THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

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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

FINAL REPLY BRIEF OF APPELLANTS

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ARGUMENT IN REPLY

I

Standing is a flexible concept, measured by the particular facts of the case Standing is acquired in one or more of three ways The appellants have standing in all three ways

The thousands of students deprived of millions of dollars intended for them by the testator over many years in the future are unidentifiable — many of them not yet born — and none are parties to this case Hence, say the respondents, there is no one with standing to complain about the decimation of the testator's educational foundation

The personal representatives were dealing in a normal manner with claims of undue influence, pretermitted child, and omitted spouse when the Attorney General of the State stepped in and took over The Attorney General did this by claiming that the chief beneficiary of the estate was a charitable trust, and the Attorney General has the power to set aside the trustees and speak for the trust, entering into a Section 1102 settlement agreement in its behalf and relinquishing more than half the estate to disinherited claimants As part of this settlement the Attorney General, acting for the 2000 Trust, agreed with the disinherited members of the Brown family to unseat the duly appointed PRs/trustees without cause, replacing them with a nominee of their mutual choice and obtaining a court order requiring the ousted PRs/trustees to signify their consent to all this

Nothing like this has ever been seen in the caselaw of South Carolina, so far as we know There is not a case in the country that we have found — and none has been cited by the respondents — holding that the ousted fiduciaries lack standing to appeal an order approving events such as these

Repeatedly in recent years this Supreme Court has reiterated that "the rule [of standing] is not an inflexible one " *Thompson v South Carolina Comm'n on Alcohol & Drug Abuse,* 267 S C 463, 467 229 S E 2d 718, 719 (1976) *Accord Sloan v Wilkins,* 362 S C 430, 608 S E 2d 579 (2005), *Davis v Richland County Council* 372 S C 497,

642 S E 2d 740 (2007) Standing is assessed under all the facts and circumstances of the particular case, and this case is unprecedented

The Court has identified the sources of standing, as follows

> Standing may be acquired (1) by statute (2) through the rubric of "constitutional standing," or (3) under the 'public importance" exception

ATC South, Inc v Charleston County, 380 S C 191, 195, 669 S E 2d 337, 339 (2008)

The appellants possess standing in all three ways

A The appellants have standing and authority under the 2000 Trust and the default trust code provisions

The first place to look for an authoritative answer to the question of standing is the Code of Laws *See, e g , Sloan v Friends of Hunley, Inc ,* 369 S C 20 630 S E 2d 474 (2006) (FOIA confers standing upon citizens)

The applicable code — the South Carolina Trust Code — is primarily a "default statute " The terms of a trust prevail over any trust code provision, with eleven exceptions These exceptions do not include the authority to settle claims against the trust, or to represent or act for the trust in the defense or settlement of a will contest S C Code Ann § 62–7–105(b) Thus, the Trust Code confers upon a settlor the authority to appoint those who may defend the trust against attack and to appoint those who may settle claims in its behalf The Court must therefore look to the terms of the 2000 Trust before looking to the statute in order to determine who has authority to defend the trust, to settle claims against it, and to act for it in the settlement of a will contest

1 The 2000 Trust confers upon the trustees the authority to defend the trust

The private, partially charitable 2000 Trust expressly gives authority and fiduciary discretion to its trustee to "compromise adjust mediate, arbitrate sue on or defend, abandon, or otherwise deal with and settle claims in favor of or against the Trust Estate as the Trustee shall deem best " [2000 Trust, Art X(19), R p 2088] James Brown's will and 2000 Trust provide that any challenges to the estate plan "shall be considered an affront

to Grantor's wishes and shall be vigorously challenged as such by his fiduciaries ' [2000 Trust, Art XXI, R p 2094, Will, Item X, R p 2075] Appellants are thus charged with an affirmative duty to defend the will and 2000 Trust against the contests brought by many of the respondents The duty to defend the estate plan is mandatory, and "[a]bsolute liability arises when the trustee fails to do some mandatory act required by the express terms of the trust instrument " *Cartee v Lesley* 290 S C 333, 350 S E 2d 388 389 (1986) If the appellants bear absolute liability for any failure to meet Mr Brown s requirement that they vigorously defend contests to his estate plan, they are certainly aggrieved by an order which requires them to assent to a settlement they know to be damaging to the estate and 2000 Trust

2 *Even if the default provisions of the Trust Code came into play, those default provisions would confer upon the duly appointed trustees the authority to defend the trust*

There is no need to look beyond the terms of the 2000 Trust because it is valid However, if the provisions of the default statute did come into play, the result would be the same the duly appointed and acting trustees have standing to defend the trust Under § 62–1–308, the appellants are Interested Persons injured by their improper removal as fiduciaries The appellants have statutory standing to appeal for the benefit of the I Feel Good" Trust and the Education Trust as statutory beneficiaries and as representatives of the settlor under §§ 62–7–410 through –416 of the Trust Code [1] As persons with a duty to defend the estate plan, appellants are interested persons injured by their removal as fiduciaries and by actions designed to prevent their defense of the estate plan S C Code Ann § 62–1–308

Moreover, S C Code Ann § 62–7–405(c) authorizes a trustee, among others, to maintain a proceeding to enforce the trust " The use of the word 'proceeding" encompasses a broader range of court activity than the word 'action" would have

[1] Obviously the appellants are not beneficiaries in the traditional sense Their statutory inclusion in the category of "Beneficiary was intended by the General Assembly to confer upon them the right to enforce the trust

conveyed This appeal is in the nature of a proceeding to enforce the 2000 Trust, the purpose being to prevent its decimation, followed by its obliteration and replacement by a new entity created and controlled by the Attorney General and the other parties to the August 2008 agreement

B The appellants have "constitutional standing "

The appellants have been ousted without cause from their fiduciary positions The corpus of the estate and of the trust which they have a fiduciary duty to protect has been more than cut in half They have been compelled to signify their agreement with the order which ousts them and which decimates the estate and the trust

These wrongs give the appellants standing under the three-part test of constitutional standing

> First, the plaintiff must have suffered an "injury in fact' — an invasion of a legally protected interest which is (a) concrete and particularized, and (b) "actual or imminent, not conjectural' or hypothetical' ' Second there must be a causal connection between the injury and the conduct complained of — the injury has to be "fairly trace[able] to the challenged action of the defendant, and not th[e] result [of] the independent action of some third party not before the court " Third, it must be 'likely," as opposed to merely "speculative " that the injury will be "redressed by a favorable decision "

ATC South, Inc v Charleston County, 380 S C 191, 195, 669 S E 2d 337 (2008) *quoting Lujan v Defenders of Wildlife,* 504 U S 555 560–61 (1992)

Each of the injuries suffered by the appellants is concrete and actual Each is directly attributable to the order approving the rejection of the testator's estate plan, entrusted to their care, and ousting them without cause from their positions *See, e g , Davis v Richland County Council,* 372 S C 497, 642 S E 2d 740 (2007) (recreation commissioners had standing to challenge the constitutionality of a statute authorizing their removal from office) *Smiley v South Carolina Dept of Health & Envir Control,* 374 S C 326, 649 S E 2d 31 (2007) (recreational jogger had standing to challenge permit for removal of sand from beach) These injuries will be redressed by reversal

Thus, the appellants have constitutional standing

C This is a case of public importance

The "public importance" exception to traditional rules of standing is now firmly seated in the jurisprudence of this state *See, e g , Baird v Charleston County,* 333 S C 519, 511 S E 2d 69 (1999) *Sloan v Sanford,* 357 S C 431, 593 S E 2d 470 (2004), *Sloan v Department of Transportation,* 365 S C 299, 618 S E 2d 876 (2005), *Sloan v Hardee,* 371 S C 495, 640 S E 2d 457 (2007), *Sloan v Greenville Hosp System,* 388 S C 152, 694 S E 2d 532 (2010) (demonstrating that the public importance exception is so well-established at this point that Sloan's standing is no longer even challenged), *Sloan v School Distr of Greenville County,* 342 S C 515 537 S E 2d 299 (Ct App 2000), *Sloan v Greenville County,* 356 S C 531, 590 S E 2d 338 (Ct App 2003)

The case at bar is of public significance on two levels

First is the impact of the order of May 26, 2009 on the private foundation which Mr Brown created for the education of students at South Carolina and Georgia schools This case raises the question of whether potentially thousands of college students in the decades ahead will be deprived of the scholarship benefits intended for them by the testator Given the importance of education in our pantheon of values, it is scarcely debatable that this is a matter of substantial public importance

On a second level of public importance is the question of whether the Attorney General has the legal authority to take over the administration of an estate and the operation of a private trust settling a will contest and claims against the estate as he sees fit and preempting fiduciaries without cause Private foundations such as the I Feel Good" foundation/trust are not public charities They are an expression of private philanthropy sanctioned by this State and by the Internal Revenue Code The benefactor is granted certain tax benefits in exchange for dedicating assets to charitable, educational or scientific purposes selected by the settlor Persons considering the creation of private foundations, and counsel advising them, should know whether the Attorney General has the authority claimed by him in this case Private philanthropy in South Carolina would be chilled if a

settlor's funds could be diverted from the settlor's chosen class of recipients to others chosen by the Attorney General If this is the law of South Carolina, the Bar and many others need to know it

E The cases from other jurisdictions support standing, as do the South Carolina cases

In support of their contention that the appellants lack standing to challenge the Section 1102 settlement, the respondents cite a decision by a New Jersey trial judge [2] This was an appeal by the executor of an estate from a probate court judgment approving a will contest settlement to which all the charity beneficiaries of the estate agreed Since the executor failed to allege 'any substantive grounds for opposing the settlement," 445 A 2d at 458, other than the statute of limitations, the trial judge found no standing His Honor cautioned, however, that "a personal representative faced with an agreement that violates the testator's intent may have greater standing *Heritage Bank-North, N A v Hunterdon Med Center,* 164 N J Super 33, 395 A 2d 552 (App Div 1978) " In the *Heritage Bank-North* case, a New Jersey *appellate* court sustained the appeal of an executor/trustee from an order approving the abolition of a trust by agreement of all beneficiaries The settlement contravened "the well settled principle that termination by consent of the beneficiaries cannot be compelled where continuation of the trust is essential to carry out a material purpose thereof " 395 A 2d at 554 This case shows that the courts of New Jersey would accord standing to the appellants in the case at bar

As noted in our principal brief, the Minnesota Court of Appeals found that the personal representative/trustee who objected to the settlement had standing to appeal since a personal representative " is under a duty to see that the assets constituting the testator's estate are not diverted from the course prescribed by the testator '" *In re Estate of Schroeder,* 441 N W 2d 527, 529 (Minn 1989), *quoting In re Healy's Estate,* 247 Minn 205, 209, 76 N W 2d 677, 680 (1956)

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[2] *Matter of Liss' Will,* 184 N J Super 184, 445 A 2d 455 (N J Super L 1981)

> If a personal representative cannot appeal, no one remains who can challenge a settlement agreement which aids the beneficiaries, yet emasculates the testator s intent To hold otherwise would mean that nominated executors and testamentary trustees do not have standing to challenge orders which are in derogation of their fiduciary responsibilities

441 N E 2d at 529 *Accord Altemeier v Harris,* 335 Ill App 130, 81 N E 2d 22 (1948) (trustees have not only right but duty to appeal order approving settlement which they believed thwarted the will of the creator of the trust which they were required to defend) *In the Matter of the Estate of Ward,* 200 Ariz 113, 23 P 3d 108, 109 (2001), *Budin v Levy,* 343 Mass 644 648, 180 N E 2d 74, 76 (1962) ("An executor has a duty to see that what he reasonably believes to be his testator's intent is carried out, and, should his judgment be that a decree in the Probate Court did injustice, he would have standing to seek appellate review " [internal citations omitted]) *See also Brown v Peters,* 39 Ill App 3d 962, 350 N E 2d 565 (Ill App 1976) (executor is aggrieved party where court approves probate of codicil which executor believes is contrary to testator's wishes), *In re Estate of Denman* 270 S W 3d 639 (Tex App 2008) (executor has standing to appeal where estate is damaged by ruling of court below)

In *Blackmon v Weaver,* 366 S C 245, 621 S E 2d 42 (Ct App 2005), the personal representative appealed her removal The Court of Appeals reversed Although standing was not challenged, the court could have considered the question *ex mero motu* if any doubt existed *See also Floyd v Floyd,* 365 S C 56, 615 S E 2d 465 (Ct App 2005)

* * * * *

The respondents challenge to appellants' standing to appeal the approval of the settlement rests upon the fact that they were removed from their fiduciary offices by the order under appeal If the appellants had sought a full stay of that order (which they chose not to do in the interest of the estate), and if the court had stayed the order, the appellants at this stage would continue to hold their fiduciary offices Their standing would be unquestioned Surely the vital question of standing cannot rest upon such happenstances of litigation

None of the potentially thousands of students who would have benefitted from the 2000 Trust has standing to challenge its decimation *See generally Robert Schalkenbach Foundation v Lincoln Foundation, Inc*, 208 Ariz 176, 91 P 3d 1019 (App Div 2004) *See also* M Blasko, *et al*, *Standing to Sue in the Charitable Sector,* 28 U San Fran L Rev 37, 72 (1993) (hereafter, "Blasko"), and cases cited, *and see Trustees of Dartmouth College v Woodward*, 17 U S (4 Wheat) 518, 641 (1819) If the appellants have no standing then no one does It is simply unthinkable that *no one* has standing to seek appellate review of these important questions [3]

II

As the respondents assured the circuit court, Section 1102 devises an equitable procedure for considering approval of a settlement

The Attorney General repeatedly assured the circuit court that the procedure for considering approval of the settlement is equitable None of his co-petitioners demurred Now that it is politic to insulate the result from meaningful appellate review they tell this Supreme Court without a blush that the procedure is at law In support of their turnabout, the respondents say that a will contest is an action at law which of course it is From this proposition they reason that an order approving the settlement of a will contest " is likewise at law In support they cite two cases,[4] neither of which involved the settlement of a will contest and neither of which was a Section 1102 procedure for changing a

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[3] The circuit court accorded standing to appellants to challenge the settlement Respondents' objection to appellants' standing was not addressed in the order of May 26, 2009 nor was it raised in a Rule 59 motion to alter or amend A challenge to standing is subject to ordinary issue-preservation rules *Kolle v State,* 386 S C 578, 690 S E 2d 73 (2010), *Michael P v Greenville County Dep't of Soc Servs*, 385 S C 407, 413 n 4, 684 S E 2d 211, 214 n 4 (Ct App 2009) *See A Fast Photo Express, Inc v First Nat'l Bank,* 369 S C 80, 630 S E 2d 285 (Ct App 2006) Of course the Court may choose to consider the question in its discretion *I'On, L L C v Town of Mt Pleasant,* 338 S C 406, 421, 526 S E 2d 716, 724 (2000) (appellate court is likely to ignore' any additional sustaining grounds not presented to the trial court) There is no reason to exercise that discretion in favor of insulating this judgment from appellate review

[4] *Johnson v Johnson,* 235 S C 542, 112 S E 2d 647 (1960), *In re Estate of Weeks,* 329 S C 251 495 S E 2d 454 (Ct App 1997)

testator's estate plan by unanimous consent of the beneficiaries, approved by the court as just and reasonable This is not an appeal from a judgment in a will contest but an appeal of a judgment entered pursuant to the statutory procedure devised by Section 1102

In South Carolina the scope of appellate review of the facts does indeed continue to turn upon whether a claim would have been characterized as equitable or at law before that distinction was nominally abolished with the introduction here of the Field Code in 1870 But the procedure devised by Section 1102 was unknown to courts of law or equity before this statute was enacted Hence the Court is free to choose the proper appellate role for it to play in this process This might involve imputing an "intent" to members of the General Assembly — almost certainly none of whom gave it a thought But we do know that the General Assembly enacted here a *uniform* law, and stated its intention that this law should be interpreted *and applied* so as to make uniform the laws of the States which enact it S C Code Ann § 62–1–102(b)(5) There can be no doubt, either, that the National Conference of Commissioners on Uniform State Laws, which wrote this law, intended a robust role for the appellate court in reviewing the trial court's decision to approve a settlement which could — and here *does* — destroy a testator's estate plan Every other appellate court which has reviewed a decision approving a settlement under this uniform law has scrutinized it inside out Those decisions are all cited in the appellants' principal brief The respondents in a 57-page brief have addressed none of these cases The appellate courts of those States no longer speak of at-law versus equitable claims but they *do* exercise the full power of review of the facts which this uniform law accords them This Supreme Court of South Carolina can and should do the same

Especially is this so where, as here, the impact of the settlement falls so heavily upon a trust Viewing this statutory procedure as equitable in nature would fit seamlessly into this Court's trust jurisprudence Trusts have long and broadly been a field for the jurisdiction of equity " *Epworth Orphanage v Long,* 199 S C 385, 389, 19 S E 2d 481, 482 (1942) *quoted in Floyd v Floyd,* 365 S C 56, 615 S E 2d 465, 485 (Ct App 2005)

For yet another reason, this case sounds in equity Part and parcel of the August 2008 agreement approved by the circuit court was the removal of the appellants as personal representatives and trustees As the respondents confirm [Brief at 52–56], the only reason for their removal was their opposition to the settlement agreement The propriety of their removal therefore, depends upon the validity of the settlement agreement The removal of a fiduciary sounds in equity *Dean v Kilgore,* 313 S C 257, 437 S E 2d 154 (Ct App 1993) (action to remove a personal representative is equitable) Hence, this Supreme Court may and should scrutinize the facts as an equity court to determine whether the settlement is valid — *i e ,* just and reasonable

For all these reasons, Section 1102 creates an equitable claim, just as the respondents told the circuit court and the removal of the appellants likewise sounds in equity

As we said before, it makes no difference in the end since there is no evidence upon which to find that this settlement is just and reasonable

III

The will contest was frivolous The challenge to the validity of the 2000 Trust was frivolous The dismemberment of the estate was neither just nor reasonable

1 The offer of compromise was evidence of nothing

Rule 68 SCRCP, provides a mechanism for a party to attempt to shift certain court costs to an opposing party Like all settlement offers, it is inadmissible in evidence *See* Rule 408, SCRE, *and see* authorities cited in *QHG of Lake City, Inc , v McCutcheon,* 360 S C 196, 600 S E 2d 105 111 (Ct App 2004) Where, as here, there was little chance of acceptance, Rule 68 provides a safe means of attempting to shift some of the costs of litigation to the opposing parties

The respondents now contend that the offer of judgment is an admission that the undue influence challenge to the will and 2000 Trust was "a good faith controversy" [Brief at 23] It is nothing of the kind

The challenge to the will and trust was frivolous, but even frivolous claims may have settlement value if the party sued would rather pay to settle a frivolous claim than pay the lawyers to fight it By April 2009 the proceeding to approve the settlement had become an intensely litigated issue It was clear that the State's resources would continue to be applied in aid of the disinherited parties so as to force the settlement, despite its massive flaws

Especially where the party managing the litigation is not the party whose property is at stake, the need to consider the settlement of even a frivolous claim may be prudent If an offer of judgment were evidence of anything — which it is not — the size of the offer would be measured in relation to estimated litigation costs against a small army of opposing parties, and not in relation to the value of the property at issue

Again, such offers of judgment are evidence of nothing and admit nothing

2 The challenges to the will and 2000 Trust were frivolous

The respondents contend that the challenge to the will and to the 2000 Trust must have been meritorious because the appellants themselves once alleged that Cannon, Dallas and Bradley procured the signatures of James Brown on various documents by undue influence, fraud and/or forgery " [Brief at 24] Astonishingly the respondents tell the Court that "the same set of facts" was involved in the fraud suit against these three for embezzlement over a period of years as was involved in the execution of the will and the 2000 Trust [Brief at 24, n 27] The appellants' action to recover some of the money secretly stolen began with a lawyer's typical shotgun "and/or" allegation in the complaint These defalcations had nothing remotely to do with the execution of Mr Brown's will and his 2000 Trust — four years in the making and in the refinement

The respondents next identify the supposed *evidence* of undue influence upon which they rely First, they contend that an allegedly generous limitation on the management expenses which the trustees might incur is evidence that they unduly influenced the

trustor [5] Under this theory, every benefit conferred by a will or a trust would be evidence that the recipient unduly influenced the giver There is no evidence in this massive record that the trustees had anything to do with this provision But even assuming *arguendo* that they did importune Mr Brown for such a provision, there is nothing wrong with that

> "The mere influence of affection and attachment, or the mere desire of gratifying the wishes of another, will not vitiate a testamentary act unless that act was the result of coercion or importunity beyond the testator's power to resist "

In re Estate of Anderson, 381 S C 568, 674 S E 2d 176, 179 (Ct App 2009), *quoting Harris v Berry,* 231 S C 201, 205, 98 S E 2d 251, 253 (1957) The suggestion that a bequest in a will, or a benefit conferred in a trust, in and of itself is evidence of undue influence exerted by the recipient is frivolous It is no accident that the respondents fail to cite a single case of a successful challenge to a will on the ground of undue influence [*See* Respondents' Brief at 23–27]

Next, the respondents say [Brief at 25] that Cannon s boast, following Mr Brown s death, that he could have induced Mr Brown to leave him the entire estate is evidence of undue influence The respondents neglect to tell us what rule of evidence would apply here — for a good reason Cannon's idle boast is evidence of nothing

The respondents then say that Mr Brown once signed a blank deed The only evidence is that many lawyers have had clients to sign blank deeds [R p 1499] The respondents offered no evidence of undue influence at trial Instead they combed a myriad documents in this record at their leisure to find what they might, and this was the best they could come up with This is evidence of nothing

Finally, we are told that 'the credibility of four principal witnesses to the validity of

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[5] This limitation originated in the 1999 Trust [Art V(1)], in which Cannon, Dallas, and Bradley constituted a *minority* of the board of trustees The limitation was carried over into the 2000 Trust The trustees' *fees* are specified elsewhere in the 2000 Trust [Art VI(3)] There is no suggestion that the *fees* allowed were excessive If the trustees were to claim excessive *expenses*, they would be subject to the remedy of enforcement by the beneficiaries or by the Attorney General among others S C Code Ann § 62–7–405(c)

the 2000 Will and Trust is questionable " [Brief at 26] The logic of this statement can only flow from the respondents' belief, voiced at trial, that the burden is on the *proponent* of the will to prove the *absence* of undue influence Since the burden of proof is the other way round, undue influence trials usually start with the challenger offering the testimony of the witnesses to the will The respondents do not identify the witnesses to the will, but Cannon, Dallas, and Bradley were not among them The respondents nonetheless say that the witnesses to the will are not to be believed It is hard to see how the challenger to a will can prevail while offering the testimony of witnesses who, according to the challenger, cannot be believed

The respondents point out that the challenge to the validity of the will and 2000 Trust was not the only claim eliminated by this settlement The claims of the alleged omitted spouse and omitted child were also removed [6] The portion of the settlement fund attributable to the settlement of these two claims is in the neighborhood of what these claims would have generated *if they had prevailed* But the heart of this settlement and the hole into which most of the settlement money is poured is the frivolous claim of undue influence If the settlement was unreasonable on that account, the entire settlement was unreasonable

The respondents say that the administration of the estate was simplified by this settlement Perhaps it was Capitulation to a frivolous claim may simplify things greatly

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[6] Although some claims had still to overcome dispositive motions at the time of the settlement, the record contains much evidence weighing against Tommie Rae Hynie Brown's claim The evidence shows, among other hurdles, that her marriage to Mr Brown was bigamous and thus void, that after the annulment of her first marriage, she and Brown never attempted to validate their marriage, and that her prenuptial agreement with Mr Brown precludes all of her claims The success of James II s claim was entirely dependent on the success of the will contest, as the will specifically disinherits him Despite almost no discovery having taken place at the time the August 2008 agreement was signed, the evidence was overwhelmingly unsupportive of such a large payout At page 29 of their brief, the respondents say that the appellants have abandoned" any challenge to the contention that respondent Tommie Rae was the testator s wife Although the appellants do not understand the basis for this claim, suffice it to say that the validity of that putative marriage was not before the circuit court, is not before this Court and will be adjudicated in due course unless properly settled at some point

That can never justify the court in substituting a new estate plan for the one devised by the testator, without the clearest legal reasons to do so [7]

The respondents claim that the will contestants have contributed "valuable assets, including federal copyright termination rights, that under federal law would never have been in the 2000 Trust even if the contests and statutory claims were all successful " [Brief at 9 and 33] Under federal law it is doubtful whether these rights are transferrable at all *See* A Scott, *Oh Bother Milne, Steinbeck, and an Emerging Circuit Split Over the Alienability of Copyright Termination Rights*, 14 J INTELL PROP L 357 (2007), *Stewart v Abend* 495 U S 207 (1990), *Classic Media, Inc v Mewborn*, 532 F 3d 978 (9th Cir 2008) The caselaw on these relatively new rights is developing and inconsistent There is no evidence of when or if the termination rights to Mr Brown's seven decades of work might come into the hands of any respondent The record is devoid of evidence tending to establish who might own these termination rights if and when they take effect There is no evidence of the value of such termination rights, in any event No value can be given to this assignment, nor do the respondents try

3 Section 1102 commits to the Court the duty to scrutinize settlements of this nature rigorously

One of the remarkable things about the respondent s brief is its failure to discuss, or even to mention the uniform treatment given the role of the appellate court in Section 1102 litigation across the country This is an admission by silence that the legislative intent was to create a statutory procedure ending with a probing search at the appellate level into the question of justice and reasonableness

* * * * *

[7] By no means would this settlement remove all the issues present in this estate For example the respondents say that the settlement removes all question about which assets are owned by the estate and which are owned by the 2000 Trust The settlement documents do not answer that question The agreement simply provides that all respondents will pool whatever interest they have in James Brown's assets into the Legacy Trust Creditors, taxing authorities, or other beneficiaries could still require a determination of ownership

For all the unrefuted reasons given in our principal brief, this settlement was unjust and unreasonable

IV

There was no Section 1102 settlement agreement since the chief beneficiary, the 2000 Trust, was not a party

The respondents appear to agree that the 2000 Trust, as chief beneficiary of the estate was a necessary party to any Section 1102 settlement, although even this is not crystal clear [*See, e g ,* Brief at 44–45] The respondents later appear to contend that the 2000 Trust, as a legal entity and as chief beneficiary of the will, is not actually the one whose consent was required Rather, it was the unidentifiable beneficiaries of the 2000 Trust whose consent was required, and it was they who were spoken for and signed for by the Attorney General The only case cited for this proposition [Brief at 47] is the decision of the same New Jersey trial judge who held that a personal representative had no standing to object to a settlement but might have had "greater standing if the settlement agreement "violates the testator's intent " *Matter of Liss' Will,* 184 N J Super 184, 445 A 2d 455 (N J Super L 1981)

The thousands of students who will be beneficiaries of the 2000 Trust are not beneficiaries of the will ***The 2000 Trust is that beneficiary*** The Attorney General had no authority to sign the settlement agreement in behalf of the 2000 Trust

These students are not beneficiaries of the will but of the 2000 Trust They are not the only beneficiaries of the Trust Certain of Mr Brown's grandchildren are entitled to benefits from the Brown Family Education Trust, a sub-trust of the 2000 Trust Although some of the beneficiaries of the Education Trust signed the settlement agreement, at least two adult beneficiaries of this sub-trust have not [8] Respondents state in a footnote that

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[8] The original settling parties went to great lengths to obtain unanimity among all claimants and beneficiaries but failed Respondents assert that Terry Brown, a son of the testator, "later joined in the Settlement Agreement " [Brief at 7] A more accurate account is that respondents bought-off Terry Brown to induce him to abandon his support of his father's estate plan and his opposition to the settlement The parties to (continued)

because the Education Trust shifts any assets remaining at its termination to the "I Feel Good" Foundation, the Education Trust is a "charitable trust" as defined by S C Code Ann § 62–7–103(3) According to the respondents, this enables the Attorney General to speak for the Education Trust This assertion is incorrect The Education Trust is not a charitable trust Section 103(3) of the Trust Code defines a charitable trust" as 'a trust, or portion of a trust, created for a charitable purpose The terms of the Education Trust make abundantly clear that Mr Brown's purpose in creating it was to provide for the education of his grandchildren The trustees are given broad discretion to distribute income and principal to pay for "education and related expenses' for each grandchild until he or she attains age 35 [2000 Trust Art VI, R p 2083]

The 2000 Trust is the principal beneficiary of the estate, but was not a party to the settlement, nor were other beneficiaries Hence, the settlement agreement does not qualify for consideration under Section 1102

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[8](continued)
the August 2008 agreement treat the payment to Terry Brown as an *expense* of the settlement entity [R p 2390] Terry's consent was expensive indeed The rights granted to him could be worth millions When the original settling parties moved for approval, Terry strongly opposed the settlement on grounds similar to some of those advanced by the appellants Specifically, he asserted that no settlement could be binding without his consent and that of his sons Forlando and Romunzo Brown, who are beneficiaries of the Brown Family Education Trust Ten days later Terry agreed to abandon his support of the estate plan in exchange for a 4 79% interest in the settlement entity, a 6-month exclusive right to bring a buyer for some or all assets of the Estate/Trust, and a 10-year right of first refusal to buy the James Brown Assets As Terry Brown correctly pointed out before reversing his position, two of his children, Forlando and Romunzo Brown, are beneficiaries of the Brown Family Education Trust [R pp 564-67] They are not parties to the August 2008 agreement, nor have they joined in the brief of the other respondents

V

The Attorney General has now abandoned his contention that the law in other jurisdictions supports his authority to sign the settlement agreement in behalf of the 2000 Trust The South Carolina authorities upon which he relies are nowhere in point

In the proposed order which they submitted to the circuit court, resulting in the Order of May 26, 2009, the respondents assured the circuit court that the Attorney General's authority to assume command of the 2000 Trust and to enter into a Section 1102 settlement in its behalf was supported by authorities in other States None of those authorities are relied upon or even mentioned in the respondents' brief in this Court This is a belated concession of the fact that the attorney general of no other State has the authority to do what the South Carolina Attorney General did here [9]

Instead, the respondents now rely exclusively for caselaw authority upon South Carolina cases, none of which stand for the claimed proposition Typical of these is the Furman University case, *Furman University v McLeod,* 238 S C 475, 120 S E 2d 865 (1961) When Professor Freemont-Smith was preparing her leading treatise on the law of charities, cited in our principal brief, she wrote to Attorney General McLeod, whose thoughtful response is what one would have expected from this modest and devoted public servant Explaining the significance of the *Furman University* case, General McLeod told Professor Freemont-Smith

> [T]he case of Furman University v McLeod, 238 S C 475 120 S E 2d 865, was brought to determine the proper construction to be given certain deeds whereby land had been conveyed in 1820 for the purpose of maintaining a male and female academy in this State The case is important chiefly for the reason that it establishes that the Attorney General of South Carolina is the only proper and necessary party defendant in a proceeding involving a public

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[9] Although they have abandoned the claim that attorneys general elsewhere have authority to settle will contests in behalf of private foundations, the respondents do cite BOGERT ON TRUSTS AND TRUSTEES for the proposition that the AG is a necessary party to an action approving a settlement agreement affecting the interest of charitable beneficiaries " The appellants have never questioned the right of the Attorney General to be present in this case as a party The respondents ask the Court to conclude that status as a party carries with it the power to oust the trustees without cause and act for the charity Nothing in Professor Bogert's treatise remotely supports such a claim

trust where no private rights, such as by way of reversion or reverter exist Attorney General McLeod's letter of June 1, 1965 to Professor Freemont-Smith is reproduced in the addendum to this brief In his brief to the Supreme Court in the *Furman* case, Attorney General McLeod confirmed that "[t]he presence of the Attorney General provides no representation so far as those who may have a special interest in the trust The joining of the Attorney General in this suit does not cut off the rights of those persons who are students or were former students, or the patrons of the school situate upon the land in question " [Appellant's Brief at 20, *Furman University v McLeod, id*] Mr McLeod would be shocked to learn that his role in the *Furman* case and the Court's holding therein were today being offered as support for the Attorney General's claim to speak and act for a private foundation in its capacity as chief beneficiary involved in a will contest, to the exclusion of its trustees

The respondents explore the ***facts*** of only one South Carolina decision *Watson v Wall,* 229 S C 500, 93 S E 2d 918 (1956) Attorney General McLeod, who intervened on appeal in the *Watson* case, explained to Professor Fremont-Smith that this case "establishes that the Attorney General may intervene in a case where the public interest in a charitable bequest is shown to exist ' [1965 WL 11641 (S C A G June 1 1965)] The Attorney General argued for a particular outcome there, as any other litigant might do He entered into no contract, signed no settlement agreement, and ousted no one in charge in the management of a private foundation The respondents quote general observations in the Court's opinion in *Watson* to the effect for example that the Attorney General's function is to enforce trusts That is indeed his function (which he shares with others, including the trustees themselves) as the appellants demonstrated in their principal brief "Enforcement of a charity" is a term of art The "[p]ower to enforce charities" is the power "to remedy cases of maladministration of a charity [10] Blasko, *op cit* , p 43 The Attorney

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[10] Chief Justice Traynor recounted the history of the AG's enforcement authority, and its limited nature, in *Holt v College of Osteopathic Physicians and Surgeons,* 61 Cal 2d (continued)

General, among others, has that power The Attorney General "does *not*, under any circumstances, have the power to govern trusts , but she does have the power to bring suit to enforce the charitable purposes of the organization " *Id* at 43 (orig emphasis) [11]

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[10](continued)
750, 755–56, 40 Cal Rptr 244, 394 P 2d 932 (1964)

> The prevailing view of other jurisdictions is that the Attorney General does not have exclusive power to enforce a charitable trust and that a trustee or other person having a sufficient special interest may also bring an action for this purpose This position is adopted by the American Law Institute (REST 2D TRUSTS, § 391) and is supported by many legal scholars (Karst, *The Efficiency of the Charitable Dollar An Unfulfilled State Responsibility,* 73 HARV L REV 433, 443-449, 4 SCOTT, TRUSTS (2d ed) § 391, 4 POMEROY, EQUITY (5th ed) 287 n 13, *see also* Note 62 A L R 881, 4 WITKIN, SUMMARY OF CALIFORNIA LAW (7th ed) 2918-2919)
>
> The foregoing statutes were enacted in recognition of the problem of providing adequate supervision and enforcement of charitable trusts Beneficiaries of a charitable trust, unlike beneficiaries of a private trust, are ordinarily indefinite and therefore unable to enforce the trust in their own behalf Since there is usually no one willing to assume the burdens of a legal action, or who could properly represent the interests of the trust or the public, the Attorney General has been empowered to oversee charities as the representative of the public, a practice having its origin in the early common law (*See generally* SCOTT, *supra*, § 391, pp 2753-2756)
>
> Although the Attorney General has primary responsibility for the enforcement of charitable trusts, the need for adequate enforcement is not wholly fulfilled by the authority given him The protection of charities from harassing litigation does not require that only the Attorney General be permitted to bring legal actions in their behalf This consideration "* * * is quite inapplicable to enforcement by the fiduciaries who are both few in number and charged with the duty of managing the charity's affairs " (Karst supra 73 HARV L REV at pp 444–45) There is no rule or policy against supplementing the Attorney General's power of enforcement by allowing other responsible individuals to sue in behalf of the charity The administration of charitable trusts stands only to benefit if in addition to the Attorney General other suitable means of enforcement are available 'The charity's own representative has at least as much interest in preserving the charitable funds as does the Attorney General who represents the general public The cotrustee is also in the best position to learn about breaches of trust and to bring the relevant facts to a court's attention ' (Karst, supra, 73 Harv L Rev at p 444) Moreover, permitting suits by trustees does not usurp the responsibility of the Attorney General, since he would be a necessary party to such litigation and would represent the public interest

[11] These authors again emphasize the '[l]imitations of the Attorney General's [a]uthority"

(continued)

The holding of any common law court and the precedential scope thereof can be understood only in light of the facts of the case The holding in *Watson v Wall* gives no support to the Attorney General's contention here The other South Carolina cases cited are equally unsupportive [12]

The statutes cited by the Attorney General codify his common law authority to enforce trusts They are typical of the statutes found in every jurisdiction They confer no authority for the Attorney General's action here

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[11](continued)

> The duty to protect the public interest by litigation *does* imply broad investigatory and supervisory powers The attorney general does *not*, however, have a right to regulate the actions of a charity of to direct its day-to-day affairs As a California court put it in *In re Horton's Estate,* [90 Cal Rptr 66, 68 (Ct App 1970)], the attorney general is not a super-administrator of charities She has 'no control over, or right to participate in, the contractual undertakings of charities The attorney general has standing to seek redress for demonstrated abuse of trust management, but cannot control or manage the everyday affairs of charities

Id at 47 (orig emphasis)

[12] For example, the respondents rely upon *Cooley v South Carolina Tax Comm'n,* 204 S C 10, 28 S E 2d 445 (1943), for the proposition that the Attorney General has authority to compromise disputes in which the State has an interest In *Cooley* the South Carolina Tax Commission disavowed a settlement entered into in its behalf in an estate tax case by its attorney, the Attorney General, and petitioned the Court to disapprove the settlement The Court addressed only the narrow issue of whether the Attorney General, when representing the Tax Commission at its request, had the authority to settle the case prior to an adjudication of the deceased taxpayer's legal domicile — the issue upon which the right of taxation depended Since the Attorney General had statutory authority to represent the State in such litigation and had acted in good faith the Court rejected the Tax Commission's claim The result would be the same if the Tax Commission had been represented by a private attorney Where the attorney has apparent authority, the client is bound by the attorney's settlement agreement *Shelton v Bressant,* 312 S C 183, 439 S E 2d 833 (1993)

In *Epworth Children s Home v Beasley*, 365 S C 157, 616 S E 2d 710 (2005) (decided under the former § 62–7–503) the Court held that where a testatrix has established a valid testamentary trust the courts must enforce it *Epworth* involved facts opposite to those here the trustees wished to terminate the trust in a manner that would have violated the testatrix/settlor's intent The AG intervened to protect the charitable trust from being destroyed by the trustees This was a traditional case of enforcement

VI

The appellants were removed as trustees and as personal representatives for one reason they opposed the settlement If the order approving the settlement is reversed, so must their removal be

The respondents confirm [Brief at 52–56] that the appellants were removed as personal representatives of the estate and as trustees of the 2000 Trust for one reason they opposed the settlement

The respondents say [Brief at 52] that the appellants' argument of this point is too brief Respondents' counsel are unable to tell the difference between a concise argument and a perfunctory one If the approval of the settlement is reversed, and if the only reason for the appellants' removal was their opposition to the settlement, it follows inexorably that their removal must also be reversed

The respondents sought and obtained this Court's permission to exceed the page limitation of their brief with the purpose, it turns out, of filling their brief with page after page of unfounded criticism of the appellants' administration of the estate and their opposition to the settlement To answer these criticisms properly, we too would have to ask the Court to waive the page limits Since all this is immaterial, we have not done so We only note that the circuit court made no such findings in its Order of May 26, 2009, nor did it remove appellants for any alleged breach of duty The opposite is true During the Section 1102 hearing the court noted appellants' extraordinary service [R pp 1324-25]

CONCLUSION

The respondents told the circuit court that Section 1102 creates an equitable procedure They reverse their field in this Court, but they were right the first time They do not try to distinguish the Section 1102 cases in every other State where such settlements have been addressed at the appellate level In every case the court found a duty to scrutinize such settlements rigorously, refusing to approve the destruction of a testator's estate plan unless clearly justified

The respondents have failed to defend their contention, offered to and accepted by

the circuit court, that the attorneys general of other States have authority to enter into a Section 1102 settlement agreement in behalf of a trust beneficiary thereby settling a will contest in the trust's behalf Nowhere is such authority conferred upon the office of attorney general

The respondents make no effort to show that ***the facts*** of any South Carolina case resulted in a holding of this Court which might support the Attorney General's authority to act as he did here None do

More than half of James Brown's assets were paid in settlement of claims, the principal one of which was utterly frivolous The remnant which is left does not go to the 2000 Trust created by James Brown That trust is obliterated by this settlement It is turned over instead to a new entity created by and controlled by the Attorney General and the disinherited members of the Brown family

By any standard this settlement was unjust and unreasonable

For these reasons and the others given earlier, the appellants again urge the Court to reverse the Order of May 26, 2009 and related orders

Respectfully submitted,

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by James B. Richardson, Jr.
Attorneys for Appellants

April 25, 2011

ADDENDUM
1965 WL 11641 (S C A G June 1, 1965)

Office of the Attorney General
State of South Carolina
June 1 1965

Mrs Marion R Fremont-Smith
Russell Sage Foundation
75 Federal Street
Boston 10 Massachusetts

Dear Mrs Smith

I must apologize for not having heretofore responded to your inquiries with respect to the administration of charitable trusts in this State The same reasons which have caused a lack of full implementation of statutes relating to this subject have necessitated the lack of response to your inquiry and the resume set forth below explains this in further detail

The administration of the uniform act relating to charitable trusts encompassed in Section 67-81 to 67-85 Code of Laws, 1962 has been plagued by lack of administrative personnel brought about principally by the large increase of litigation involving the interstate highway construction program The latter project has required the greater portion of the time of personnel
available for the administration of this office, particularly in the last five years

Eighteen trustees have filed copies of trust instruments with this office in accordance with the provisions of the statutes and submit annual reports to this office They are examined by me and by non-lawyer personnel but such examination is not in detail for the reasons recited above There have been no actions taken to assure compliance with the act and I am not aware of any violation of the law or omission or improper performance of trustees' duties In one instance an inspection of the returns of the trustees indicated that loans were being made to the trustees in a relatively small amount Informal report of this was made to the trustees with the result that the practice ceased

The statutes comprised in Sections 67-50 through 67-57 2 relate to trustees generally and do not necessarily involve this office nor do I consider that Section 67-57 2 requires that notice be given to the Attorney General for the allowance of acts by testamentary trustees The commissions paid to trustees are fixed by statute and in only one instance have allowances in excess of the statutory limits pursuant to a specific statute been called to my attention In that case a charitable trust was involved and I was made a party to the proceeding

The principal statute which was not cited by you in my opinion is Section 1-240 Code of Laws of South Carolina 1962 which provides

> The Attorney General shall enforce the due application of funds given or appropriated to public charities within the state prevent breaches of trust in the administration thereof and when necessary prosecute corporations which fail to make to the General Assembly any report or return required by law

This statute has been in existence since 1868 but only recently have actions involving its application been brought before the Supreme Court of this State

Watson v Wall 229 S C 500 93 S E 2d 918 involv[ed] the construction of a will whereby the testator devised certain portions of his estate to charitable purposes The matter was heard on the trial level without the knowledge of the Attorney General but on appeal to the Supreme Court this office petitioned for leave to intervene for the purpose of protecting the interests of the public in the charitable trust and the position adopted by this office with respect to the construction to be given the will was adopted by the Court This case is most important because of the clarification given South Carolina law with respect to the devolution of a lapsed or renounced devise but more importantly it establishes that the Attorney General may intervene in a case where the public interest in a charitable bequest is shown to exist

Subsequently the case of Furman University v McLeod 238 S C 475 120 S E 2d 865, was brought to determine the proper construction to be given certain deeds whereby land had been conveyed in 1820 for the purpose of maintaining a male and female academy in this State The case is important chiefly for the reason that it establishes that the Attorney General of South Carolina is the only proper and necessary party defendant in a proceeding involving a public trust where no private rights such as by way of reversion or reverter exist Aside from this postulate, the result of the case was that the trustees of Furman University were not restricted to the maintenance of the school established upon the land conveyed in 1820 but could sell such lands and build a new school in a suburban area

Subsequently an action predicated upon Furman University v McLeod was brought in the Circuit Courts wherein the Attorney General was named as the only party defendant and the action was remarkably similar to Furman and in fact involved the construction of a deed of the approximate time and verbiage as that in Furman and involved also a denominational institution Based upon the holding in Furman the matter was adjudicated at the trial court level and no appeal was taken

Of interest also is Cothran v South Carolina National Bank of Charleston 242 S C 80 130 S E 2d 177 wherein the Attorney General was made a party defendant The net result of this case was that dividends in stock received by trustees under a trust created by a will were considered to be net income and distributable to the life beneficiaries whereas a contrary holding would have resulted in accretion to a fund which ultimately would have devolved to the benefit of a charitable trust

The foregoing are the principal areas in which this office has been engaged with respect to charitable trusts As noted they arise under Section 1-240 of the South Carolina Code of Laws which is a tangential relation to the newer charitable trust act (Section 67-81 et seq)

The field of charitable trusts and charitable organizations is one to which I am directing my attention but which has not received the supervision which is indicated chiefly because of lack of personnel I find also that in some instances I am required to adopt a paradoxical position For instance in a pending case an application has been made to the South Carolina Tax Commission for a refund of taxes assessed upon funds held but not distributed by trustees As attorney for the South Carolina Tax Commission it is my duty to urge the collectibility of such taxes but as the officer charged with the preservation of funds bequeathed for charitable purposes I am likewise vested with the duty of attempting to assert nonliability If the issues were legally clear-cut there would be no problem but in this particular instance the respective positions are reasonably arguable

In another instance a charitable trust is sought to be taxed and I am convinced from the facts in evidence that the corporate entity is not in actuality a charity but has used such corporate organization as a subterfuge Various factors as well as trial court determinations have prompted me to approve a settlement of the matter without the necessity of bringing an action to revoke the charter of the corporation The ultimate result will be that a portion of the taxes will be paid and the alleged charity will surrender its charter

The field of public charities is one which requires attention and one which will receive further extensive consideration so far as the capabilities of this office permit I am pressing the program of supervision of charitable trusts as intently as is possible under the circumstances and I anticipate that increased emphasis will be directed in this field

Very truly yours

/s/ Daniel R McLeod
Attorney General

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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 Repre-sentatives 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

CERTIFICATE OF COUNSEL

I certify that appellant's final reply brief complies with Rule 211(b), SCACR

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April 28, 2011

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

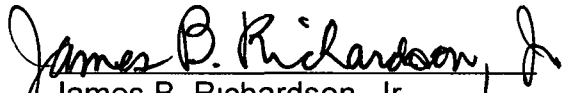
CERTIFICATE OF SERVICE

The undersigned certifies that he served a copy of the Final Reply Brief of Appellants upon the respondents by first class mail, postage prepaid, addressed to their

respective attorneys, namely

Attorney General Henry Dargan McMaster
Assistant Deputy Attorney General Robert D Cook
Senior Assistant Attorney General C Havird Jones
Assistant Attorney General J C Nicholson, III
Assistant Attorney General Mary Frances Jowers
Fred L Kingsmore, Jr , Esq
H Wesley Kirkland, Jr , Esq
James M Griffin, Esq
William Joseph Barr, Esq
Louis Levenson, Esq
Matthew Day Bodman, Esq
Max N Pickelsimer, Esq
R Wayne Byrd, Esq
Robert N Rosen, Esq
T Heyward Carter, Jr , Esq
S Alan Medlin, Esq
David L Michel, Esq
Albert P Shahid, Jr Esq

addressed to them at their respective addresses of record, on April 27, 2011



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