

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge  
The Honorable Liz Godard, Clerk of Court

Appellate Case No. 2013-00169

Alan Wilson, in his Capacity as Attorney General of  
South Carolina; and others ..... Plaintiffs,

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust  
Code Section 62-7-405, is.....Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and  
Tommie Rae Hynie are.....Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.  
Brown Thomas and Robert L. Buchanan, Jr., are...Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust  
u/a/d August 1, 2000

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## QUESTIONS PRESENTED

- I. **The June 13 Orders violate the Due Process and First Amendment Rights of Appellant, Buchanan, Brown's heirs and others, and the Equal Protection rights of Brown's Incarcerated son Michael and others.**
- II. **The Attorney General's withdrawal, jeopardy to Brown's backup 1999 will, and the threat to the "I Feel Good" Foundation's royalty copyrights, give Buchanan and Appellant Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust.**
- III. **The June 13 Orders promote fraud on the Court by ignoring the Richland County Court's jurisdiction; and preventing Appellant and Buchanan from demonstrating Tommie Rae was not Brown's spouse and the State/AG joined in or condoned material misrepresentations by Tommie Rae, Forlando and others.**

## Statement of the Case

This is an appeal from three orders issued without notice or hearing on June 13, 2013 (the "June 13 Orders"). The June 13 Orders relate to the estate and 2000 Trust of entertainer James Brown<sup>1</sup>.

The June 13 Orders, affecting fourteen Aiken County James Brown cases, were issued without service of a pleading on or notice to at least a dozen necessary parties, including:

1. Five of the seven Grandchildren Beneficiaries of \$285,000 education subtrusts of the 2000 Trust: Romunzo, Janice, Lindsey, and minors Sydney and Carrington L.;
2. Brown's DNA-proven daughters acknowledged by the Estate in 2007: LaRhonda Pettit; Nicole Parris; and Jeanette M. Bellinger;
3. Brown's daughter Lisa from his first marriage;
4. Brown's incarcerated son Michael and claimed son James Curtis [Both awaiting DNA testing];
5. The fiduciaries or beneficiaries of Brown's 1999 backup will which – like the 2000 estate plan – leaves Brown's worldwide music empire to The James Brown "I Feel Good" Trust, Brown's private foundation for education for needy students;
6. Appellant and other creditors who have demanded notice.

In addition to the Aiken cases, the June 13 Orders purport to materially alter the conduct and outcome of a pending federal suit; three pending cases under the South Carolina Freedom of Information Act ("FOIA"); and Richland

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<sup>1</sup> Appellant also appeals the Form 4 Order Denying her Motion to Alter, Amend or Vacate.

County Case 2010-CP-40-4900 (the "Wingate Suit").

Under South Carolina Trust Code ("SCTC") Section 62-7-204,<sup>2</sup> by Order of the Honorable L. Casey Manning ("Judge Manning"), the Wingate Suit, filed May 19, 2010, currently has jurisdiction over material James Brown issues, including:

1. May the State/AG sue Robert Buchanan, Jr. and Appellant in a tort suit with its sole counsel being a private law firm also representing Tommie Rae and other non-residents?
2. May Russell Bauknight sue on behalf of the State/AG while also serving as agent for Respondent Tommie Rae and her son?
3. Was Tommie Rae Brown's spouse?
4. Was the value of Brown's music empire at his death on December 25, 2006 almost \$84 million – or less than \$4.7 million?
5. Should two Newberry County FOIA suits have been moved to Richland County and consolidated with the Wingate Suit?
6. Should Tommie Rae and others be allowed to intervene in FOIA suits to stop release of public documents?
7. Have Plaintiffs misrepresented the value of Brown's assets; the heirs of James Brown; and their rights under the Federal Copyright Act?
8. Did Appellant and Buchanan breach their fiduciary duty by conducting the *Wilson v. Dallas* appeal; not accepting a \$100 million offer for Brown's music empire; or otherwise?

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Plaintiffs in the Wingate Suit are Attorney General Wilson ("State/AG") and more than a dozen individuals, including Tommie Rae Hynie ("Tommie Rae") and her minor son, James B. Plaintiffs prevented Buchanan and Pope's efforts to dismiss the Wingate Suit or to transfer it to Aiken County. [Appeal Orders]

Two of the June 13 Orders were issued by the Honorable Doyet A. Early, III ("Judge Early"). The third was issued by the Honorable Liz Godard, Clerk of Court for Aiken County. They were issued just a month after the final decision of the South Carolina Supreme Court ( the "Supreme Court") in *Wilson v. Dallas*, 743 S.E.2d 746 (2013).

The *Wilson v. Dallas* decision voided an August 10, 2008 contract between former Attorney General Henry McMaster (the "AG/State") and others which was approved in modified form by Judge Early on May 26, 2009. [Agrmt.8/10/08]

The AG's agreement gave 25% of Brown's assets to Tommie Rae and 25% to clients of Louis Levenson, Esquire ("Levenson").<sup>3</sup> [Agrmt.p.]

The AG's agreement also stipulated that Tommie Rae would be considered to be Brown's spouse "for all purposes." Respondent James B., not born of a marriage and the only claimed child born in the 22 years between Brown's vasectomy and his death, was stipulated to be a child. James B. was exempted from the estate's official "Peeples DNA Protocol" for non-presumed children.

Brown's three DNA-proven and acknowledged daughters, his imprisoned son Michael; and other heirs being identified as DOE Defendants in the pending Levenson suit for an administration in intestacy (the "Intestacy Suit") were all known to the AG. But they were excluded from the AG's settlement. The AG/State agreed to join with Tommie Rae and others to :

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<sup>3</sup> Of Brown's dozen-or-more claimed heirs, Levenson represented only three presumed children: Deanna, Larry and Yamma. Two others were acknowledged only in the will which they claimed was invalid.

... use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or Successor...

As to Robert Buchanan, Jr. and Appellant the State/AG agreed:

...that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust...[Agr., p. 2]

On September 25, 2008 CPA William Sellars, appointed by Judge Early, filed the estate tax return for Brown's estate. The music empire was valued at approximately \$84 million, after taking into account a \$15 million debt to the New York Teachers (the "TIAA Debt").

The \$84 million conformed to the valuation formula presented to Judge Early, AG McMaster and others, who made no objection, on November 15, 2007.<sup>4</sup>

On September 27, 2008 Brown's grandson Forlando Brown ("Forlando"), testified in a deposition in Federal District Court Case No. 3:08-cv-00014 -WOB

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<sup>4</sup> The State/AG's claim that the approximately \$84 million of the music empire on the estate tax return was improper and without basis, overlooks that on November 15, 2007 Buchanan and Pope moved for Judge Early's approval of a formula to value the asset on the estate tax return. The formula proposed was:

Value of Royalties and Publicity Rights = 12 ½ - 14 times:  
(Average Annual Royalties PLUS one-half Gross Annual Road Revenues)

Brown's average royalties were consistently about \$3 million per year. His Road Revenues for 2003 - 2006 were about \$18 million.

(the "Forlando Federal Suit") that offers of \$150 million were still available for the music empire. Forlando is 39% owner of TJBL, a group seeking the purchase the music empire.

On November 18 and 19 a hearing on the attempt to obtain a temporary injunction against the 2000 Trust was held in the Forlando Federal Suit. The estate tax return was examined in detail. No objection to the \$84 million value was made.

Forlando's father, respondent Terry Brown ("Terry"), also a part TJBL, attended the hearing.

On January 30, 2009 Terry joined the AG's settlement. Terry was given nearly 5% of Brown's assets and a right of first refusal to buy the music empire (the "ROFR").

In March 2009 Buchanan and Pope raised concerns to AG McMaster that Terry and others were seeking to devalue the music empire since Terry acquired the ROFR. [Ltr. Buchanan and Pope to AG McMaster 3/09]

On May 26, 2009, with motions to dismiss pending and unheard as to all claims of Tommie Rae and all challenges to the estate plan, Judge Early approved the AG's settlement. Buchanan and Appellant were replaced by Bauknight.

On May 26, 2009 Appellant was owed \$1,473,550 in court-approved PR/Trustee commissions and \$47,972 in unpaid SA fees from 2007. [Claim. Ex. 5] Both amounts, by court order, have earned interest at the legal rate since 2009. [Ord. 1/8/08]

On May 19, 2010, the State/AG, Tommie Rae and others sued Buchanan

and Appellant in the Wingate Suit. [Comp. Wing.]

On August 27 Tommie Rae and all who had challenged Brown's estate plan in the Levenson Intestacy Suit admitted in the Wingate Suit:

...the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. [Mem. Opp., p.2, 8/27/10]

Interrogatory answers in the Wingate Suit confirmed that all Brown's acknowledged children had discussed Brown's estate plan with him during the last three years of his life.

On September 30, 2010 Respondent Dallas filed for bankruptcy in Georgia. He asserted a \$6 million PR/Trustee commission claim was his largest asset.

In November the State/AG named Cannon and Dallas as their witnesses against Buchanan and Pope, even though Cannon had been indicted for taking more than \$12 million from Brown and a 2008 forgery. [Cannon. Sentend.Exhibit]

In November 2010 Wingate moved to be relieved from default as to the Counterclaims of Buchanan and Pope in the Wingate Suit. [Mot. Rel.Def.]

In 2010 Brown's estate brought in \$10 million, including settlements from suits commenced by Buchanan and Pope in 2008.[Acctg.]

In January 2011 AG McMaster, Terry and Others amended the Legacy Trust, and Terry's interest in the estate and ROFR were transferred to Forlando. [Jan. 11 Transfer Emails, Jones, etc.]

In April 2011 Wm. Jeffrey Smith and Appellant circulated the draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I*

*Feel Good” Trust doesn’t... for review by professionals. [P.Fdns.]*

In May, 2011 Bauknight filed an amended I&A asserting the value of Brown’s music empire was about \$4.7 million. [Am. I&A, partial].<sup>5</sup> On May 6, 2011 the State/AG asked the Supreme Court to supplement the record in *Wilson v. Dallas* (the “ROA”) by accepting the \$4.7 million value.

On May 18, 2011 Forlando filed a Status Report in the Forlando Federal Suit. He did not disclose his ownership of the ROFR.

On August 3, 2011 Appellant filed a FOIA Suit in Newberry County to obtain:

1. A copy of the Legacy Trust, with amendments, which had sued her in the Wingate Suit; and
2. A copy of Bauknight’s \$4.7 million appraisal [Complaint].

On August 10, 2011 Appellant filed a FOIA Suit in Newberry County to obtain a copy of the Wingate Litigation Retention Agreement.

In September 2011 The Honorable Susan Barrett abstained as to the Dallas claim, allowing the \$6 million Dallas claim to be heard in Aiken.

In the fall of 2011 Tommie Rae, Bauknight and other Wingate Suit Plaintiffs moved to intervene in Appellant’s FOIA Suits to stop release of the Wingate Agreement.

In October 2011 the TIAA Debt was paid in full.

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The original I&A filed by Respondent Dallas and Al Bradley valued the music empire at about \$83 million [I&A, partial]

In October 2011 Respondent Cannon pled guilty to some of the \$12+ million he was charged with taking from Brown. [Plea Exs.] No restitution was sought.

On October 26, 2011 a hearing was held in Newberry County on the State/AG's motion to consolidate the FOIA Suit and the Wingate Suit.

On November 1, 2011, Bauknight, through counsel, represented to the Supreme Court:

1. Tommie Rae's elective share claim was a "slam dunk."
2. Copyright termination rights are "all this case is about."
3. Brown's estate and 2000 Trust have no corpus to speak of.
4. If Tommie Rae does not control Brown's termination rights, the settling children do.
5. But for the AG's settlement, the "I Feel Good" Trust's Royalties will end by 2023. [Disk, Oral Argument]

By Order dated November 22, 2011, the FOIA Suit seeking the Wingate Agreement was moved to Richland County and consolidated with the Wingate Suit. [Order dtd. 11/22/11]

In December, 2011, based on Bauknight's representation to the Dallas Bankruptcy Court that all PR commissions should be determined in the same proceeding, Appellant moved for Buchanan and Appellant to intervene in the Dallas \$6 million claim suit. The Bankruptcy Trustee consented.

By Order dated January 11, 2012 the FOIA Suit seeking the \$4.7 million appraisal was moved to Richland County. The State/AG's motion to consolidate it with the Wingate Suit is pending.

On April 13, 2012 a hearing was held in the Forlando Federal Suit on the

dismissal of Forlando's claims<sup>6</sup>.

As relates to the counterclaims, the following discussion took place between Judge Bertelsman and Forlando:

THE COURT: Well, do you have any assets, Mr. Brown?

MR. BROWN: I do not.

THE COURT... But you're going to pursue these counterclaims, but if he has no assets – You willing to give us a sworn financial statement?

MR. BROWN: Absolutely.

THE COURT: Do you stand to gain any inheritance under the settlement in the State Court?

MR. BROWN: Not unless my father were to pass away.  
[Hg.4/13/12, pp, 3,46]

In May 2012 Buchanan's and Appellant's amended counterclaims against Forlando were filed in the Forlando Federal Suit.

On May 18, 2012 the State/AG, through Wingate, filed a motion to compel settlement against Buchanan in the Wingate Suit.

Appellant responded, asking that Buchanan receive the proposed \$500,000 payment as already due, but that the settlement be declared void as against public policy. [Ret.]

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<sup>6</sup> During his now-void appointment Bauknight notified Judge Bertelsman that he intended to drop the 2000 Trust's counterclaims for attorneys fees for the 4-year injunction attempt.

In June 2012 James Curtis wrote Appellant claiming to be Brown's oldest son. He asked to be DNA tested. Appellant notified Bauknight. [Ltr. Curtis, Article Papa's]

On July 5, 2012 Judge Manning orally ordered mediation in the Wingate Suit. A written order followed.

On July 12, 2012 Judge Early declined to hear Appellant's motion to declare void or expired three 2008 Gag Orders which prevent as many as 50 people from discussing the widely-known contents of Tommie Rae's "diary". [Brief]

On July 19, 2012 the State/AG and Tommie Rae obtained an emergency oral ruling to prevent the deposition of Dallas, who was their witness.

On July 20, 2012 Dallas gave a sworn statement confirming why the Estate/2000 Trust, during his administration, asserted Tommie Rae was not Brown's spouse. [Sworn statement Dallas]

In the summer of 2012 the State/AG and Tommie Rae issued a subpoena for the notes and sources of journalist Sue Summer.

In 2012 Summer filed a FOIA suit. Bauknight, Tommie Rae and James B. are seeking to intervene in the Summer Suit to stop FOIA compliance.

In September 2012 Wingate withdrew the subpoena for Summer's sources and notes.

In 2012 the State/AG and Bauknight joined Tommie Rae in a motion to dismiss the Gag Orders appeal. [Return]

In late 2012, Bauknight secretly paid Wingate \$563,000 from the Estate. This was in addition to Wingate's 40% contingency.

On February 27, 2013, the first *Wilson v. Dallas* opinion was issued. It contained Footnote 29, which said:

29 Although Brown's music rights have been widely reported as being worth up to \$100 million or more at death, Bauknight filed documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of \$4.7 million. The \$4.7 million valuation has been questioned based on the fact that it came at a time when one of Brown's sons, Terry Brown, had joined the compromise upon being given a first right of refusal to purchase the estate assets.

Further, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, to sue Appellant Pope on behalf of the State, Bauknight and others while representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, effectively controlling the charitable trust through the appointment of Bauknight, who serves at the AG's pleasure.

On March 6, 2013 Appellant met with AG Wilson to discuss concerns.

On March 14, 2013 the State/AG's Petition for Rehearing said of the Wingate Suit:

In this instance, the [AG] was particularly hesitant to sue because Appellants Pope and Buchanan enjoy a superb reputation throughout the legal community. Appellant Buchanan serves as a part-time federal magistrate judge and is a long time member of the South Carolina Bar... Appellant Pope has, for more than thirty years in South Carolina, been an outstanding attorney in the field of trust and estate matters. She is considered by the legal community to be an exceptional attorney. [p.25]

On April 10, 2013, Forlondo gave a deposition in the Federal Case.

On April 18, 2013 Wingate asked Judge Manning to delay any hearing in the Wingate and FOIA Suits. [Ltr. Gende]

On May 8, 2013 the Supreme Court issued the final *Wilson v. Dallas* decision. Certain matters were remanded to the circuit court, including the appointment of fiduciaries in accordance with Brown's documents.

Before their replacement Buchanan and Pope had designated Ronald Stanley, Esq. and former Warner Music executive Ray Gonzalez, Esq., entertainment counsel to the Estate/2000 Trust as successors<sup>7</sup>.

Brown's documents require three fiduciaries who will "vigorously defend" the estate plan<sup>8</sup>.

Between May 8 and May 12, prior to the Remittitur, Bauknight obtained *ex parte* orders from Judge Early and the Probate Judge naming him SA and ST. They were not served on anyone.

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<sup>7</sup> Failing appointment by outgoing fiduciaries, the Advisory Board makes fiduciary appointments. When the May 26 Order was issued those on the Advisory Board were: Dr. Ann Carmichael, Judge (Ret.) Walter Williams and Dr. Leonard McIntyre. Former State Superintendent of Education, Inez Tenebaum, Esq. was also a member of the Advisory Board until she resigned to accept a now-completed federal post.

<sup>8</sup> Under documents submitted by Buchanan and Pope and approved by the IRS, once the "I Feel Good" Trust is funded, the three trustees will share ½ of 1% of the value of the "I Feel Good" Trust annually. Prior to that time, PR/Trustee commissions under all documents must be reasonable.

On May 10, 2013 Wingate moved to be relieved as counsel for the State/AG in the Wingate Suit. The motion is pending but delayed at Wingate's request. Bauknight has not moved to be relieved as agent for Tommie Rae, James B. or the State/AG.

On May 12, 2013 Wingate wrote Judge Manning:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from 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. . . the court no longer puts any primacy or priority on any court hearing these matters.

..Therefore, Case 4900 Plaintiffs and Proposed FOIA Interveners respectfully request that [the Wingate & FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.]

On May 17, 2013 Judge Early directed that any *Wilson v. Dallas* remand requests must be made by properly-filed motion by May 25.

On May 17, 2013 Appellant wrote AG Wilson asking him to support Brown's 1999 Will as a backup to the 2000 estate plan. [Ltr. Pope to AG]

On May 22, 2013 Bauknight signed, but did not file, an accounting revealing \$563,000 payments to Wingate in 2012. [Bauknight Acct.]

By May 25, 2013, three motions, all by Appellant, had been filed:

1. Motion for Expedited Relief to Protect The James Brown "I Feel Good" Trust ["Case 872"]<sup>9</sup> [Mot.]
2. Motion to Expedite Intervention; Add Parties; and Determine

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<sup>9</sup> Case 2008-CP-02-0872 ("Case 872")

Commissions and Attorneys' Fees. [ Dallas Claim Case] [Mot.]

3. Motion for Scheduling Order and Appointment of Limited SA/ST to Comply with Mandate of Supreme Court Decision, *Wilson v. Dallas*. [Mot.]

No record was made of the May 29, 2013 status conference, Levenson and counsel for Tommie Rae announced their intention to attempt to reinstate the AG's settlement. The AG made no objection.

The AG announced his intention to withdraw from the Aiken cases.

On May 29, 2013 Bauknight delivered a notice of disallowance with impending bar, asserting Buchanan, Pope and their counsel Tressa Hayes, Esq. and James Bailey, Esq. were not entitled to be paid. [Disallow] Unless suit were filed in 30 days the following would be disallowed:

1. Appellant's approximately \$1.4 million, with interest since 2009;
2. Approximately \$80,000 due Tressa Hayes, Esquire under contract with the Estate/2000 Trust for appellate work; [Claim. Ex. 12]
3. The unpaid approximately \$110,000 due James Bailey, Esquire, for his litigation services to the Estate/2000 Trust' [Claim, Ex. 5]
4. Buchanan's claims.
5. The offsets and counterclaims of Buchanan and Appellant in the Wingate Suit, the Forlando Federal Suit and the FOIA suits. [Dissal.]

On June 4, 2013 James Griffin moved to be relieved as counsel for Brown's DNA-proven and acknowledged daughters LaRhonda and Nicole. He asked the Court to allow them time to obtain counsel.<sup>10</sup> [Mot.Grif.]

Griffin's motion has not been heard.

On June 10, 2013 Appellant filed a Summons and Complaint to void

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<sup>10</sup> Griffin had merged with counsel representing McMaster's Legacy Trust

Bauknight's *ex parte* appointments and/or remove him for cause, and for other relief. [Complaint. Mot. Affidavit.]

The June 13 Orders, in part:

1. Enjoined Appellant, other fiduciaries and creditors who support the 2000 Estate Plan and backup 1999 Will from participating the James Brown estate and trust cases;
2. Directed that Appellant's unheard motions be removed from the public record;
3. Directed the Clerk not to accept any filings of Appellant in any case except the case she filed on June 10. [Ords.]

On June 24, 2013 Appellant hand-carried her motion to alter or amend the June 13 Order to be filed. The clerk advised Appellant that Judge Early had directed her not to accept any filings from Appellant except in the case filed June 10, Case 2013-CP-02-1337 ("Case 1337).

When Appellant explained to the Clerk that the motion did not relate to Case 1337, the clerk excused herself to make a phone call; returned; and allowed the motion to be filed.

On July 2, 2013, matters related to David Cannon<sup>11</sup> and other matters came before Judge Early.

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<sup>11</sup> In November 2010 Cannon was named by the State/AG as a witness against B&P. In February 2010 he had been indicted for taking more than \$12 million from Brown between 1999 and 2006, and a 2008 forgery. In November 2011 he entered an *Alford* plea to some of the takings. Neither the State/AG nor Bauknight recommended any jail time or restitution, even though Cannon owns a million-dollar retirement home on Roatan Island purchased in 2007. At a hearing seeking to reopen the restitution, the State/AG and Bauknight blamed each other for the failure to seek restitution on behalf of the needy student to whom Brown had devised the missing funds.

On July 2, 2013, and by later motion, Appellant asked Judge Early to require the release of fee agreements of Levenson, Bell, counsel for James B. and others which were the subject of a 2010 Order, but missing from the Clerk's office. [Email. Order dtd. 2010]

Since June 13 Appellant has made multiple requests for a hearing as to the 2008 Gag Orders.

On July 8, 2013 Bauknight presented *ex parte* to Judge Early an ethics opinion of Professor Nathan Crystal.

On July 9, Appellant's motion to alter or amend was heard and the ethics opinion was mentioned. [Tr. 7/9/13] Appellant has requested, but not been provided, a copy.

On August 20, 2013, Bauknight was deposed in the Forlando Federal Suit. When questioned about whether appellant's service in appealing the AG's settlement helped the estate, he stated:

That's poppycock. Pure speculation from your client. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic].

You don't know the value. . . She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with it. ...You know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....

...[Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent....Your client didn't even try. Your client didn't know the numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Bk.depos.]

In August 2013 Brown's son Daryl launched a website to try to help save Brown's estate plan and the "I Feel Good" Trust.

On September 11, 2013, Terry gave his deposition in the Forlando Federal Case. He affirmed the validity of Brown's estate plan.

On October 1, Bauknight and his appointee were appointed fiduciaries based on a summons and petition not directed to or served on any heirs, devisees or beneficiaries as required by the Probate Code; and after a "hearing" where there was no required notice and those attending were not allowed to examine either Bauknight or his appointee. SEE SCPC §62-3-402 and §62-3-403.

In October 2013 Appellant filed a motion to be named GAL for incarcerated son Michael after seeing that Bauknight's appointee was trying to terminate his interest as an heir without his having been served or allowed to undergo the Peoples DNA Protocol. [Supp. Ret. AFF. GAL]

On October 8, 2013 Bauknight filed the May 22 accounting for 2012. It:

1. Disclosed \$563,000 paid to Wingate in addition to his 40% contingency.
2. Carried Estate assets at \$1.
3. Did not account for several millions in transfers to and from an LLP he formed. [2012 Acctg.]

AG Wilson was not advised of the \$563,000 transfer to Wingate, and has no documents related to the LLP Bauknight created in 2012.

In 2013, Bauknight asked the Federal Court to treat the less than \$4.7 Million appraisal as confidential in the Forlando Federal Suit. Bauknight asserted he had never shown the appraisal to anyone - not even the AG.

There is no evidence there was any written authorization for Wingate to seek to intervene in three FOIA suits for Tommie Rae and other Wingate Suit Plaintiffs.

On October 8, 2008 Judge Early "double approved" the amount paid Buchanan under the January 8 Order; praised his service; and left open his recovery and offset if the Wingate Suit "settlement" is set aside and in the Forlando Suit.

On October 10, 2013 Bauknight's appointee was named limited SA in an *ex parte* probate court order<sup>12</sup>. [Order dtd. 10/10/13]

On November 18, 2013, the Honorable J. Gregory Wehrman declared that the Wingate Contingency Fee Agreement was a public document in the Forlando Federal Suit. Bauknight had prevented its release under FOIA for nearly 2 ½ years; and the State/AG had acquiesced.

The Wingate Agreement showed that the Wingate Suit contract was not signed by any Plaintiff other than Bauknight. It was signed by Levenson, Bell and counsel for Tommie Rae. The three approved the complaint. Neither Wingate nor Bauknight had written authorization to sue or speak on behalf of the

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<sup>12</sup> A motion to reconsider the *ex parte* order is pending.

State/AG.<sup>13</sup>

On January 6, 2014, the Appointee asked the Court to terminate LaRhonda's acknowledged heir status on January 8, 2014, even though she had died in December. [Ltr. Beach 1/6/14].

As of February 19, 2014:

1. Named fiduciaries Deanna Thomas, David Cannon and Albert Dallas have declined requests to support the 1999 Will;
2. Appointee has ravaged the rights of Michael, LaRhonda, Lisa, Nicole and Jeanette, Daryl and James Curtis with knowledge, as defined in the Trust Code, of the damage he is doing to the "I Feel Good" Trust's royalty copyrights; [See Mots.Pope.Aff.]
3. Neither Bauknight nor Appointee has asked the Court to dismiss Tommie Rae's claims; lift the 2008 Gag Orders; or complete the People's DNA Protocol;
4. Judge Early has declined to hear Appellant's Motion to be GAL for Michael and others not challenging the "I Feel Good" Trust;
5. Bauknight continues to be agent for Tommie Rae and James B. in Wingate Suit, and claims to speak on behalf of the State/AG; and
6. Bauknight, as agent for Tommie Rae, James B. and others is continuing to try to intervene in 3 FOIA Suits.

### **Statement of Facts**

Fifteen years ago, on February 24, 1999, entertainer James Brown made what may be the most important recording of his life. In his staccato style Brown talked for four minutes about the "I Feel Good" Trust he was preparing to establish.

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This did not end the matter. Sr. Assistant AG Jones regularly attended the Wingate Suit hearings as a client. At the August 2010 hearing, he allowed himself to be introduced as one of Wingate's 15 or so clients.

He hoped that the tape would be "duplicated many times and put in many places." He directed that it not be used for any commercial purposes, but only to "stabilize what we are trying to do here today."

Brown spoke of making it with God's blessing despite all obstacles. Brown mentioned leaving school in the 7<sup>th</sup> grade. Referring to "the Kennedys" Brown said he was at the stage in life to think about giving back.

Brown made clear his education trust was for "poor kids" of all races – "not just Blacks." "We've had enough of that in America already."

Brown said that being in the recording industry, he knew the tape could be altered or re-mixed. He said making multiple copies would make it "subject to be checked for any hanky panky."

Brown didn't sign the next day as planned. He said he wanted to be sure he fully understood the step he was taking. [Tape, Brown 2/24/99]

On June 15, 1999 – four days after completing a \$26 million financing deal for himself and his company in New York – Brown put the "I Feel Good" Trust into place. [Pullman Article. 1999 Will]

The next year Brown finalized his estate plan. He made minor modifications to the scholarship provisions of the "I Feel Good" Foundation and made the trust which would hold his \$100 million music empire irrevocable. [Excerpts, Will/Trust.]

Brown's companion and all six of the dozen or more claimed children he acknowledged in the will discussed Brown's estate plan with him in the years before his death. [Ans. Interrog Wingate]; Two children and Tommie Rae were

present when Will and 2000 Trust were signed [Adv. Bd. Doc.]. All knew the establishment of a charitable trust was what Brown wanted.

When Brown died on Christmas Day 2006 four separate documents signed over two years established what should now be the largest-ever private foundation in South Carolina dedicated solely to the education of needy students.

Brown's own voice and two successive wills made his estate plan ironclad.

But for the intervention and takeover of Brown's private assets by the highest legal office of the State of South Carolina, its Attorney General, about \$90 million, under IRS distribution requirements, would now be dispensing several million dollars a year in scholarships for needy students.

This did not happen.

Whether by design or inattention, two separate AGs have allowed their staffs to wield the power of the State/AG – and more – against Appellant; the "I Feel Good" Foundation; and against Brown's real heirs. In short - against anyone who dared to challenge the AG's right to take over the operation of Brown's music empire and give it away as he chose.

Since August 10, 2008 the AGs; their appointee; and the appointee's appointee have allowed Tommie Rae and three attorneys - collectively wanting about \$30 Million from funds Brown set aside for scholarships - to dictate the State's charitable policy.

The AG's first problematic alliance was with Brown's original trustee David Cannon and Brown's then- 21-year-old grandson Forlando. Forlando served as the public face of the Cannon trustees, giving media interviews to praise Cannon

for his honesty and bravery<sup>14</sup>. [Ltr. Buchanan and Pope to AG McMaster 6/23/08].

The Cannon Group couldn't account for \$12 Million missing since 2000. And they wanted a \$15 Million commission and options or a "kickback" after the sale of the music empire and formation of an IPO.<sup>15</sup> But they did support Brown's estate plan.

When the AG shifted his alliance to Tommie Rae, it was clear from the first day her interest was directly adverse to the "I Feel Good" Trust and Brown's estate plan. Yet by July 2008, her attorneys were beginning to fashion the State/AG's actions.<sup>16</sup>

From these alliances two AGs have developed and supported for six years a handful of false propositions that have twice threatened to ruin the "I Feel Good" Trust; have trampled on the rights of Brown's real heirs; and have destroyed the careers and reputations of Appellant and Buchanan.

The June 13 Orders, blessed by AG Wilson with knowledge Levenson and

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<sup>14</sup> Forlano was represented by David Bell, Esquire. Bell is known for his dirty tricks, including filing career-threatening six grievances against Levenson in two states. [Bell even accused Levenson of forgeries on the 30% contract with Terry and Forlano.] [Levenson corresp. W/Grievance Board, 2007.]

After Terry joined AG's settlement in 2009 Bell threatened Buchanan with a judicial grievance if he did not resign. [Ltr. Bell to Buchanan 3/09.]

<sup>15</sup> For his loyalty Forlano was given a 39% interest in the company seeking to purchase Brown's \$100 million music empire. From the sale the Cannon trustees proposed to pay themselves \$15 million as PR/Trustees' commissions. They also sought options or a "kickback" from the resulting IPO.

<sup>16</sup> On July 30, the day AG McMaster wrote to approve Buchanan and Pope as permanent Trustees, his Sr. Assistant was meeting with counsel for Tommie Rae. [Email, Rosen, Medlin 7/08]. The secret mediation which produced the AG's settlement was 11 days later.

Tommie Rae are committed to reinstate the States/AG's takeover, continue this destruction. The June 13 and subsequent orders, and the court's refusal to hear motions, have deprived Appellant, Brown's heirs and others seeking to enforce Brown's noble gift to needy students of a right to even approach the table.

The AGs have relied on Forlando's and Hynie's false claims, including:

1. The original false claim that Buchanan and Pope were incompetent intermeddlers who ousted the Cannon group to get a \$5 million commission on Brown's \$100 Million estate.
2. The false 2011 - 2014 claim that Buchanan and Pope are incompetent and were seeking a \$5 Million commission from a \$5 Million estate.
3. The false claim that Tommie Rae and her son control the termination rights to 800+ of Brown's songs, which would be lost but for the AG's settlement.
4. The false claim that Brown's music empire was worth \$4.7 million when he died; and the AG's settlement didn't cause an estate tax problem.
5. The false claim that Buchanan and Appellant intentionally overstated the music empire's value to the IRS by \$79 Million for an improper purpose.

The June 13 Orders -- with additional *ex parte* orders and orders secured without proper notice or hearing since the *Wilson v. Dallas* decision -- make clear that the circuit court has accepted the above propositions as fact. Further, it has added the "finding" that there must be a speedy resolution of all issues related to this magnificent but complex gift which Brown set up to last in perpetuity.

It is a rush to injustice.

The AG has done nothing to stem the tide - actually a tidal wave - his office created in 2008 when it placed the state's power in Tommie Rae's hands.

The vitriolic attacks by the State/AG against Buchanan and Pope are

reflected in the June 13 Orders, but were hatched in the fall of 2008 when it became clear that Buchanan and Pope – like any fiduciaries doing their job – could not condone giving away half of Brown's "I Feel Good" Trust to a non-wife and about half of Brown's claimed children.

In early 2009 Levenson threatened Buchanan with Rule 11 sanctions and Bell later threatened him with a judicial grievance for not going along with the settlement. [Buch.phone.notes. 1/31/09; Bell.ltr]

In front of Judge Early, however, the threats remained veiled until Judge Early approved the AG's settlement in the May 26, 2009 Order.

By September 9, 2009, the State/AG and Tommie Rae were "speaking as one". The AG's appointee, Bauknight, became their principal voice. Bauknight, through counsel, said in a September 2009 hearing before Judge Early:

THEY HAVE VIRTUALLY NO CHANCE OF SUCCESS ON THEIR APPEAL. THEY WILL NEVER BE ABLE TO OBTAIN REINSTATEMENT AS PERSONAL REPRESENTATIVES. THE BENEFICIARIES DON'T WANT THEM... [Emphasis applied]

Then Tommie Rae's counsel spoke for the Attorney General:

WE'RE UNANIMOUS ... WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL -- IF THEY WIN ON APPEAL... THEN EVERYTHING GOES TO THE CHARITY... THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES.

...THEY CLAIM MR. BAUKNIGHT HAS A CONFLICT OF INTEREST ...

... EVEN IF THERE WERE SUCH A CONFLICT, THAT'S A PROBLEM FOR THE SETTLING PARTIES... [Emphasis supplied.]

An assistant AG followed Bauknight's and Tommie Rae's counsel. He said he did not

want to re-plow the same ground. He adopted Tommie Rae and Bauknight's arguments. [ Hg. 9/7/09., pp. 11-20]

By May 2010 it was clear that withholding the approximately \$1.4 Million owed Appellant and the amount owned Buchanan under the January 8 Order - which were accruing interest at the legal rate - was inadequate to stop their appeal.

By then James Richardson, Esq. had begun his four-year *pro bono publico* service as lead appellate counsel.<sup>17</sup>

By the time the Wingate suit was filed, the clients were forgotten. Wingate's 40% *contingency* fee contract was not even signed by the clients. It was signed by Bauknight, Bell, Levenson and Tommie Rae's attorney. These lawyers, with Tommie Rae, had been given \$30 Million or more by the AG from the "I Feel Good" Trust. They intended to hold onto it. [Slides; What Rosen wants, etc. Wingate Mediation]

But the Wingate Agreement had to be kept secret because Bell - for Forlando - was opposing the AG's settlement in Forlando Federal Suit, claiming Buchanan and Pope would not protect the 2000 Trust. But for Terry, Bell was suing them for tens of Millions of dollars for protecting the 2000 Trust in the *Wilson v. Dallas* appeal<sup>18</sup>.

On May 19, 2010 Wingate filed the Wingate Suit as sole counsel for Henry McMaster as AG of South Carolina; Bauknight as agent for the State/AG and Tommie Rae; and others.

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<sup>17</sup> Ten taxpayer-paid attorneys; Bauknight's fifteen attorneys; Hynie's six, and Forlando's six had not been able to derail the appeal. So they sued.

<sup>18</sup> Bell also said for Terry that Brown's music empire was worth \$4.7 Million while Forlando said \$85 Million was conservative. Bell, for Terry, said Tommie Rae was Brown's spouse. Forlando confirmed she was not; and Brown would not marry her after he discovered her marriage, even though she begged.

The Wingate Suit claimed the following breaches of duty by Buchanan and Pope:

1. Challenging the AG's settlement and conducting an appeal.
2. Christie's sale problems, even though Forlando confirmed under oath the family had gotten together to sabotage the sale.
3. Improperly valuating the assets, causing millions of dollars of IRS claims.
4. Failing to accept a \$100 million offer for Brown's music empire made in 2007. [Compl.]

For the next 3 years the State/AG's participation in the Wingate Suit was orchestrated by those trying to keep \$30 Million from the "I Feel Good" Foundation.<sup>19</sup>

While the Forlando Suit had caused Appellant's professional insurance to increase from \$3,000 a year to about \$20,000, the Wingate Suit caused it to be cancelled and to have to defend a suit over coverage.<sup>20</sup>

As AG McMaster was leaving and AG Wilson taking office, Forlando secretly received Terry's ROFR and interest in the estate. The secret transaction was overseen by a Senior Assistant to both AGs. The AG, Bauknight, and

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<sup>19</sup> The Levenson contract for \$150,000 plus a 30% contingency was produced in the Forlando Federal Suit. Forlando asserts that Tommie Rae advised him that her contingency fee is 45%.

A March 2010 Order of Judge Early directed disclosure of the contracts of Bauknight's counsel and others by the clerk for use in the ROA in *Wilson v. Dallas*. But they were not found. Counsel has refused to provide copies.

<sup>20</sup> Together the 2 lawsuits have made Appellant unable to secure professional coverage from her former carrier at any price. Buchanan experienced similar problems, but has obtained less coverage at a higher price.

Forlando concealed the transfer for two years in the Forlando Federal Suit and the Wingate Suit.

The attacks continued under AG Wilson.

On January 31, 2011 AG Wilson sought sanctions against Buchanan and Pope for filing a brief that would have helped recover some of the costs of Case 122 from Cannon under an Order of Judge Early dated April 8, 2008. [Sanctions were not granted.]

By April 2011 when Wm. Jeffrey Smith, a former patent examiner, and Appellant completed a draft of *Private Foundations*...., all knew that the State/AG's proposal to fabricate spousal status for Tommie Rae, then give Tommie Rae and the Levenson clients about \$50 million for copyright termination cooperation, made no sense. For less than \$200,000 a year the same cooperation could have been secured from the half of Brown's heirs AG McMaster had left out of his Settlement, namely:

- a. Daughter (1) Lisa from Brown's first marriage/divorce decree;
- b. DNA-proved and Acknowledged daughters (2) La Rhonda, (3) Jeanette; and (4) Nicole;
- c. (5) Michael (subject to the DNA test he was awaiting;
- d. Son (6) Daryl, who had repudiated the McMaster Settlement; and possibly one or more of the DOE Defendants in the Intestacy Suit<sup>21</sup>.

*Private Foundations* addressed the termination rights problem the State/AG

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James Curtis wrote Appellant in June 2012 seeking to be DNA tested. In addition to seeking to be GAL for Michael, Appellant seeks to be *pro bono publico* GAL for James Curtis and all DOE Defendants not challenging the Estate Plan. [Curtis Ltr.]

had caused by interfering with the Estate's plan to protect the "I Feel Good" Trust's royalties. The plan conformed to proper procedure for any charity holding music copyrights, namely:

1. Confirm that there is no surviving spouse if there is none. [Since State law controls the determination of Spouse, so this is critical.<sup>22</sup>] See Copyright 17 U.S.C. §101;
2. Correctly identify, using DNA testing for non-presumed children, as many children as possible, to give the charity maximum flexibility.<sup>23</sup>
3. Follow the procedure for children of a deceased child.
4. Update the heirs baseline at deaths of children.
5. Make arm's length termination cooperation agreements with the least-expensive half of the Heirs by "splitting heirs".<sup>24</sup>
6. Keep options open to avoid or limit terminations if unable to find a cooperative half. SEE Nine Ways to Avoid Copyright Termination,

Articles before and since *Private Foundations*...stress the importance of estate attorneys becoming versed in this IP area, and IP attorneys to understand the need to protect charities in the probate settings<sup>25</sup>. Appellant is one of only a

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<sup>22</sup> See the *artist as philanthropist* ....; *Pooh-Poohing Copyright Laws* "Inalienable" Termination Rights.

<sup>23</sup> [State law does not control children under the Copyright Act, but the estate is the most efficient place – and best for the charity – to complete the heirs determination. By the Estate/2000 Trust's Peeples DNA Protocol and consent to the March 8, 2008, the Estate, Order acknowledged this. [Order dtd. 3/8/08.]

<sup>24</sup> "Splitting the Heirs" was used by Smith and Pope in *Private Foundations* to describe the charity's need to work with a floating half or half + 1 of heirs for maximum protection of the Charity's copyrights.

<sup>25</sup> See Pope, A.J. and Smith, W.J. (2011). *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't*.... Unpublished manuscript; The Aspen Institute (supp. 2013). *The artist as*

handful of attorneys within the state to have explored and written professionally in the area.

By early May 2011 the final briefs in the *Wilson v. Dallas* appeal were filed.

Between May 4 -6, 2011 Bauknight filed an I & A claiming the value of the music empire was less than \$4.7 million. This was simply false.<sup>26</sup>

The State/AG joined Tommie Rae and Bauknight in moving to supplement the ROA in *Wilson v. Dallas*. Of a closing letter, which merely says the IRS will not reopen a review except in certain circumstances, the State/AG claimed:

...

"This IRS finding, directly and incontrovertibly refutes Appellants' contention that: (1) the Settlement Agreement will cause the Estate to lose the charitable deduction; (2) that the Settlement Agreement creates additional tax liability; and (3) that on the date of death the Estate was worth \$80 - \$120 Million dollars. [Emph.Supp.]

...

CONCLUSION ... "Absent a complete record, this Court does not have an accurate picture of the underlying probate proceeding. As a result, Appellants may inequitably benefit through their own fiduciary inaction in failing to properly value the Estate and in turn claiming a right to receive a \$5 Million dollar commission.

F4 "Appellants are presently pursuing a \$5 Million dollar fee petition against the Estate and Trust based upon their incorrect representation that the Estate and Trust was worth approximately \$80 - \$120 Million. (Rpp.2879-80)

The claim to the Supreme Court was as flawed as the \$4.7 Million value.

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*philanthropist. strengthening the next generation of artist-endowed foundations*  
Menell, P.S. and Nimmer, D., Journal, Copyright Society of the U.S.A. (Jan. 2011), p. 799, *Pooh-Poohing Copyright Law's "Inalienable" Termination Rights*.

<sup>26</sup> Bauknight has refused for the 2 ½ year since to file the appraisal as required by SCPC § 62-2-707 and -708

The sworn value reported to the IRS of almost \$84 Million was correct. It was supported by the Court-presented IP valuation formula; evidence and testimony; Brown's \$3 Million annual royalties; his \$18 million in road revenues between 2003 and 2006; and other data<sup>27</sup>.

The State/AG and Bauknight – who were suing Buchanan and Appellant for not accepting a \$100 Million offer – told the Court emphatically that there had never been any offers.

The Supreme Court did not supplement the record. The "I Feel Good" was saved. But Buchanan and Appellant's reputations for credibility were ruined. It didn't stop there.

From 2011 until 2013 the State/AG and Bauknight openly made the career-threatening allegation that Buchanan and Pope had intentionally overstated the value of music empire to the IRS by \$79 Million for the improper purpose of securing a \$5 million commission.<sup>28</sup>

In August 2011 Appellant filed two FOIA suits after the State/AG and McMaster's Legacy Trust<sup>29</sup> refused to produce public documents, including a copy of the Wingate Agreement, the \$4.7 Million Appraisal and Tommie Rae's

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<sup>27</sup> Brown was listed in 2007 as a *Forbes* top-earning dead celebrity. A 2007 Global Gaming contract was projected to earn \$1 million or a year after the startup period.

<sup>28</sup> The State/AG chose to forget that the Sr. Assistant had inquired about a \$100 million offer just two weeks after the IP valuation formula was presented to the court.

<sup>29</sup> The Legacy Trust is a Plaintiff in the Wingate Suit.

handwritten notes.

The result: 2 ½ years later these public documents have not been produced by the AG or the Legacy Trust under FOIA.<sup>30</sup>

On October 31, 2011 Bauknight's attorney's scurrilous remarks about Appellant and Buchanan were reported in more than 330 media outlets.

On November 1, 2011 the State/AG failed to correct Bauknight's incorrect claims that:

1. Tommie Rae's elective share claim was a "slam dunk."
2. the Estate/2000 Trust had no corpus to speak of;<sup>31</sup>
3. Termination Rights were "all this case is about."
4. If Tommie Rae didn't control the Termination Rights, the other settling parties did.
5. If the 2008 Settlement were not upheld there would be almost nothing in the "I Feel Good" Foundation by 2023.

By then the State/AG and Bauknight had clear knowledge that:

1. Only half of Brown's real heirs were needed to secure the copyrights for decades.
2. The state/AG had intentionally excluded half of Brown's real heirs from the AG's agreement.
3. Bauknight was doing nothing to secure modest termination rights agreements for the "I Feel Good" Foundation with DNA-proven and acknowledged daughters LaRhonda, Jeanette and Nicole; daughter Lisa; or incarcerated son Michael.

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<sup>30</sup> Some were publicly released by others.

<sup>31</sup> The Uniform Principal and Income Act, SCPC 62-7-901, et.seq. deals with allocation to principal of income from depleting assets.

In 2012, with knowledge that Tommie Rae's cooperation was not needed to protect the "I Feel Good" Trust copyrights - and another son, James Curtis, seeking DNA testing - the State/AG continued its vitriolic campaign to make Tommie Rae Brown's spouse.<sup>32</sup> [Ltr. J. Curtis 6/12; Mot., Ret. Gag Order appeal]

On May 22, 2012 Bauknight told Judge Early he [Judge Early] had already determined Tommie Rae to be Brown's spouse. The record was corrected - but not by the State/AG.

In July 2012 Judge Early declined to void the Hynie "diary" Gag Orders.

The State/AG, through Wingate, violated the Shield law by seeking the notes of a Newberry journalist who reported an interview with a longtime friend of Brown's about the "diary" contents. [Summer Articles]

It is clear the source was not Appellant.<sup>33</sup>

In the summer of 2012, the State/AG - who now asserts Wingate should not have sued Buchanan and Pope in the name of the State/AG - reached an unconscionable "settlement" with Buchanan. [Buch.Ltr. To Jg.Early]

Buchanan was facing financial hardship because Bauknight refused to pay the \$500,000, with interest, payable to him since 2009 under the Jan. 8 Order [Buchanan Ltr. July 13].

The payment was made, with reduced interest, only after the State/AG,

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<sup>32</sup> The testimony and flings to prevent ungagging of 50 or more people who were familiar with the public; so-called Hynie "diary" content were among the most vicious. [Mot.Dism.Memo.Tr. 5/22/12]

<sup>33</sup> Both Forlando and Dallas have discussed the contents since. [Summer Articles, Depos.Forlando.Stmt.Dallas]

through Wingate, extracted Buchanan's commitment not to protect the "I Feel Good" Trust if necessary in a Petition of Rehearing.

For the State officer charged with protecting charities to require a fiduciary not to take steps to protect the charity was unconscionable. Thereafter, the State/AG concealed the secret commitment from the Supreme Court; focused its attacks on Appellant; and tried to make it appear there was a rift between Buchanan and Appellant.

On October 10, 2012, in an appeal related to the Gag Orders, the State/AG joined Tommie Rae in the following statement:

P. 6. ... "there is no conflict of interest like self-interest." Pope's \$2.5 Million Conflict of Interest...

She [Appellant] had the "audacity to file a claim for that amount. Her claim is simply egregious when viewed against the backdrop of her actual work and the value of the Estate and Trust." Mr. Bauknight ... obtained an independent.. valuation of the intellectual property....

James Brown's Estate was found to be worth \$6.5 Million at the date of his death... "That ... valuation was... submitted to and scrutinized by the ... IRS.. refunded \$10,000 in estate taxes that Pope erroneously concluded were due...

"Haphazardly claimed the date of death value of James Brown's Estate was worth varying amounts around \$100 Million, not one of them ever provided any substantiation for that figure.

"The number was created by Cannon, Dallas and Bradley (and followed by Pope), yet never substantiated by an analytical business valuation model or methodology.

"Since late 2008 the family and the Attorney General have been in agreement that the litigation must end. "Similarly, the family and the Attorney General are in agreement that Pope's conduct must come to an end. ..." [Gag Ord.App.]

Since May 8, 2013 Appellant has offered her expertise and service *pro bono publico* to help enforce the "I Feel Good" Trust as James Brown wanted.

None of Dallas, Cannon or Deanna – named PR s under the 1999 Will - will help admit the 1999 Will to alternate probate. [Ltrs. Dallas, Deanna email, Lydon & Resps.]

One year after the first *Wilson v. Dallas* decision the State/AG has watched as Bauknight paid Wingate \$563,000 - in addition to a 40% contingency - of funds Brown gave the "I Feel Good" Trust to destroy Appellant; harass a small-town journalist; and intervene for Tommie Rae in three FOIA suits. He has done nothing to prevent a second dismemberment of the "I Feel Good" Foundation.

### **Argument**

**I. The June 13 Orders violate the Due Process and First Amendment Rights of Appellant, Buchanan, Brown's heirs and others, and the Equal Protection rights of Brown's Incarcerated son Michael and others**

The Fifth Amendment to the United States Constitution provides, in part:

[N]or shall any person . . . be deprived of life, liberty, or property, without due process of law . . . .

Section One of the Fourteenth Amendment to the United States Constitution provides, in part:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .

The due process clauses apply to "legal persons" (that is, corporate personhood) as well as to individuals. *Noble v. Union River Logging* 147 U.S. 165

(1893). Under the SCTC the 2000 Trust and the "I Feel Good" Foundation, a subtrust of the 2000 Trust, are entitled to Due Process, as are Brown's heirs and Appellant.

The June 13 Orders enjoin Appellant from protecting herself from continuing false felony claims lodged by the State and by Bauknight still claiming to act for the State. The injunction against Pope was preceded and followed by a series of ex parte orders and orders issued with no notice or hearing that simply ignore her rights; those of Brown's real heirs; and the "I Feel Good" Foundation.

These improper orders are intended to – and do – damage the property rights of Appellant, the heirs Bauknight and the State/AG omitted; and others.

Even Appellant's "liberty" as defined in the due process clauses is threatened by the State's actions. Whether that term is applied to personal restraint or to the full range of conduct which the individual is free to pursue, Appellant's and Buchanan's liberty has been threatened by the June 13 Orders coupled with the false felony claim Bauknight is still lodging in the name of the State. There is no proper governmental objective for this attack on those who spent nearly seven years in loyal service to the estate and estate plan of James Brown.

The June 13 Orders violate procedural due process. They were not generated by an unbiased tribunal. They were issued with no notice, and no reason. They enjoin Appellant from her right to be heard and her right to practice her profession. There is no evidence to support them. There was no right to cross-examine adverse parties. They are not based on the evidence presented, for

there was none. There is no evidence on which to base the broad mandate that Buchanan and Pope, and others, be enjoined from participation in trust and estate cases. When they have pending counterclaims and requests for offset in suits brought against them by the State, the Estate/2000 Trust and its beneficiaries, such a mandate is manifestly unjust.

The *Wilson v. Dallas* decision simply cannot be read to violate the Due Process and First Amendment rights of Appellant, Brown's real heirs and others supporting the "I Feel Good" Foundation to protect their property; ply their trades; and speak freely. Nothing in the decision suggests that Appellant may not serve as *pro bono publico* GAL to James Curtis, Michael and others. Nothing suggests the AG/State and Court may exclude them and favor non-heirs Tommie Rae and James B.

During the course of the *Wilson v. Dallas* appeal Appellant received inquiries about representation. She elected not to consider them. Even now, she elects only to serve heirs *pro bono publico* where to do so will not threaten the "I Feel Good" Trust in any way.

While the *Wilson v. Dallas* appeal was pending, by study and on-the-job training Appellant, who was admitted as an expert without question in the settlement hearings, has become an expert in the relationship between state probate law and the Federal Copyright Act termination provisions. Nothing in the *Wilson v. Dallas* decision suggests that she should be enjoined from offering her expertise— either *pro bono publico* or for pay - to help save the "I Feel Good" Trust. She has elected to do it without pay.

Michael Brown's former lawyer in California asked Appellant to contract Michael about representation. Appellant elected not to do so, but rather to ask to serve as GAL. Michael has been incarcerated since Brown's death and seeking DNA testing since 2007. He is entitled to a GAL under SCRCP 17(c).

As a result of the June 13 Orders and injunction, Judge Early will neither grant her request to be Michael's GAL nor conduct a hearing.

James Curtis wrote Plaintiff in 2012 asking for DNA testing. [Curtis ltr.] She passed his name to Bauknight, who has done nothing to provide the Peoples DNA Protocol in almost two years. This damages the "I Feel Good" Trust.

La Rhonda died in December 2013 without the Court's having relieved her former counsel or given her a change to get new counsel. Her children now have the same rights LaRhonda had under the Federal Copyright Act. But the right to protect her acknowledgment by the Estate as an heir in the Levenson Intestacy Suit belongs to her Estate. Bauknight's appointee sought to undo her official 2007 acknowledgment by the Estate as an heir within days of her death - even before her estate was opened. [Ltr. 1/4/14]

Appointee's action is particularly troublesome because a September 2013 letter of Copyright termination attorney Marc Toberoff claims LaRhonda and Levenson clients Deanna and Yamma as both clients and heirs<sup>34</sup>. This strongly suggests that the State/AG is doing nothing while the Levenson clients secure advantageous arrangements with real heirs which should belong to the Estate!"

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<sup>34</sup> Toberoff affirms Tommie Rae is not the spouse and James B. is not a son. Toberoff suggests the Estate aided Tommie Rae in giving improper termination notices to Warner Music. [Ltr.]

Feel Good" Trust. [Toberoff ltr.]

If Michael and Curtis pass the Peeples DNA test, as is certainly expected of Michael, more than half of Brown's heirs under the Copyright Act will have openly repudiated the 2008 settlement or not contested the Will. Five or more are available for termination rights agreements, including: (1) La Rhonda's daughters; (2) Nicole; (3) Jeanette; (4) Lisa; (5) Michael (6) James Curtis; (7) Daryl (8) Terry/Forlando.

This is more than is necessary – with modest agreements --to protect the royalties for decades. There is no reason to pay \$11 million to Tommie Rae; \$10 million to her attorneys; or \$9 million to Levenson.

The First Amendment provides in part :

Congress shall make no law... abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The June 13 Orders enjoin Appellant, others who support the "I Feel Good" Trust and Appellant for Michael from discussing the widely known contents of Tommie Rae's handwritten notes gained before Gag Orders. The Gag Orders are a prior restraint on free speech.

Judge Early's declining to hold a hearing on the Gag Orders is unwarranted. As is the AG/State's refusal under FOIA to release these public documents.

The June 13 Orders and the continued service of Bauknight as Tommie Rae's agent in the Wingate Suit have kept the State/AG at the service of Tommie Rae and James B. for too long.

The June 13 Orders should be declared void as issued entirely without Due

Process; violating First Amendment rights; and violating the Equal Protection rights of heirs.

**II. The Attorney General's withdrawal, jeopardy to Brown's backup 1999 will, and the threat to the "I Feel Good" Foundation's royalty copyrights, give Buchanan and Appellant Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust.**

The "I Feel Good" Foundation may be enforced under SCTC Section 62-7-405 by persons other than the Settlor, AG and Trustee.

Appellant has earned her status to help enforce the "I Feel Good" Trust by study; by six years' experience with Brown's estate and trust; and by dedicating her time and expertise *pro bono publico* since May 8, 2013 in Aiken County cases where the "I Feel Good" Trust and the half of Brown's heirs not challenging Brown's noble estate plan have been ignored for years.

Appellant's position in all of these projects is consistent with the protection of the "I Feel Good" Trust, and with her individual goal to restore her reputation and that of Buchanan. It is not inconsistent with her desire to be paid the \$1.4 Million, with interest, contracted, court-approved and awarded her by unappealed Order of Judge Early. It is consistent with her position that Buchanan's "settlement" in the Wingate Suit is void, and that the cost of the Wingate and Forlando Suits should be offset - to the extent reasonable - against the shares of those adults responsible for the suit. Not from the "I Feel Good" Trust.

Buchanan and Appellant are the *only* two remaining proponents of Brown's backup 1999 will – the document which, with Brown's own voice tape, makes his plan to leave his music empire to the "I Feel Good" Trust ironclad. [Voice tape] If

they are not allowed to submit the the Will for alternate probate, it may become void under the 10-year rule.<sup>35</sup>

In the face of a proposed second dismemberment of the "I Feel Good" Foundation, the AG has dropped out of the Aiken cases. There could not possibly be a more apt time for Appellant and others to be allowed to step in under Section 62-7-405 to enforce the "I Feel Good" Trust.

The Levenson Intestacy Suit should never have been characterized as a contest between the 2000 Estate Plan and heirs. It was – and is – a contest, if at all, between a 2000 Will which leaves scholarships for needy students in Georgia and South Carolina and a 1999 Will which leaves scholarships for needy students at U.S. C. Aiken, Voorhees, and U.S.C. Salkehatchie.

By State action this critical fact was ignored from August 10, 2008 until May 8, 2013. By State action, including the June 13 Orders and *ex parte* orders it approved and spawned, Brown's noble gift under two estate plans is at greater risk than before.

**III. The June 13 Orders promote fraud on the Court by ignoring the Richland County Court's jurisdiction to complete the Wingate and FOIA suits; and preventing Appellant and Buchanan from demonstrating Tommie Rae was not Brown's spouse and the State/AG joined in or condoned material misrepresentation by Tommie Rae, Forlando and others.**

26 USC §7206(1) provides that a person who willfully makes and subscribes, under penalty of perjury, any return, statement, or other document,

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<sup>35</sup> See S.C.P.C. §62-1-108. Appellant as a creditor has a right to submit the 1999 Will.

which he/she does not believe to be true and correct as to every material matter, has committed a criminal offense.

An intentional \$79 million overstatement of the value on an estate tax return for the improper purpose of obtaining a \$5 million commission violates Section 7206. It did not happen. Buchanan and Appellant properly valued Brown's music empire on the estate tax return.

This and other misrepresentations made or condoned by the State/AG were poised to be cleared up in two FOIA Suits and the Wingate Suit. The Richland County Court now has jurisdiction to conclude these matters.

The State/AG, after telling the Supreme Court it was taking action to end these suits, did the opposite.

The AG's appointee still speaks for Tommie Rae, James B. and other Will challengers in the Wingate Suit. He still purports to speak for the State/AG.

This and misrepresentations about heirs and the Copyright Act should be corrected now – in Richland County; in the FOIA and Wingate Suits.

The June 13 Orders allow the State/AG and Tommie Rae to run from court to court at their pleasure. In 2010 they fought to keep many matters in Richland County. They won. They are now in deep trouble because of public documents they refused to produce under both FOIA and discovery for more than two years.

The Wingate Suit and FOIA Suits should be concluded. The June 13 Orders prevent that by ignoring the jurisdiction of the Richland Court.

## Conclusion

Buchanan, Pope and their small team protected the Estate Plan and "I Feel Good" Foundation for years against the juggernaut combination of the State/AG, Levenson, Tommie Rae's counsel and Bell. The legal fee for more that 4 years: about \$200,000 to restore \$50 Million.

For the reasons state herein, and found within the record, the June 13 Orders should be vacated.

The Court should direct that the Wingate Suit and all pending FOIA suits in which the Estate is seeking to intervene should be concluded forthwith.

The Court should confirm that the replacement of Buchanan and Pope does not deny them the right to participate in James Brown estate and trust cases in any capacity other than as PR/Trustees. It does not deny them the right to serve the Estate, 2000 Trust or any person or entity as attorney, GAL, or in any other capacity.

The Court should find that both have multiple standing, including as creditors and as "others" under Section 62-7-405.

Respectfully submitted,

*Adele Pope*

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February 21, 2014