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STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-001727

Adele J. Pope..... Appellant,

v.

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

APPELLANT'S PETITION FOR REHEARING

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SC Court of Appeals

Appellant respectfully requests, pursuant to Rule 221, SCACR, a rehearing of the decision rendered on June 19, 2019. This petition is presented to provide the Court with information within the record needed to accurately assess the continuing role of Respondents James Brown Legacy Trust (Legacy Trust) and the Attorney General of South Carolina (AG) in delaying and denying Appellant and other citizens of South Carolina access to public documents to which they are entitled under the South Carolina Freedom of Information Act (FOIA)¹ related to the estate of entertainer James Brown and his “I Feel Good” Trust.

The Court is asked to consider the facts and applicable law presented herein as well as matters related to the actions of the AG and Legacy Trust in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) and Richland County Case 2010-CP-40-4900 (Richland 4900) of which the Court may take proper judicial notice.²

Appellant respectfully requests that the Court modify its opinion to declare that Respondent Legacy Trust, like the AG, is a public body as defined in FOIA, and that Appellant is entitled to summary judgment and immediate FOIA compliance by both the AG and Legacy Trust as to all documents requested under FOIA. The matter should be remanded to the circuit court for enforcement of the Court’s ruling, a determination of the award of attorney’s fees and costs to Appellant, and the allocation of those fees and costs between the AG and the Legacy Trust.

In this extraordinary FOIA case the Court has acknowledged Appellant’s FOIA rights eight years after her FOIA request was made. If the Court fails to find that the Legacy Trust is a public body and direct immediate FOIA compliance, costs will be increased and Appellant may have to wait for a decade to obtain documents from the State official charged with the enforcement of FOIA

¹ S.C. Code Ann. §30-4-10, et seq.

² Specifically, Appellant asks that the Court take judicial notice of its own files for Appellate Case Nos. 2017-1899 and 2018-2229 arising from Richland 4900, as well as Appellate Case No. 2019-0362, arising from Aiken 1337 (discussed below).

which should have been delivered in 2011. The same would be true if counsel who is holding the AG's documents which are subject to FOIA, and has itself agreed to comply with FOIA, can continue to help the AG evade its statutory obligations under FOIA. Such further delay would harm Appellant and fly in the face of both the letter and spirit of FOIA.

The Attorney General Creates and Controls the Legacy Trust

James Brown died on Christmas Day 2006 leaving all of his assets except his personal and household effects to a trust he established in 2000. At his death, by a "fractional share" formula related to Brown's final estate tax proceeding, a fraction of Brown's assets and income is placed in a taxable trust for the education of seven specific grandchildren to age thirty-five (35). Everything else goes to Brown's "I Feel Good" Trust, a private charitable foundation dedicated solely to providing scholarships for needy students studying in South Carolina and Georgia.

In October 2007 AG Henry McMaster, now Governor of South Carolina, officially entered the James Brown proceedings to protect James Brown's "I Feel Good" Charity.

Brown's Inventory & Appraisalment (I&A) filed the following month valued Brown's music empire at \$100 million, less Brown's \$15 million debt to the New York Teacher's Assn. (TIAA). The value was based on a letter of intent from TJBL to buy the music empire.

A February 2008 WIS-TV interview in which the AG and Brown's grandson Forlando Brown (Forlando) participated states:

...[Brown's] assets contain his 6-acre Beech Island home and even more importantly, rights to James Brown's image and music. Altogether, the estimated worth is more than \$100 million. "So the children", McMaster says, "the needy children stand to gain a lot." [R., p. 311]

As to the possibility that litigation might diminish the "I Feel Good" Charity, Governor McMaster said:

There is a concern some could be whittled away, but we think there

is so much money involved because the name is so big and the rights to his image – really a valuable thing. We’re trying to look at this long term. [R., p. 311]

In 2008 TJBL made two additional attempts to purchase the James Brown assets for between \$90 million and \$102 million. [R., p. 311]

On July 30, 2008 the AG approved Robert Buchanan, Jr. and Appellant Pope, who had been serving as Brown’s PR/Trustees since November 2007, as permanent trustees of Brown’s 2000 Trust. Eleven days later, however, the AG contracted to replace them That day, August 10, 2008, the AG brokered a settlement deal which dismembered Brown’s estate plan and threatened the 900 copyrights James Brown had given his “I Feel Good” Charity. [R., p. 312]

The AG asserted the right to “stipulate” who would be James Brown’s heirs under the U.S. Copyright Act, 17 U.S.C. §§ 101 *et seq.* (Copyright Act) and thus be entitled to certain “Termination Rights” under Sections 304 and 203 of the Copyright Act to some of Brown’s U.S. royalties. He stipulated that Tommie Rae Hynie Brown (Tommie Rae), her son James Brown II (James) and five clients of Louis Levenson, Esq., would be Brown’s heirs “for all purposes.”

Tommie Rae, James and the Levenson clients, with knowledge of each other’s potential impediments, agreed to “stipulate” that Tommie Rae was Brown’s spouse under the Copyright Act and that they were Brown’s only children. They agreed to pool all of their Termination Rights proceeds, and certain other assets, in Respondent Legacy Trust; put the AG in effective control by the right to appoint and replace the trustee at will; and give Tommie Rae and the AG 75% voting control (50% to the AG and 25% to Tommie Rae). They even agreed that half of the income and assets of the Legacy Trust would go to a charity controlled by the AG.

The AG overlooked two critical factors. First, Termination Rights stand apart from Brown’s estate plan. No attempt by Brown to exclude heirs in his will or attempt of the AG to stipulate heirs would prevent Brown’s half dozen or more claimed heirs – some already DNA- proven – from

sharing in a proper Termination Rights election.

Second, the AG and “stipulated” heirs ignored, or concealed, that Termination Rights proceeds, which would slowly mature beginning in 2012, apply only to U.S. royalties, and U.S. royalties make up only about half of James Brown’s \$4 million annual worldwide royalty stream. Thus \$2 million a year of the “I Feel Good” Charity’s income; half the copyrights; all of Brown’s image and likeness (right of publicity); and all of the remainder of the assets Brown gave the “I Feel Good” Charity will never be threatened or diminished by Termination Rights. Further, multiple strategies are available to the “I Feel Good” Charity, and others, to lessen the impact of Termination Rights elections.

Despite these factors, the AG claimed that it had conducted proper due diligence when he decided to put all of James Brown’s assets in the Legacy Trust; give Tommie Rae and the Levenson clients about \$2 million a year of income; and use their Termination Rights and James Brown’s fortune to defend his plan. The AG continued this position in his March 2013 Petition for Rehearing in *Wilson v. Dallas*. At page 16 the AG said:

As the contribution agreement states: “The parties hereunder recognize that it may be difficult at this time to value accurately the interests and rights being contributed hereunder to the Legacy Trust. However, the parties are reasonably informed that a large portion of the value of the assets and interests contributed hereunder resides in the rights granted to heirs under the federal copyright act. Accordingly, the parties recognize that the beneficial interest received hereunder by Mrs. Brown and/or the Levenson clients may be of lesser value than the interests they are contribution to the Legacy Trust ... [Emphasis supplied]

In September 2008 Buchanan and Pope filed Brown’s estate tax return. Schedule F of the return reported Brown’s worldwide music empire, consisting of this 900 copyrights; claims against David Cannon and others for the \$17 million Cannon took; Brown’s right of publicity (image and persona), his valuable tangible personal property (TPP) and other miscellaneous assets at \$84

million – about \$99 million less the TIAA debt. Based on information then available, and available now, the \$84 million valuation was reasonable and conservative. The valuation of the copyrights and right of publicity was consistent both with a formula presented to Judge Early in 2007 and unopposed by the AG and the non-professional valuation formula accepted by the IRS in 2002 for the valuation of the copyrights of songwriter Harlan Howard. *In re Estate of Harlan Perry Howard*, No. M2008-00540-COA-R3-CV (Tenn. App. 2009).

The estate tax return was promptly made public, and no objections were made to the value.

By January 2009 Russell Bauknight was serving at the pleasure of the AG as trustee of the Legacy Trust, a position he holds today. Tommie Rae, James and the Levenson clients had placed their Termination Rights proceeds in the Legacy Trust.

On or about January 17, 2009, the AG filed an unsigned, incomplete copy of the Legacy Trust in Aiken County. [R., p. 312] It did not show that Bauknight was trustee.

On January 30, 2009 Terry Brown (Terry) joined the settlement and placed his Termination Rights proceeds in the Legacy Trust. The AG and Tommie Rae maintained their 75% voting control of the Legacy Trust, but the ownership was modified slightly as follows: AG's Charity, 47.5%; Tommie Rae, 23.75%; Terry, 4.79%; Venisha Brown (Venisha), 4.79% and four other Levenson clients 4.79% each.

Immediately after Terry joined the settlement, Bauknight, without disclosing his role as trustee of the already-funded Legacy Trust, recommended that Judge Early approve the AG's settlement. [R. p. 300]

On March 26, 2009 a second, modified, incomplete, unsigned copy of the Legacy Trust was filed in Aiken County. [R., p. 312] The Legacy Trust document make clear the AG's control. Assets may not be sold other than in the ordinary course of business without his agreement. Nor can a modification or dissolution of the Legacy Trust occur without the AG's consent.

On April 6, 2009 Senior Assistant Attorney General Havird “Sonny” Jones, who has overseen the AG’s involvement in James Brown matters since 2007, assured Judge Early:

THE ATTORNEY GENERAL IS GOING TO...MAKE SURE IT IS TAKEN CARE OF AND WE HAVE CONTROL OVER [THE] CHARITABLE TRUST AND SETTLEMENT ENTITY [Legacy Trust], SO WE’LL MAKE SURE THIS CHARITABLE TRUST SET UP UNDER THIS SETTLEMENT WILL BE CARRIED FORTH PROPERLY.... [R., p. 300]

On May 26, 2009 Judge Early, persuaded that the AG had conducted extensive due diligence, approved the AG’s settlement, as modified.

In the fall of 2009 Judge Early lifted the automatic stay imposed by the appeal by Buchanan and Appellant which would become *Wilson v. Dallas*.

From 2009 until 2013 Buchanan, Pope and a small legal team were the only persons working to protect the “I Feel Good” Charity. Under the direction of two AGs, at least five taxpayer-paid lawyers were working for Respondent Legacy Trust. Another dozen lawyers, under the control and with the approval of the AG, were using Brown’s “I Feel Good” Charity’s funds to defeat the claims of anyone who opposed the AG’s heirs “stipulation” or the Legacy Trust.

The AG and Legacy Trust Sue Buchanan and Pope in Richland 4900

In April 2010 an attorney for Tommie Rae advised that Sr. Assistant AG Jones had hired the law firm of Kenneth Wingate, Esq., (Wingate), and Wingate would sue if Buchanan and Pope did not drop their appeal of the AG’s settlement. [R., p. 301]

On May 18, 2010 Bauknight signed the 23% - 40% Wingate contract for the Legacy Trust, and Wingate agreed to a contract which made clear that the documents it was holding were subject to FOIA and that the AG controls all litigation related to the charity. AG McMaster did not sign the Wingate contract, but this was not known until the fall of 2013.

On May 19, 2010 the AG and the Legacy Trust sued Buchanan and Pope for tens of millions

of dollars in Richland 4900 for the benefit of the Legacy Trust and its beneficiaries, including the AG. [R. pp. 33-4]

In Richland 4900, Bauknight, in addition to suing as trustee of the Legacy Trust, has for nine years claimed to act “on behalf of” the AG, Tommie Rae, James, and other Legacy Trust beneficiaries to whom Buchanan and Pope owed no duty. [R. 34]

Richland 4900 and the \$79 Million Devaluation of the Music Empire

The AG and Legacy Trust claim in the Richland 4900 complaint that Buchanan and Pope should have accepted TJBL’s \$100 million offer in 2007. They also claimed Buchanan and Pope overstated the value of James Brown’s assets in James Brown’s IRS proceeding in order to get a big commission. The complaint, which is being pursued by the AG and Legacy Trust today, asserts that as a result of the failure of Buchanan and Pope to accept the \$100 million offer, the James Brown assets in 2010 were worth tens of million of dollars less than in 2007. The complaint also asserts that Buchanan and Pope knew nothing about the Copyright Act or its impact on the value of the James Brown assets.

On August 23, 2010 the AG and other Legacy Trust beneficiaries told the Court of Appeals in *Wilson v. Dallas*:³

6. Respondents dispute Appellants’ assertion that the settlement agreement has the potential to divert “tens of millions of dollars” from the [2000] Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars⁴,

³ The representation was made in a return by the AG, Bauknight and others to a request of Buchanan’s and Pope’s *pro bono publico* appellate counsel James Richardson, Jr., for an extension to file their initial brief in *Wilson v. Dallas*. [R., p.337]

⁴ The difference between \$100 million and \$85 million is the \$15 million TIAA debt.

in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal.⁵ By contrast Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million (\$12,000,000.00) Dollars. [R., p. 336]

In response to the claimed devaluation from about \$84 million to \$12 million or less Wm. Jeffrey Smith, Esq., and Appellant Pope circulated a draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*⁶ [R. pp. 1335-1338; R. pp. 1581-1600]

The claimed \$4.7 million valuation arrived in September 2010, but the AG, Bauknight and others agreed to withhold it from the *Wilson v. Dallas* Court for eight months.

Buchanan and Pope moved to dismiss the Richland 4900 complaint or change venue to Aiken County. They also claimed that Richland 4900 was unconstitutional.

In response, Bauknight stated under oath that he managed the Legacy Trust and kept its assets, books and records at his Columbia office. [R., p. 59]

Subject to the motion to dismiss, Buchanan and Pope answered, counterclaimed and sought discovery, including:

Any and all documents which support any position you may have as to the value of the James Brown assets as of December

⁵ This statement was incorrect. There was a professional appraisal of approximately 800 of Brown's 900 copyrights, including the major copyrights, in 2006 conducted by the Royal Bank of Scotland (RBS). RBS valued the royalty stream from the 800 copyrights at \$42 million or more.

⁶ The draft of *Private Foundations* was circulated in April 2011 to peers and the AG. It explains how the combined devaluation of Brown's music empire from about \$99 million (less a \$15 million debt to TIAA) to \$12 million, and sale to Terry at that reduced valued, would leave the "I Feel Good" Charity with almost nothing. [R.p. 372]

25, 2006. [R., p. 66, L 2 – 5]

In December 2010 the AG and Bauknight filed their initial brief in *Wilson v. Dallas* and did not disclose the claimed \$4.7 million valuation.

The AG and the Legacy Trust did not produce the requested documents in Richland 4900 in 2011, and they have not been produced today. [R. pp. 66-67].

In December 2010 Bauknight filed documents in James Brown's IRS estate tax proceeding claiming Brown's worldwide music empire (estate tax return Schedule F) was worth only \$4.7 million. That year alone Brown's royalties brought in \$5.4 million. [R., p. 303]

The damage caused by Bauknight's \$79 million devaluation to \$4.7 million, and the shifting of 31% of assets out of the "I Feel Good" Charity was immediately apparent in 2011 by a reading of Brown's 2000 Trust.

On or about January 4, 2011 the AG amended the Legacy Trust to allow Terry to begin due diligence on his right of first refusal (ROFR) to buy the music empire. Terry then transferred his 4.79% interest in the Legacy Trust to Forlando. [R., pp. 223 - 227] Terry and Forlando were both part of two of the three TJBL attempts to buy the music empire at \$90 - \$100 million.

On May 3, 2011, Bauknight filed a supplemental I&A in the Aiken Probate Court, changing the value of the music empire (Schedule F) from nearly \$85 million to under \$4.7 million. [R., p. 66, ¶6]

On or about May 6, 2011, Bauknight, the AG, and other Legacy Trust beneficiaries asked the Supreme Court to supplement the record on appeal (ROA) in *Wilson v. Dallas* to show that Brown's music empire was worth only \$4.7 million when he died. The AG and Legacy Trust beneficiaries claimed Bauknight had engaged a "nationally known firm to conduct the valuation and appraisal of the Estate and Trust." The appraisal was not attached. [R., pp. 66,67]

Buchanan and Pope opposed the motion and cited voluminous evidence that Brown's assets

were worth \$100 million or more. They continued efforts to obtain the claimed \$4.7 million value in Richland 4900. [R., p. 67]

The AG and Bauknight “on behalf of” the AG began making the false claim to the Supreme Court that Buchanan and Pope had intentionally overstated James Brown’s asset to the IRS by \$79 million in order to secure a \$5 million commission on a \$5 million estate. If true, this false claim would have been a federal felony. *See* 18 U.S.C. § 1001.

Pope’s position in the face of these accusations in 2011 was the same as it is today:

I am informed and believe that when such false accusations are made on behalf of the State’s chief law enforcement officer, who also enforces tax and fraud laws, they are clearly intended to threaten and intimidate [Buchanan] and me, and we are entitled to know if AG McMaster authorized them and AG Wilson condoned them.
[R., pr. 41]

The Role of FOIA Noncompliance in Advancing the Legacy Trust’s Agenda

In 2011, as today, a handful of public documents were all that was needed to show that the AG’s 2008 settlement and the Legacy Trust’s claims were inaccurate. Those documents are:

1. The AG’s Litigation Retention Agreement with Wingate to sue Buchanan Pope in Richland 4900 in 2010 to try to stop the appeal which became *Wilson v Dallas* (Wingate contract);
2. The authorization, if any, by which Bauknight has claimed in Richland 4900 since 2010 that he speaks for the State/AG;
3. The handwritten admissions of Tommie Rae that she was married; living with her husband; and possibly pregnant before conducting a marriage ceremony with James Brown in 2001;
4. The Legacy Trust and amendments, including the January 2011 amendment and transfer of the 4.79% interest of Terry to Forlando in the month Forlando planted the false Grammy © story noted by the Supreme Court in 2013.
5. The September 2010 claimed \$4.7 million valuation of James Brown’s worldwide Music empire (Schedule F, Estate Tax Return) used by the AG and Legacy Trust for 8 years to suggest that Buchanan and Pope are greedy, incompetent felons who falsified IRS filings to get a \$5 million commission from a \$5 million estate.

The AG, Wingate and Bauknight have worked in concert in FOIA proceedings since 2011 to prevent the dissemination of these critical public documents.

As discussed later, Between February 2013 and March 2015 Appellant's counsel made twelve separate requests for a hearing in each of her two 2011 FOIA cases. No hearing was held.

Appellant's FOIA Requests for the \$4.7 Million and Legacy Trust Documents

In June 2011 Pope made a FOIA request for the \$4.7 million valuation, the Legacy Trust documents, and related documents. The request was sent to the AG, the Legacy Trust and Wingate.

On June 30, 2011, David Black, Esq., counsel for the Legacy Trust, wrote Pope. Claiming the Legacy Trust was not a public body, he stated:

In the event that you continue to file unnecessary discovery and/or FOIA requests, please be advised that the Trust and Estate will have no choice other than to file an action against you for abuse of process and sanctions. [ROA, pp. 48, 49]

On July 1, 2011 the AG and Legacy Trust, through Wingate, moved in Richland 4900 for a protective order as to the documents sought under FOIA. [R., pp. 70, 71]

On August 3, 2011, Pope filed this FOIA action in Newberry County, and on August 10, 2011, she filed a second FOIA suit, also in Newberry County. Taken together, the relief sought in the two FOIA suits was:

1. That the AG produce the Litigation Retention Agreement between the State/AG and Wingate;
2. That the AG produce any documents which would show whether Bauknight was authorized to act "on behalf of the Attorney General of South Carolina" in Richland 4900.
3. That the AG produce the \$4.7 million appraisal and related documents;
4. That the AG and Respondent Legacy Trust produce finals and drafts signed and unsigned, of the Legacy Trust and all amendments;

5. That the AG require Wingate, over which it has effective control, to comply with the FOIA requests.

6. The both the AG and Legacy Trust be declared public bodies under FOIA and bear the legal fees and costs necessary to secure FOIA compliance by the Legacy Trust and AG.

The August 3 complaint explained the relationship of the false claims being lodged against Buchanan and Pope in Richland 4900:

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

10. AG McMaster and the Legacy Trust, among other false allegations, asserted that Plaintiff's and Buchanan's approximately \$85 Million valuation of James Brown's assets was incorrect and improper. They asserted Plaintiff intentionally overstated Brown's assets on the estate tax return for the improper purpose of obtaining a large commission. [R., p. 18]

An affidavit of Pope filed on August 3, 2011, supports the FOIA requests and asserts the importance of obtaining the claimed \$4.7 million appraisal before a hearing in Richland 4900 to enjoin Wingate from representing both the AG and Terry, who was seeking to buy the James Brown assets. [R. pp. 33- 43] The affidavit asserted that FOIA compliance would help answer the following questions:

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

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

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

d. Can Bauknight continue to speak on behalf of the AG/State after filing sworn documents with the Court and IRS asserting Brown's

worldwide music empire was worth less than \$4.7 million⁷ [R., p. 34]

The affidavit advised the court of the substantial evidence that some or all of the beneficiaries of the Legacy Trust, or their agents, were actively involved in the manipulation of the value of Brown's assets. [R., pp. 37, 38] It noted that Terry, supporting the \$4.7 million value claim, had been part of two \$90 - \$100 million offers for Brown's music empire, and that Tommie Rae had asserted that the 900 copyrights alone might be worth \$100 million. [R, p. 5, Fn. 11] It explained how the AG, Terry and others stopped a 2-year "publicity rights" contract negotiated by Buchanan and Pope with GreenLight, a company which had earned tens of millions annually by exploiting the images and personas of Einstein, Steve McQueen and others. [R., p. 36, Fn. 11]

Pope's affidavit stated that in 30 years of practice she had never known an "AG to be a co-Plaintiff using joint private counsel in a tort suit for money damages against a South Carolina citizen;" where neither the AG (nor an associate) was counsel of record. Nor had she seen a suit where a private citizen purported to act "on behalf of" the AG, as Bauknight was doing. [R., pp. 38, 39]

The affidavit cited the AG's October 20, 2006 litigation retention agreement with private counsel in the AstraZeneca (AZ) litigation, which did not involve private co-Plaintiffs, and suggested the undisclosed Wingate contract should contain a provision:

... as found in other AG Contracts, to allow the AG to end a case without merit and to protect Bob [Buchanan] and me from the use of the State's power to support the abusive acts of private counsel and Private Plaintiffs [See AstraZeneca agreement AG McMaster... [R., p. 39]

The August 3, 2011 affidavit recited some of the many public policy questions raised by

⁷ Footnote 7 stated that on May 4, 2011, 4 years and 4 months after Brown's death, Bauknight revealed that he had used a \$4.7 million valuation for Brown's worldwide music empire, even though 2 months earlier he had confirmed that Brown's royalty receipts for 2010 were approximately \$5.4 million. [R., p. 36, Fn.7]

the extraordinary Richland 4900:

1. Is Bauknight's assertion that he speaks on behalf of the AG in Richland 4900 legal?
2. Did all Private Plaintiffs sign the Wingate contract (as is required for a contingent fee) to bring Richland 4900?
3. Did the AG violate his own policy and/or the Wingate contract by not maintaining control over the Richland 4900 litigation and signing the contract?
4. How is the Buchanan/Pope counterclaim judgment against the Richland 4900 Plaintiffs, if any, to be paid?
5. Did the AG approve seeking money damages against Buchanan and Pope for not signing an agreement not to criticize him?
6. Does the Wingate Agreement designate Bauknight to speak on behalf of, or bind, the AG and State?

On August 9, 2011, the AG and Legacy Trust served a Motion for Protective Order Concerning Fee Agreement and/or Motion to Strike Defendant Pope's Motion to Compel Plaintiffs' fee agreement in Richland 4900. Wingate claimed the AG's public contract was the "epitome of privileged communication[s]." [R., pp. 343 – 345, 344]

In September 2011 the Legacy Trust moved to dismiss this FOIA suit, claiming venue in Newberry was improper. The Legacy Trust stated:

Dismissal under Rule 12(b)(6) should be granted, as venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. [R., p. 79]

On September 11, 2011, an affidavit opposing the motion to dismiss and requesting an expedited hearing was filed. [R., pp. 299 – 315]

On September 12, 2011, Appellant filed a Return to Motion of Defendant James Brown

Legacy Trust to Dismiss. [R., pp. 81 – 84] Appellant asserted that the FOIA requests were properly made in Newberry, and that there was no basis for this FOIA suit to be transferred to Richland County or consolidated with Richland 4900. Appellant asserted that her rights to receive documents under FOIA are entirely distinct from discovery in Richland 4900, and that the transfer would only result in delaying a hearing of the FOIA case on the merits. [R., p. 83]

On October 6, 2011 Appellant filed in this FOIA case the AG's and Legacy Trust's Richland 4900 motion to prevent release of the public Wingate contract in which the AG made the following claim about his public contract which Governor McMaster had not signed:

Fee agreements are the epitome of privileged communication, Plaintiffs. . . therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement. [R., p. 335]

That fall the AG posted other Contingency Fee Litigation Retention Agreements with outside counsel, but excepted those whose disclosure was “currently under review by a court.” The AG did not disclose that it was his own motion which had placed the Wingate contract “under review.” [R., p. 342] The AG's public website stated:

Below are all active, contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases that the Attorney General's office itself would otherwise be unable to pursue. [R., p. 342]

It would be late 2013, after *Wilson v. Dallas*, before a Federal Court, over Bauknight's objection, directed that the Wingate contract be made public. The Wingate contract showed that AG McMaster never signed the Wingate contract. Three years later, in sworn 2016 testimony, now-Governor McMaster stated emphatically that he never sued Buchanan and Pope as AG in

Richland 4900; that he did not authorize Richland 4900 to be brought in the name of the State/AG; that he did not authorize Bauknight to act on behalf of the State/AG in Richland 4900; and that he did not know he was a Richland 4900 Plaintiff until after leaving office in January 2011.

In September 2011 Appellant filed a motion for summary judgment, including a determination that the Legacy Trust is a public body. It was supported with an affidavit dated September 29, 2011 which outlined in detail the structure and operation of the Legacy Trust, including the AG's control of the day-to-day functions of the Legacy Trust [R. pp. 316 – 326] The September 29, 2011 affidavit stated in part:

39. The State/AG continues to support the Legacy Trust – now paying its own attorneys and allowing the Legacy Trust to hire distinguished outside counsel to fight this FOIA request so that the public will be prevented from knowing:

...

b. What members of the AG's Office were involved in the fabricated \$4.7 Million valuation of Brown's assets?

c. Why did the State authorize the Wingate Firm/Legacy Trust Trustee to accuse Bob Buchanan and [Appellant] of causing tens of millions of dollars of damage to Brown's music empire while at the same time the trustee (Bauknight) presented to the IRS a fabricated \$4.7 million valuation of the music empire?

d. Why did AG Wilson not fire Bauknight and admonish his staff for presenting the \$4.7 Million to the Supreme Court when public documents make clear it was outrageous? [R., p. 9]

The section of the September 29, 2011 affidavit entitled "The Valuation is public and should be disclosed" set out in detail that Brown had earned more than \$5 million a year between 2003 and 2006, and that the income since his death made clear that the \$4.7 million, which reduced scholarships to needy students by about \$3 million a year, was wrong. [R., pp. 324 – 326, and Chart 1, Exhibit C, D, E & F, pp. 327 - 333]

On October 6, 2011 Appellant filed an Affidavit of ... Pope in Further Support of All Relief

Requested in the Complaint, Expedited Hearing and *In Camera* Review. [R., p. 334 – 342]

On October 14, 2011, the AG moved to strike Appellant's affidavit supporting summary judgment and the attachments to the summary judgment motion. [R., p. 91]. This was one of a number of motions to strike. [R., p. 98] Appellant opposed the motions to strike. [R., pp. 352, 353]

On October 25, 2011 the AG filed a memorandum in opposition to summary judgment and in support of his motions to strike the affidavits of journalists, experts, and others which support Appellant's requests for FOIA compliance. [R., p. 354 – 367] The affidavits and attachments were not stricken.

By affidavit of Wm. Jeffrey Smith dated December 9, 2011, and related affidavits of Thomas R. Young, Jr., and others, Appellant urged the FOIA court to consider the public importance of the damage being done both to FOIA and the "I Feel Good" Charity by the FOIA noncompliance related to Bauknight's \$79 million devaluation and claimed \$4.7 million value. [R., pp. 369 – 400. Affidavits of Smith; Young, Spence, T. Pope, Summer, and *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...*, pp 372 – 384]

On January 10, 2012 Pope moved for expedited consideration of her summary judgment motion; opposed all motions to strike; and asserted that there was no basis for the dismissal motions of the AG and Legacy Trust. She reiterated that the AG, the Legacy Trust and other Richland 4900 Plaintiffs had still refused to produce anything other than a 2-page witness list in Richland 4900. The motion stated:

1. The Defendants, which are public bodies, should have complied with FOIA in July [2011].
2. The media, writers and members of the general public believe that FOIA is important to our free society.

3. There is great public interest in James Brown matters.
4. Attorney's fees and costs are appropriate under the facts of this case. [R., p.98]

In defense of the affidavits of journalists and others supporting the FOIA requests, which the AG was seeking to strike, Pope's motion stated:

Where, as here, public bodies have vigorously resisted compliance with FOIA, it is appropriate for Plaintiff and others to explain to the Court, through affidavits and documents, what has happened and what effect the delays caused by Defendants have had on both Plaintiff and the general public. [R., p. 98]

On January 11, 2012 a hearing was held in Newberry County on the AG's motion to transfer this FOIA case to Richland County and consolidate it with Richland 4900. [R., pp. 266 – 291] The circuit court stated:

I ordered the other case consolidated. Once this matter is transferred to Richland County, in terms of venue – and that's the grounds that I'm using to transfer this case – either party may seek consolidation; either party may seek an expedited hearing with the judge. And I hope you get the information sooner, rather than later.

But that's what I feel is appropriate to do under the circumstances and based upon everything that has transpired with the – this case, Case 4900, and Case 379. I've consulted with some other judges on this very issue, and I have yet to hear one of them remark to me that they think that this is a bad idea. There seems to be a consensus, so that's what I'm doing. [R, p. 273]

By order dated January 11, 2012 the Honorable Frank Addy changed venue of this FOIA case from Newberry County to Richland County, where it became Case No. 2012-CP-40-350. [R., p 103]

On February 1, 2012, the AG moved to consolidate this FOIA case with Richland 4900. [R. pp. 103 -105].

I

On December 30, 2012 the AG began claiming that the complaint in this action should be denied because Appellant's FOIA request, which was properly made to the AG, the Legacy Trust and Wingate, as well as attached to the complaint, was not properly presented to the AG. The AG alleged:

Plaintiff has failed to serve her FOIA request on the Defendant by mail or delivery so as to trigger the application of the statute, and because the items demanded in the FOIA requests at issue in this proceeding are subject to the rules regarding discovery in the Rules of Civil Procedure applicable to *Bauknight v. Pope*, 2010-CP-40-4900, and exempt from disclosure under FOIA § 30-4-40(a)(4) for that reason. [R., p. 135]

The Legacy Trust and FOIA Noncompliance Continue after *Wilson v. Dallas*

On February 27, 2013 the Supreme Court issued its first *Wilson v. Dallas* decision. The Supreme Court admonished the AG to conclude Richland 4900 and the FOIA suits "in the first instance."

On March 6, 2013 Appellant Pope obtained a meeting with the AG to discuss the tax problems and damage done to the "I Feel Good" Charity Bauknight had caused by the \$79 million devaluation and \$4.7 million claimed value. She and counsel had a second meeting with the AG's senior staff to the same effect. [*Wilson* did not correct the substantial income tax problem Bauknight caused by his shifting of 3/10 of the assets and \$1 million a year of income out of the "I Feel Good" Charity by the \$4.7 million value, with no corresponding estate tax benefit.]

At the March 2013 meeting the AG and his staff had been in possession of *Private Foundations* for two years, and the Copyright Act was clear that neither James Brown himself, nor the AG, had the right to declare Brown's heirs. Yet the AG, Legacy Trust which he controlled, and Bauknight acting "on behalf of" the AG have continued to try to reinstate the AG's 2008 settlement.

For six years the AG, the Legacy Trust and Bauknight have actively disrupted FOIA cases and discovery in Richland 4900 and elsewhere to conceal documents which show that the May 29,

2013 announced intention to Judge Early by Tommie Rae and the Levenson to disregard *Wilson v. Dallas* will severely damage Brown's "I Feel Good" Charity.

The AG, allowing Bauknight to continue to speak for the State/AG and the Legacy Trust in Richland 4900, is not only ignoring *Wilson v. Dallas* but preventing the return of to the "I Feel Good" Charity of 3/10 of its assets, and \$1 million or more of income a year.

On March 7, 2013 the AG served his answer in this FOIA case. [R., pp. 159 – 167] The AG attached a draft of the Legacy Trust which had been included in the ROA in *Wilson v. Dallas*. He stated in part:

Because most of the allegations of Plaintiff in the instant Complaint regarding the Legacy Trust are irrelevant to that complaint, this Answer is not intended to address how the Opinion in *Wilson etc. et al v. Dallas* may apply, if at all, to the allegations in the instant complaint.

The AG's answer repeatedly referenced the Richland 4900 Complaint and craved reference to it; repeated the claim that the FOIA request was not properly mailed or delivered and asserted he was without sufficient knowledge or information to know whether it was properly mailed to the Legacy Trust; [R., p. 162] The AG admitted that the AG had not responded to the FOIA request, but claimed he was not required to do so; [R., p. 162] As to the Legacy Trust, the AG stated in part:

23. The allegations in paragraph 26 regarding the Legacy Trust do not apply to the Defendant Attorney General or the FOIA directed to the OAG. The OAG was not properly served with the FOIA at issue so as to trigger a requirement to respond thereto.

On March 7, 2013 the AG also moved for judgment on the pleadings in this FOIA case. [R., p.] The AG referenced the case of *Summer v. Wilson* a 2012 Newberry County FOIA case in which a journalist following the progress of Pope's 2011 FOIA requests had made her own FOIA requests for some of the same documents. In addition, the journalist sought the so-called "Hynie

diary,” long-public handwritten admissions by Tommie Rae which show that she was married; living with her husband; and possibly pregnant before concealing her marriage and conducting a 2001 ceremony with Brown.

On March 14, 2013 the AG told the Supreme Court in its petition for rehearing in *Wilson v. Dallas* that he was getting out of Richland 4900 and hoped to complete the FOIA cases within a short time. At page 5 of the AG’s Petition for Rehearing in *Wilson v. Dallas* the AG stated:

Accordingly, we now advise this Court that, it is our plan, that, having completed our function in intervening in this case, the Attorney General will, upon the appointment of a new trustee, assume a posture of monitoring the action, as we typically do in many charitable trust matters. Chief Justice Toal is correct that “the AG’s involvement [is] no longer necessary to stave off maladministration.”

The AG continued its support for the Legacy Trust in its impassioned, but incorrect, claim in its Return to Petitions for Rehearing filed March 25, 2013:

The valuable James Brown music rights, obtained in the settlement for the charitable trust, was a boon in effectuating Brown’s laudable purpose. The circuit court served as the ultimate protector of that desire which was so important to Mr. Brown. . .

On March 15, 2013 the Legacy Trust filed a motion to stay this FOIA case. [R., p. 1215, 216]. The Legacy Trust claimed it did not exist. Yet for the next six years it has actively pursued Richland 4900 for the benefit of the AG, Tommie Rae and other Legacy Trust beneficiaries in accordance with the announced intention of May 29, 2013 to disregard *Wilson v. Dallas* discussed below. The Legacy Trust asserted incorrectly that [i]f the status of the Legacy Trust continues as presently determined by the South Carolina Supreme Court, the Legal [Legacy] Trust will not exist after remittitur.[R, pp. 215, 2016]

On March 18, 2013 the Honorable L. Casey Manning requested a status report in light of the Supreme Court’s first *Wilson v. Dallas* decision. [R., p. 218] Appellant, through counsel, stated

in part:

As is clear from the Supreme Court's opinion, the Court did not declare the Legacy Trust void. Instead, the Court reversed the approval of the *settlement agreement*. Although the decision may have some effect on the management and funding of the Legacy Trust, nothing in the opinion suggests the Supreme Court eradicated the Legacy Trust *ab initio*.

Furthermore, the Legacy Trust's argument that it has no assets is incorrect. Since May 19, 2010 the Legacy Trust has pursued a multi-million dollar claim against Plaintiff [Pope] for alleged breaches of fiduciary duty and trust. Indeed, the Legacy Trust is still one of the lead Plaintiffs in Case 4900, where it has indicated no doubt of its existence. [R, p. 220]

Appellant referenced and attached documentation from the January 2011 Legacy Trust amendment, signed by Attorney General McMaster without the participation of Bauknight. [R., p. 221] Appellant stated:

The Legacy Trust asks this Court to find that the Attorney General can create an entity which does not have to produce its own public documents if the Supreme Court later finds that the Attorney General's actions were improper. The Court should decline to do so and set a hearing on this matter at its earliest convenience. [R., p. 222]

On May 8, 2013 the Supreme Court issued its decision in *Wilson v. Dallas*. The Supreme Court voided the AG's settlement and voided Bauknight's appointments as SA/ST and PR/Trustee. It made no statement about his role as trustee of the Legacy Trust, which provided that its existence did not depend on court approval.⁸

Within two days the AG, Tommie Rae and Levenson had secured Bauknight's appointment

⁸ In six years there has been no evidence of any action on the part of the AG to dissolve the Legacy Trust, or disburse its Termination Rights proceeds, including the 47.5 % Tommie Rae and others placed in the Legacy Trust and agreed to give to the "I Feel Good" Charity in exchange for the AG's action on behalf of Brown's estate/2000 Trust not to challenge their status as Brown's heirs under the Copyright Act.

as SA/ST for Mr. Brown's estate and 2000 Trust.

That same day, May 10, 2013, the AG, Legacy Trust, and Bauknight on behalf of the AG and other Legacy Trust beneficiaries, told the Richland 4900 Court, through their private counsel:

... [T]he Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 of the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. While the court does recognize that the Attorney general is contesting releasing some documents pursuant to FOIA, the court no longer puts any primacy or priority on any court hearing these matters. We believe that such position is entirely appropriate, because the documents requested under FOIA are subject to a claim of privilege which is the subject of a motion for protective order before this court in Case 4900. The claim of privilege must be decided before any court can make a determination of the application of any FOIA claim.

Therefore, the Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that Richland 4900 be held in abeyance in its entirety until all the underlying issues related to the Plaintiffs are resolved by the Aiken Court. Should you deem it best for Plaintiffs to make a formal motion to stay, I would be pleased to do so.

In the fall of 2013, over objection of Bauknight, a Federal Judge in S.C. District Court Case 3:08-cv-00014- WOB denied an attempt to impose a confidentiality order of the Wingate litigation retention agreement. When released, it showed that Wingate's 23% - 40% contingency contract to sue Buchanan and Pope was not signed by the AG or most of the Legacy Trust beneficiaries, but by Bauknight and three lawyers for Legacy Trust beneficiaries.

On November 22, 2013 Appellant requested a FOIA hearing on the two FOIA cases. None was held. [Supp. R. p. 23]

On April 17 and 29, 2014 Appellant requested a hearing on the two FOIA cases. Wingate

objected for the AG and Legacy Trust. They were not held.

On May 7 and 28, 2014 Appellant requested a FOIA hearing on the two cases. No hearing was held. [Supp. R. p. 23]

By order dated September 14, 2014 the AG was directed in a journalist's 2012 FOIA case to release many of the documents Appellant had been seeking since June 2011. [R., p. 250]

On October 8, 2014 Appellant requested a hearing in the two FOIA cases. [Supp. R. p. 23] No hearing was held. Another request was made on November 13, 2014, and another on December 2, 2014. No hearing was held. [Supp. R. p. 23]

On January 14, 2015 the Honorable Eugene C. Griffith ruled in the journalist's case that the AG had to produce all of the document on the AG's privilege log. He also lifted the stay imposed by the appeals filed by Bauknight and the AG, and ruled:

5. Plaintiff is the prevailing party in this action under FOIA and is entitled to an award of attorneys' fees and cost; the Court will determine the amount of the fees and costs after the FOIA appeals are concluded.

Despite the FOIA rulings about the same documents sought in this FOIA case, the AG and Legacy Trust continued to refuse to produce the documents.

On March 20, 2015 Appellant requested a hearing in the two FOIA cases. No hearing was held. [Supp. R. p. 23]

The AG, through counsel, claimed that the FOIA cases must be delayed and subjected to the mediation, which took place on October 12, 2015 in a joint mediation ordered in Richland 4900 and Aiken 1337 by both Judge Early and Judge Manning.

On March 2, 2016, the circuit court officially ordered the stay in Case 4900 which had been *de facto* in effect since 2013. On March 24, 2016 Judge Early was assigned to this FOIA case [R.

12] and lifted the Richland 4900 stay.

On May 17, 2016 Judge Early heard the motions of the AG and the Legacy Trust to dismiss the 2011 FOIA complaints in this case and the FOIA case seeking the Wingate contract. [R., p. 274 – 291] Of the \$4.7 million appraisal the AG had used to accuse Buchanan and Pope of a federal felony, and which Appellant asked that he secure from his Richland 4900 counsel, where, under the Wingate contract, it was subject to the FOIA, if he did not have it within his office, the AG said:

As to the appraisal, we don't have that. And so we can't produce what we don't have which is what Judge Griffith ruled in the *Summer v. Wilson* case about the request for the same document.

She tries to argue that we should pull in Sweeny Wingate firm documents but she did not make a request for documents from the Sweeny Wingate firm. She made the request from our custodian of records. And that is not enough to pull in lawyer files. And so therefore we believe she is not entitled to it. [R. 277]

The Court, assigned to the 5-year-old FOIA case and 6-year-old Richland 4900 had the following discussion with the AG:

THE COURT: But isn't the end result we are going to end up in 4900 which I'm now having to resolve or rule on and preside in, and discovery is going wide open in 4900 and all of this stuff is going to be discoverable; is it not? Aren't we just wasting our time?

MR. SMITH: I believe that this case is a waste of time, Your Honor, and it's inappropriate.

THE COURT: I don't mean a waste of time, but isn't it duplicative? 4900 is going to open to discovery in the James Brown case, everything that's gone on. Why are we fussing about jurisdiction? And why are we fussing About ---

MR SMITH: Because the Plaintiff continues to press this

FOIA case and is asking for attorney's fees. That's why – and is not willing to drop it. That's why we're here.

We agree that the documents that she is seeking, the efforts to obtain documents, should be made in 4900. ... And that's where it should be, not here in an independent Freedom of Information Act action. [R., pp. 278, 279]

Appellant's counsel stated that both the AG and Legacy Trust:

The Legacy Trust has never notified the Court in that action [Richland 4900] that it has any doubt about its continued existence, and it's never sought to change anything in that case as far as I am aware...

I'm not aware of any proceeding that's been brought to terminate the Legacy Trust and it's identified none...

This trust was also funded, ...with contributions that had already been made or were being made at the time [2008 and 2009] of copyright termination interests by some of the parties to the settlement. [R., p. 289]

Appellant also argued that the AG and his staff spent years defending the Legacy Trust's existence in the Supreme Court, and that Appellant is entitled to a declaration that it is a public body, and the documents. [R., pp. 290, 291]

On June 14, 2016 the AG signed orders dismissing the AG and Legacy Trust. They were filed on June 20 and received by Appellant on June 24, 2016. [R., p. 252]

On June 27, 2016 Appellant served a motion to alter, amend or vacate the order granting the Legacy Trust's motion to dismiss. [R., pp. 262 – 265] Among other issues, Appellant said:

3. The Court overlooked or misapprehended that the...Legacy Trust at all times since the commencement of this action has been an active party in Richland...4900...; has moved to intervene in another FOIA case; and has, through its Trustee, Russell Bauknight, taken action confirming its existence. [R., p. 262]

Argument

I. The Court Erred in Directing that the Legacy Trust be Dismissed on Remand.

In its opinion, this Court made no finding on whether the Legacy Trust was a public body subject to FOIA. Instead, the Court reversed the Order appealed from and remanded with a direction that the circuit court dismiss the Legacy Trust as a party to this action. This instruction is based on the Court's finding "that the issuance of the Wilson opinion mooted the premise for naming the Legacy Trust as a defendant in this action." No further explanation is given for this finding, and Appellant respectfully submits that it is in error.

First, the record and law cited by Appellant herein fully support a finding that the Legacy Trust is a public body. *Weston v. Carolina Research & Development Foundation*, 303 S.C. 398, 401 S.E.2d 161 (1991), holds that even indirect public support of an organization could cause that organization to be treated as a public body. Likewise, *Associated Press v. Sebelius*, 31 Kan.2d 1107, 78 P.3d 486 (Kan. 2003), holds that an organization's use of state employees (who were not paid outside their state salaries), meant that it was a public body for FOIA purposes.

Importantly, the Legacy Trust did not dispute that it was supported by the use of multiple members of the Attorney General's office in defending its creation, funding and continued existence. See *Wilson*, 743 S.E.2d 746, 768.⁹

Even if the *Wilson* decision had somehow terminated the Legacy Trust (which is inconsistent with the record herein, including the Legacy Trust's own positions), the Court appears

⁹ "The AG has taken unprecedented action in this case. After effecting a total takeover of Mr. Brown's estate by excluding its trustees and banding together with parties who stand only to gain from the invalidation of the testator's devise, the AG disposed of the court-appointed trustees, created a new settlement entity, and inserted himself into the day-to-day operations of a newly created charitable trust, the Legacy Trust." *Id.*

to have overlooked that *Wilson* was not decided until nearly two years after the FOIA request was made in June 2011. At that time, both the Legacy Trust and the AG were defending the Legacy Trust's funding and the propriety of the AG's actions in creating the Legacy Trust in the appeal which would later result in *Wilson* and also pursuing Richland 4900.

If *Wilson* did affect the continued existence of the Legacy Trust or its status as a public body, any documents possessed or controlled by the Legacy Trust during the period during which the AG had unfettered control over it would have remained public and must have been preserved for FOIA compliance.

The South Carolina Public Records Act, S.C. Code Ann. §30-1-10, *et seq.*, requires that public bodies maintain their public records. Further, the chief administrative officer of any public body is required, if he has no successor, to deliver public documents in his possession to the Archives. *See* S.C. Code Ann. §30-1-40. The statutory scheme for maintaining and preserving public records cannot be reconciled with a finding that the obligations the Legacy Trust had to maintain or release public records was extinguished by the Supreme Court's holding in *Wilson*.

Further, the record in this case demonstrates that the Legacy Trust does exist and is a public body. The Legacy Trust was an active, public body subject to FOIA at its creation in late 2008 or early 2009. [R. 17] It remains so today.

On March 18, 2013, between the first *Wilson* decision and the final May 8, 2013, decision, the Legacy Trust claimed in this FOIA action that if the final *Wilson* decision was consistent with the first ruling, the Legacy Trust would not exist. After the final decision, however, the Legacy Trust continued to function in Richland 4900 and elsewhere.

In the six years since the first *Wilson* decision, the Legacy Trust has pursued Richland 4900 with and for the AG, Tommie Rae and others the AG chose as beneficiaries of the Legacy Trust.

In addition, its trustee, Bauknight, has remained an agent for Tommie Rae and other will contestants in Richland 4900. The AG had done nothing to curb Bauknight's alliance with those seeking to dismember Brown's "I Feel Good" Foundation.

The Legacy Trust moved for and received summary judgment on Appellant's counterclaims against it in Richland 4900, and it continues to this day to defend that result on appeal before this Court.

Importantly, the Legacy Trust was 47 1/2% charitable on the day of the Wilson decision. If -- contrary to the evidence -- the Legacy Trust did cease to exist, Bauknight would have been required under S.C. Code Ann. §62-7-413 and the Internal Revenue Code to take certain actions to protect the charitable assets. The AG is the state's official charged with assuring such actions are taken. There is no evidence in the record to suggest that a charitable dissolution took place.

The Legacy Trust was created and is controlled by the AG. It was active for nearly four years before the *Wilson* decision. It has continued to litigate for six years since. Nothing in the record supports dismissal of the Legacy Trust as a defendant.

Given all of the above, this Court's finding that the circuit court erred in dismissing the claims against the Legacy Trust as moot, but that the Legacy Trust should nonetheless be dismissed in light of the later-decided *Wilson*, should be reversed. Because the issue of whether the Legacy Trust is public is not moot, the Court should proceed with deciding this issue which was briefed extensively by the parties.

II. The Court Erred in not Directing the AG to Turn Over all Responsive Documents.

Although the Court determined that Appellant's FOIA claims against the AG were not moot, it stopped short of finding that she is entitled to all responsive documents from the AG. Appellant respectfully submits that, particularly in a now 8-year-old FOIA matter, it is error for this Court to remand that question for further proceedings.

Section 1 of the FOIA states:

The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials **at a minimum of cost or delay to the persons** seeking access to public documents or meetings. S.C. Code Ann. § 30-4-15. (emphasis supplied)

This Court in its opinion quotes¹⁰ the above passage, with the same portion emphasized. Further, in Footnote 9 of the published opinion, the Court cites and quotes from four reported South Carolina FOIA cases to support its acknowledgment that FOIA is taken very seriously by the courts. It nonetheless remands this 8-year-old case for further proceedings.

Based on the record before this Court and the law cited in the Court's opinion herein, Appellant submits that this Court is in a position to direct the AG's production of responsive documents to the FOIA request. The only basis ever advanced by the AG for nondisclosure of documents to Appellant was that her FOIA requests were subordinate to discovery in Richland 4900. [R. 239] The Court held on that point:

In sum, we decline to depart from precedent by imposing a blanket prohibition on disclosure whenever the person seeking public records is simultaneously being sued by the public body in possession of those records. *Opinion* at 10.

Having dispensed with the AG's sole argument regarding an alleged exemption, this Court should promote the stated purposes of FOIA by directing that the AG must fully respond and produce all

¹⁰ While this is quoted in the separate, published opinion in *Adele J. Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Op. No. 5657 (S.C. Ct. App. filed Jun 19, 2019), the Court incorporates Section 1 of the published opinion into its opinion in this case.

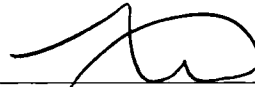
requested documents, leaving only the issue of attorneys' fees and costs for determination on remand.

Conclusion

For the foregoing reasons, Appellant respectfully petitions this Court to grant a rehearing on the points above or, alternatively, to substitute this Court's June 19, 2019 opinion with one which:

1. Eliminates the direction that the Legacy Trust be dismissed on remand;
2. Finds based on the record herein that the Legacy Trust is a public body subject to FOIA;
3. Directs the AG and the Legacy Trust to fully respond to the FOIA requests, and produce all requested documents; and
4. Remands the matter for a final determination of attorneys' fees and costs.

Respectfully submitted,



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June 27, 2019

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Appeal from Richland County
Court of Common Pleas

JUN 28 2019

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-1727

Adele J. Pope..... Appellant,

v.

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

PROOF OF SERVICE

I certify that I have served the Petition for Rehearing on all Respondents by hand-delivering a copy of same on June 27, 2109, addressed to his attorney of record as follows:

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