

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning

RECEIVED

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SC Court of Appeals

Appellate Case No. 2017-001899

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

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope and Robert L. Buchanan, Jr., Defendants.
Of whom Adele J. Pope is Appellant

RETURN AND OPPOSITION TO MOTION OF ATTORNEY GENERAL TO STRIKE

For each reason stated herein, Appellant opposes the motion of Respondent Alan Wilson, Attorney General ("AG"), to strike Appellant's Initial Brief and Designation of Matter to be included in the Record on Appeal filed January 29, 2018, and requests for stay or abeyance related to the motion.

SUMMARY OF OBJECTIONS TO MOTION TO STRIKE

Respondent AG continues with the Motion to Strike and related filings the bifurcated, and conflicting, approach the AG has taken since January 2011 to this multi-million dollar tort suit filed in the name of his predecessor AG.

This lawsuit, as confirmed by former AG, now Governor, Henry McMaster in his sworn 2016 statements, was filed in the name of the AG without the AG's knowledge. AG McMaster did not sign a valid contingency fee contract with Sweeny, Wingate & Barrow, PA ("Wingate"), yet his office is to receive ten percent of the Wingate contingency fee related to entertainer James Brown's charity. AG McMaster did not authorize Respondent Russell Bauknight to sue Robert Buchanan, Jr., and Appellant ("Pope") "on behalf of the Attorney General of South Carolina," as Bauknight has done in for almost eight years.

Governor McMaster knew nothing about either the facts related to James Brown or this lawsuit. He had not read the Will of James Brown. He relied on a Sr. Assistant AG and his staff. He did not learn he was a named Plaintiff until after leaving office.

In January 2011 AG Alan Wilson, with no knowledge of the facts,

authorized this suit to continue. That same month, the AG condoned, without review, Bauknight's overstatement of Brown's deductions to the IRS and the securing of a closing letter which, under Brown's 2000 Trust, shifted one third of Brown's assets and income from Brown's "I Feel Good" charity to the taxable Grandchildren's Trust.

For the next seven years, while asserting through staff counsel that he supported the South Carolina Freedom of Information Act *South Carolina Code of Laws, Annotated Sec. 30-4-10* (1976 as amended) ("FOIA"), the AG worked through the Wingate firm, his private lawyer, to suppress handwritten admissions of Respondent Tommie Rae Brown ("Tommie Rae") that she was not James Brown's spouse; the Wingate contract which Governor McMaster did not sign; amendments to the Legacy Trust over which the AG and Tommie Rae exercise seventy-five percent control; and the \$4.7 Million appraisal which valued James Brown's Right of Publicity at zero and secretly overstated his TIAA debt by \$3 Million. Aided by the Wingate firm and Bauknight, the AG was successful in having one FOIA suit consolidated with this case and was seeking the consolidation of a second in 2016 when it was dismissed.

In March 2013 the AG assured the South Carolina Supreme Court in *Wilson v. Dallas* that he was withdrawing from this suit. By May 2013, however, Tommie Rae and six other Respondents had publicly announced their intention to ignore the *Wilson* decision and reinstate the McMaster settlement deal which placed all of James Brown's assets under the control of AG Wilson and Tommie

Rae. The AG's private counsel resumed its active pursuit of this case.

On August 29, 2016, as the AG's staff counsel argued that the AG should be dismissed under Rule 21 because of improper joinder, the AG's private attorney was arguing that the AG, his Legacy Trust and his agent Bauknight should be granted partial summary judgment.

After the initial ruling dismissing the AG as a party under Rule 21 of the *South Carolina Rule of Civil Procedure ("SCRCP")*, the AG's staff counsel asserted he was no longer a party, while the Wingate firm counsel continued to pursue the summary judgment and to oppose a lifting of the stay so that a motion to amend the summary judgment order could not be heard.

The Governor of South Carolina has confirmed under oath that this case was commenced by the Wingate firm in 2010 against Pope and Buchanan, two South Carolina citizens, when the Wingate firm had no legal authority to bring the suit in the name of the State or the AG; that Bauknight has no legal authority to claim he was acting "on behalf of" the AG of South Carolina; and that the Wingate firm had no signed State contract (or contract with any Plaintiff other than Bauknight) to support its 23% - 40% contingency fee.

The record has not closed in this matter. Each matter challenged was properly presented to the lower court and is relevant to this appeal. Many of the items objected to by the AG were presented to the lower court by the AG himself.

The Motion to Strike should be denied. No stay should be granted. This appeal should proceed.

BACKGROUND

The AG provides the following history for the suit he, his Legacy Trust, and Tommie Rae have pursued against Buchanan and Pope for almost eight years:

This suit was brought against Appellant, as personal Representative of the late singer James Brown's estate and as a trustee of the James Brown 200 [sic] Irrevocable Trust. The claims include breach of fiduciary duty, breach of trust, and negligence. Appellant counterclaimed against Respondents.

The actual background consists of hundreds of filings by the AG and other Respondents, together with a large number of filings by Appellant and Buchanan. In addition to the filed record, there were many communications with the Court. Further, the lower court took free judicial notice of, and based rulings on, other James Brown cases, especially *Wilson v. Dallas*; Aiken Case 2013-cp-02-1337 ("Aiken 1337"); and the voluminous record in United States District Court case number 3:08-cv-00014-WOB, brought in 2008 to enjoin Brown's 2000 Trust until original Trustees David Cannon and Albert Dallas could be reinstated.¹

This case, filed May 19, 2010 sought damages from Pope and Buchanan for taking the appeal which became *Wilson v. Dallas* 403 S.C. 411, 743 S.E.2d 746 (2013). It sought tens of millions of dollars in damages for the AG's James Brown Legacy Trust.

¹ Case 3:08-cv-00014 was brought by David Bell, Esq., and his client Forlando Brown, assisted by Atlanta law firm Powell Goldstein. Bell and Forlando, closely associated with felon David Cannon, planted a false Grammy (c) claim noted by the Supreme Court in *Wilson v. Dallas* with a second Atlanta law firm in January 2011.

Buchanan and Pope never owed any duty to Tommie Rae, who holds a 25% vote and 23 ½% equity interest in the AG's Legacy Trust. Their duty to the five clients of Louis Levenson, Esq. who had another 23 ½% interests in the AG's Legacy Trust, was limited to delivering them certain items of tangible personal property ("TPP")

In short, this multi-million dollars tort suit was brought for the benefit of a private trust created and controlled by the AG's Legacy Trust, to whom Buchanan and Pope never owed any duty.

On May 18, 2010 the secret Wingate contingency-fee contract to bring this suit, known as "Richland 4900," was signed by Bauknight, Tommie Rae's lawyer, Levenson and David Bell, Esq. If the *Wilson* appeal had been stopped, the three lawyers would have collected about \$20 million in contingency legal fees.

The Wingate contract provides that ten percent of the Wingate 23% - 40% contingency legal fee related to Brown's charity will go to the AG's office. The Wingate contract remained secret until 2013.

While the main goal of the Complaint was to stop the appeal which became *Wilson v. Dallas*, the AG's Complaint also asserted Buchanan and Pope knew nothing about "Termination Rights" under Sections 203 and 304 of the U. S. Copyright Act. In addition, it made the conflicting claims that Buchanan and Pope should have accepted a \$100 Million offer for James Brown's assets, and, yet that they had artificially inflated the value of Brown's assets to secure a \$5 Million commission.

Beginning in January 2011 the false claims made in this suit would be used by Tommie Rae and the AG in *Wilson v. Dallas* and other appellate court filings to persuade the Court that Buchanan and Pope were not simply incompetent, but greedy felons who had intentionally overstated the value of Brown's music empire by \$79 Million to get a \$5 million commission.

The claims would be accompanied by Bauknight's devaluation of Brown's music empire to \$4.7 million, achieved by secretly overstating his remaining debt on a 1999 transaction by \$3 million; valuing Brown's Right of Publicity at zero; and valuing of Brown's iconic TPP and other assets at zero or near zero.

In 2010 the AG, through Senior Assistant AG Havird "Sonny" Jones, told this Court, in the appeal that became *Wilson v. Dallas*, that an appraisal was expected within a few weeks which would show the assets of James Brown's estate and 2000 Trust were worth less than \$12 million when he died.

In October 2010 the AG named former trustee Cannon, who had stolen \$17 Million from James Brown, as a witness against Buchanan and Pope.² By then, the AG was seeking relief from default after Wingate failed to timely respond to Buchanan's and Pope's counterclaims.

In January 2011, AG Wilson and Bauknight filed a motion seeking sanctions against Buchanan and Pope for filing a brief to hold Cannon responsible for court-ordered costs associated with their successful effort to

² At the time, Cannon was under indictment for about \$12 million of the \$17 million he took from Brown, and for a 2008 forgery to cover up some of the taking.

secure Cannon's 2007 resignations. It would be the first of many attempts of Bauknight and the AG to sanction Buchanan and Pope.

The AG's request for sanctions was denied, but the brief was stricken.

In January 2011, Bell and his client planted the false story about the proper withdrawal of James Brown's Grammy from the 2008 Christie's sale. This was typical of the work of Bell, his client Forlando Brown, and former trustees Cannon and Albert Dallas.³

In April 2011, in response to the AG's \$12 Million value claim, Pope and William Jeffrey Smith, circulated *Private Foundations, Copyright Heirs and Musical Millionaires: why The James Brown "I Feel Good" Trust doesn't...* The article explored the damage to Brown's nearly \$85 million "I Feel Good" Charity and its 800+ copyrights by the AG's alliance with Tommie Rae – declaring her the spouse despite strong evidence to the contrary --- and the proposed devaluation revealed by the AG's staff.

In May 2011, the AG, with others, filed a motion to supplement the record on appeal ("ROA") in *Wilson* with an IRS closing letter they claimed showed Brown's music empire was worth only \$4.7 million when he died.

The AG and Bauknight did not explain that the \$4.7 million valuation did not benefit Brown's "I Feel Good" Charity or his Grandchildren's Trust in the estate tax proceeding and generated disastrous income tax consequences for the charity. These were, however, clear from a reading of Brown's 2000 Trust (Article

³ Dallas had filed documents in this Court in 2008 to try to stop the Christie's sale nine days before it took place.

V).

When the Internal Revenue Service did not challenge Bauknight's \$4.7 Million value, Bauknight shifted about 1/3 of Brown's assets and income from the "I Feel Good" charity to Brown's taxable Grandchildren's Trust, where it will remain and be taxed unnecessarily for two decades before going to the "I Feel Good" Charity.⁴

In the summer of 2011 Pope sought a copy of Respondent Legacy Trust and the claimed \$4.7 valuation under FOIA.

The AG declined to release the documents. Bauknight's lawyer claimed the AG's Legacy Trust was private and not subject to FOIA. He threatened sanctions if Pope continued to exercise her FOIA rights. Pope filed a FOIA suit for the documents in August 2011.

On September 2, 2011, the AG served a MOTION OF ATTORNEY GENERAL TO DISMISS AND ALTERNATIVE MOTION TO STRIKE. The AG asserted in part:

1. Venue is improper....the Honorable Casey Manning has already determined that venue should be in Richland County... *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010. . .
2. Another action is pending among the same parties as to the same or substantially the same claim....*Bauknight, etc., et al, supra*...Moreover the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900.. .

⁴ Page 2 of the Attorney General's motion focuses on the statement on page 29 of the Brief that "no court has been told" of this income tax damage caused by Bauknight's \$79 million devaluation and ill-gotten closing letter, which the Attorney General both supported and praised. The documents which show this, Brown's Will and 2000 Trust, have been part of the Richland 4900 record for years.

In the fall of 2011 the Richland 4900 Plaintiffs moved to intervene in the FOIA suit pending in Newberry County. Tommie Rae and others sought to prevent release of the Wingate contract with the AG. While the AG's staff claimed they were ready and more than willing to release the document, the AG's private Wingate firm claimed the Wingate contract was private.

On November 1, 2011 the AG supported Bauknight's claims to the Supreme Court that Tommie Rae's elective share claim was a "slam dunk;" that James Brown's estate and 2000 Trust had no corpus to speak of; that Termination Rights are "all this estate is about;" and that, as a result of Termination Rights there would be nothing left in the "I Feel Good" Trust by 2023 if the AG's 2008 settlement deal were not upheld.

On November 22, 2011 on the AG's motion, Newberry County FOIA Case 2011-CP-36-379 was transferred to Richland County and consolidated with this case. The Order stated in part:

...2 At the conclusion of the pleadings phase of this case, this matter will be consolidated with Bauknight v. Pope, 2010-CP-40-4900 (Richland 2010).

On December 9, 2011 the Wingate firm filed a MOTION FOR SANCTIONS on behalf of the AG's co-Plaintiffs against Appellant and her counsel in the above FOIA case.

In 2012 Appellant asked Judge Early to lift or declare void two 2008 *ex parte* gag orders related to Tommie Rae's handwritten admissions that her 2001

ceremony with Brown was bigamous because she was married; living with her husband in Texas; and thought she might be pregnant before leaving her husband and taking up with Brown.

For much of 2012 and until May 2013, the AG joined Bauknight and Tommie Rae in vitriolic attacks on Pope in an effort to prevent release of Tommie Rae's admissions.

In 2012 a journalist covering Pope's FOIA suits requested some of the same documents under FOIA that Appellant had requested. In addition, the journalist sought Tommie Rae's handwritten admissions, which the AG had held since early 2008. Until 2015 the AG and Bauknight worked to suppress these admissions.

In July 2012 the AG reached a settlement to pay Buchanan to release his counterclaims in this case; did not disclose the settlement to the *Wilson v. Dallas* Court; but required Buchanan not to file a Petition for Rehearing in *Wilson*. A motion to void as against public policy is pending.

In addition to seeking to have the journalist's FOIA case consolidated with Richland 4900, the AG, through Wingate, sought notes and sources from the journalist in Richland 4900. The subpoena was later withdrawn.

In October 2012 the AG and other Richland 4900 Plaintiffs filed and sought to strike Offers of Compromise presented to the AG and other by Pope.

In 2012 the AG, with others, filed one hundred articles, letters and filings from other courts and the media as part of a Motion for Guidance as to Pretrial

Publicity. In doing so, the AG put before the lower court FOIA and other pleadings from various James Brown's suits and much of what had been said in the media about the proceedings.

On February 27, 2013 the South Carolina Supreme Court issued its first decision in *Wilson*.

On March 6, 2013 Pope personally met with AG Wilson and his Senior staff to tell him of the terrible damage to Brown's "I Feel Good" Trust caused by Bauknight's devaluation. She described both the serious tax problems and the reduction of "I Feel Good" scholarships from more than \$3 million a year to \$150,000 or less a year caused by the Bauknight devaluation.

Within a few days, Pope and her counsel Adam Silvernail, Esq., met with Solicitor General Cook and Chief Deputy McIntosh (the second meeting for Pope) for the same purpose – to encourage the AG to take rather easy steps to correct the Bauknight filings.

By March 14, 2013 the AG, through staff, had told both Pope and the Supreme Court that he was getting out of Richland 4900, and had told the Supreme Court he hoped to resolve the FOIA matters promptly.

By May 2013, however, Tommie Rae's attorney and Levenson had openly announced to Judge Early the plan to reinstate the recently-voided McMaster settlement deal, and the AG had helped reinstall Bauknight after his appointments were voided in *Wilson v. Dallas*.

As the AG and his Legacy Trust continued to pursue Richland 4900

through Wingate, his staff counsel told FOIA courts that the Legacy Trust no longer existed.

Between 2013 and 2016 the AG praised Bauknight as Bauknight paid \$1.5 Million to David Sojourner, Esq. not to protect Brown's copyrights in the Tommie Rae proceedings; condoned a \$700,000.00 legal/GAL fee for Tommie Rae's son; paid Peter Afterman \$360,000 in 2016 after Afterman helped Tommie Rae siphon off \$1 million from three "I Feel Good" Trust copyrights in 2015; and continued his efforts to help Tommie Rae and her son take some of the U.S. royalties to about 90 of the 900 copyrights owned by the "I Feel Good" charity by 2023, He took no action when Bauknight failed to file proper accounting and spent millions of dollars to defeat Pope's 2013 fee claim in Aiken 1337.

By *sua sponte* Order of the Honorable Donald W. Beatty, then-Acting Chief Justice, dated March 24, 2016, both Richland County FOIA cases were assigned to the Honorable Doyet A. Early, III, Early, to whom this case was assigned.

On June 14, 2016 Judge Early granted the AG's and the Legacy Trust's Motions to Dismiss the FOIA suit seeking the Legacy Trust amendments and \$4.7 million appraisal and related documents. Judge Early stated on page 2 of the Dismissal Order:

These documents are potentially discoverable documents under pending litigation in Richland/Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. [Ord. dtd. 8/19/16, Case No. 2012-CP-40-350]

On August 29, 2016 the AG's Motion to be dropped as a party under Rule 21 was argued by his staff counsel in the same hearing where his Motion for Partial Summary Judgment was argued by the AG's private counsel, Wingate. (Orders dated May 31, 2017 and June 23, 2017.)

In 2016 Governor McMaster testified under oath that he had not authorized the Wingate Firm to name him as a Plaintiff in Richland 4900; that he had not authorized Bauknight to act "on behalf of the AG" in this suit; and that he did not know until after he left office that he was a party to this suit.

On January 4, 2017, while those two motions were pending, the AG joined Bauknight in seeking a PETITIONERS' JOINT MOTIONS TO CONSOLIDATE DEPOSTIONS FOR THE PURPOSES OF DISCOVERY ONLY AND FOR PROTECTIVE ORDER AS TO THE DEPOSITIONS OF DESIGNATED EXPERTS. The AG sought to consolidate expert discovery in Richland 4900 and Aiken County Case 2013-CP-02-1337. Attached to the Motion were:

1. A cover letter dated November 28, 2016 and Defendant's Designation of Expert Witnesses in Aiken 1337;
2. A cover letter dated November 30, 2016 and Plaintiffs' Identification Of Experts in Richland 4900
3. An ORDER OF CONSOLIDATION issued by Judge Early on May 6, 2008 in three James Brown cases.

Arguing for the consolidation, the AG asserted that "Defendants expect the expert witnesses to testify to substantially the same subject matter in both

cases and therefore deposing each witness twice is unnecessary and unduly burdensome.” He, with others, asserted:

...[T]he consolidation of actionsis proper because both suits involve common questions of law and fact with regard to Ms. Pope’s former services...Furthermore, the consolidation will not deprive any party of a substantial right, but, in the alternative, will have the effect of preventing multiplicity of litigation, promoting judicial economy, clearing congested dockets, conserving court time and space and saving the parties unnecessary costs.

In 2017 AG Wilson was deposed in Aiken 1337. He confirmed that he knew virtually nothing about the James Brown assets he had controlled for three years; this lawsuit; or the Legacy Trust he continues to control with Tommie Rae. He did, however, confirm that he had authorized this lawsuit to continue in January 2011.

The AG asserted he had no recollection of the Pope meeting, but did not challenge Pope’s account of the meeting.

Depositions of Solicitor General Robert Cook and former Chief Deputy John McIntosh confirmed they lacked authority to make the AG a Plaintiff in this suit, and did not authorize it.

Solicitor General Cook testified in 2017 that he believed Pope to be competent and concerned about Brown’s “I Feel Good” Trust, not greedy.

Richland 4900 counsel, the Wingate firm, to protect its clients in Aiken 1337, was allowed to attend the AG staffs’ depositions.

The Order dismissing the AG as a party under Rule 21 was issued on May

31, 2017.

On June 23, 2017 Judge Early, while reconsideration of the Rule 21 Order was pending, granted Respondents' MOTION FOR SUMMARY JUDGMENT AS TO DEFENDANT'S COUNTERCLAIMS.

The lower Court, at the request of the AG, relied in its decision on *Wilson v. Dallas* and also on the massive record in *Brown v. Buchanan and Pope*, 3:08-cv-00014-WOB (D.S.C. 2014), even though the Plaintiff Forlando Brown was not a litigant in this case.

On July 13, 2017 Appellant filed a 71-page MOTION TO ALTER, AMEND, RECONSIDER AND/OR VACATE ORDER GRANTING MOTION FOR SUMMARY JUDGMENT TO COUNTERCLAIMS raising numerous important issues, including asking the Court, among other things, to rule that :

7. ..[B]ecause former AG Henry McMaster, now Governor of South Carolina ("Governor McMaster") has confirmed under Oath in this case (the "Wingate Suit") that he did not authorize The Wingate Firm to name the AG as a Wingate Suit Plaintiff; did not authorize Bauknight to act on behalf of the AG in the Wingate Suit; and did not know that this had happened until he left office in January 2011. . .

and:

8. ...AG Alan Wilson's January 2011 authorization to continue the Wingate Suit did not make the illegal Wingate Suit legitimate...

In August 2017 Appellant's motion to alter, amend or vacate the Order dismissing the AG as a party under Rule 21, *SCRCP*, was denied.

Since the Rule 21 ruling, the AG's staff counsel has claimed that the AG is

no longer a party to Richland 4900 and takes no positions, while in contrast the AG's private Wingate firm attorneys have pursued the partial summary judgment and resisted lifting the stay related to this appeal..

The actions of the AG with respect to this appeal parallel the actions of the AG's Legacy Trust. In the FOIA matter, the AG and the Legacy Trust sought, and obtained, an Order of Judge Early stating that the Legacy Trust does not exist. Through Wingate, however, the Legacy Trust has vigorously pursued this suit.

The AG continues to take opposing positions with respect to many of the issues in this case, including his own stance and that of the Legacy Trust over which he holds effective control.

RESPONSE TO ARGUMENT OF ATTORNEY GENERAL

I, IV & VI

Generally and Other Objections

Rule 210(b) requires that the Designation propose to include only "portions of the materials which may be properly included in the Record on Appeal [see Rule 210(c)]. A party shall not include in matter in his Designation which is not relevant to the appeal."

The AG has vigorously pursued a tort suit against two South Carolina citizens for nearly eight years to benefit his private "Legacy Trust" to which they

never owed a duty. He now seeks to be released claiming a misjoinder of parties under Rule 21, SCRCP. At the same time he has obtained – after his dismissal – a partial summary judgment order. And he is asking the Court to enforce a stay so that the summary judgment order will not be finalized. Under these facts, *everything* the AG has done to actively participate in this litigation over these years is relevant.

Under the extraordinary facts of this case the Appellate Court needs as full a record as can be garnered.

Were the record now closed, some of the matters would surely be the proper subjects of motions to supplement the record by judicial notice. This is especially true of the accounting recently filed 2016 accounting by Bauknight which shows that he paid Peter Afterman \$360,000 after Afterman helped Respondent Tommie Rae siphon off royalties. It is also true of the California lawsuit filed in January 2010, in which some Respondents allege improper secret deals by other Respondents.

The AG advised the lower Court in 2013 that he was getting out of Richland 4900, then did the opposite.

The unique Rule 21 claim is in distinct contrast to the actual and active role the AG continues to take in this case. A full record of his actions is appropriate.

Where, as here, the AG is seeking to be dismissed, claiming improper joinder, at the same time he is actively naming nine experts; claiming 10% of the

legal fee for his office; and allowing the Legacy Trust he and Tommie Rae control to be seeking millions of dollars from the fiduciaries who protected James Brown's estate plan, everything he has done since January 2011 is relevant.

Where, as here, the AG has subpoenaed the notes of journalists and stopped depositions to prevent release of public documents everything he has done is relevant.

Where, as here, the AG condoned IRS filings by Bauknight which overstated James Brown's deductions by \$5 Million, the AG's actions after being told of the filings are relevant to this appeal.

Where, as here, the AG has attacked Buchanan and Appellant and falsely accused them of a federal felony, everything he had done in this case is relevant.

The matter designated and discussed in the brief was "presented to the lower court or tribunal" as required by Rule 210(c), including many items of which the lower court took judicial notice at the request of the AG. The AG expanded the record exponentially by voluminous filings related to at least five James Brown cases.⁵

Some of the documents relating to five or more James Brown cases the AG and other Respondents presented to the lower court are part of a single motion filed by the AG and other Respondents on August 23, 2012. Some of the 100 attachments are: 1. *High Court Takes up James Brown Settlement*; 22. Brief in Support of Summary Judgment, FOIA(Case 379); 25. Deposition of Deanna Brown Thomas in another case; 26. Order (Case 379); 27 Affidavits (15); 30 *Goliath Roar* (Article about FOIA susits); 32. Motion for Sanctions letter from Emory Smith, Esq, to Judge Addy; 33. Motion to Strike Affidavit off W. Jeffrey Smith w/Attachment (*Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown I Feel Good@ Trust doesn=t...*); 34. Return to Motion of AG to Strike ; 35. Images, Affidavit of W. Smith Opposing Strike or

The need for a fair and full record is compelling where the Governor has now stated under oath he did not authorize this case to be brought in the name of the AG, and did not authorize Bauknight to act on his behalf. New developments in this court and others shine more light on the AG's role in this case each day.

The Brief contains proper citations. Should there be any defect to a particular citation, the remedy would have been to consult with counsel to resolve that issue. The AG's asserts that summary judgment matters are not pertinent to the issue in the instant appeal. They are, in fact, at the heart of it.

Disregarding; 36. Aff. of Adele J. Pope Opposing and Exhibit A; 38. *Former Songwriter Sues* (About Jacque Holander Federal Case); 39. *AG Wilson Continues Battle to Conceal JB Documents and Deny FOIA Requests*; 40. Pope Subpoena and Letters to Attorney General, Rosen; 41. Motion to Quash Subpoena and Unseal Documents; 43. Motion to Vacate or Declare Void/Moot Orders Related to diaries of Tommie Rae Hynie Brown and for related relief; 44. *Gende (AG's at) tries to force Buchanan Settlement* 46. *AG Wilson Asks Judge to Conceal diaries of James Brown Companion*. 47. Silvernail letter to Jg. Manning July 11, 2012; 52. *Daryl Brown Pleads With Attorney General: Protect Needy Children*; 62. *Attorney General's Promise to Release Contracts may Resolve Newberry James Brown FOIA Case*; 65. *Wingate Firm, James Brown Children, Others, Ask to Join Wilson in fighting Release of Public documents*; 67. *Judge Casey Takes Control of Ring Two in James Brown Circus*; 68. *Attorney Claims Nobody Forced James Brown to Give \$100 Million Music Empire to Needy Children*; 70. *Brown Grandson Fires Lawyer in Trust Lawsuit* [Above Federal Case 3:08-cv-00014-WOB] 72. *AG Wilson Attempts to Exclude Affidavit of Local Copyright Expert in James Brown FOIA lawsuit*. 75. *Attorney for James Brown Companion Subpoenas Information About "Explosive Diaries"*; @ 76. *James Brown Trustee Claims Son, Grandson Conspired With Companion*; 77. *Former James Brown Trustee Fights " Career Threatening" Allegations of Lying to Court*; 78. *Las Vegas Man Claims James Brown Was his Father*; 80. *At Request of AG, Judge Keeps Gag Order on Diaries Court Hears Arguments, Finger - Pointing at Hearing on James Brown Restitution*. [about David Cannon Criminal Case]; 100. *Deanna Brown Thomas Talks Court Battle, James Brown Movie Deal*.

II

Affidavit of Pope dated November 8, 2017

For the reasons stated above, the Affidavit of Pope was properly cited and is relevant.

The AG states that he was “no longer a party to the case below when Appellant filed it with the lower court.” This is inconsistent with his continuing role, both though Bauknight “on behalf of” the AG and AG’s Legacy Trust.

III

Opinion/Affidavit of William Smith

Mr. Smith was engaged by Buchanan and Pope in June 2008 to help prepare the “I Feel Good” Trust to minimize any reduction in its royalty revenues by the attempted exercise by claimed heirs of “Termination Rights” under Sections 203 and 304 of the Federal Copyright Act, which would begin to be affect the “I Feel Good” charity in 2012. On August 10, 2008 the AG threatened the process by giving away half of the charity; declaring Tommie Rae to be Brown’s spouse; and declaring that only those the AG elected to designate would be Brown’s heirs.

Private Foundations, Copyright heirs and Musical Millionaires: why the James Brown “I Feel Good” Trust doesn’t..., describes the combined damage of the AG’s misapplication of the Copyright Act; stopping the proper heirs determination process; and devaluation of Brown’s assets threatened to leave the “I Feel Good” charity with almost nothing, was published by Smith and Pope,

its co-authors, in April 2011. It was made a part of the record in this case in an Affidavit of Smith filed by the AG and other Respondents in 2011. His later Affidavit provides nothing new, and was appropriately designated.

V

Documents Presented to the Lower Court

The AG's motion seems to focus on whether something shows up by name in the list of filings in Richland 4900. This is not the standard. The record is far broader than described in the motion. For example, prior to the May 26, 2009 Order which became the subject of *Wilson v. Dallas* Judge Early was asked to take judicial notice of every filing in all James Brown cases, and he did so. The summary judgment order, and others, make clear that Judge Early considered many things outside the record of Richland 4900, as does the fact that Judge Manning and Judge Early, *sua sponte* issued an order for a joint mediation of Aiken 1337 and Richland 4900.

Citations to *Wilson v. Dallas* and Sworn Statements of Governor are Proper

In the objections to almost every paragraph of the brief, the AG seems to take the position that appellate review of the AG's 8-year pursuit, through a private law firm, of what is now known to be an unauthorized tort suit against South Carolina citizens, cannot be had unless that citizen has refiled in Richland County every representation made by the AG and his agent Bauknight to a lower court. Where the lower court in this case took liberal notice of all James Brown cases, they have been presented to the lower court. This is true of the *Wilson v.*

Dallas citations and the sworn statements of the Governor and AG.

The AG also seeks to prevent the Court from reviewing the sworn testimony of Governor Henry McMaster that he did not authorize this lawsuit to be filed; did not authorize Russell Bauknight to sue on behalf of the AG; and did not know the private law firm had named him as a Plaintiff until after leaving office. The AG seeks to prevent this Court from reviewing the sworn testimony of AG Wilson that he did, in fact, authorize the litigation to continue when he came into office in January 2011. These statements were presented to the lower court and are relevant.

This Court should not allow the AG to prevent review of what the Governor of South Carolina has now confirmed under oath was an unauthorized lawsuit brought by private lawyer in the name of the State's highest legal officer.

Documents Addressed on Attorney General's Schedule A

Virtually every citation to the record can be found in multiple documents. The complaints of the AG are unwarranted. Appellant has, however, addressed some of them below.

1. P. 4, Note 7 . Appellant's reference to *Wilson v. Dallas* and request for judicial notice of certain documents on file in that appeal is appropriate. Although the Court may elect not to take notice of the briefs, Rule 201 SCACR states that the Court shall take judicial notice of certain matters. The relevant documents are available to the Court on the public C-Track.
2. P.5, continuing on P. 6. The AG asserts that documents regarding the AG's Motion for Partial Summary Judgment are not the subject of this appeal. See above. Where the AG is simultaneously seeking to be dropped as a party to a lawsuit under the Misjoinder provisions of Rule 21, SCRCF; vigorously pursuing discovery; and even seeking partial

Summary Judgment as to the Counterclaims against him, all of these acts, and the related documents, are the subject of this appeal. There is no basis to strike.

3. Page 6, Note 10. The AG asserts that statements and documents referring to a FOIA case are not properly before the Court. This is incorrect and inconsistent with the record the AG has made in this case. The AG's bringing FOIA cases into this case, or seeking their consolidation, and then claiming that they are not relevant or proper is unwarranted. There is no basis to strike.
4. Page 7, 1st Full para. The AG's suggestion that references to *Wilson* in the brief are inappropriate is misplaced. This suit was filed against Buchanan and Pope by the AG and others to stop the appeal which became *Wilson*. There is no reasonable reason to strike the reference.
5. Page. 7, 2d. Full para., to page 8, including quote. The AG asserts that this contains no citations, but it does. A letter from the AG's counsel to Judge Manning dated 5/2/13 is cited, as is the Mot. 6/23/17 and the deposition of Bauknight. The AG does not assert that the quotes are incorrect or not found where cited, and they are in the record of this case repeatedly.
6. P 8, first Full para. The fact that on June 13, 2017, at the request of Bauknight, Tommie Rae and other Respondents, Judge Early issued orders excluding Buchanan and Pope from participating in an Aiken County James Brown case except their own claims cases is found throughout the entire record, and its accuracy is not refuted by the AG. This citation could be attached to numerous filing in the Case below. There is no basis to strike.
7. Page 8, 2d Full para, including P. 9, including Note 13. There are no page or line cites related to the August 20, 2013, statements under oath related to Pope's service. The quote has been repeated often since it was made by Bauknight under oath just two months after Aiken 1337 was required to be filed in 2013. The AG does not deny the accuracy of the quote. Page and line numbers can be provided is requested by the Court. There is no basis to strike.
8. P. 8, Para. At bottom, and continuing on page 9, including Note 13.
 - a. Afterman's claim to be hired by the State of South Carolina is public and contained throughout the record.
 - b. The 11/18/17 affidavit is not an effort to bolster the record, but to

complete the still-open record where the AG has sought dismissal as a party for nonjoinder under Rule 21, but continues to seeks partial summary judgment and resists a lifting of stay which would allow the motion to alter the summary judgment decision to be ruled on and this Court to consider both (contradictory) claims of the AG together for purposes of judicial economy and fundamental fairness.

- c. Statements of counsel were not objected to at the hearing on August 29, 2016, and are appropriately part of the record of this appeal. There is no prohibition of inclusion of statements of counsel.
 - d. The Toberoff Letter of September 2013 was presented to the Court below, and is part of the record in this case. No basis to strike any portion of this.
9. Para. 9, first full para. Where the AG continues to pursue the case as an active party after the initial Motion to be Dropped as a Party is granted, and his Motion for Summary Judgment is being pursued, all matters which related to these contrary and simultaneous claims of the AG are appropriate until the record is closed. *Hickman v. Hickman* is not being violated..
10. Parag 9, note 14. The Smith Opinion merely recites the sworn March 16, 2017 testimony of Termination Rights expert Jonas Herbsman who was designated by the AG after the AG argued his motion to be dropped as a party in both this case and in Case 1337 which the AG sought to consolidate with this case. The inclusion was proper and directly relates to the AG's Complaint which asserts that Buchanan and Pope lack proper knowledge of Termination Rights.
11. Page 9, Note 14. The AG's assertion that this is unsupported or improper is incorrect. Levenson, the attorney-signatory to the Wingate contract seeking \$9 million if the *Wilson v. Dallas* appeal could have been stopped, was named by Bauknight as a witness against Appellant and deposed in November 2017. He confirmed that Peter Afterman, in addition to helping Tommie Rae and her son siphon off royalties from James Brown's charity, in 2013 solicited Respondent Deanna Thomas and others to attempt to siphon of the "I Feel Good" Charity's copyright royalties with Tommie Rae.

12. Page 9 Toberoff Letter was presented to the lower court.
13. Page 10, first full paragraph. The fact that Buaknight was appointed PR/Trustee in October 2013 and Sojourner was appointed SA/ST is widely recited within the record, including in the Affidavit of 11/18/17, and is undisputed. There is no basis to strike.
14. Page 10, Note 15. There is nothing inappropriate about a request for judicial notice.
15. Page 10, Second and third full paragraphs. See comment to 13. The Wingate litigation agreement is a part of the record in this case, which was presented to the lower court..
16. Page 10, Note 16. The fact that the AG continued to decline to release the entire Wingate contract and asserts that it cannot be produced in discovery is repeatedly found within the record below. See Ans., FOIA case consolidated with Richland 4900.
17. Page 10, 4th Para. This correctly cites the Bauknight accountings which were presented to the lower court.
18. Page 10, bottom, continuing to 11. The AG incorrectly states that this relates to a Bauknight report. It relates to Buchanan's payments, and was properly cited.
19. Page 11, Note 17, If Appellant's Motion to Enforce Settlement dated 5/21/12 was not designated, and is not properly referenced in another document, it can be designated in Reply. Evidence that Appellant asked that Buchanan be allowed to retain the \$500,000, but to void the AG's settlement which forced Buchanan not to file a Petition for Rehearing with the Supreme Court when the decision in *Wilson v. Dallas* was handed down is contained in numerous places within the record.
20. The fact that a January 2015 circuit court order found Tommie Rae to be Brown's spouse is contained numerous times within the record and needs no citation. Multiple citations can be added if needed.
21. Page 11, Second full para. The citation to the *Ray Charles Foundation v. Robinson* case decided by the 9th Federal Circuit which gave charities a place at the Termination Rights table where heirs were seeking to take

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20. The fact that a January 2015 circuit court order found Tommie Rae to be Brown's spouse is contained numerous times within the record and needs no citation. Multiple citations can be added if needed.
21. Page 11, Second full para. The citation to the *Ray Charles Foundation v. Robinson* case decided by the 9th Federal Circuit which gave charities a place at the Termination Rights table where heirs were seeking to take

royalties belonging to the charity was appropriately cited and presented to the court below. The failure of the AG to oversee Bauknight where he failed to take measures taken by the Ray Charles Foundation since 2012 to protect its copyrights is relevant to this case; was presented to the lower court; and is an appropriate part of the record. There is no basis for striking.

22. Page 11, third full para. It is undisputed from her deposition in this case that Tommie Rae was paid \$1 million for what she described as a sale of three copyrights. A memo correctly cites her deposition, which is a part of the record below.
23. Page 11, 5th full para. The AG does not dispute that Governor McMaster, under oath, stated twice that he did not authorize this lawsuit to be filed against Buchanan and Pope by the State/AG. He testified in the second deposition that he did not authorize Wingate to claim in this suit that he was acting "on behalf of the AG of South Carolina," and that he did not know he was a named Plaintiff until after leaving office in January 2011. This critical information was presented to the court below without objection of the AG; was properly presented in the brief; and is necessary for the record, which remains open.
24. P. 12, Note 19. This is a matter of public record; undisputed; and has been repeatedly presented to the lower court below. The Disallowance is part of the record in this case. It was necessarily considered by Judge Early and Judge Manning in their joint mediation order.
25. Page 12, First full sentence. The AG filed in this case both Expert Designations in this case and in Aiken 1337.
26. Page 12. The AG incorrectly asserts that fact that the AG and others moved for summary judgment as to Appellants and Buchanan's counterclaims on May 17 2016, is undocumented. It is fully documented within the record.
27. Page 12, Third full para. The Memorandum is merely a recitation of the January 2017 undisputed sworn testimony of Russell Bauknight. Both the statement and citation are correct.
28. Page 12, Fifth full para. The fact that the Court ordered all affidavits filed by Appellant to be filed under seal without review of the Affidavit in dispute is uncontested. If needed, the Order dtd. 3/19/17 can be designated on Reply.

29. Page 12, last para. It is undisputed that AG Wilson was deposed in Aiken 1337, and that fact is relevant to this appeal.
30. Page 13, First para. Where the AG has accused Buchanan and Pope of a federal felony of overstating the value of Brown's music empire by \$79 million to get a \$5 Million commission (since 2011), and Appellant's valuation expert disclosed in this case is deposed and asserts that Appellant's and Buchanan's valuation was conservative, it is relevant to this case, and properly cited in the Smith Affidavit.
31. Page 13, 3d and 4th paras. No citation is needed for the undisputed fact that Appellant's expert Wallack K. Lightsey, Esq., and Thomas H. Pope III, who represented the journalist in the AG's FOIA denials and other issues were deposed, and the Smith Affidavit is a mere recitation of the facts undisputed within the record.
32. Page 13, 5th full para. No citation is needed for the deposition of AG's expert Ellison Thomas, CPA. The fact that the \$4.7 Million valuation reduced James Brown's assets, after debts claimed, to about \$6 Million and shifted about 1/3 of Brown's assets from the James Brown "I Feel Good" Charity to Brown's taxable trust for grandchildren is derived from The James Brown 2000 Irrevocable Trust which has been a part of the record of this case since 2010. The fact that Brown's Grandchildren's Trust was created by a fractional share formula tied to numbers finally determined in Brown's estate tax proceeding has been known since the Estate was opened, It has also been known since the Estate was opened that neither Brown's "I Feel Good" Charity nor his Grandchildren's Trust would pay Estate Taxes, and that the devaluation to \$4.7, or any similar amount would not benefit either the Charity or Grandchildren from an Estate Tax standpoint, and would damage the Charity from an income tax standpoint. This issue is fully and appropriately documented.
33. Page 13, last Para. through 14. The statement of Tommie Rae, with whom the AG remains aligned as she, aided by Peter Afterman, attempts to siphon off royalties from more than 90 of James Brown's 900 copyrights he gave the "I Feel Good" Trust was properly cited; is highly relevant' and is directly related to this appeal. While the AG is seeking to be dropped as a party under Rule 21, his "private" Legacy Trust which he controls with Tommie Rae, and Bauknight as both his agent as AG, and as trustee of the Legacy Trust for Tommie Rae and the AG continues to pursue the Complaint which seeks tens of millions of dollars of damage for the AG's Legacy Trust.

34. Page 14, where it is undisputed that at least five Respondents have asserted in Court proceedings that Tommie Rae was not Brown's spouse, thus having no termination rights, and this Court is one where such assertions have been made, no citation is necessary. While the record remains open, it is appropriate for the Court to be asked to take judicial notice of cases which are relevant to this appeal.
35. Page 14, para. 2. Where the AG is simultaneously moving to be dismissed under improper joinder of Rule 21 and seeking partial summary judgment, and the record has not closed, his actions to try to enforce as stay so that the second of the two matters will be delay, possible causing a second interlocutory appeal, matters related to the summary judgment and Appellant's request to lift stay are relevant to the appeal and appropriate.
36. Page 14, para 3d, See above for Smith Affidavit. The Levenson affidavit supports the AG's continuing alliance with Tommie Rae and failure to oversee Bauknight who paid Afterman \$360,000 in 2015 while he helped Tommie Rae siphon off a million dollars of royalties belonging to the "I Feel Good" charity.
37. Page 14, para. 4. The lower court's order declining to lift stay is appropriate to this appeal.
38. Page 14 to 15 The case filed in the Central District of California is appropriately cited, and appropriate for this Court to take judicial notice. The AG's 10-year alliance with Tommie Rae; Bauknight's enforcement of that alliance since 2009; and Sojourner's failure to take any steps to protect the "I Feel Good" charity's 900 copyrights are directly relevant to this suit by the AG against Buchanan and Pope. In this suit the AG claims that Buchanan and Pope have no understanding of Termination Rights. It is appropriate for Appellant to request judicial notice of this case.
39. Mc Master Deposition. See above. Appropriately cited.
40. AG does not dispute that he has used FOIA to prevent release of handwritten admissions of Tommie Rae that she was married; living with her husband; and possibly pregnant before her bigamous ceremony with James Brown. This matter and others within paragraph are fully cited within the brief.

41. The record of Appellant's March 6, 2013 meeting with AG Wilson and advising him of the disastrous tax consequences and reduction in scholarships for needy students if he failed to require a successor to Bauknight to correct the incorrect IRS filings is fully documented within the record and in the court below, as is the subsequent meeting with Adam Silvernail, Esq., Solicitor General Robert Cook and former Chief Deputy John McIntosh on the same subjects.
42. Solicitor General Cook's testimony as set out in the 11/18/17 Affidavit is not disputed, nor is the need for testimony of AG Wilson in this case as set out on page 23. No citations are necessary for an explanation of why the lower court erred in not granting the deposition. Also see above for Affidavits related to Summary Judgment while AG is simultaneously pursuing with motion to be dropped under Rule 21.
43. Page 23, second para to page 24. No citation needed. No violation of 208(b)(4)
44. Page 24, first, second and third full paras. No citation. No violation of 208(b)(4) Like 43, questions for Court.
45. Page 24, Note 27. The motion was properly designated by the Return in which it was noted. Respondent may designate the motion
46. Page 24, Note 28. Properly cites FOIA case AG was seeking to consolidate with this case at time he was dismissed as party, and in which he claimed FOIA subject to discovery in this case.
47. Page 25, First full para. This paragraph is supported by the Complaint, Answer & Counterclaim and virtually every document since. Citations can be added, but are not required for this argument.
48. Page 25, second full para and noted 29. All citations correct. See above.
49. Page 25, third full para. This quote is found within the record of this case and, in addition, comes from the lower court record in *Wilson*.
50. Page 25, para. At bottom, continue p. 26 and note 30. No citation needed. James Richardson, Esq., served *pro bono publico* on the *Wilson v. Dallas* appeal and has given a sworn statement that it was the most important case of his long, successful appellate career. Citation to Page 26, his statement is found throughout the record and is undisputed.

51. Page 26, first full para. This is found at para. 155, p. 45, Mot. dtd. 6/13/17 and at numerous places within the record. Is undisputed. Addl citations.
52. Page 26, fourth full para. No citation necessary. Appropriate argument.
53. Page 26, fifth para. Appropriate reference to *Wilson* record of which the AG sought and obtained judicial notice from lower court. Repeatedly found in record below.
54. Page 26, para. at bottom and page 27. Summary judgment is subject to This appeal. Properly documented. Wilkins email is
55. Page 27, first full para and Note 31...
56. Page 27, second and third full paras notes 32 and 33. No citations required for IRS documents or Footnote 33, which can be calculated from 2000Trust, Article V.
57. Page 27, para at bottom to 28 and footnote 35. Citation to *Wilson* proper
58. Page 28, first and second full para. and note 36. *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* was first filed in December 2011 in FOIA case in Newberry County prior to the AG's motion, along with all other Respondents, to have that matter transferred to Richland County , consolidated withthis case; and FOIA subordinated to discovery in this case. It has been repeatedly presented and discussed in the lower court proceeding, and has been part of the record since the cases were consolidated. See Aff. W. Jeffrey Smith, Dec. 2011.
59. Page 28, beg. Bottom of page and continuing on page 29. Citation correct.
60. Page 29. The facts cited are correct. Where not court has been told, but James Brown' s 2000 Trust, which is a part of the record, shows the fact to be true, the citation is adequate. James Brown's 2000 Trust, Article V contains the fractional-share formula which, by virtue of the reduction of Brown's assets in the final IRs filing, resulted in a shifting of approximately 1/3 of Brown's assets from the charitable "I Feel Good" Trust to the taxable Trust for Grandchildren can be derived from the document itself.

61. Page 29. Appropriate citation to FOIA case consolidated with this case at request of Both AG and all Respondents, and, at their request, subordinated to discovery in this case. Whether the "alleged contract" was an actual contract, or whether this case was illegally brought in the name of the AG and by Russell Bauknight "on behalf of the AG" is central to all issue before the Court in this appeal. Whether the Court elects to consolidate the two FOIA cases in which the lower court found, at the request of the AG, that FOIA is subordinate to discovery in this case, is a matter for the Court of Appeals to decide. To date, neither Respondents nor Appellant has moved for consolidation of this appeal and the two pending FOIA cases.
62. Page 29, Note 37. See Mot. for Guidance as to Pre-Trial Publicity of AG for filings presented to the lower court in all FOIA cases, as well as Federal District Court Case 3:08-cv-00014-WOB, in which the AG and other Respondents filed multiple pleading from these cases; the Answer and Counterclaim of Robert L. Buchanan, Jr., in 3:08-cv-00014-WOB; the Affidavit of W. Jeffery Smith of December 2011 attaching *Private Foundations*; correspondence with the Court and the AG about both FOIA cases the AG and Respondents had consolidated; and Orders from those cases. Also see correspondence with Court about position of AG's private counsel that FOIA cases must be part of 2012 mediation.
63. Page 29, first full para at bottom and continuing. See 62, above. Comments should be addressed in Respondents' briefs.
64. Page 30, 2d full para. Correct cite to the Motion Re: Publicity presented for review by the lower court in 2012 by the AG and all other respondents, and which contains multiple filing from other cases, and article about the "explosive" admissions of Respondent Tommie Rae; fifteen separate affidavits; and 99 other entries, including pleadings correspondence and filings at least two FOIA cases and one Federal Case. No objection was made by Appellant to the lower court of the presentation by Respondents, including the AG of these documents to the lower court.
65. Footnote 30, the AG took judicial notice of the media criticism and directed his private counsel to withdraw the subpoena. See Goliaths Roar, part of Pub. Motion.
66. Page 30. The Mediation Report was presented, as required, to the lower court.
67. Page 30, 2017. Citations are appropriate. No prohibition against citing a legal memorandum.

68. Page 31, note 41. Citations appropriate. See above.
69. Page 31, first full para. first 2 sentences. Citations in paragraph appropriate.
70. Page 31, Page 31, See 69 above.
71. Page 31, See 69 above. Memorandum was not post-appeal. It was during period the AG, after claiming to be dismissed as a party under Rule 21, was claiming, through his private counsel of record, seeking to obtain partial summary judgment, then prevent the hearing on the motion to alter or amend the same summary judgment.
72. Page 32, third pars. See 71, above.
73. Page 32. Citation appropriate.
74. Page 33, Correct citation. If uncertainty about designation, could be resolved with Rule 11 conference.
75. Page 33, 1st para. Citation appropriate
76. Page 33, 2d, 2d, 3d, 4th. Appropriate citations to memorandum.
77. Page 34, 1st, 2d, and 3d para. Appropriate citations to FOIA cases one of which was consolidated at the request of the AG and other Respondents, and the other which the AG and Respondent Bauknight were seeking to have consolidated and subordinated to discovery in this case, and as to which Respondents, including the AG filed multiple pleadings and filings, and had case transferred from Newberry County to Richland County where it was awaiting consolidate when dismissed on an appealed finding that FOIA was subordinate to discovery in this case.

Specific Responses to Exhibit B

1. This Order was made a part of the Record by the AG in its Publicity Motion. All FOIA matters appropriate. See Responses to Exhibit A.
2. (All Sections) After claiming through his staff counsel that the AG was no longer a party to the case below, the AG, through his private counsel,

continued to pursue a motion for partial summary judgment. Having ignored any stay to obtain the partial summary judgment order, Respondents, including the AG (through private counsel), then sought to enforce the stay so that the order granting partial summary judgment could not be altered or amended, or confirmed and become a part of this proceeding if appealed. All references to FOIA cases documents are appropriate and have been presented to the lower court. The AG's direct defiance of the Supreme Court's directive to conclude the FOIA matters in the first instance is relevant to this case, and is his March 2013 assertion to the Supreme Court that he was seeking to be dropped as a party, then vigorous pursuit of discovery and the case, including partial summary judgment, for four years.

3. Appellant has withdrawn, for this designation only, the 11/21/16 transcript, but may designate portions in reply. All other designations are correct. See comment to 2, above.
All matters designated are relevant to this appeal.
4. Affidavits and Other.
 - a. Item 4 is relevant
 - b. Item 5 was presented to the lower court and is relevant
 - c. Item 6 is relevant. Any uncertainty as to designation could have been resolved in conference, which was not requested.
 - d. Items 7, 8 and 9 are properly referenced; were presented to the lower court; and are relevant
 - e. Items 11 & 12 are relevant. See Item 2
 - f. Item 14 presented to the lower court. Relevant
 - g. Item 15, presented to the lower court
 - h. Item 16. Presented to the lower court
 - i. Item 17 Affidavit is appropriate and was properly presented to the lower court.
 - j. Item 18. Relevant because AG, after being dismissed, continued to take action through private counsel in lower court.
 - k. Item 19. Relevant
 - l. Item 20. AG's attempts to consolidate discovery in this case with Aiken County Case 2013-CP-02-1337 is directly relevant to the claim that he cannot be dismissed under Rule 21 where he is actively pursuing discovery; seeking to consolidate FOIA cases and subordinate them to discovery; and taking other action inconsistent with his claim that he was misjoined. It is also, like all Other documents, relevant to whether the Wingate firm should be disqualified and

whether the AG should have been relieved from default and exempted from being deposed.

- m. Item 21. Affidavit presented to the lower court and relevant. Could have been Clarified, if needed, by conference.
- n. Item 22. Ruff affidavit appropriately presented to the lower court. See 2 above. Relevant and consistent with the Rull testimony given in 2009. No new matters
- o. Item 23, presented to the lower court. Note: The AG and other Respondents obtained an order directing that at least one Affidavit of Appellant be filed under seal, without presenting to the lower court any basis for the sealing of the affidavit. As a result, the Clerk of Court appears to have removed at least one affidavit from the file without properly designating it or sealing it. The AG does not deny that the March 24, 2017 affidavit was properly presented to the lower court. At the time of the appeal, Appellant asked the lower court to reconsider its unconstitutional policy of requiring Affidavits of Appellant and other numerous other public
- p. Item 24 This items is relevant because the AG, through private counsel, continues to seek relief below, including partial summary judgment, At the same time he is representing to this Court that his is no longer a party. Also relevant to all other orders on appeal.
- q. Item 25. This is relevant for the reasons stated in Item 24 and Para 2 above. The AG, as well as Russell Bauknight "on behalf of the AG of South Carolina" and the James Brown Legacy Trust over which the AG and Respondent Tommie Rae Brown hold 75% voting control, and as to which the AG has the right to remove and replace the Trustee at will, continue to act for the AG is securing his partial summary judgment and in preventing a lifting of the stay which would allow his summary judgment award either to be reversed or affirmed and a possible appeal of that ruling, if final.

As to all A and B matters, Appellant incorporates the reasoning above as to each matters, and the facts within the record as

presented to the lower court, especially the 100 items (including more than 15 affidavits) submitted to the lower court by the AG and other Respondents in the Motion for Guidance as to Pretrial Publicity and all matters pursued by the AG and/or Russell Bauknight "on behalf of the AG" and/or the AG's Legacy Trust until this appeal closes. Appellant also asks the Court to take judicial notice of those items cited from the public record, which notice was taken by the lower court.

CONCLUSION

The Court is asked to find that the Brief of Appellant and Designation of Matters to be Included in the Record on Appeal give adequate citations to the record, and include only matters relevant to this appeal. The Motion to Strike the Brief and Designations should be denied. They stay request should, likewise, be denied.

Respectfully submitted,

signed with permission
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March 2, 2018

Counsel for Appellant

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM RICHLAND COUNTY
Court of Common Pleas**

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning**

RECEIVED
MAR 02 2018
SC Court of Appeals

Appellate Case No.: 2017-001899

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

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

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

whom Adele J. Pope is Appellant

PROOF OF SERVICE

I certify that on March 2, 2018, I have served the Return and Opposition to Motion of Attorney General to Strike by hand delivery on counsel listed below:

Kenneth B. Wingate, Esquire Mark V. Gende, Esquire Joseph O. Thickens, Esquire Sweeny, Wingate & Barrow, P.A. 1515 Lady Street Columbia, SC 29201	J. Emory Smith, Jr., Esquire Office of the Attorney General 1000 Assembly Street Columbia, South Carolina 29201
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Signed with permission

W.H. Bundy, Jr. by Daryl L. Williams
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