

**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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Appellate Case No. 2017-001899

SC Court of Appeals

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 MEMORANDUM IN OPPOSITION TO MOTION OF
RESPONDENTS TOMMIE RAE BROWN, JAMES B., DARYL J. BROWN,**

**JANISE BROWN, LINDSEY DELORES BROWN, DEANNA BROWN THOMAS,
JASON BROWN-LEWIS, YAMMA N. BROWN, SYDNEY LUMAR,
CARRINGTON L., TONYA BROWN, VENISHA BROWN, LARRY BROWN,
THE JAMES BROWN LEGACY TRUST, THE JAMES BROWN 2000 TRUST
AND THE ESTATE OF JAMES BROWN TO STRIKE INITIAL BRIEF AND
DESIGNATIONS**

For each reason stated in the Response and Opposition to the Motion to Strike and Stay of the Attorney General, which Appellant incorporates as fully as if set out herein, and for the reasons set out herein, the Motion of the above Respondents to Stay and Strike Appellant's Initial Brief and Designations of Matter to be Included in the Record on Appeal should be denied.

BACKGROUND

While the seventeen Respondents who seek to strike Appellant's Brief and Designations share general background with the Attorney General of South Carolina, each of the seventeen has unique background issues relevant to this appeal and the Brief and Designations.

In order to provide the Court with an efficient summary of the background of each moving Respondent, the Respondents may be divided into several groups, as follows:

- a. Respondents to Whom Robert Buchanan and Appellant Owed No Duty: (1. Tommie Rae Brown¹; 2. James B. 3. Tonya Brown; and 4., James Brown Legacy Trust)
- b. Vanisha Brown, Minors Without Guardians *ad Litem* (GALs), and others:

¹ For ease of understanding, Appellant refers to all parties using the name "Brown" by first name, and other by last name.

(5. Vanisha Brown; 6. Lindsey Delores Brown; 7. Sydney Lumar; 8. Carrington L.; 9. Jason Brown-Lewis; and 10. Janise Brown)

c. The Levenson Will/Trust Contestants and Terry Brown:

(11. Deanna Brown Thomas; 12. Yamma Brown; 13. Daryl J. Brown; 14. Terry Brown 15. Larry Brown)

d. Russell Bauknight on behalf of the Attorney General, Tommie Rae and Others.

The background of each of these unique Respondent groups is necessary to show that each document designated and referenced in the Initial Brief was appropriate, consistent with the Rules of Appellate Procedure (SCACR), and relevant to this appeal. It is especially important to show how Respondents have voluntarily expanded the scope of what the lower court was asked to consider in this case.

All eighteen Respondents, or their counsel in this case, asked the lower court to make three separate FOIA cases part of this case. In a single filing in 2012, Respondents presented to the lower court one hundred separate and expansive filings from multiple cases. [Mot. For One of the hundred filings was actually fifteen affidavits.²

² Some of the documents relating to five or more James Brown cases the Attorney General and other Respondents presented to the lower court as part of a single motion filed 8/23/12 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 suits); 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. Miages, Affidavit of W. Smith Opposing Strike or 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*

The result of all of these filings, and admissions, is numerous documents relevant to Appellant's position that that no Respondents should have been granted relief from default by the lower court. Nor should the Attorney General of South Carolina have been exempted from being deposed or dropped as a party from litigation he has controlled for almost eight years. They are also relevant to Appellant's position that Wingate should have been disqualified.

Respondents' use and abuse of FOIA, including the unprecedented effort by the Attorney General and other Respondents, including many non-residents, to subordinate the FOIA to discovery in this tort suit, is an essential part of the story. As footnote 2 shows, the story was presented to the lower court in the Attorney General and other Respondents' own motion and other filings.

This State has no prior history of three separate attempts, such as those of

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.

Bauknight, to intervene in FOIA suits to try to stop FOIA compliance. This State has no prior history of an Attorney General assuming control over private assets (charitable and non-charitable); placing them in a “Legacy Trust” he has created for the majority benefit of disinherited claimed heirs; and then declaring that his “Legacy Trust” is private and not subject to FOIA. The State has no prior history of the State/Attorney General pursuing a tort suit for the private benefit of non-residents where there is not a valid contract with the State and Attorney General – now Governor – states under oath that he did not authorize the lawsuit to be brought in the name of the State/Attorney General.

While the backgrounds of the eighteen Respondents overlap, the extreme discord in which they now find themselves demonstrates how important the record they have made is to this appeal.

Over nearly eight years Respondents developed an expansive record, complete with liberal judicial notice of events outside the case and in multiple James Brown proceedings. They brought to the lower court the filings, orders and media commentary about at least five separate suits as part of their effort to suppress documents and testimony indicating Respondent Tommie Rae was not James Brown’s spouse; Richland 4900 was not legally authorized; ;James Brown’s music empire was worth many multiples of the \$4.7 million Bauknight claimed to the IRS and all Respondents claimed to the South Carolina Supreme Court. A single filing in 2012 reference above is but one example of the vast record made by Respondents.

Respondents sought to move three separate FOIA cases to Richland County; consolidate them with this case; and subordinate the FOIA requests to discovery in this

case. They cited and filed documents related to Federal District Court Case 3:08-cv-00014-WOB and other cases. They twice moved to consolidate discovery with Aiken County Case 2013-CP-02-1337 (“Aiken 133”). They named the same experts in Richland 4900 and Aiken 1337. They called the discovery in the two cases “two sides of the same coin.” “These documents Respondents have put before the lower court are all relevant to Appellant’s position that the Attorney General, who has led this litigation for almost eight years, should have been deposed in this case and that the law firm of Kenneth Wingate, Esq. (“Wingate”) should be disqualified. Further there was no basis to dismiss the Attorney General as a party pursuant to Rule 21 SCRPC while he was conducting vigorous discovery and seeking partial summary judgment.

A brief summary of the background of these Respondents as presented to the lower court by the official record and by matters the lower court (usually on request of Respondents) has been asked without objection to take judicial notice, follows:

BACKGROUND

a. RESPONDENTS TO WHOM BUCHANAN AND POPE OWED NO DUTY

1. BACKGROUND RELATED TO RESPONDENT TOMMIE RAE BROWN

Respondent Tommie Rae Brown is not a devisee under the Will of entertainer James Brown or a beneficiary of the James Brown 2000 Irrevocable Trust, although she was present when Brown’s Will and 2000 Trust were executed. At the time Tommie Rae was married to Javed Ahmed.

In 2001, concealing her marriage, Tommie Rae entered into a bigamous ceremony

with James Brown.

Shortly after Brown died on Christmas Day 2006, Tommie Rae filed elective share claims and pretermitted spouse claims against James Brown's Estate. In December 2006 she also filed challenges to Brown's Will and 2000 Trust.

The Estate, 2000 Trust and Attorney General have handwritten admissions of Tommie Rae which confirm she was living with her husband and possibly pregnant before she became Brown's companion.

In August 2008 Attorney General Henry McMaster, without having read James Brown's Will and with no understanding of Termination Rights under Sections 203 and 304 of the U.S. Copyright Act, brokered a settlement which "stipulated" Tommie Rae was Brown's spouse and gave her 25% of the assets of James Brown's "I Feel Good" charity for needy students. [Tommie Rae put her Termination Rights in Respondent Legacy Trust, but has since received \$1.8 Million outright.]

In May 2009 the Attorney General's 2008 settlement, with modifications, was approved by the circuit court.

In August 2009 Tommie Rae's lawyers proposed to devalue Brown's copyrights to \$15 - \$24 million and to value Brown's Right of Publicity at zero.

In March 2010 Tommie Rae's lawyer advised Robert Buchanan, Jr. and Appellant ("Pope") that the Attorney General had hired the Wingate firm and would sue if Buchanan and Pope did not drop their appeal of the McMaster settlement.

On May 18, 2010 Tommie Rae's lawyer signed the 40% Wingate contract for her. If they could stop the appeal which became *Wilson v. Dallas*, Tommie Rae's lawyers

would make about \$10 Million in contingency fees.

In May 2010, Tommie Rae and others filed the Complaint in this case (“Richland 4900”) Buchanan and Pope counterclaimed, and Tommie Rae and others did not timely respond.

In May 2011 Tommie Rae joined the Attorney General in asserting to the South Carolina Supreme Court that James Brown’s Estate and 2000 Trust were worth only \$4.7 million when he died.

On May 8, 2013 the South Carolina Supreme Court issued its final decision in *Wilson v. Dallas*. On May 29, 2013 Tommie Rae’s lawyer and Louis Levenson, Esq. (“Levenson”) announced in open court to the Honorable Doyet A. Early, III, (“Judge Early”) their intention to reinstate the McMaster settlement deal which had dismembered James Brown’s estate plan and threatened royalties from the 900 copyright Brown gave his “I Feel Good” charity.

In August 2013 Tommie Rae and her son, aided by the Estate’s music agent Peter Afterman, filed in the U.S. Copyright Office defective Termination Notices attempting to siphon off U.S. royalties from over 90 of Brown’s 900 copyrights between 2015 and 2023.

In 2016 Tommie Rae was deposed in this case, and testified that she had been paid \$1 million for the “sale” of three of Brown’s 900 copyrights.

In 2016 Tommie Rae moved for summary judgment as to the counterclaims Appellant and Buchanan made in this case.

On March 8, 2017 Tommie Rae relinquished all of her interest in James Brown’s

Estate and 65% of any Termination Rights she owns.

Termination Rights as they mature over the coming decades, will apply only to Brown's U.S. Copyrights, and U.S. Copyright royalties make up only about half of Brown's \$3+ million annual royalty stream. This makes clear that Buchanan and Pope were prudent to appeal a settlement which gave Tommie Rae 25% of *all* of Brown's assets, including his Right of Publicity, Claims against Greenberg Traurig and other assets which are not subject to Termination Rights. Further, unpublished songs and many sampling revenues will not be subject to possible Termination Notices for decades.

In 2017 Tommie Rae was granted summary judgment as to Appellant's counterclaims. A motion to alter or amend that Order is pending.

In 2017 Tommie Rae opposed lifting the stay in this matters so that the summary judgment matter, if not reversed, might be heard with this appeal.

In January 2018, Tommie Rae, with others, was sued by Respondents Deanna Thomas, Yamma Brown, Tonya Brown and others in California over alleged improper dealings related to Terminations Rights as to five of James Brown's 900 copyrights.

2. BACKGROUND RELATED TO RESPONDENT JAMES B.

Respondent James B. is not a devisee under the Will of James Brown or a beneficiary of the James Brown 2000 Irrevocable Trust. He was born in 2001 of the marriage of his mother, Respondent Tommie Rae, and Jahved Ahmed. He is not a presumed child of entertainer James Brown. He shares with his mother much of the background set out above.

In 2007 James B's mother engaged Peter Shahid, Esq. To represent her son on a

contingency fee basis.

In 2007 James B. filed claims as a pretermitted child of James Brown. The Estate requested that he take a DNA test under the Estate's official "Peeples DNA Protocol." Shahid declined.

In 2008 the Estate paid the approximately \$300 cost of James B's DNA test, but he still declined to be tested.

In August 2008 the Attorney General exempted James B. from being DNA tested; declared him an heir of James Brown; and contracted to work with James B. to defeat the interests of James Brown's real heirs not parties to the Attorney General's settlement.

In 2011 Respondent James B., with other Richland 4900 Plaintiffs, moved to intervene in Newberry County FOIA Case 2011-CP-36-379; have it transferred to Richland County; and have it consolidated with Richland 4900. James B., with others, sought sanctions against Appellant for objecting to his attempt to intervene.

In December 2011 Copyright expert W. Jeffrey Smith, the Honorable Thomas R. Young, Jr., Thomas H. Pope III., two journalists, and others filed affidavits in the FOIA case asserting that the Wingate contract to sue Buchanan and Pope for conducting the appeal which became *Wilson v. Dallas* should be released by the Newberry FOIA court, and the case should not be transferred to Richland County and subordinated to Richland 4900 discovery. [Aff. W. Jeffrey Smith, dtd. 12/8/11, Case 4900, fmrlly 2011-CP-36-379]

The Attorney General, aided by Tommie Rae, James B., and others, prevailed. The FOIA case was transferred from Newberry to Richland County and consolidated with this case. The Wingate contract was suppressed until after the May 8, 2013 decision in

Wilson v. Dallas, 743 S.E.2d 746 (2013).

In March 2013, after the first *Wilson* decision, James B. filed a Petition for Rehearing in *Wilson v. Dallas*. [Pet. Rehg., *Wilson*, 3/14/13] Respondent James B. revealed for the first time how Bauknight arrived at the \$4.7 Million claimed at-death value of James Brown's music empire::

James Brown's 900 copyrights	\$ 23.7 Million
Right of Publicity	\$ 0
Claims against Cannon/GT	\$ 0
Tangible Personal Property (TPP)	\$ 0
Other claims & miscellaneous	\$ 0
LESS: claimed value of \$15 Million TIAA Debt:	<u>(\$ 19.0 Million)</u>
Claimed Value Reported to IRS:	\$4.7 Million

In August 2013 Respondent James B., aided by Peter Afterman, filed public notices in the U.S. Copyright Office seeking to secure U.S. royalties from more than 90 of the "I Feel Good" Charity's 900 copyrights between 2015 and 2023.³

In 2016 Respondents James B's Aiken County GAL and lawyer obtained an Order granting James B. approximately \$700,000.00 in legal and GAL fees, even though James B's maximum claim is for 1/20 of what he asserts is a \$5 Million estate.

In 2017 Respondent James B., with others, named Termination Rights expert Roger Miller and eight others experts, as experts for Respondents in this case. With others, he sought to consolidate discovery in this case with Aiken County Case 2013-CP-02-1337 ("Aiken 1337").

³ According to Respondents' expert Roger Miller, Brown's U.S. copyrights make up about half of the James Brown's income stream from his major royalties. Miller testified in 2017 that Brown's copyrights catalogue was "solid gold," and that 15 - 20 times annual royalties (\$45 - 60 million) was reasonable for the at-death value of the catalog.

In 2017 Respondent James B. obtained a order for partial summary judgment in Richland 4900, which is currently subject to a motion for reconsideration. James B. has opposed the lifting of the stay to conclude this ruling.

In January 2018 Respondent James B. was sued by Respondents Deanna Thomas, Yamma Brown, Tonya Brown and others in California District Court over alleged impropriety with a transaction involving Termination Rights to five copyrights James Brown devised his "I Feel Good" Charity. [*Thomas et al. v. Hynie et al.*, U.S. Dist. Ct., Central Dist. Ca., Case No. 2:18-cv-00307]

3. BACKGROUND RELATED TO RESPONDENT TONYA BROWN

Respondent Tonya Brown, also known as LaTonya Brown Fegan, is not a devisee under the Last Will and Testament of James Brown or a beneficiary of the James Brown 2000 Irrevocable. Trust.

In January 2007 Tonya, with others, hired Levenson and agreed to pay him \$150,000 and 30% of what Levenson could get them from James Brown's assets.

In December 2007 Levenson filed challenges to Brown's Will and 2000 Trust even though Tonya and others knew the creation of a Trust for the education of needy students was Brown's long-held and often-stated desire.

In a Consent Order filed March 8, 2008 Levenson did not name Tonya as an heir of James Brown.

In the McMaster settlement deal as approved by the circuit court on May 26, 2009, Tonya was not given any interest in the Attorney General's James Brown Legacy Trust. Yet, through Levenson, she contributed her Termination Rights under Sections

203 and 304 of the U.S. Copyright Act to Respondent Legacy Trust.

Tonya did not sign the 40% contingency fee contract with Wingate to bring this suit against Buchanan and Pope. It was signed by Levenson, who expected to make about \$9 Million in contingency legal fees if could stop the appeal that became *Wilson v. Dallas*.

In 2010 Tonya, with other Respondents, moved for relief from default after Wingate failed to timely respond to the counterclaims of Buchanan and Pope in this suit.

On August 9, 2011 Tonya and others filed PLAINTIFFS' MOTION FOR PROTECTIVE ORDER CONCERNING FEE AGREEMENT AND/OR MOTION TO STRIKE DEFENDANT POPE'S MOTION TO COMPEL PLAINTIFFS' FEE AGREEMENT. [Mot. 8/9/11] Tonya joined the Attorney General and others in claiming: "Fee Agreements are the epitome of privileged communication."

In 2011 Tonya also moved to intervene in FOIA case 2011-CP-36-379 in an effort to stop release of the Wingate contract which neither she nor Governor McMaster had signed.

In 2012 Levenson appeared for Tonya a mediation in this case.

On May 8, 2013, the *Wilson v. Dallas* decision secured by Buchanan and Pope restored Tonya's Termination Rights, but failed to address that she had contributed her Termination Rights to the AG's Legacy Trust.

On May 29, 2013 Tonya's counsel Levenson, with counsel for Tommie Rae, announced to Judge Early their intention to reinstate the McMaster settlement deal which stipulated that Respondent Tommie Rae was Brown's spouse.

In September 2013, Russell Bauknight's agent Peter Afterman solicited Tonya and others as clients to join with Tommie Rae in attempting to take U.S. royalties from the 900 copyrights Brown gave his "I Feel Good" charity.

In September 2013 a letter from Tonya's attorney Marc Toberoff, Esq. was presented to Judge Early. The Toberoff letter protested the "Tommie Rae Terminations" as defective. Toberoff asserted that Tommie Rae was not Brown's spouse and James B. not Brown's son.

In 2014 Tonya terminated Levenson and engaged David Bell, Esq.

On May 22, 2015, represented by attorney William J. Barr, Esq., Tonya filed in the South Carolina Supreme Court a RESPONSE TO STATUS REPORT FILED BY JUDGE DOYET A EARLY, III, in Appellate Case No. 2009 -142286. Tonya, with others, objected to various parts of Judge Early's Report, including references to the joint mediation in Richland 4900 and Aiken 1337 ordered by Judge Early and the Honorable L. Casey Manning.

In 2017, over the opposition of Appellant, Tonya obtained partial summary judgment as to the counterclaims made by Buchanan and Pope. Respondent Tonya has since opposed a lifting of the stay imposed by this appeal so that reconsideration of the partial summary judgment may proceed.

In January 2018 Tonya and others filed suit against Respondent Tommie Rae, Respondent Bauknight and others referenced herein.

4. BACKGROUND RELATED TO JAMES BROWN LEGACY TRUST

Buchanan and Pope never owed any duty to The James Brown Legacy Trust

("AG's Legacy Trust"). The AG's Legacy Trust was created by Attorney General Henry McMaster for purposes directly opposed to the mission of James Brown's estate plan.

Before the approval of the McMaster settlement deal, the AG's Legacy Trust had been established. Its original beneficiaries and voting control were: a charity to be created by Respondent Attorney General (50%); Respondent Tommie Rae (25%) Respondent Deanna Thomas and four other Levenson clients (25%).

In hearings in the spring of 2009 Bauknight assured the lower court that his mission was to serve the Legacy Trust. He saw no conflict with also being PR/Trustee under Brown's Will and 2000 Trust. [Hg. April 2009]

Bauknight, Tommie Rae and Levenson represented to the lower court that the Termination Rights of Tommie Rae and the Levenson clients under Sections 203 and 304 of the U.S. Copyright Act has been placed in the AG's Legacy Trust.

The relief sought in this case is for the benefit of the AG's Legacy Trust.

[Complaint]

Between December 31, 2010 and January 4, 2011, Tommie Rae, Levenson, Attorney General McMaster and Terry Brown amended the AG's Legacy Trust, also known as the "Settlement Entity." The amendment permitted Respondent Terry Brown to proceed with exercising the due diligence period under the Right of First Refusal ("ROFR") Terry was given in the Attorney General's settlement. Immediately upon receipt of the Amendment, Respondent Terry assigned his rights to his son Forlando Brown.

In the very month Terry/Forlando began due diligence under the ROFR

Respondent Bauknight was representing to the IRS that Brown's worldwide music empire was worth less than \$4.7 million when Brown died.

In the summer of 2011 Appellant made a FOIA request for a copy of Respondent Legacy Trust and any amendments, and for the \$4.7 million valuation and related documents. David Black, Esq., wrote Appellant and claimed the AG's Legacy Trust was not subject to FOIA and was private. Black said that if Appellant continued to exercise FOIA rights he would seek sanctions against her.

On August 3, 2011, when the Attorney General and Legacy Trust declined to release a copy of Respondent Legacy Trust, Pope filed Newberry County FOIA Suit 2011-CP-36-364.

In 2011 Lewis & Babcock was paid nearly \$300,000 from James Brown's funds, and began representing the James Brown Legacy Trust.

From 2011 until 2016, when the FOIA suit was dismissed, both the Attorney General and the Attorney General's Legacy Trust worked to transfer the FOIA suit to Richland County and subordinate the \$4.7 million appraisal and the Legacy Trust and amendments to discovery in this case. The FOIA case was transferred from Newberry County, and the consolidation motion was pending when the case was dismissed.

In late 2011 Forlando Brown distributed the Legacy Trust/Settlement Entity amendment and assignment to the media. Forlando asserted that Bauknight had rejected overtures for a \$200 million sale of James Brown's assets, and that the \$4.7 million PBW appraisal was "bogus."

In 2012 a journalist covering the James Brown FOIA proceedings made a FOIA

request of the Attorney General for the same documents requested by Appellant. In addition, the journalist sought handwritten admissions of Tommie Rae which had been public prior to 2008, and which showed that Tommie Rae knew she was not Brown's spouse.

On or about February 13, 2013 the Attorney General tried to dismiss the journalist's FOIA suit or transfer it to Richland and consolidate it with this case. [Ord. Req. Prod., 2012-CP-36-00688, 7/8/14]

An ORDER REQUIRING PRODUCTION OF PUBLIC RECORDS issued by the Honorable Eugene C. Griffith, Jr. on July 8, 2014, rejected Bauknight's attempt to intervene in this third FOIA suit, and stated in part:

On February 27, 2013, plaintiff moved for summary judgment. That same day, the Supreme Court issued its first decision in Wilson v. Dallas... Footnote 29 directed that case 4900 and certain FOIA cases should be "considered by the circuit court in the first instance."

In March 2013, defendant [Attorney General] filed a Petition for Rehearing with the Supreme Court addressing footnote 29. He advised the Court that he would shortly move to have the Attorney General removed as a party to Case 4900. He also advised that he had no objection to the release of the Wingate Contract and hoped "to have a resolution of this matter in the near future."

On April 16, 2013, ..Bauknight... moved to intervene. Bauknight asserted that this case is an extension of the parties and issues involved in Case 4900... Bauknight asserted that plaintiff's FOIA requests should be denied and the case consolidated with Case 4900. . [Ord. Pp. 2-4]

In 2013, at approximately the same time he moved to intervene in the journalist's FOIA case, Bauknight began to make conflicting claims to this Court and others about the

existence of the AG's Legacy Trust.

In FOIA matters and in Aiken 1337 Bauknight asserted that the AG's Legacy Trust does not exist. Yet neither the Attorney General nor Bauknight provided any explanation for what happened to the Termination Rights and other assets the Attorney General had assured Judge Early had gone into the Legacy Trust. Nor was there any accounting, or evidence that Bauknight or the Attorney General had taken steps to protect the 47 ½% of the Legacy Trust which was dedicated to the charity the Attorney General controlled.

There is no evidence of a proper dissolution of the AG's Legacy Trust in accordance with the South Carolina Trust Code's (SCTC's) requirements for the dissolution of charitable trusts.

By 2016, although claiming it does not exist, the AG's Legacy Trust sought partial summary judgment in this case. After obtaining partial summary judgment in 2017, the AG's Legacy Trust, while claiming not to exist, has resisted the lifting of the stay for the summary judgment order to be reconsidered. It made the motion to strike Appellant's Initial Brief and Designations.

b. BACKGROUND AS TO VANISHA BROWN AND OTHERS WITHOUT GALs:

5. BACKGROUND RELATED TO RESPONDENT VANISHA BROWN

Vanisha Brown, like other Respondents, sued Buchanan and Pope on May 19, 2010. Over the years, Vanisha, through counsel, has participated in more than three hundred filings made in this case.

Venisha, like others, moved in 2011 to intervene in a FOIA suit to stop release of the Wingate contract. Like the Attorney General and others, she was served with the 2011 Pope and Smith article, *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't*. The article set out a plan of "DNA and Dignity" which would have allowed the most cooperative and inexpensive half (or half + 1) of Brown's real heirs to enjoy a stream of the fruits of Brown's royalties in exchange for their support for the mission of the "I Feel Good" charity.

In 2012, when Vanisha was arrested, Buchanan and Pope sought to have a GAL appointed for her. Counsel refused, and the lower court declined to appoint a GAL.

Levenson, who would receive about \$9 million in contingency fees if he could stop the *Wilson v. Dallas* appeal, appeared on Venisha's behalf at mediation.

In the fall of 2012, Pope made an Offer of Judgment to Vanisha that would have given her a fair, regular income and funds for rehabilitation in exchange for support for her father's estate plan and cooperation in Termination Rights matters.

As Judge Griffith's ORDER REQUIRING PRODUCTION OF PUBLIC RECORDS states:

On November 14, 2013, United States Magistrate Judge Gregory J. Wehrman ruled in a federal case captioned *Brown v. Pope* (Case No. 3:08-cv-14-WOB) that the retention agreement between Brown trustee Bauknight and the Attorney General "is a public document due to the involvement of the South Carolina Attorney General." This agreement is one of the public records sought by plaintiff in this case. It should be produced to plaintiff by the Attorney General.

When released in 2013, the Wingate contract showed that Vanisha – like all Plaintiffs except Bauknight – had not signed the 40% contingency fee contract with Wingate. Again, it had been signed for Vanisha by Levenson.

In 2016 and 2017 Vanisha’s lawyers in this case could not find her. They said Vanisha could not be deposed. Yet while her lawyers could not find Vanisha, she was taking bold action in this and other cases. She moved for partial summary judgment. She objected to the lifting of the stay related to this appeal. She sued Respondents Bauknight and Tommie Rae in California over the Termination Rights she had put in the AG’s Legacy Trust back in 2009.

The full record of Vanisha’s actions, including matters of which the lower court readily took judicial notice, is relevant to help demonstrate that Vanisha should not be relieved from default as to Appellant’s counterclaims, as well as why the Wingate firm’s conflicts prevent it from continuing in this case.

6. BACKGROUND RELATED TO 6. LINDSEY BROWN; 7. SYDNEY LUMAR AND 8. CARRINGTON L.

In 2008 the Attorney General of South Carolina proposed to give away half of Brown’s assets to a person very likely not be found to be Brown’s spouse, and five Levenson clients who were claimed children of Brown. The Attorney General’s settlement did not solely damage Brown’s estate plan. It also put at risk careful preparation for a DNA & Dignity plan to protect Brown’s \$3+ million annual royalty stream from dissipation by premature and defective attempts to exercise Termination Rights as to certain U.S. copyrights under Sections 203 and 304 of the Copyright Act.

The Attorney General's settlement dismembered the approximately \$285,000.00 education trusts Brown had created for Lindsey Brown, Sydney Lumar and Carrington L, as well as others. It also cut their Termination Rights under the Copyright Act in half for the life of Respondent Tommie Rae.

On May 19, 2010 Levenson signed the contract for then-minors Lindsey, Sydney Lumar (now of majority) and Carrington L. to sue Buchanan and Pope, the two people who were conducting an appeal to restore their \$285,000.00 Trusts and their fair chance to exercise Termination Rights when the law becomes applicable to them.

Repeated efforts to secure GALs for these minors, like efforts to appoint a GAL for Vanisha, failed.. Wingate resisted GALs and the Court declined to appoint them.

In 2011 Janise, Sydney and Carrington began "supporting" the devaluation of James Brown's music empire to \$4.7 Million even though it provided them no estate tax savings; provided no estate tax savings to their grandfather's "I Feel Good" charity; and shifted about 1/3 of Brown's assets into the Grandchildren's Trust where it was not needed and would be unnecessarily taxed for two decades or more. [See 2000 Trust, Art. V]

In the fall of 2012 Appellant Janice and several minors were served with Offers of Judgment to let them out of this case for \$1 if they supported their grandfather's Trust which gave them \$285,000. Instead of presenting the offers to these Respondents, counsel filed the offers with the court, and moved to strike them.

The May 8, 2013, decision in *Wilson v. Dallas* restored the minors' \$285,000 education Trusts after years of lost benefits. It restored the lost half of their Termination

Rights after the death of their parents, but during the life of Tommie Rae

On May 29, 2013, however, Levenson and counsel for Tommie Rae announced to Judge Early their intention to reinstate the McMaster settlement deal. The minors then continued to make false claims in this case against the two people who had restored their trusts and rights.

When deposed in 2016 Lindsey had not met her lawyer until the week before. She did not know about the suit or the offers, and had not seen the complaint until 2016.

As unfortunate as these circumstances are, they are important to show that the Wingate Firm should be disqualified and that these Respondents had no meritorious defense to the Buchanan/Pope counterclaims.

9. BACKGROUND RELATED TO JASON BROWN-LEWIS

In 2010 Jason Brown-Lewis sued Buchanan and Pope for conducting the appeal of a settlement which dismembered his \$285,000 education Trust. In 2011 he agreed with Bauknight and the Attorney General that Brown's music empire was worth less than \$4.7 million when he died. For years he stood firm with Tommie Rae in her claim that she was Brown's spouse.

Like others, however, Brown-Lewis had not signed the Wingate contract. It had been signed by Levenson.

When deposed in 2017 in Los Angeles Brown-Lewis knew virtually nothing of the hundreds of actions he had taken, including seeking to intervene in a FOIA suit, and seeking sanctions against Appellant for exercising her FOIA rights. Consistent with Appellant, he opined that \$100 million might be low for James Brown's music empire.

He did not believe Tommie Rae was Brown's spouse. And he did not think she was entitled to any Termination Rights under the Copyright Act.

The entire history of Jason Brown-Lewis' involvement in this case, including his most recent action to enforce the stay and strike Appellant's brief, is relevant to the appeal. .

10. BACKGROUND RELATED TO RESPONDENT JANISE BROWN

Like Respondents Lindsey and Jason, when deposed in 2016 Respondent Janise had met her lawyer only a week earlier and knew nothing about the litigation. Levenson had signed the 40% Wingate contract for her, without her knowledge.

Like Lindsey, Janise was not presented with Appellants' 2012 Offers of Judgment which would have let her out of this suit for \$1. She did not know she had sought sanctions against Appellant, or sought to intervene in a FOIA suit to stop release of the Wingate contract.

For Respondents Janise and her sister Lindsey, however, the damage they had done to themselves (through Levenson) while damaging Buchanan and Pope is serious.

By 2016 Respondents Deanna Thomas and Yamma Brown were challenging the status of Janice's father, Daryl Brown, as an heir of James Brown.

The possible failure of a blood relationship to James Brown now stands to jeopardize both the \$285,000 education trusts of Janise and Lindsey and their claim, after the death of Daryl Brown, to Termination Rights under Sections 203 and 304 of the Copyright Act.

Their continuing "action" in this suit, through Wingate, while all agree that

Tommie Rae was not Brown's spouse and should not have gotten a quarter of his estate, is relevant to the appeal of the order declining to remove Wingate, as well as the other orders on appeal.

c. BACKGROUND RELATED TO THE FIVE LEVENSON WILL/TRUST CONTESTANTS

Once unified in their effort to take a quarter of James Brown's music empire, and content to let Tommie Rae have another quarter, the five former Levenson clients are now in bitter battles with Tommie Rae and among themselves.

Having participated in all of the above actions, Respondents Deanna Thomas and Yamma Brown are now challenging the heir status not only of Tommie Rae and her son, James B., but of Respondent Larry Brown and Daryl Brown.

While aligned with Tommie Rae in this suit, they are challenging her heir status both in the South Carolina Court of Appeals and in the Federal District Court in California. They are suing Russell Bauknight and David Sojourner, Esq. claiming the two were involved in secret deals with Tommie Rae and her son. Their unique facts are set out below.

11. FACTS RELATED TO RESPONDENT DEANNA BROWN THOMAS:

In 2006 Thomas, with Respondent Yamma Brown, joined briefly with original Trustees David Cannon and Albert Dallas. By January 2007 she had abandoned her alliance with the Cannon trustees and agreed with other family members to pay Levenson \$150,000 and 30% of what he could get them.

In October 2007 Thomas confirmed in a deposition the validity of her father's

estate plan, which she had helped him set up.

In December 2007 Thomas contested Brown's estate plan even though she knew that the creation of a Trust to educate needy students was Brown's long-held and often-stated desire.

In August 2008 she agreed to let Tommie Rae have a quarter of Brown's assets so the Levenson clients could have another quarter, even though she knew directly from her father that Respondent Tommie Rae was not Brown's spouse.

From 2009 until 2013 Respondent Thomas supported a settlement deal in which she agreed to fight the heir status of DNA-proven daughters Jeanette Mitchell, LaRhonda Pettit, and Nicole Parris, who are now her Co-Plaintiffs in the California lawsuit against Respondent Tommie Rae and Respondent Bauknight.

Respondent Thomas supported suing Buchanan and Pope even though she had actual knowledge they were protecting Brown's Estate Plan and the Grandchildren's Trust of her own son. She contested her father's estate plan even though she had helped him set it up.

On May 29, 2013 Respondent Thomas supported Levenson's and Tommie Rae's announcement that they intended to ignore *Wilson v. Dallas* and reinstate the McMaster settlement which gave Tommie Rae a quarter of Brown's assets.

By September 2013 Respondent Thomas had actual knowledge that Bauknight's agent Peter Afterman was helping Respondent Tommie Rae and Respondent James B. attempt to siphon off the "I Feel Good" Charity's U.S. royalties from about 90 of James Brown's 900 copyrights, but still nominated Bauknight to be reinstated as James Brown's

PR/Trustee.

Between 2013 and 2017 Respondent Thomas, while continuing to be aligned with Respondent Tommie Rae in this case, aligned herself with La Rhonda Pettit, Nicole Parris, Jeanette Mitchell and others against Tommie Rae in Aiken Court and elsewhere. Thomas also challenged the heir status of Respondents Daryl Brown and Larry Brown.

In 2018 Respondent Thomas sued Bauknight and Tommie Rae in California Federal District Court claiming they were involved in secret deals. Thus, by 2018 Respondents Thomas was still pursuing this suit she brought to enforce a deal that gave about 35% of James Brown's assets to persons Thomas now claims are not James Brown's heirs.

12. FACTS RELATED TO RESPONDENT YAMMA BROWN

Respondent Yamma N. Brown joined Respondent Thomas in each of the matters above except Thomas' deposition. With Respondent Thomas, she consented to the 2008 McMaster settlement which dismembered the \$285,000 education Trust James Brown had given her two minor children and Thomas' son, and had cut their future Termination Rights under Sections 203 and 304 in half for the life of Respondent Tommie Rae.

Respondent Yamma, like Thomas, supported the devaluation of Brown's music empire to \$4.7 million, and claim to the Supreme Court that the McMaster settlement saved estate taxes with actual knowledge that it was incorrect, and that James Brown had earned \$4.6 million in the year of his death alone.

Respondent Yamma, like Thomas, failed to challenged the shifting by Bauknight of an additional approximately 1/3 of Brown's assets and income from Brown's "I Feel

Good” charity to the taxable Grandchildren’s Trust under the fractional share formula of Brown’s 2000 Trust.

Respondent Yamma Brown, like Thomas, now claims that persons she is claiming in this case should have gotten about 35% of James Brown’s asset under the McMaster Settlement – Respondents Tommie Rae, James B., Daryl and Larry – are not even heirs of James Brown.

13. FACTS RELATED TO RESPONDENT DARYL BROWN

The record supports Appellant’s position that Daryl Brown should not have been relieved of default as to the counterclaims of Buchanan and Pope in this case.

In 2007 Daryl, not a presumed child of James Brown, challenged Brown’s Will – the only document which names him as a child – and placed both his Termination Rights and those of his two daughters, Janice and Lindsey, in jeopardy.

In addition, Daryl’s challenge placed his daughters’ \$285,000 education trusts in jeopardy because the recipients must be “blood descendants” of James Brown.

Then in 2010, like Respondent Thomas and Respondent Yamma, he filed suit against Buchanan and Pope in 2010 to enforce a settlement which gave a quarter of Brown’s assets to Tommie Rae; “stipulated” that she was Brown’s spouse; and both decimated and threatened the much-needed education trusts of his two daughter, .

Between 2010 and 2012 Respondent Daryl Brown, while continuing this suit, waged a campaign to enforce his father’s estate plan. [See: Son Regrets Challenging Will, Mot.Guidance] He confirmed that Tommie Rae was not Brown’s spouse, and that he should never have gone along with the settlement.

By the time his deposition was taken in December 2012, however, Respondent Daryl testified that he and Levenson had “kissed and made up.” He continues today this suit he brought seeking damages against Buchanan and Pope for protecting his daughters’ trusts.

Daryl was still supportive of Levenson on May 29, 2013 when he and Tommie Rae’s counsel announced to Judge Early their intention to reinstate the 2008 McMaster settlement deal.

While having admitted repeatedly and publicly that he should not have challenged his father’s will, and Tommie Rae is not Brown’s spouse, Respondent Daryl joined with Tommie Rae, Respondents Thomas and Yamma, and others to seek relief from default, and summary judgment, in this matter.

There is no evidence Daryl or any of the Levenson five has paid any portion of the \$500,000 settlement they made with Robert Buchanan, Jr., to drop his claims against them, or the cost of the nine experts engaged by his counsel, even though the Wingate contract calls for this payment.

Having attacked his father’s estate plan in the courts for ten years, while often claiming publicly to support it, Respondent Daryl is now facing challenges by Respondent Thomas and Respondent Yamma to his status as a child of James Brown.

14. FACTS RELATED TO RESPONDENT LARRY BROWN

Respondent Larry Brown, like Daryl Brown, has been aligned with Respondents Tommie Rae, Thomas, James B., and Yamma in this suit for almost eight years. Yet he now faces a challenge by Respondents Yamma and Thomas to his status a James Brown’s

child.

In November 2011 Respondent Larry supported Bauknight as Bauknight told the Supreme Court that Tommie Rae's elective share claim was a "slam dunk;" that James Browns Estate and 2000 Trust had no corpus to speak of; and that, because of Termination Rights, there would be nothing in the "I Feel Good" charity in 2023 unless the McMaster settlement deal were approved.

Today Larry has abandoned his claim under the McMaster settlement deal to nearly 5% of Brown's assets for a mere \$37,500 and a 1/6 share of Brown's household good which – with his support – Bauknight valued at zero.

Today the Termination Rights Larry, along with the five Levenson clients, assigned to Respondent AG's Legacy Trust are in jeopardy. Like Respondent Daryl, Larry Brown's status as James Brown's child is being challenged by Respondents Thomas and Yamma. They are challenging his status even though he, along with a sister, was acknowledged and supported in Brown's divorce agreement from his first marriage.

15. FACTS RELATED TO RESPONDENT TERRY BROWN

Aided by David Bell, Esq., son Forlando Brown, and former trustee Albert Dallas, Terry Brown has engaged in false claims and dirty tricks in James Brown litigation since 2008.

In 2008 Respondent Terry Brown supported Forlando Brown in his frivolous suit to enjoin the 2000 Trust until felon David Cannon and Albert Dallas were reinstated as trustees. The suit was pursued by Bell and Forlando until 2012.

In 2008, to support their positions, Forlando, Terry and another son filed six false

grievances against Levenson in Georgia and South Carolina, even accusing Levenson of forging his 2007 contract with family members.

By 2009, Bell and Terry had consented to dismember James Brown's estate plan in the McMaster settlement in State court while Bell and Forlando were claiming in Federal Court Case 3:08-cv-00014-WOB that Buchanan and Pope were not protecting Brown's 2000 Trust against Tommie Rae.

By 2010 Bell and Forlando were continuing their position that Brown's assets were worth \$100 million or more, while Bell and Terry – holding a right of first refusal to buy Brown's music empire – were working with Bauknight to devalue the music empire to \$4.7 million.

In January 2011 Bell and Forlando planted the false Grammy © claim in which lawyer Robert Potter, Esq., (without his knowledge) was attributed with halting the Grammy sale, which he did not halt. In the same month, Terry assigned his ROFR to Forlando, who began due diligence on a sale.

In 2011 Terry moved to intervene in a FOIA case to prevent release of the Wingate contract.

Today, Respondent Terry is claiming to the Court of Appeals of South Carolina that Tommie Rae's marriage ceremony with James Brown was bigamous, and she was not Brown's spouse. Today he is also aligned with Respondent Tommie Rae in this suit to enforce an agreement which "stipulates" that she is Brown's spouse and gives her a quarter of Brown's assets.

The extreme discord in which these former Levenson clients – none of whom are

now represented by Levenson – are now engaged has made one thing clear. Like all other Respondents, none had a meritorious defense to Buchanan’s and Pope’s counterclaims..

D. BACKGROUND RELATED TO RUSSELL BAUKNIGHT “ON BEHALF OF” THE ATTORNEY GENERAL AND OTHERS

Little needs to be said about Russell Bauknight except that he had no legal authority to claim that he was acting “on behalf of the Attorney General of South Carolina.” He has done so for almost eight years. Further, his simultaneous claim to be protecting the Attorney General’s Legacy Trust and James Brown’s charity, if not earlier obvious, became abundantly clear on February 27, 2013, the day of the first *Wilson* decision.

INCOPORATION BY REFERENCE OF RETURN TO MOTION OF ATTORNEY GENERAL

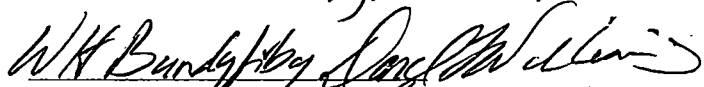
Appellant incorporates each and every argument made in her Return in Opposition to Motion of Attorney General to Strike dated today, which is being filed herewith, and which is incorporated as fully as if set out herein..

CONCLUSION

The record in this almost-eight-year-old case is voluminous. Records from at least five other cases have been considered by the lower court at the request of Respondents. Without objection the lower court has been presented and taken judicial notice of multiple James Brown cases and media reports of those cases. The Designations and Initial Brief properly rely on this voluminous record., and are in compliance with the

Appellate Court Rules. The Motion of Respondents to Strike the Initial Brief and Designations and Stay this appeal should be denied.

Respectfully submitted,

signed with permission


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Counsel for Appellant

March 2, 2018

**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**

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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

PROOF OF SERVICE

I certify that on March 2, 2018, I have served the Return and Memorandum in Opposition to Motion of Respondents Tommie Rae Brown and Others to Strike Initial Brief and Designations by hand delivery on counsel listed below:

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Signed with permission
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