit on the attorney general in August of 2011.

As I mentioned earlier, had they written us and said, oh gosh, we didn't get that initial request, here is a proper response to your FOIA request, then this would have been all over. The attorney general, however -- again, with the dates that were missing from Mr. Smith's argument, he mentions that they gave us what they say is all they have of the legacy trust.

Now, we received that as part of their amended or motion to amend their motion to dismiss, which I believe was filed in March of 2013 nearly two years after this case was brought. You know, nowhere along the way from June of 2011 through today have we ever received what I would consider a normal FOIA request -- FOIA response, rather, from the AG's office, which in any other case, any other instance I've ever been aware of is a letter or other communication that says, okay, here's what we've got that's responsive to your request. Here are the things that we believe are responsive but are exempted under particular rules or are under particular parts of the FOIA statute allowing certain documents not to be produced. And here is how we -- when we will either get them to you or allow you to inspect or copy them. That's a normal FOIA response.

This case we got initially nothing. The AG says

that's because he didn't get it. We filed the lawsuit rather than saying, okay, here's a FOIA response. They moved to dismiss, saying Ms. Pope was not entitled to ask for anything under FOIA because of her status as a litigant with the state of South Carolina.

The Court of Appeals has done away with that argument. They have said in their opinion -- this is the operative language, and I believe, Your Honor, I'm going to tell you the Court of Appeals' opinion in the case we're arguing right this minute as to the issues about mootness. And the attorney general, I believe, just refers and incorporates its more complete analysis from the case we're going to argue in a couple of minutes that went up on -- as to the AG, basically the same issue.

So, the 350 opinion that Your Honor just pulled up that I was just reading to refers to the 4900 opinion for this analysis where they say:

> To seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record rather than vaguely referencing discovery.

And so that's the issue we've got in this case, Your Honor. You know, ultimately at this point, the attorney general is taking the position today that he has given us

everything he's got responsive to the initial FOIA request. Now, we didn't get any of that until over a year into this case, and we've gotten all these responses piecemeal over the years.

The purpose of a lawsuit under the FOIA, as I understand it, Your Honor, is ultimately, as Judge Griffith did in the *Summer* case that Mr. Smith has referred to and that we have attached the orders from to Ms. Pope's affidavit filed shortly before this hearing was originally scheduled -- October 27th, I believe -- you know, the process that Judge Griffith used was to determine that the objections the AG had raised to responding under FOIA, which were very similar to those asserted in this case and, in fact, I believe were based on the fact that they thought Ms. Summer was asking on behalf of Ms. Pope or with some close connection. Judge Griffith -- Judge Griffith's first order says that does not work. He actually used the logic that the Court of Appeals basically adopted in reversing the appeal in this case from Judge Early's order finding that, you know, the fact that discovery is available in another case where the documents might be generally subject to being discovered or not discovered in that case doesn't affect a requester's rights under FOIA. And so what Judge Griffith did with that case was to say this objection doesn't work. You must respond. Within a certain period

of time, you need to give her a response and produce whatever you're going to produce. Tell her if you've got anything you are withholding, and tell her under what specific portion of the FOIA you claim that this is exempt.

Because he issued that order finding that she was entitled to a proper FOIA response, he directed that her attorney should submit an affidavit of fees and costs at that point because you don't know what they are until you have completed the case. And that he would hold jurisdiction over the case to discuss the response, any further litigation needed, and ultimately determine the attorney's fees, which he did all of those things. There were another -- I believe one more order about specific objections and exemptions and then a final order saying I've reviewed the attorney's fees and costs sought, and this case is otherwise is over. So, I'm making this ultimate award.

And, Your Honor, I would submit to the court that from my review, which I certainly won't represent is absolutely every case ever, but from looking at FOIA cases for over the last nine years while working on this one, that seems to be the trajectory that most FOIA cases take, and we're asking that this case be treated the same.

I -- you know, Ms. Pope again requested documents. The attorney general has objected for various reasons that

have varied over time, but generally, at least up until the Court of Appeals' ruling, took the position that Ms. Pope wasn't entitled to get anything under FOIA. And we submit that that argument has always been erroneous, has never been supported by any law, has been done away with by Judge Griffith in the similar looking case that, by the way, was filed in 2012 and ended in 2015. So, it had a much shorter lifespan than these cases have had. And ultimately, we didn't get any response, any documents produced until 2013 in this 2011 request.

Now, the attorney general likes to say how Ms. Pope was already in the possession of these or has gotten them from other sources, and that completely overlooks the purpose of the FOIA. There is not a thing in the FOIA statute that presents a test for who you are, why you want the documents, whether you need to get them from this particular person, or could get them from somewhere else. All of that would totally subvert the purpose of the FOIA. Frankly, there are many instances in which someone may say I've gotten this document from elsewhere. It would be important to me to know whether the attorney general has the same thing, and the response there is not to say you already have that from somewhere else. It's to say this is a public document. We are a public body. You have requested it, and here it is.

So, from the attorney general's first filing in this case, his position was she shouldn't get these because of case 4900. Even in the *Summer* case, he took the position that Ms. Summer shouldn't receive them because she had some, you know, imagined or general connection to Ms. Pope. And because these documents are totally, legally separate and apart from Ms. Summer, were subject to discovery in a case she wasn't even a party to.

So, in our case, we have filed these affidavits to show not only that Ms. Pope does need them, is entitled to them. There are affidavits in the record from journalists confirming that other people in the state of South Carolina would have an interest in them but shouldn't have had to go out and request them separately when Ms. Pope was already entitled to them. At the end of the day, I don't believe there is any basis for the court to strike any of these affidavits. But I do believe that the court can consider and decide this case in Ms. Pope's favor without relying on any of them if it can disregard the baseless arguments made by the attorney general that Ms. Pope's identity or the whereabouts of these documents elsewhere has any effect on her right to request and receive them under the Freedom of Information Act.

And so, you know, that's a -- we heard a lot about these affidavits, and I think they are important, but only

if the court determines that there is some merit to the attorney general's argument that who you are has some effect on your rights under the FOIA. And I submit to the court that there is not a word in the FOIA statute that ties you are or why you want it or whether you've already got them to your entitlement under the FOIA.

Bear with me just a moment, please.

Now, Mr. Smith also talked a fair amount about this letter from John McIntosh that's attached to Ms. Pope's most recent affidavit as Exhibit I. And, you know, we seem to have a fundamental disagreement about what the words in this three-paragraph letter saying -- Mr. Smith reiterated more than once that this was about an engagement agreement. The middle paragraph of this letter says, and this is addressed to a member of Sweeny, Wingate, Barrow:

> Your letter is entitled, quote, privileged attorney-client communication, closed quote. Please be advised that the Office of the Attorney General has never been a client of Sweeny, Wingate, and Barrow in this matter.

That's not about a retainer agreement, and despite what Mr. Smith has said -- and if Your Honor reviews his quotes from the record suggesting that Ms. Pope or any of her counsel knew the content of that letter prior to its publishing in October of 2020, I would urge Your Honor to

read those quotes because what Ms. Pope has known since March of 2013 was that the attorney general was at that point no longer represented by Sweeny, Wingate, and Barrow. In fact, in March of 2013, Sweeny, Wingate, and Barrow filed a motion to be relieved in case 4900 as counsel for the attorney general, stating that its services were no longer desired or required or had been terminated. I'm not attempting to quote that, but I absolutely represent to Your Honor the language there indicated an ended representation, not a non-representation.

Ms. Pope has taken issue since the filing of case 4900 with whether the AG had authority to bring a suit of that sort, sharing private counsel with individuals. That's all the subject of separate appeals, and Your Honor probably won't ever have to hear any of that if you plan to retire while you're still fairly young. But we -- in this case, Ms. Pope has never said, nor did she know, that the attorney general took the position that it had never been represented by Sweeny, Wingate, Barrow. And it's a difficult position to understand, given that case 4900 was filed on May 19th of 2010 with a summons and complaint captioned Russell Bauknight and the attorney general and others v. Ms. Pope and Robert L. Buchanan, Jr., signed by one lawyer for all plaintiffs, and that was the firm of Sweeny, Wingate, and Barrow.

Now, in 2013 after the Supreme Court threw out the settlement agreement and issued some relatively harsh criticism of the AG's actions in that case, it wasn't that shocking to us that Mr. McIntosh, I believe, had written me personally to say that the AG was no longer represented by Sweeny, Wingate, and Barrow. And contemporaneous with that, Sweeny, Wingate, and Barrow moved to be relieved as counsel.

This letter which we had never seen until last month clearly says we've never been the client of Sweeny, Wingate, and Barrow. And, frankly, the context of that strongly implies that they were taking the position they had no privilege with Sweeny, Wingate, and Barrow since that sentence begins by observing that the most recent letter from Sweeny, Wingate, and Barrow had borne an attorney-privilege, had -- and although Mr. McIntosh doesn't explicitly say it, I can't make any heads or tails of the sentence ending with we have never been your client other than to dispute that there was a privilege there.

And I note in this case, Your Honor, the attorney general has never made a claim of privilege, its own privilege, on any of these documents. I believe that in more recent hearings, there was a suggestion that certain of the documents in the attorney general's possession may have been the subject of a privilege among other people,

such as this letter to Russell Bauknight that is three or four pages long and has unredacted only the words: He is. That is a letter written to Russell Bauknight by Rett Kendall, I believe, who was member of Sweeny, Wingate, and Barrow, and copied to the attorney general. And the attorney general taking the position in these cases that there is any manner of privilege attached to these documents between other people and lawyers who the attorney general says have never represented them is absurd.

The attorney general in his memo cited the tobacco bill case which talks about the Common Interest Doctrine. That was a case that dealt with materials exchanged among attorneys general and the National Association of Attorneys General in the context of all of them pursuing, I believe, damages from tobacco companies back then. This is a case where the attorney general hasn't demonstrated any kind of common interest. They alleged recently that the attorney general's -- or that Sweeny, Wingate, and Barrow's, excuse me, work had benefitted the attorney general. But, you know, in these letters that are attached to Ms. Pope's affidavit, the attorney general also says we don't owe you any money when asked to pay part of Sweeny, Wingate, and Barrow's fees.

And ultimately the idea that there's a common interest privilege here usually tracks with some sort of agreement.

You know, if I have ever been in a position where I might want a joint defense agreement or a common interest privilege, I'd lay that down in writing with the folks I intended to claim it with because otherwise we're in a situation like today where somebody is claiming it a decade after the generation of the documents, and we're looking back at the attorney general through goggles of everything that's happed up to today. But this lawsuit was filed in 2011, and what had not happened at that point, what has not happened for long periods of time after that is any response to Ms. Pope's FOIA request.

So on this case, Your Honor, I would submit that there is no reason to strike the affidavits. They are necessitated because of the attorney general's own positions in this matter related to Ms. Pope's identity, the existence of other cases, her need or perceived intent for these documents, and various other things that should have never turned up in the record here but did, and we've responded to them via affidavit. If Your Honor doesn't believe those are useful arguments from the attorney general, Your Honor probably doesn't need to read the affidavits very much, if at all.

As to the substance of this case, the case law that controls in South Carolina is your FOIA case is not mooted unless and until you get a response under the FOIA. That's

Sloan v. DOR from about 2014, I believe. In this instance, we have gotten in some dribs and drabs very belated responses. The attorney general continues to this day to take the position that the documents produced were not produced pursuant to FOIA. They say we're producing these voluntarily and just out of some sort of goodwill, but we still don't believe that we should have to give them to her under FOIA.

We're entitled to a declaration from this court that the attorney general must comply with the FOIA request by giving a proper response. And when that part of this case is concluded, we would submit that we have prevailed, and we'd submit an affidavit to Your Honor outlining what fees and costs we request from the attorney general.

THE COURT: So, Mr. Silvernail, more succinctly in response to Mr. Smith and Mr. Smith's contention that section 30-4-30(c) has not been complied with because there's no proof that a written request was made to the attorney general, what is your response?

MR. SILVERNAIL: My response is that statute -- and I believe Your Honor asked Mr. Smith about this -- doesn't prescribe very much about the form or fashion in which the written request must be received. It's indisputable in this case that the attorney general received not later than August of 2011 our summons and complaint which attached

that request, made clear what documents were sought. And, you know, as I say, at that point had the attorney general said, oh, now that we've got this, we'll respond, I doubt we would have been entitled to proceed, nor would we have needed to proceed with this litigation. But I don't believe that that works nine years later when it's undisputed ---

THE COURT: I understand. I didn't ask -- I said more succinctly, not to rehash your entire argument. How is that issue addressed by the appellate court in its order, if it was?

MR. SILVERNAIL: It was -- Your Honor, I believe the word I used earlier was acknowledged, and I would stick with the word it was acknowledged. They quote a letter from the attorney general in the Court of Appeals' opinion that stated the attorney general's position it had not received the initial request. As far -- I don't believe the Court of Appeals makes any further discussion, but it's clear that they were aware that was an issue in this case.

THE COURT: And then you contend that there is a waiver of jurisdiction?

MR. SILVERNAIL: Your Honor, I contend that the jurisdictional argument at this point doesn't work because they have not made a response. As I said ---

THE COURT: Meaning that it's waived?

MR. SILVERNAIL: Your Honor, I, I want to be careful about the word waived about jurisdiction.

THE COURT: You said before that they had waived it.

MR. SILVERNAIL: I, I believe that at this point they can't assert that, and I think it's less that they've waived it. Waiving jurisdiction is something that I don't believe that's easy or may be possible to do. They've waived the argument that they didn't receive a FOIA request.

THE COURT: Waived the argument? Well, in Mr. Smith's brief, he is contending that, in citing this California case, that there is a lack of subject-matter jurisdiction because of this notice discussion in his brief, and I guess in this 1998 California case, and subject-matter jurisdiction cannot be waived.

MR. SILVERNAIL: Correct, Your Honor.

THE COURT: So, that's why you don't want to use the word jurisdiction. That's why you don't want to use the word waiver.

MR. SILVERNAIL: Well, I want to use the word waiver but as to their argument that they did not receive a FOIA request. I am not arguing that they have waived jurisdiction, but their jurisdictional argument is based on this idea that they didn't receive a FOIA request, which nine years later I don't think works.

THE COURT: Well, right off the bat, he wants me to hear this motion to dismiss because of lack of proper notice of service or something and contending that issue has never been addressed in these proceedings. And your argument, well, it doesn't need to be addressed.

MR. SILVERNAIL: That's correct, Your Honor. I think that when this motion to dismiss was filed -- which I believe was in September of 2011, depending on what the circumstances were -- had that motion been heard and decided at that point, it would be potentially different.

THE COURT: Well, ten years later, why hasn't there been a hearing on it?

MR. SILVERNAIL: Your Honor, I wish that I could give you a good hard and fast answer to that. You know, a portion of that time, not an insubstantial portion of this case was in the Court of Appeals on other matters. I believe that appeal lasted three years. It was 2016 orders which were decided in 2019 and remanded about a year ago.

THE COURT: All right.

MR. SILVERNAIL: This case, in fact, wasn't remanded until much more recently because there was a petition for *certiorari*.

THE COURT: So, considering that the Court of Appeals said that Judge Early could not use the discovery rules to, in effect, ignore FOIA requests, you're saying the Court of

THE COURT: Well, right off the bat, he wants me to hear this motion to dismiss because of lack of proper notice of service or something and contending that issue has never been addressed in these proceedings. And your argument, well, it doesn't need to be addressed.

MR. SILVERNAIL: That's correct, Your Honor. I think that when this motion to dismiss was filed -- which I believe was in September of 2011, depending on what the circumstances were -- had that motion been heard and decided at that point, it would be potentially different.

THE COURT: Well, ten years later, why hasn't there been a hearing on it?

MR. SILVERNAIL: Your Honor, I wish that I could give you a good hard and fast answer to that. You know, a portion of that time, not an insubstantial portion of this case was in the Court of Appeals on other matters. I believe that appeal lasted three years. It was 2016 orders which were decided in 2019 and remanded about a year ago.

THE COURT: All right.

MR. SILVERNAIL: This case, in fact, wasn't remanded until much more recently because there was a petition for *certiorari*.

THE COURT: So, considering that the Court of Appeals said that Judge Early could not use the discovery rules to, in effect, ignore FOIA requests, you're saying the Court of

Appeals should have ruled on this motion even though it wasn't before them or?

MR. SILVERNAIL: Your Honor, I believe they were aware of this issue. The attorney general raised it. I do not have his brief in hand, and so I don't want to misrepresent anything to the court. I believe, though, Your Honor, that the attorney general substantively addressed the argument that there was no jurisdiction over this case in its brief in that case. The Court of Appeals didn't say, no, we don't take that, but they also, as Mr. Smith noted, said we're not going to talk about the attorney general's additional sustaining grounds. To me, Your Honor, if an appellate court ---

THE COURT: You're saying in hearing the case, they concluded that there was subject-matter jurisdiction.

MR. SILVERNAIL: I would ---

THE COURT: Because otherwise they wouldn't have had a case to hear.

MR. SILVERNAIL: That's correct, Your Honor. I would assume if the Court of Appeals had concerns about subject-matter jurisdiction, they would either dismiss the case on their own accord or at least requested briefing on that specific issue, which had just been my experience with the appellate courts when there appears to be a fundamental issue like that.

THE COURT: Well, this California case from 2011 that -- or 1998 that Mr. Smith gave you, I guess you would have spent -- when did you get his memorandum ---

MR. SILVERNAIL: I believe ---

THE COURT: --- citing this case from 1998?

MR. SILVERNAIL: I believe it was November 1st or 2nd, Your Honor, within a day or so before our hearing was originally scheduled.

THE COURT: All right. So, I'm sure since that time, you've probably tried to find something to counter that someplace in America.

MR. SILVERNAIL: Your Honor, I, I have but I just have not found, as you asked Mr. Smith, and I -- his answer and mine, somewhat usually in these cases, I think is the same. This case certainly stands for the proposition it stands for, but I don't find anything else that either backs it up or directly confronts that issue elsewhere, and ---

THE COURT: You know, courts in South Carolina rarely accept anything from California as being the law.

MR. SILVERNAIL: Your Honor, I've had the unfortunate experience of litigating some strange questions, and I'm very familiar with the, with the response that California cases tend to get in our courts. I always -- if I'm handing you one of those, I'm probably very worried.

THE COURT: So, that's 22 Fed Supp. 2d, then 1116 CD

much interpreting the statute for FOIA on this front. And I would submit to Your Honor that's because -- that leaves us with just the statute controlling.

THE COURT: Well, how did she contact them with this FOIA request? How were they contacted?

MR. SILVERNAIL: Well, we've always taken the position that she mailed it to them on June 30th of 2011. We found out after filing this suit that they say they didn't receive it. The statute has no -- it does not require certified mail. It doesn't require any particular form. It just is written request and so, you know, this is a little different because under the statute, they most certainly got a written request not later than August of 2011 when they were served with this lawsuit.

THE COURT: So when they didn't respond to her, the letter that you believe that she sent, that she says she sent, when you got no response, then the lawsuit was filed?

MR. SILVERNAIL: Yes, Your Honor. I will note that in the meantime, I believe they had sent -- because there is the separate case we haven't yet gotten to this morning but that Your Honor may be relieved to know has a lot of similar argument and hopefully won't require this amount of length, but I believe, my memory is -- and it's nearly a decade ago and my memory isn't great on last week -- but I believe there had been some communication on the other FOIA

request in the meantime notifying Ms. Pope that they didn't really intend to give her a substantive response. And so that's why this lawsuit got filed without further communication.

I believe the attorney general had taken a very general position in response to the other FOIA request that because case 4900 was pending and there was discovery going on, I believe that the assistant in the attorney general's office who wrote that letter suggested that the wisest thing to do was to put the request on hold pending an outcome of ---

THE COURT: And the James Brown legacy trust and the estate of James Brown is totally ancillary to why we're here today because FOIA has taken on a life of its own?

MR. SILVERNAIL: Yes, Your Honor. You know, again, there's a lot of material in this record about what was going on and what these documents have to do with various things. My position today is this case and the one you're about to hear about are quite simple. A request was made, and it completely subverts the FOIA to bring in issues about who asks, why they ask. There's nothing in FOIA statutes that makes your request dependant on anything about who you are or what you might do with the document. I have every right to write the attorney general and say I'd like to know what you spent on staples this year, and

if there's a public document responsive to that request. They may wonder what I want it for, but the right response -- and in a couple of places in this record, we filed initial pages from the *Public Official's Guide* to dealing with the FOIA which has letters at the front from both the now Governor McMaster and Attorney General Wilson, and this is a handbook. We're not citing it as authority, but both of them have the words: When in doubt, disclose the document. And that's ---

THE COURT: When in doubt, do what?

MR. SILVERNAIL: Disclose the document. If there's a question about whether this is exactly responsive, disclose it. And, you know, again, I'm not submitting that as any sort of authority, but I believe it's representative of the spirit in which public bodies are supposed to and for the most part have dealt with the FOIA. This is a law intended to allow people to find out things, and ideally they're not very interesting things.

THE COURT: All right.

MR. SILVERNAIL: Thank you, Your Honor.

THE COURT: All right, Mr. Smith.

MR. SMITH: Your Honor, Mr. Silvernail has got things backwards. He said that because we got the, the FOIA pursuant to the complaint, we should have responded then to that, and the suit would have been dismissed. That's

backward. We have to get the request first, and so when he got -- Ms. Pope got Ms. Meyers's letter saying we hadn't gotten anything, she should have turned around and sent her then a FOIA request saying here it is. Please respond and then I'll dismiss my suit. She didn't do it. Instead, she proceeded with her litigation, and here we are today nine years later.

THE COURT: Well, let me, let me hold you just to that point because you've included this letter from Tracy Meyers to ---

MR. SMITH: Oh, I'm ---

THE COURT: --- Ms. Pope, and so in the letter that she's writing Ms. Pope, Tracy Meyers is writing Ms. Pope, she said:

> I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to FOIA. I have also been notified by the Civil Division of the attorney general's office that you refer to a request dated June 30th in a motion filed by you in a circuit court case. Please be advised the only direct request I have received from you during the June to August 2011 time period are six -- the six referenced above. If there is a request dated in June that was not

received by this office that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five days, I will expedite the response to it.

So, that's just paragraph number one. So, tell me what's going on here and what is she telling Ms. Pope?

MR. SMITH: Well, I think what she's saying is we heard through attorneys involved in another case that you had sent a FOIA request, but we haven't gotten it and so if you'll send it, we'll expedite a response to it. And so she didn't respond to that letter, and then Ms. Meyers later executed an affidavit which we also have there. In fact, I think this letter is attached to the affidavit saying she's -- we never got it. She searched our mail records. We never got it. So -- and, and Ms. Pope has filed nothing to refute that. The California case ---

THE COURT: Well, let me just -- before you get back to California. So in response to this letter from Ms. Meyers, what did Ms. Pope do?

MR. SMITH: I think that she -- I think Mr. Silvernail said she got it after she had filed the suit, and I don't think anybody has produced any letter from Ms. Pope back to our office saying sorry you didn't get it. Here it is. As I said, respond and I'll dismiss the suit. She should have done that. She did not do it and so, therefore, a FOIA

response was not triggered.

Mr. Silvernail acknowledged that it has to be a written request. It doesn't specify the means of delivery, whether it's by mail or by hand delivery, but it's undisputed that we didn't get it through any mechanism of delivery. And so, therefore, there was nothing under the FOIA to trigger a duty to respond under FOIA.

THE COURT: So then when you skip all of that and say, well, I'll just sue you because I didn't hear from you, then rather than then providing FOIA, you start defending a lawsuit.

MR. SMITH: Yes, Your Honor, and that we had a -- we have a duty to -- a requirement to respond to the lawsuit, which we had to do. What -- but a lawsuit is not a means of delivery of a FOIA request for purposes of, of responding. Her allegation was that we did not respond to her.

THE COURT: All right. Well, I cut you off ---

MR. SMITH: And so, therefore, she was suing.

THE COURT: You were heading to California. We can go ahead.

MR. SMITH: I'm sorry, Your Honor?

THE COURT: You were heading to California, and I cut you off, so we can go ---

MR. SMITH: All I was going to say is it's of

that would have headed this off or maybe, as I said, somebody would have responded. Some -- she, she would have gotten a letter such as the one she got from Tracy Meyers and, and would have sent a response back. That didn't happen. The only delivery we got was in an attachment to a lawsuit against us for failing to respond to the attachment, and that just is not sufficient and so ---

THE COURT: Well, Mr. Silvernail says, well, despite all of that, we're ten years down the road, so.

MR. SMITH: Well, Your Honor, if I may, Mr. Silvernail suggested we had waived that. I, I don't know of any waiver we have made of, of that position. It's been our position all along and in any event, it goes to subject-matter jurisdiction, and that can be raised at any time.

THE COURT: This motion we're now talking about -- and forgive me if I don't have all the procedural history. I definitely don't have what you all have since I've only been involved in it ---

MR. SMITH: Yeah.

THE COURT: --- for about a year now. Did you file this motion to dismiss early on or?

MR. SMITH: We did a motion to dismiss. Then we -- I think before that was heard, we did an amended -- a motion to amend the motion to dismiss, and we went on ahead and

answered. And I'm certain that this ground was in the motion to amend and in the answer. I do not know whether it was in the original motion to dismiss. Probably was. I think we wanted to raise some additional defenses, but anyhow it has been before this court since an -- in an -- since an early point. I know of no reason why the motion to amend the motion to dismiss shouldn't be granted. I think that's been pending for seven years.

THE COURT: So, you said it wasn't ruled on because Judge Early, under the guise of, well, you have a civil case going on. I don't need to deal ---

MR. SMITH: He chose to ---

THE COURT: --- with FOIA.

MR. SMITH: --- get rid of it on that basis. The Court of Appeals chose to remand it and reverse because they thought that ground was too broad, but they didn't address the additional sustaining ground such as this one perhaps -- well, it's within their authority not to go that far, and perhaps they thought they needed to be fleshed out by the circuit court because he had never reached them. He had just dismissed on the general basis of civil discovery pending.

THE COURT: So, after the Court of Appeals sending it back, reversing Judge Early and having him to not use discovery to get rid of it, did he -- were there subsequent

hearings or now -- we're now have the subsequent hearings?

MR. SMITH: Now having a subsequent hearing, Your Honor.

THE COURT: Okay. My goodness.

MR. SMITH: The, the -- Mr. Silvernail also referred to the Summers -- Sue Summer's case addressing this issue. I don't believe it did. I don't believe we relied on that as a defense for the reason that Sue Summer is a journalist. She was represented by Ms. Pope's husband. There's obviously some close association there because Ms. Summer has done affidavits for Ms. Pope that are at issue, but she was not a party to the litigation other than her own. So, the, the assertion that it was exempt but due to civil discovery would not have been applicable to Ms. Summer's lawsuit as it was to Ms. Pope, who was an actual litigant and able to conduct discovery. So, I don't believe that that issue was addressed in the *Summer* case.

The -- Mr. Silvernail also said, well, we're relying on the defenses that Ms. Pope had access to the valuation from other sources, and she did, but we're not relying on that, even if this court had jurisdiction of this case, and we contend that it does not. We've given her what we have. We don't have the valuation. That was found to be true in the *Summer* case as well, that we didn't have it.

The legacy trust, we've given her what we have: the

draft. She's got it. We don't have anything else. Doesn't really matter that she could get it elsewhere. She can but we can't produce what we don't have. We've given her what we do have.

So, that leads me to the, the Sweeny, Wingate, Barrow issue. Again on that, she did not request documents from Sweeny, Wingate, Barrow in her FOIA request. That was to our custodian of records, so that would be files within the Office of the Attorney General, not its agents. It would be our records custodian and so, therefore, that would not reach Sweeny, Wingate, Barrow documents.

Sometimes she's asked for them; sometimes she hasn't. She didn't put that in her brief to the Court of Appeals that she wanted them. She didn't even put that in her most recent memorandum to this court. She may have stuck it in the affidavit. So, she's kind of all over the map about whether she is or is not reaching them. We don't believe she can because the FOIA, as I said, is directed to the custodian of records.

But let's just assume for agreement that it is before us. She can't get them, Your Honor. First of all, she points to this letter from John McIntosh which says -- I've lost my place. It says in part:

> The Office of the Attorney General has never been a client of Sweeny, Wingate, Barrow in this

matter.

Okay, that's about a retainer agreement. It doesn't matter whether a retainer agreement was or was not signed. If there was no attorney-client relationship with Sweeny, Wingate, Barrow, then there would be no basis for Ms. Pope to be trying to reach those documents.

Our position is, however, that we benefitted from their representation. There was a -- I quoted from Sonny Jones in court in, in our memorandum saying that we benefitted from their representation. They were representing the, the, the beneficiaries of the James Brown trust. That was why we were in the case, for their protection to the charitable beneficiaries, and so we benefitted from that representation.

THE COURT: Why is that important or even relevant? I mean, why are you telling me that you benefitted from their representation?

MR. SMITH: Okay, my, my -- the reason I'm telling you this, Your Honor, is that if they never represented us, then there's no cause to get it. Our position is that we benefitted from their representation and so, therefore, anything that -- communications with Sweeny, Wingate, Barrow would be privileged pursuant to that representation of the common interest of the beneficiaries.

I'm moving away from the mic. I'll move back.

And so we cited the tobacco bill case. The tobacco bill was limited to communications in that case between the Office of the Attorney General and the National Association of Attorneys General, but the reasoning of that case would apply to any common interest litigation situation. Sometimes common defense agreements are signed but not always, and attorneys on the same side of a case regularly cooperate. They benefit from each other's work; they exchange ideas. These are protected by a common interest privilege.

So, therefore, our, our position is on Sweeny, Wingate, Barrow, she didn't request it from them. Went to our custodian of records or was directed to custodian of records to -- regardless of whether there was a retainer agreement, and she was informed of that issue, as we put in our memo, back in 2013 and stated that similar position then. So, she knew about it then and didn't explore it further in this case. That regardless of whether they were or -- or there was or was not a retainer agreement, that we benefitted from the representation of the common interest in this case and so, therefore, any such documents would be protected and so she can't get them.

THE COURT: So, Mr. Silvernail says that it's none of your business basically why Ms. Pope would want certain information. That the Freedom of Information Act does not

require any explanation of why someone might want some public information. And I accept that as being correct. I guess you do as well.

MR. SMITH: Well, Your Honor, that goes to not the Sweeny, Wingate, Barrow issue, respectfully. It goes to these affidavits, and our position is that one of the reasons the affidavits should be struck is that what matters under FOIA is what the -- well, first of all, whether it's delivered or mailed; two, whether the -- what is requested; and three, whether there are documents that are responsive to it, whether they are exempt from being produced. Not whether she needs them or whether they are important, not about whether people are good or bad. It's just a matter of whether that there are documents responsive to the request and not exempt, and she strays way beyond that in these affidavits.

And it's not -- the problem with them is not just irrelevance, Your Honor. An affidavit under rules of court case decisions has got to be based on personal knowledge, not hearsay, not speculation, and she engages in both. I quoted from that not to be an exclusive list but just examples, like I think something will show, I believe it will show. It's not knowledge. It's just speculation, and that is not enough. Hearsay about what other people may have said or done, that's not proper in an affidavit. And

so, therefore, they should be excluded for that reason.

Some of them are vitriolic. That's not a ground, but we don't rely on that. They are vitriolic in engaging in speculation and engaging in hearsay and in other ways that are a reason for striking the affidavits. So, for these reasons, Your Honor...

THE COURT: Well, before you get to these reasons, my asking that question was not so much to get as to why you wanted the affidavits struck but just more to the -- I guess the whole purpose of FOIA is that persons seeking public information has a right to know as citizens or something to that effect. You know, I have a guy suing the city of North Augusta, and he's saying that they didn't publish their agenda properly, and he needed to know how public money was being spent on this ---

MR. SMITH: Yeah.

THE COURT: --- dam that they were going to build ---

MR. SMITH: Yeah.

THE COURT: --- with over in North Augusta. And generally it's something, some public good somewhere at the end of the rainbow as to why someone should be required to comply with FOIA. And I'm saying without the court indicating that there is a need for Ms. Pope to have this information or not have the information, without addressing all of that, what is it, what is it at stake here in this

case? I mean, what are we spinning our wheels over? What's, what's there at the end of the rainbow? Is this just -- when I say that the James Brown estate is ancillary, the legacy trust is ancillary, is this case just being generated for attorney fee purposes? What is it out there that should cause this case to still be going on these many, many years later, and what is it that we're fighting for?

MR. SMITH: Well, Your Honor, that, that's a good question. Respectfully, I would submit that the reason this case is going on -- and it will be more apparent in the, the next case, even more apparent in the next case -- is to get attorney's fees. And, and because, as I pointed out with respect to, for example, the valuation, she's already got access to that. She doesn't need to pursue this to get it, and so it's being pursued so that she get a judgment and get attorney's fees.

Ms. Pope, as Your Honor could probably take judicial notice of and also from the filings in here, is involved and has been involved in multiple cases related to James Brown and, and that -- and some of those or many of those are still pending at various stages. Some on appeal. I believe Your Honor has presided over one of them and, and so she has had -- maybe initially she hoped to get some of this for the purposes of that suit. In the meanwhile, she

has had the opportunity for discovery in that litigation, and if she's entitled to it, she could have gotten it through discovery.

We're not trying to reassert here Judge Early's general exemption because of discovery planning. My point is that, that I think the main purpose of the continuation of this suit is so she can get attorney's fees.

But, but our position just very simply is that, Your Honor, at this point we believe, no. First, that the court does not have jurisdiction for -- because we didn't get it. Two, even if we did, we've given her what we have that's responsive in our files and that there's nothing more to give. And the, the reason the case is taking a long time is there was some -- it was pending before another judge before it got to Judge Early. There were motions that were never decided then. Then he decided. Then it went up on appeal. Now it's back before you. It's had a long trajectory.

THE COURT: Well, yeah, I understand, and another reason I asked the question is because I received a notice from the Supreme Court last week dated November the 9th where Ms. Pope was seeking to, seeking -- she was seeking to be involved in the estate of Vanisha Brown and wanting to be involved in litigation as having a creditor's claim against Vanisha Brown. And the Supreme Court has issued an

order banning her from being involved in anything in any matter related to the estate of James Brown, and she was seeking an exemption so that she could pursue her creditor's claim. And the Supreme Court issued an order disallowing an exception and banning her from being involved in any way involving the estate of James Brown. So, this one has been parsed out, I guess, from the estate of James Brown, but the genesis of it was the estate of James Brown or the James Brown legacy trust. So, I take it from all of that that this is probably the last James Brown-related matter that Ms. Pugh could be involved in, but this is -- but she is not involved in it because this is not against the estate of James Brown. This is against the attorney general. So, I'm trying to get some clarity in my mind because I'm dealing with all of it.

MR. SMITH: Well, Your Honor, I would certainly like to apply those -- that order that you referenced of the Supreme Court to this case. There was also another earlier order in, I think, 2016 maybe saying stay out of James Brown matters. We have not asserted that position here. Our, our -- but I certainly wouldn't object to it if Your Honor thinks it's applicable.

THE COURT: No. I'm not ---

MR. SMITH: But, but, but ---

THE COURT: --- taking a position. I'm just getting

clarity as to ---

MR. SMITH: But, but certainly these ---

THE COURT: --- why we have this FOIA thing going on for ten years.

MR. SMITH: But certainly these requests are related to James Brown and, and perhaps when she brought it, made the FOIA request, she hoped that she could get something faster through FOIA than through civil discovery. But our position as I said, Your Honor, is, one, there's no jurisdiction because we didn't get it. Two, we've given her everything responsive and, and so, therefore, we believe that the suit should come to an end and, and with judgment for the attorney general in it.

THE COURT: All right, and that's what your -- that's on the 350 case?

MR. SMITH: Yes, Your Honor. You -- would you like me to proceeded into 4900?

THE COURT: Any other comments you would make on the 350 case, Mr. Silvernail?

MR. SILVERNAIL: Very, very briefly, Your Honor. You asked what this case is about, and I'd like to throw my hat in the ring on what this case is about to my client, the plaintiff.

THE COURT: All right.

MR. SILVERNAIL: You're absolutely correct, and Mr.

Smith is absolutely correct that part of this case is about attorney's fees because we shouldn't have had to incur all of this. The attorney general didn't produce anything to Ms. Pope until a year and a half or so after this case was filed. Has still never acknowledged that she had the right to ask for anything at all.

The FOIA and attorney's fees, this is not a punitive statute. This is simply meant to allow people to exercise their FOIA rights to get a result out of the court and to not allow public officials who refuse to comply with FOIA -- knowing that most people out in the state are not going to be able to pay a lawyer to do what needs to be done to get a court order otherwise.

However, I want to note that that's not all this case is about. I mean, this wasn't brought to go get attorney's fees. I can assure you I could have made a lot more money in the last decade painting walls or something than I will end up making if I'm fairly paid for this case. But initially this case was to get the documents Ms. Pope had requested. The attorney general later changed position and said, well, here's what we've got. But again those were all attached to a pleading that said we're giving these just voluntarily and spontaneously because, Ms. Pope, we, we shouldn't -- we're not giving these to her as a FOIA response.

Ms. Pope is entitled to declaratory relief under the FOIA that she was entitled to these documents. She's entitled to declaratory relief that they need to give one single, clear response: what they have, what they have turned over, anything they are turning over, and anything they're withholding under an exemption. The attorney general has never done that in this case. And so we are here and yes, Your Honor, we believe we should prevail in this case, and I will absolutely submit an affidavit of fees and costs at that point.

But Mr. Smith said early in his last stretch of argument that Ms. Pope should have said, oh, I see y'all say you didn't get this. If you'll send me the documents, I'll dismiss the case. And I just want to note for the court that everything under the FOIA puts duties on public officials. Nothing in that statute puts a duty on the requester. I think if Mr. Smith is going to take that position, it's disingenuous where the attorney general never said the same thing: gosh, we didn't get that. In the letter that Mr. Smith pointed you to, Ms. Meyers or Green, I forget which, but the lady in the attorney general's office who wrote and said I'm responding to one of your FOIA requests and letting you know I hear you made another one we didn't get. I want to note for the court that that response to the other FOIA request still says

we're not responding to this FOIA request. So, it's a little disingenuous at this point to suggest that the outcome of this would have been any different if Ms. Pope had dismissed this case, made the request again, waited another thirty days or gotten the same response and brought it. At this point, Your Honor, we hope the court will just bring this matter to an end.

THE COURT: All right, and I certainly plan to, but this August 25, 2011, letter that is from Tracy A. Meyers, Senior Assistant Attorney General for the state of South Carolina, and it's to Adele J. Pope, Esquire, on Walnut Street in Newberry saying that we didn't get your FOIA request, so we don't really know what you requested. Please send us, send us a copy or send us whatever it is you want, and I will see to it that we expedite a response. Do you have any evidence that Ms. Pope ever responded to that ---

MR. SILVERNAIL: Yes, Your Honor.

THE COURT: --- other than filing a lawsuit?

MR. SILVERNAIL: Well, other -- my response is we did serve them with the summons and complaint, I believe, after this letter was written. That was the -- the case had already been filed, I believe. This case was either filed on August 3rd or August 5, 2011, but before we had notice of this letter. And so, you know, they received it.

I, to be very honest, Your Honor, I would have to look back in the file. It's possible that I also wrote a letter associated with that when we served them. I, I have not looked at that recently. I'm glad to check and supplement the record. I don't have a specific memory of it but, you know, our position was -- and this case had a first hearing in, I think, November or December of 2011.

MR. SMITH: Some time that fall.

THE COURT: Well, is the -- the original FOIA request is attached to the summons and complaint?

MR. SILVERNAIL: Yes, Your Honor, it is.

THE COURT: All right.

MR. SILVERNAIL: Thank you, Your Honor.

THE COURT: Okay.

MR. SMITH: May I proceed into ---

THE COURT: Well, I'll take this matter under ---

MR. SMITH: --- case number 4900?

THE COURT: --- advisement on the 350, and then we'll go on to the next one.

MR. HAYES: Your Honor, respectfully, if I may on the issue of case 350?

THE COURT: Yes, sir, and tell me again who you are.

MR. HAYES: Yes, Your Honor. I am Aaron Hayes from Sweeny, Wingate, and Barrow.

THE COURT: Yes, sir.

MR. HAYES: And I represent the remaining plaintiffs in case 4900 on the tort side. And, Your Honor, to, just to use debate terminology, my, my law firm has been namechecked this morning by both the attorney general's office and Mr. Silvernail. And I just want to respectfully request for the record in case 350 to the extent that this court inclined to issue an order that would touch documents in our possession, we would respectfully request notice and opportunity to be heard and brief that issue on behalf of SWB's -- Sweeny, Wingate, and Barrow's -- position. SWB for short. We are not currently a party to case 350, but to the extent that our documents could be implicated, we would like the opportunity to be heard on that at the appropriate time.

THE COURT: Well, how would I know that? As Mr. Smith says, that they are seeking documents in the custody of the attorney general.

MR. HAYES: I certainly understand.

THE COURT: So, how could that ever implicate?

MR. HAYES: I certainly understand the question, Your Honor, and I just direct the court to Mr. Silvernail's filings. Actually, his client's affidavit, and the only reason I'm here today, page 2 of that affidavit, they are requesting an order related to all documents held by my law firm.

THE COURT: That's a discovery request. That can't be a FOIA request, can there -- can it be?

MR. HAYES: I agree, Your Honor, I agree. However, I just had to lodge that for the record and is the reason I'm here today. Thank you.

THE COURT: All right. Yes, sir. I understand. Thank you.

Mr. Silvernail.

MR. SILVERNAIL: Very briefly, Your Honor. Our position here is the attorney -- Ms. Pope requested documents from the attorney general. Under the FOIA, we are entitled to documents possessed, used, owned, and the rest of that laundry list. If and when the attorney general gives an appropriate FOIA response, we will know whether they're going to take the position that these lawyers who have claimed at some point to represent them -- I believe there is certainly a chance that those documents are under the control of the attorney general, that they've been used by them, but we need a real FOIA response from the attorney general. And that would be the place where, if we thought it was deficient, we'd address it with them and bring it back to the court if necessary. But what we are asking for is a response from the attorney general on what documents they have, what they're producing, and why they're not producing anything they have but won't produce.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	) COURT OF COMMON PLEAS) 2010-CP-40-04900) 2012-CP-40-00350
Adele J. Pope vs. Alan Wilson, in his capacity as Attorney General of SC DEFENDANT	) TRANSCRIPT OF RECORD) April 16, 2021) Columbia, South Carolina

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, judge.

A P P E A R A N C E S:

ADAM T. SILVERNAIL, ESQ.
MARK GENDE, ESQ.
Attorneys for the Plaintiff

J. EMORY SMITH, JR., ESQ.
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

to appeal without potentially waiving it by producing the document -- arguably waiving it. We may not appeal. I just would like to protect our rights from having to make a snap decision on appeal and filed before 15 days in order to avoid that and have to file a supersedeas or something like that. I'm sure Ms. Pope does not want us to appeal. I can't say at this point whether we will or will not, but having the 30 days will assure we got enough time to decide to appeal before having it produced.

THE COURT: Mr. Silvernail.

MR. SILVERNAIL: Your Honor, I would submit that this is a decision that could have been thought about starting more than -- or 15 days ago meaning 15 days from now would have been the time that they've had to appeal a previous order. I would submit that we're all ready for this to be over. There shouldn't be that much left to talk about within the AG's office related to this production. And I would ask that the Court maintain its original finding.

THE COURT: Now, the Court will remain its original time and not delaying things for 30 days for an anticipated appeal or decision regarding appeal and that decision could be made within ten days, five days, 15 days if need be. So that's it for that order and we will draft the amended order. Regarding the other case, yes, sir.

MR. SILVERNAIL: Thank you, Your Honor. We respectfully move to alter amend your Honor's order in the 2012-350 separate FOIA case where your Honor granted judgment on the pleadings to the Attorney General. And we've addressed our arguments in detail in our motion, but I like to go through the basis on which the Court disposed of this case appears to be the Attorney General's position that it never received the June 30th 2011 FOIA request. As we addressed previously, that request was sent to the Attorney General's private counsel on June 30th. The complaint alleges that it was delivered to the Attorney General. That it was sent to the private counsel. The Attorney General admitted that it was sent to his private counsel. And in fact Ms. Myers letter responding to the FOIA request at issue in the previous case we argued which takes the position that she had not heard of or she had not seen excuse me -- the June 30th 2011 FOIA request. It is quoted in the Court of Appeals opinion on this case the one we're now arguing wherein she also acknowledges she's aware of the June 30th FOIA request from other attorney's in their office.

And your Honor we submit that the Attorney General's allegation that its custodian of records did not directly receive this request which was admittedly received by the AG's private counsel which their office

was obviously aware of in their response to the other FOIA request, that doesn't work to end this case after nine years. And certainly it shouldn't work for judgment on the pleadings where at the very least there's a question of fact about whether that was received. Ms. Myers has presented an affidavit that gives, you know, what we believe is a clear statement that she did not receive that and cannot find any indication that their office received that.

THE COURT: Was that the issue whether it was properly received or whether you -- whether the plaintiff properly submitted the request?

MR. SILVERNAIL: The code section your Honor says counts the days for a response from receipt of a rewritten request by a public body. I think the question in this case if it is true that the Attorney General never received the June 30th request that Ms. Pope alleges and has given an affidavit backing up that she did mail to them. If they didn't get that one, I think the open question in this case is does the AG receive it when their private counsel who is involved under an agreement that says they are subject to the FOIA and all of their records belong to the State of South Carolina. I believe that that is an unusual circumstance. I believe the AG previously took the position that because their records

custodian did not receive directly from Ms. Pope a written request for documents under the FOIA, that this case is, you know, was dead from day one nine and half year ago.

I would submit that the FOIA does not prescribe any form nor any particular recipient for a FOIA request. It simply says upon written receipt or upon receipt of a written request a public body should comply with FOIA. And here I think it's in disputed in this case that the Attorney General's lawyer -- I personally sent Attorney General's lawyer a copy of Ms. Pope's request on the day it was made because as I say the Attorney General's answer acknowledges our allegation that it was sent to the Attorney General's private counsel.

THE COURT: And, again, that's the question is it adequate under FOIA to serve someone's lawyer versus serving the Attorney General?

MR. SILVERNAIL: The FOIA is silent on any specifics in one direction or another about that. I certainly believe that in pretty much every instance because, again, the FOIA does not require you to achieve service of process, you know, which is the only place I'm aware of that by sending something to somebody's lawyer you have not adequately notified them of. You know, and there is no evidence in the record to say that the Attorney General did not receive that request from his

lawyer and did not receive that request from whoever in the office Ms. Myers refers to in her letter who was aware of it. And so your Honor they have argued under and I believe your order cites the Gasparutti case, which is very different. That is a case under the federal FOIA which is based on a line of cases that go under the exhaustion of remedies doctrine.

Now, the federal FOIA is especially in relation to the IRS is a good bit more complex then ours. The federal FOIA requires you to comply with the agencies specific publish FOIA regulations. Our FOIA doesn't make any such allowance nor has there ever been any allegation that the Attorney General has any more specific FOIA regulations. Our FOIA is very simple and I don't, you know -- receipt or non-receipt I believe is a more complicated then usual question given the number of people who did get this, but I don't think Gasparutti is dispositive and I cited in our brief excuse me -- our motion to reconsider the Wilbur vs. CIA case that also explains the exhaustion of remedies while it may be a basis for dismissing a case, it's not jurisdictional.

The AG's argument was that this court did not have jurisdiction to do anything with this case because the AG takes the position that its custodian of records did not receive directly from Ms. Pope a written FOIA

request. The Wilbur case that I've cited it goes through to say, you know, that's not a jurisdictional issue. We can always override that for the sake of judicial economy. And your Honor we submit that had this case it would have been proper to -- regardless of the answer to the question of where the AG might have gotten it, we've been here for nine and a half years, that is not the only issue that's been litigated in this case.

In this case, they have also taken similar positions to the ones they took in the 4900 FOIA case we just spent a good time talking to you about and that was that they shouldn't respond while this litigation was going. That these documents were also subject to discovery motions. We have litigated those questions up to the Court of Appeals and come back. And so your Honor I believe in this case it doesn't serve excuse me -- judicial economy to dismiss this case nine and a half years in based on a very specific set of facts related to the AG's alleged non-receipt of this document where that is at least a -- we know that it went to the AG's counsel and, you know, whether that is good enough, I believe it is. I don't know that there is any opinion that would resolve that question, but to send this up on appeal based on the Gasparutti case based on a lack of subject matter jurisdiction that this case just should have never gone

anywhere, I think that that risks judicial economy a great deal because they have raised and argued many other substitutive issues. We went all the way through an appeal about the argument that Judge Early adopted in 2016 that, you know, production of these documents muted the case. The Court of Appeals said, no, it didn't. This is one where the Court of Appeals opinion I wouldn't call it confusing, it's just a little odd that they blocked quote from Ms. Myers letter, the passage about being aware of the June 2011 receipt or request but not having received it. They don't seem to go on and use that passage for anything in their actual ruling, but as we've argued, the AG offered as an additional sustaining ground the argument that your Honor's order adopts, that under Gasparutti which they cited in their brief to the Court of Appeals, this case was no good from day one.

The Court of Appeals did not rule on it. The AG I believe in his return takes issue with our characterizing it that the Court of Appeals rejected that argument. They argued it in their brief. The Court of Appeals does not mention the argument in their opinion. They argued it again in a position for rehearing. The Court of Appeals didn't ask for a response to the petition and denied it. They did not petition for cert priority in that case. And so, you know, to me it's not at all

unusual where a Court affirms on one ground not to bother reaching additional sustaining grounds because that's just repeating the resolve.

As far as I can tell from review of case law, it's relatively unusual for a court to reverse and remand a case without even observing that there are additional sustaining grounds. I believe that matter was fully briefed puts squarely in front of the Court of Appeals and I think that it serves judicial economy to dispose of this case substitutively similar to the one we just finished arguing about so that we don't return to the Court of Appeals once again to find out whether they really meant to disregard that or whether they somehow just missed it in the brief and in the petition for rehearing.

And so, you know, as I say here we have kind of two issues that are interrelated. One, I don't think the Court could grant judgment on the pleadings that the AG did not receive the written request. I don't think that question is answered by the pleadings. They acknowledged that their lawyer received it and I don't know of any legal analysis that could conclude that that wasn't some form of receipt especially where the FOIA has no specific requirements and where it's the FOIA which ---

THE COURT: Isn't this pretty much -- doesn't it boil down to a question of law as to what is adequate

notice of a FOIA request, whether sending it through a lawyer or to a lawyer versus other means of delivery, receipt to the Court of Appeal -- I mean by the AG. Isn't that regardless you said it shouldn't be resolved under judgment on the pleadings, but should be as a result of complete litigation of the case. But doesn't it boil down to a question of law. And he could be right maybe mailing documents to a lawyer is sufficient. Maybe, you're wrong. You know, you have to do it a different way. My conclusion is that it's -- you can't satisfy the statute by serving a lawyer. I mean, doesn't it boil down simply to that.

MR. SILVERNAIL: On that specific point your Honor it does. I mean, there's no argument about fact on that. We allege that we sent it to a lawyer. They acknowledged that your Honor made a ruling that that wasn't sufficient.

THE COURT: Right, and if I'm wrong, then the Court of Appeals has to say you're wrong. Your type service was sufficient and I think I concluded that, you know, we getting FOIA all over the place all the time and whether or not the statute must be strictly complied with in order to get a FOIA case and then seek lawyer fees and compliance and pursuant to case nine years later or ten years later is that sufficient. You know, in some

instances serving a lawyer or satisfying a rule regarding serving a client in some instances, it doesn't. And we had that issued in cases within the last six months in various respects being presented to us on that question. And on this question I concluded that it was not done properly by Ms. Pope. And if I'm wrong, then that question needs to be answered by someone else other than me.

MR. SILVERNAIL: Well, and your Honor I would submit that even subsequent to that finding, I do believe belief that it would appropriate under cases like Wilbur that we've cited from the federal courts acknowledgedly. I don't think there is anything similar going either direction in South Carolina, but with a statute that has such an integral public policy meaning, we are here. All these issues have been fully litigated. The parties positions are very known. You know, the Court of Appeals has passed on this case once. I would submit that at this point there is no argument about, you know, what issue the Attorney General has raised, what issue the Attorney General presumably would raise if Ms. Pope reissued that FOIA request tomorrow.

And I suppose, you know, with your Honor's ruling if she did that, we would then have to return and start litigating again which I don't think is anybody's

goal. But I would submit that given the posture of this case which I very much hope is unusual if not extraordinary, that this FOIA case is still around nearly ten years after the initial request was made, that it is in the interest of judicial economy. It serves the purposes of the FOIA to go ahead and answer the substitutive questions in this case, so that everybody can be finished. The Attorney General has voiced his desire that we be done. I have no doubt your Honor would be able to spend this time on something else.

THE COURT: We have judicial economy and we have choices by the lawyers. You all are the one battling the issue. I don't know whether judicial economy really comes into play on this.

MR. SILVERNAIL: Well, as I say, the Wilbur case seems to pull that into play where the issues were otherwise joined before the Court and it served the ends of justice to make substitutive decisions rather than make a procedural ruling that avoids all of it especially as here where these are things that presumably would be repeated in a similar series of events beginning in 2021 rather than 2011. And so, you know, we would submit that at this point of this case it is time for a substitutive decision on the issues the Attorney General has raised which are frankly are quite similar to the ones that

you've overruled in the otherwise case and especially given all that we would submit that this should -- your order should respectfully be reconsidered and that, you know, we should get a fuller ruling in line with what we've asked for in this case. Bear with me just a minute, I think I'm...

The other thing I'll point out is the federal case law that line of cases that includes or leads up to Gasparutti, also acknowledges that, you know, futility of exhausting administrative remedies plays into a determination of whether a case should be done away on that bases. And your Honor I would submit that the existence of the other FOIA response, the other FOIA case those all demonstrate that whether or not the AG received directly from that Ms. Pope at its custodian of records the June 30th request in 2011, it would not have avoided this litigation. It is clear from the AG's position in both cases from the AG's position and the other response, they were not going to respond to Ms. Pope's request any differently in this case from how they did in the other case. And as I mentioned the Court of Appeals is actually focused on that letter although they don't seem to proceed to tell why it's relevant in their or relevant to their opinion. And so your Honor we would respectfully ask that the order be reconsidered and that the AG be ordered to

comply with the FOIA and to avoid driving this out any longer rely on the arguments that's spelled out in my motion. And also we would submit that the proposed order that we presented to the Court back I believe in December is what we believe should result in this case. Thank you.

THE COURT: Yes, sir.

Mr. Smith.

MR. SMITH: Your Honor, I'll be glad to argue the issue about whether the Attorney General's office never received it. It is my understanding is that from the discussion among counsel -- I'm not trying to put words in your mouth, but that your Honor was disincline to rule with the plaintiff on that. If I'm correct, you don't need to hear from me further. I'll address another matter briefly, but I just need to know whether you want hear from me on that?

THE COURT: Whatever you like to address.

MR. SMITH: Your Honor, the simple fact is the statute requires that it be receive by the agency. It never was. The Myers letter said so. It did not say that our office got it. It said that I have also been notified by attorneys of the civil division that you would refer to a request of a motion filed by you in South Carolina circuit court. Please be advised that the only record I receive from you she said if it's a request dated of

June 2011 that is not received by this office if you'll forward it to me and I will expedite the response to it. So she invited her to send this thing that we didn't have and she didn't do it.

The letter was addressed to the custodian of records, sending it to Sweeny, Wingate and Barrow is not consistent with either the statute or with the contents of the letter. The law firm is not the custodian of records for the office of the Attorney General. The Sweeny, Wingate and Barrow was not authorized to be attorneys as to FOIA requests for the office and so therefore sending it there is not compliant with the statute. There is arguments in our memorandum 11-2-20 that goes into our relationship with Sweeny, Wingate and Barrow. I don't think it's necessary to go over that for the purposes of this request. It was directed to the custodian of records of the Attorney General's office. It was not sent there. If plaintiff had issues about that receipt, she was informed of it by Ms. Myers letters. She was informed of it in our filings in this case. I don't know whether discovery can be conducted in FOIA cases. She never conducted discovery, never supplied an affidavit to the contrary. There's nothing to counter the fact that the Office of the Attorney General never received it. It's jurisdictional. It didn't trigger a duty to respond or

responsibility under the FOIA statute in a civil proceeding brought under that.

Mr. Silvernail suggested, well, judicial economy of this court ought to go on ahead and address the substitutive issues in here. We believe that that is barred by the lack of receipt adopted by the Attorney General. There's no basis for this court to proceed to consider disputes over the documents. If the Court wants to hear about that, I'll be glad to, but I would refer you to prior filings in this case including our proposed order. We believe there would be no basis for a substitutive ruling against the Attorney General's office, but we don't need to get that far. It was all disposed of by the fact that we never got the letter, therefore we didn't have to respond. So if there any further questions -- no further questions your Honor that completes what I have to say.

THE COURT: Okay. I have no further questions.

Anything further, Mr. Silvernail?

MR. SILVERNAIL: Just briefly, your Honor. I want to note that the letter from Tracy Myers the August 5th 2011 letter that's quoted in the Court of Appeals opinion and that we discussed at some length, August 5th 2011 is I believe either one or two days after this lawsuit was already filed. So I do want to make very

clear that Ms. Pope had not been informed or aware. She filed this lawsuit after receiving no response within the statutory period and this letter postdated the filing of this lawsuit. And so to the extent it matters to the Court, I want to be clear that she did not receive this letter and then go file a lawsuit. By the time she received the letter and was notified that the AG took the position it hadn't received the document, this case had already been filed and sent out for service.

MR. SMITH: If I may add to your Honor, Court of Appeals decision did not in any way decide this issue. It remanded the case for further proceedings and that's why we're here today your Honor.

MR. SILVERNAIL: And if I may just ---

THE COURT: Yes, sir.

MR. SILVERNAIL: I just want to note that in the litigation retention agreement which has been an issue in the other case, paragraph F dictates that private counsel or special counsel is deferred to in their must comply with the Freedom of Information Act specifically. And so, you know, I don't by any means suggest that the facts of this case can or will ever be repeated, but I believe in this case that presentation of that document to the law firm that was governed by an agreement that said they will comply with FOIA. You know, Mr. Smith's argument that

because it says custodian of records at the top, it had to be delivered somehow directly to a custodian of records.

THE COURT: You are referring to the -- what document again? Paragraph five of what document?

MR. SILVERNAIL: Paragraph F of the litigation retention agreement. I have a copy of just that part of it that I'm glad to hand up if I may approach?

THE COURT: All right. Well, I mean, you're -- that's the agreement in the first case that you're seeking production of it?

MR. SILVERNAIL: That is the part of the agreement that has been out for a while, but that is the agreement governed in relation to ---

THE COURT: You are seeking to compel production of it and the other case the 4900 case, but you're quoting it as authority in this case.

MR. SILVERNAIL: We are seeking production of it under the FOIA in the 4900 case. We have received this document from other sources. We have received parts of this document from the Attorney General. I believe that the portion that I'm referring to is actually attached to the Attorney General's answer in that case. It is the part that they took less issue with. And so, you know, again, I just submit that on this case that bolsters the idea even if in the abstract ---

THE COURT: That was produced years later, wasn't it?

MR. SILVERNAIL: It was.

THE COURT: Or hasn't been produced yet?

MR. SILVERNAIL: It has not been produced to Ms. Pope by the Attorney General.

THE COURT: So it cannot be a basis for evading FOIA, can it? Something that you discover five years later, six years later.

MR. SILVERNAIL: I don't know that I understand your Honor's question.

THE COURT: You're saying that you've discovered that the retention agreement or retainer agreement says that they will comply with FOIA and say at the time a FOIA request is made, that you can't assume that there's an agreement calling for the lawyer to ---

MR. SILVERNAIL: Well, your Honor and I believe I am almost certain, but I won't say I'm certain. I believe this is addressed in our complaint in this case from 2011 because the Attorney General's office uses a standard litigation retention agreement which exists on their website. And this is a standard provision of every one of those that we are aware of existing any time they use private counsel. We knew at the time that this was the form of their standard litigation retention agreement.

And in fact they placed all of the other litigation retention agreements with private counsel on their website for open viewing.

And so, yes, your Honor at the time we did know that their standard litigation retention agreement did require private counsel to comply with the FOIA and confirm that the State owned their records. And so, you know, regardless of the kind of complicated history of when and where the actual litigation retention agreement came from in this case, we did know in 2011 that the standard litigation retention agreement contained that term and to date everyone received to us. And we now know for certain that this one does. And so with all that said may I hand up a copy of that language?

THE COURT: I will accept that you stated to be contained in there.

MR. SILVERNAIL: So, you know, that I wanted to clarify those two things that the Myers letter postdates the filing of this lawsuit. And, again, that the Sweeny, Wingate and Barrow litigation retention agreement includes a requirement that they comply with FOIA.

THE COURT: All right. Anything further?

MR. SMITH: Yes, your Honor. First of all, the litigation retention agreement that he refers to is not signed by the Office of the Attorney General.

Secondly, as I said before and not to belabor the point, but Mr. Silvernail the statute requires that it was receive by the agency. It's not received by the agency. And in fact the FOIA itself -- I don't know where I put it. FOIA request itself ask for correspondence of the Attorney General's office with Bauknight. Sweeny, Wingate and Barrow would not have correspondence of the Office of the Attorney General, that would be something within the Office of Attorney General. Yeah, all correspondence between a number of the Office of the Attorney General and Russell Bauknight, so it wouldn't have that. It's directed the custodian of records. It should have been sent to the Office of the Attorney General. It was not. They did not explore that issue. And the rule requiring -- the provisions of FOIA requirement of receipt by the agency may be analogize to ordinary rules of service requirements for a summons and complaint. It doesn't provide for service upon counsel that people may think they're representing a party. It has to be served on the party. The FOIA request has to go to the agency just as a summons and complaint has to go to the party not to an attorney for the party. And so therefore we do not believe that they have shown that -- that they complied with FOIA. They fail under the statute. And so for this reason, we would ask that their

motion to alter or amend be denied.

THE COURT: Mr. Black, were you ---

MR. GENDE: Mark Gende.

THE COURT: I'm sorry, Mr. Gende.

MR. GENDE: That's quite all right, your Honor. And I represent the plaintiff's in case 4900 and not the FOIA 4900. And I'm not in case 350 at all, but since what's being called our fee agreement is being referenced, I raised my hand before Mr. Smith spoke because I wanted to make sure -- and Mr. Smith has pointed it out now that the Court recognizes that that document that's been handed to you now is an unsigned document by any party and I think that that is very probative. I don't want to start to get into whether the terms of that document in part or in total were understood by either the Attorney General's office or Sweeny, Wingate and Barrow to be applicable to our representation in case 4900, but there is deposition testimony on that case in case 1337 that all the items in the litigation fee agreement, 11 page retention agreement were not applicable to Sweeny, Wingate and Barrow. So I just wanted you to understand that because there's the sense that Mr. Silvernail could produce that, so here's the evidence that Sweeny, Wingate and Barrow should have known that they were controlled by FOIA. And I can tell you that that is not the case. You been given unsigned

document and there is testimony in the record in another case that all the terms of that document were not applicable.

THE COURT: Well, at this point I haven't been given any document. Mr. Silvernail ---

MR. SILVERNAIL: Your Honor, I just want to make the affection Mr. Gende is not counsel in this case. I am not sure what part that speech was intended to play here, but I would submit that the issues in this case are between Ms. Pope and the Attorney General. And I don't think that the members of Sweeny, Wingate and Barrow have anything properly to offer at this hearing.

THE COURT: All right.

MR. GENDE: I think he's used our name quite a bit today your Honor and that relevance is clear.

THE COURT: All right. Well, none of what's been stated has any bearing on the ruling that I've already made and the ruling that I've already made is that the -- that you or your client did not comply with the statute to trigger a FOIA case. And so the -- I have not overlooked or misapprehended any well pled and pled in supported facts or law or prior court ruling or pleading and I deny the motion to alter or amend the case 350. All right. Anything else?

MR. SMITH: Nothing further, your Honor. Thank

you for your time and patience with us today.

MR. SILVERNAIL: Thank you.

THE COURT: Thank you all.

END OF REQUESTED TRANSCRIPT

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 65, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of Common Pleas for Richland County, South Carolina, on the 16th day of April, 2021.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 7th day of July 2021.

Keshia Reed

Keshia Reed, Court Reporter